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# ENHANCING HMRC'S POWERS: TACKLING TAX ADVISER FACILITATED NON-COMPLIANCE

## Response by Association of Taxation Technicians

### 1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to provide comments on the policy paper enhancing HMRC's powers: tackling tax adviser facilitated non-compliance<sup>1</sup> and the accompanying draft legislation<sup>2</sup>.
- 1.2 The primary charitable objective of the ATT is to promote the education and study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 Our comments build on our response<sup>3</sup> to the open consultation on 'Enhancing HMRC's powers: tackling tax advisers facilitating non-compliance'<sup>4</sup> published at the Spring Statement on 26 March 2025. Whilst the proposed legislation has clarified some of the points raised in our previous submission, it has also raised other issues, which we address below.
- 1.4 We also acknowledge the comments made by HMRC in its 'Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance — Summary of responses'<sup>5</sup> (the Consultation response).
- 1.5 In this response, we have included a general comment on the proposed legislation in Section 2, followed by commentary on the Consultation response and draft legislation in relation to the conduct of tax agents in Section 3 and on the publication of information about tax agents in Section 4.

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<sup>1</sup> [Enhancing HMRC's powers to tackle tax advisers who facilitate non-compliance - GOV.UK](#)

<sup>2</sup> [Enhancing HMRC's powers: tackling tax adviser facilitated non-compliance - GOV.UK](#)

<sup>3</sup> [2025 - RESPONSE - condoc - Enhancing HMRC's powers tackling tax advisers facilitating non-compliance - FINAL.pdf](#)

<sup>4</sup> [Enhancing HMRC's powers: tackling tax advisers facilitating non-compliance - GOV.UK](#)

<sup>5</sup> [Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance — Summary of responses - GOV.UK](#)

## 2 General comments on consultation response and proposed legislation

- 2.1 We acknowledge that some taxpayers continue to engage with ‘incompetent’ or ‘dishonest’ tax advisers, thereby causing harm to the tax system, indicating that HMRC could take further action against such individuals. We believe that HMRC already has a substantial body of existing powers at its disposal. In our view, these powers should have been fully utilised before consideration was given to introducing additional statutory measures.
- 2.2 We are disappointed that the draft legislation has been issued at Stage 3 of the Tax Consultation Framework process<sup>6</sup> without any Stage 2 discussions. When implementing the framework, the Government acknowledged the importance of meaningful engagement with individuals, practitioners, businesses, and other stakeholders in the development of tax policy, recognising that effective public consultation enables the Government to explore, refine, and test new ideas to improve the tax system, ensuring that changes are appropriately targeted and their potential impacts fully understood.
- 2.3 This draft legislation has been released following a brief six-week initial consultation period, which we believed was insufficient to allow for the thorough consideration of the potential impacts and ramifications of the proposals, particularly given that the consultation coincided with both the Easter period and the May Bank Holiday. We had anticipated the opportunity, as provided for in Stage 2 of the Tax Consultation Framework, to engage with and comment on the detailed policy design and available options. In light of the absence of such an opportunity, we have incorporated further observations into our response. For the legislation to be correctly drafted, it needs to be done with a sensible time frame and not rushed.
- 2.4 We welcome the Government’s stated intention to ‘work with professional bodies to further assist them in dealing with poor conduct from their members at the earliest opportunity,’ and its commitment to ‘broaden disclosure of HMRC’s concerns to them.’ We look forward to engaging with HMRC to help shape how these broader disclosures will be implemented in practice, ensuring they are effective and take into account relevant practical considerations.
- 2.5 In its Consultation response, the Government confirmed that it remains keen to explore ways to tackle ‘incompetence’ and ‘unreasonable errors’ among tax advisers. It stated that it wanted ‘to incentivise’ advisers to take reasonable care to avoid facilitating tax non-compliance. The Government stated that it was considering what the appropriate levers were to tackle ‘careless behaviour’ by tax advisers and that it would welcome views on this as part of the consultation on the draft legislation, as well as views on alternative ways to tackle non-compliance facilitated by tax advisers.
- 2.6 We believe that if the Government intends to address issues of ‘incompetence’ and ‘unreasonable errors’ among tax advisers, it must first provide clear definitions of these terms. These definitions should be aligned with existing guidance, such as the Professional Conduct in Relation to Taxation (PCRT)<sup>7</sup> or HMRC’s own Standards for Agents (S4A)<sup>8</sup>, to ensure consistency and clarity in both expectations and enforcement.
- 2.7 Whilst most tax agents affiliated to a professional body will be required to undertake certain levels of mandatory ongoing CPD (continuing professional development), this is not the position for all tax agents. The Government could introduce a requirement for all tax agents to undertake mandatory ongoing CPD with an emphasis on areas where common errors occur.

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<sup>6</sup> [Tax Consultation Framework](#)

<sup>7</sup> [Professional Conduct in Relation to Taxation | The Association of Taxation Technicians](#)

<sup>8</sup> [HMRC standard for agents - GOV.UK](#)

- 2.8 As stated at 2.5, HMRC should seek to further collaborate with professional bodies. By sharing information on members who fail to meet the PCRT standards. Professional bodies (such as the ATT) can investigate potential breaches and, where appropriate, take disciplinary or remedial action to address substandard performance. This partnership approach would help raise standards across the profession and promote greater consistency in compliance.
- 2.9 We recognise that one of the drivers behind HMRC's focus on tackling 'incompetence' and 'unreasonable errors' is the Government's requirement for HMRC to take meaningful steps to reduce the Tax Gap<sup>9</sup>. According to recent figures, failures to take reasonable care and taxpayer error now account for approximately 46% of the total Tax Gap, so it is understandable that this area is receiving increased attention.
- 2.10 However, addressing this issue effectively requires more than targeting a small subset of incompetent tax agents or isolated cases of unreasonable error. A broader, systemic approach is needed. This should include:
- A comprehensive review and simplification of tax legislation, to make it more accessible, comprehensible, and easier to comply with for both taxpayers and agents.
  - The provision of clearer, more consistent guidance from HMRC, reducing ambiguity in interpretation and supporting correct outcomes.
  - Enhanced digital tools and calculators that help agents and taxpayers get things right first time.
  - Investment in education and outreach, particularly for small businesses and new entrants to the tax system.
- 2.11 Tackling the behavioural drivers of the Tax Gap requires a joined-up strategy that supports compliance, reduces complexity, and ensures that the system is fair, transparent, and navigable for all stakeholders.

### **3 Commentary on the Consultation response and draft legislation on the conduct of tax agents**

#### **3.1 Consultation response**

- 3.2 Our primary concern with the amendments to Schedule 38 Finance Act 2012<sup>10</sup> relates to the rebranding of 'dishonest conduct' to 'deliberate conduct', along with its associated definition. We believe that the term 'deliberate misconduct' would have been more appropriate, as it more accurately captures the nature of the behaviour exhibited by the tax agents targeted by this legislation.
- 3.3 Defining 'deliberate' behaviour is a well-established concept within the UK tax tribunal system, with a significant body of case law interpreting and applying it. This includes decisions at all judicial levels, culminating in the landmark Supreme Court ruling in HMRC v Tooth<sup>11</sup>. In that case, the Court clarified that for behaviour to be considered 'deliberate,' there must be a 'conscious and intentional act designed to mislead', not merely a careless or mistaken one.
- 3.4 The ruling in Tooth reaffirmed that a deliberate inaccuracy requires more than a misunderstanding or lack of reasonable care; it must involve a deliberate attempt to submit false or misleading information. This legal precedent underlines the importance of maintaining a high threshold for what constitutes

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<sup>9</sup> [Measuring tax gaps 2025 edition: tax gap estimates for 2023 to 2024 - GOV.UK](#)

<sup>10</sup> [Schedule 38 Finance Act 2012](#)

<sup>11</sup> [Commissioners for Her Majesty's Revenue and Customs \(Appellant\) v Tooth \(Respondent\) - UK Supreme Court](#)

‘deliberate’ conduct, and it reinforces the need for any legislative or administrative definition to be consistent with established judicial interpretation.

- 3.5 The draft legislation at paragraph 3(3)(1) states: “A person ‘engages in deliberate conduct’ if, in the course of acting as a tax agent, the person deliberately does, or omits to do, something with a view to bringing about a loss of tax revenue.” However, unless the Tooth ruling is strictly interpreted, this wording could be taken too broadly, as virtually all actions taken by tax agents are, by nature, deliberate in the sense of being conscious and intentional undertaken. Crucially, not all deliberate actions result in, or are intended to facilitate, non-compliance.
- 3.6 For an action to warrant inclusion under this legislation, it should follow that the deliberate behaviour must also fall below the high professional standards set out in the PCRT or HMRC’s own S4A. As outlined in paragraph 3.20 below, we recommend that the draft legislation be refined to explicitly reflect this distinction.
- 3.7 In our response we did not agree that HMRC should be granted easier access to information from tax advisers based solely on a ‘reasonable suspicion’ that the adviser has facilitated an inaccuracy in a taxpayer’s document or return. Our concern lay primarily with the vague and potentially subjective definition of ‘reasonable suspicion’, but we also had concerns about the ambiguity around what constitutes ‘facilitation of an inaccuracy,’ and the risk that some compliance officers may use this lower threshold to justify unwarranted inquiries into unco-operative tax advisers.
- 3.8 We were encouraged in the Consultation response to learn that “the Government will work to ensure the term ‘reasonably suspect’ is defined to prevent any ambiguity or confusion amongst taxpayers, tax advisers, and HMRC itself.”. It is therefore disappointing that the draft legislation does not include a definition of this key term. We remain concerned that, without a clear and objective definition, the subjective nature of the phrase ‘reasonably suspect’ could result in unwarranted inquiries into the conduct of some tax advisers.
- 3.9 We do not support HMRC having the power to issue a File Access Notice (FAN) without prior agreement from the tribunal. This concern is heightened by the proposed change allowing HMRC to issue a FAN based solely on a ‘reasonable suspicion’, and without first having to issue a Conduct Notice to the tax agent. Such powers, if exercised without independent oversight, risk undermining procedural fairness and could lead to disproportionate intrusion into confidential records without sufficient justification.
- 3.10 We agree that there should be a penalty for tax advisers who deliberately facilitate non-compliance on behalf of their clients, and recognise that such a penalty could be linked to the Potential Loss of Revenue (PLR). However, it is important to acknowledge the distinction between the taxpayer and the adviser in this context. A taxpayer penalty is rightly based on the PLR, as it reflects the amount the taxpayer stood to gain from their actions. The taxpayer also bears ultimate responsibility for ensuring that their return is complete and correct to the best of their knowledge and belief.
- 3.11 In contrast, a tax adviser’s gain is typically limited to the fee received for preparing or submitting the return. This fee may be relatively modest in comparison to the PLR, and using the PLR as the basis for calculating a penalty against the adviser could result in disproportionate outcomes. In some cases, this approach could lead to severe financial consequences, potentially putting advisers out of business, which would not appear to be a fair or balanced application of the penalty regime.
- 3.12 For the reasons outlined above, we do not support a penalty based on the PLR. While we acknowledge the challenges associated with linking penalties to a tax adviser’s fees, including difficulties in establishing the exact fee and the risk that fees may be obscured or misrepresented, we continue to believe that a

fee-based penalty remains the most balanced and proportionate approach. It better reflects the nature of the adviser's involvement and avoids the potential distortions that can arise from tying penalties directly to the taxpayer's PLR.

- 3.13 We welcome the acknowledgement that the Government "will consider if further changes to the penalty are needed once the outcome of the Behavioural penalties reform consultation<sup>12</sup> is known.". While the proposed draft penalties legislation draws on existing provisions for deliberate behaviour, it introduces a complex multiplier to increase penalty percentages for repeated actions. When combined with the existing distinctions between 'prompted' and 'unprompted' disclosures, these risks creating an overly complicated system that may prove challenging to administer effectively. This complexity is further exacerbated by the fact that, in the most serious cases, there appears to be no upper limit to the penalties that can be applied.
- 3.14 Draft legislation
- 3.15 We would recommend that in all cases where the draft legislation refers to 'deliberate conduct' that this is changed to 'deliberate misconduct' to more accurately capture the nature of the behaviour exhibited by the tax agents targeted by this legislation
- 3.16 Paragraph 2 of the draft legislation defines a 'tax agent', with sub-paragraph 2(1) stating that "a 'tax agent' is a person who, in the course of business, assists other persons ('clients') with their tax affairs." Similarly, paragraph 1 of the draft legislation<sup>13</sup> under the 'Modernising and mandating tax advisers' registration' consultation defines a 'tax adviser' in sub-paragraph 1(1) as "a 'tax adviser' means a person who, in the course of a business, assists other persons with their tax affairs.".
- 3.17 Although each definition is further elaborated upon, it is evident from these definitions that 'tax agents' and 'tax advisers' are viewed by HMRC in essentially the same way.
- 3.18 However, if it is the Government's intention for the definitions of 'tax agent' and 'tax adviser' to differ, then this distinction should be clearly articulated within the relevant legislation to avoid ambiguity and ensure consistent interpretation. Failure to provide clarity could lead to confusion among taxpayers, advisers, and HMRC staff, as well as inconsistencies in the application and enforcement of the rules.
- 3.19 Paragraph 2(2) retains the term 'individuals', whereas elsewhere in the legislation, 'an individual' has been replaced with 'a person'. Was the retention of 'individuals' in this instance intentional?
- 3.20 Paragraph 3 introduces a new paragraph 3(1) stating that "a person 'engages in deliberate conduct' if, in the course of acting as a tax agent, the person deliberately does, or omits to do, something with a view to bringing about a loss of tax revenue". We consider this definition should be further refined to reflect that deliberate conduct, in this context, involves a breach of professional standards. Specifically, it should acknowledge that such conduct falls below the expectations set out in the Professional Conduct in Relation to Taxation (PCRT) and/or HMRC's Standards for Agents (S4A). We therefore recommend that sub-paragraph 3(1) be expanded to include wording such as:
- "...and that those actions fall below the standards set out in the Professional Conduct in Relation to Taxation guidance and/or HMRC's Standard for Agents.".
- 3.21 Paragraph 5(1)(b) introduces a new paragraph 7(1)(a), under which tribunal approval is required only when a File Access Notice is issued to someone other than a tax agent. We consider this distinction to be

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<sup>12</sup> [Behavioural penalties reform - GOV.UK](#)

<sup>13</sup> [Draft Finance Bill Measures](#)

unfair and inconsistent with HMRC's Charter standards<sup>14</sup>, particularly the commitment to treat all individuals fairly and equitably. Granting HMRC unilateral access to tax agents' files without independent oversight risks undermining trust in the system and creates an imbalance in procedural protections.

3.22 We would question whether 'fraud and dishonesty' at paragraph 7(3)(a) of the original legislation now needs to be expanded to include 'deliberate'.

3.23 Paragraph 8(3) introduces a new paragraph 28(1) which states that 'the Commissioners **must** publish information about a person if the person incurs a penalty under paragraph 26 of more than £7,500.' [our emphasis]. This is a change from the current legislation which states that the Commissioners 'may' publish information.

3.24 While we acknowledge that publication is not currently a mandatory requirement, we would reiterate the concerns raised in our consultation response regarding the lack of transparency in this area. Despite our efforts, we have been unable to identify whether any dishonest tax advisers' details have actually been published, or where such information might be accessed. If a basic internet search fails to locate published details of dishonest tax advisers, it is highly unlikely that members of the public would be able to find this information either, rendering the publication measure largely ineffective. We therefore urge HMRC to give careful consideration to where such information is published and how it is promoted, to ensure the intended objectives of transparency and deterrence are met.

## 4 **Commentary on the Consultation response and draft legislation on the publication of information about tax agents**

### 4.1 Consultation response

4.2 We believe that it is in the public interest for HMRC to publish more information about its activities. This could help taxpayers to be better informed about the choice of tax adviser by knowing which tax advisers are subject to sanctions or have had limitations imposed on their ability to act effectively for clients. We are therefore broadly in support of the publication of information about tax agents who have been sanctioned.

4.3 We are pleased to see that HMRC have chosen not to proceed with publication of tax advisers where they have failed to comply with their own tax obligations. As stated in our consultation response, whilst failure to comply with their own tax obligations may suggest that a tax adviser does not take their own tax affairs seriously, it would be wrong to simply imply that they would not take the tax affairs of their clients seriously. There are already sanctions and penalties in place for late filing of returns and payment of tax, and these would adequately financially address tardy tax advisers' behaviour.

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<sup>14</sup> [HMRC Charter - GOV.UK](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/61222/hmrc-charter-2015.pdf)

#### 4.4

We consider that the information that should be published about a tax adviser or firm, should be limited to that which is sufficient to ensure that the tax adviser/firm can be clearly identified and not confused with other similar names or practices, and that the reason for disclosure is unambiguous. We understand why HMRC may wish to publish a tax adviser's address (paragraph 1(3)(b)) for example, to distinguish between advisers with similar names and to ensure transparency. However, we do not support the publication of private addresses, even where these also serve as an individual's business address. In an age where many advisers work from home, publishing such details could inadvertently expose individuals to significant personal risk.

This is particularly concerning for those who have experienced domestic abuse, stalking, harassment, or other safeguarding issues. Releasing home addresses publicly in these cases could pose serious threats to their safety and well-being. We believe this raises broader human rights and privacy concerns and would strongly urge HMRC to consider alternative ways of ensuring clarity and accountability without compromising personal security.

- 4.5 For the publication of 'deliberate' misconduct by tax advisers to serve a meaningful purpose, beyond simply enabling HMRC to demonstrate that action has been taken, the resulting lists must be widely publicised. This should include dissemination through multiple channels such as HMRC's website, social media platforms, and relevant trade publications, to ensure visibility among taxpayers, professional bodies, and the wider public.

#### 4.6 Draft legislation

- 4.7 Paragraph 1(1)(b) allows for publication where it is deemed to be 'in the public interest', based on the judgement of the HMRC officer involved. This subjective test raises concerns about consistency and fairness. We would expect robust internal guidance and oversight to be in place before any decision is made to publish a tax agent's details. To promote transparency, fairness, and accountability, we recommend that this guidance, and the oversight process, be made publicly available.

- 4.8 Paragraph 1(5)(b) states that before publishing details the officer must 'afford the person **reasonable opportunity** to make representations about whether the information should be published' [our emphasis]. We have concerns about the use of a subjective timeframe. We would prefer the legislation to specify a clear and defined period, for example, 30 days, to ensure all parties have certainty regarding the timeframe in which representations may be made.

- 4.9 In paragraph 2(1)(b) we consider that HMRC should refrain from publishing any details where an appeal to the Tribunal has been lodged prior to publication, until the outcome of that appeal is known. Whilst we are not in favour of publication before the appeals process has concluded, if there were cases where publication had already occurred and an appeal subsequently made, we agree that HMRC should clearly indicate the status of the appeal and, in due course, update the published information to reflect the final decision.

## 5 **Contact details**

- 5.1 Should you wish to discuss any aspect of this response, please contact our technical officer, Steven Pinhey on [spinhey@att.org.uk](mailto:spinhey@att.org.uk)

## 6 Notes

- 6.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.
- 6.2 Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government, and academia.
- 6.3 The Association has more than 10,000 members and Fellows together with over 7,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.