

## Finance Bill 2025-26

### Representation from the Association of Taxation Technicians (ATT)

#### Clauses 156 to 162: Representation on proposed prohibition of promotion of certain tax avoidance arrangements and related sanctions

##### Executive Summary

The Association of Taxation Technicians (ATT) supports the Government's objective of tackling persistent promoters of marketed tax avoidance and recognises the need for robust measures to deter and disrupt abusive activity that undermines the tax system and public confidence.

However, we have significant concerns that the new prohibition introduced by clauses 156 to 162 of the Finance Bill 2025–26 is drafted in overly broad terms and risks capturing legitimate tax advisers who act reasonably, professionally and in good faith. In particular, the prohibition is triggered by an evaluative judgment as to whether arrangements have “no realistic prospect” of achieving a tax advantage, a determination that may often only be made with hindsight in areas of legal uncertainty.

The introduction of strict liability criminal sanctions, without any requirement for intent, recklessness, or dishonesty, and without a statutory defence based on reasonable professional judgment, represents a material concern for tax advisers. As drafted, the legislation risks deterring tax advisers from providing legitimate tax advice in complex or evolving areas of tax law, potentially reducing choice for taxpayers, and undermining wider economic objectives.

We are also concerned that while civil penalties allow for representations to be made, no equivalent safeguard exists in relation to criminal sanctions, despite HMRC having discretion to pursue either route. This imbalance raises issues of fairness and procedural consistency.

We therefore recommend that the legislation be refined to ensure it is appropriately targeted at deliberate and abusive promotion activity. This could be achieved by introducing a requirement that the adviser acted deliberately or recklessly, or by providing a statutory “reasonable care” defence. We also recommend aligning the procedural safeguards for civil and criminal sanctions and providing clearer statutory or guidance-based boundaries around the types of arrangements intended to fall within scope.

These changes would preserve the effectiveness of the measure against known promoters of avoidance, while ensuring proportionality, legal certainty, and continued confidence in the legitimate tax advice market.

##### 1. Background

- 1.1. These measures were first announced at Autumn Budget 2024 as part of a wider package of reforms aimed at closing the tax gap and tackling persistent promoters of marketed tax avoidance schemes.
- 1.2. On 26 March 2025, the Government launched a 12-week consultation entitled “Closing in on promoters of marketed tax avoidance”. The consultation sought views on a range of

proposals, including the introduction of a Universal Stop Notice (USN), and closed on 18 June 2025.

- 1.3. Following responses from the consultation, it was decided that a USN would not be taken forward, and this legislation instead introduces a prohibition on the promotion of arrangements where there is “no realistic prospect” of those arrangements resulting in the tax advantage promised.

## 2. Changes introduced in Finance Bill 2025-26

- 2.1. Clauses 156 to 162 of Finance Bill 2025–26 introduce a new legislative framework aimed at strengthening HMRC’s ability to deter and disrupt the promotion of marketed tax avoidance arrangements. The measures significantly expand both the scope of conduct that may be sanctioned and the range of enforcement tools available to HMRC.
- 2.2. Clause 156 establishes a new statutory prohibition on the promotion of certain tax arrangements. In particular, it provides that a person must not promote arrangements that are marketed, or are likely to be marketed, as a means of obtaining a particular tax advantage where there is no realistic prospect that the arrangements will result in that advantage. The clause also enables the prohibition to apply to arrangements of a description specified in regulations made by the Commissioners which are unlikely to result in the tax advantage sought and are likely to cause harm to participants, thereby allowing the scope of the prohibition to be extended by secondary legislation.
- 2.3. The legislation applies broadly to any person who ‘promotes’ arrangements and is not limited to those traditionally regarded as promoters of marketed avoidance schemes. For example, s235 of Finance Act 2014 defines a promoter as someone who is responsible for designing the relevant arrangements, making a firm approach to someone about them, or making them available for implementation. However, Clause 157 says that someone promotes arrangements if they are either:
  - communicate information with a view encouraging someone to implement them;
  - make them available for implementation;
  - organise or manage any aspect of the arrangements; or
  - arrange (directly or indirectly) for someone else to do one of the above.

The drafting therefore has the potential to apply to a wide range of individuals involved in the provision of tax advice or the communication of tax planning ideas, depending on how the concept of ‘promotion’ is interpreted and applied in practice.

- 2.4. Clause 157 sets out the consequences of breaching the prohibition, including the imposition of civil penalties and exposure to further enforcement action. The clause forms the foundation for the sanctions regime that follows in subsequent provisions.
- 2.5. Clause 158 introduces the procedure for how regulations under section 156(2) are to be made by statutory instrument.
- 2.6. Clause 159 provides for the imposition of civil financial penalties in cases where the legislation is breached. The clause includes provision for representations to be made by the affected person before a penalty is imposed, reflecting an acknowledgment of the need for procedural safeguards in the civil enforcement context.

- 2.7. Clause 160 introduces a criminal offence for breach of the prohibition. The offence is drafted as a strict liability offence, such that no element of intent, recklessness or negligence is required to establish liability. This represents a significant escalation in the potential consequences for affected persons when compared with the existing promoter regimes.
- 2.8. Clauses 161 and 162 make supplementary provision in relation to enforcement, interpretation, and commencement. These clauses include powers to make regulations and to define key terms used throughout the regime, further shaping how the new framework will operate in practice.

### 3. General observations on changes

- 3.1. The ATT supports the principle that there is no place in the tax system for those involved in the creation, promotion and sale of marketed tax avoidance schemes that fail to comply with either the letter or the spirit of the law. We therefore support the Government's objective of deterring, disrupting and otherwise frustrating the activities of promoters of tax avoidance.
- 3.2. However, we have significant concerns that, as currently drafted, these provisions are unduly broad in scope and may give rise to unintended consequences. In particular, we are concerned that measures intended to target a relatively small number of known promoters of marketed avoidance schemes (estimated at 20–30 businesses) may instead capture tax advisers who act in good faith but make an honest error of professional judgment. This risk is particularly acute in complex or evolving areas of tax law, where reasonable differences of professional opinion are commonplace.
- 3.3. We note that many of the known promoter organisations operate through offshore entities and complex corporate structures. While enhanced financial and criminal sanctions may act as an effective deterrent for onshore promoters, we remain sceptical as to their efficacy in dissuading offshore promoters from engaging in similar activities.
- 3.4. Where offshore promoters are based in jurisdictions in which HMRC faces significant practical barriers to enforcement, the deterrent effect of even the most severe sanctions is materially reduced. Addressing this challenge is likely to require enhanced international cooperation, bilateral agreements, and more robust cross-border enforcement mechanisms, rather than reliance on domestic criminal sanctions alone.
- 3.5. The legislation may also have broader market impacts. In particular, it risks creating a chilling effect whereby tax advisers become reluctant to provide certain categories of advice where the perceived risk of criminal liability is disproportionate. We agree that tax advisers should not be promoting tax avoidance activities, however the behavioural effects of a criminal sanction could reduce the quality and range of advice available to taxpayers and, in turn, risk undermining the Government's wider economic growth objectives.
- 3.6. The phrase 'no realistic prospect that the arrangements will result in the tax advantage' in clause 156(1)(a) requires an evaluative judgment that may only be capable of being made with the benefit of hindsight. Many legitimate tax arrangements involve legal uncertainty, evolving case law, or fact-sensitive outcomes. A tax adviser may reasonably conclude that an arrangement has a realistic prospect of success based on existing authority, professional

advice, or prevailing market practice. A different conclusion later reached by HMRC, a tribunal or a court does not necessarily mean that the tax adviser's original assessment was unreasonable.

- 3.7. These concerns are compounded by the fact that breach of the prohibition gives rise to strict liability criminal sanctions, meaning that no element of intent, knowledge, recklessness, or negligence is required to establish liability.
- 3.8. The prohibition applies to a person who 'promotes arrangements' meeting the specified criteria without requiring any element of intent, recklessness, or dishonesty. There is no express statutory defence based on reasonable professional judgment, reliance on counsel's opinion or prevailing interpretation at the time the tax advice was given. As a result, innocent or well-intentioned conduct may be captured alongside deliberate and abusive behaviour.
- 3.9. In the absence of an explicit requirement that the tax adviser knew, or ought reasonably to have known, that there was no realistic prospect of success, advisers acting in good faith may nevertheless fall within the scope of the prohibition.
- 3.10. Whilst the legislation provides a mechanism for representations to be made in relation to the imposition of civil penalties under clause 159(3)(b), no equivalent safeguard exists in respect of the criminal sanctions regime in clause 160. This creates an imbalance between civil and criminal enforcement and raises concerns that criminal liability could be pursued without an adequate opportunity for advisers to explain the circumstances of their conduct.
- 3.11. Given that HMRC has discretion to pursue either civil or criminal enforcement, we consider it essential that the legislation provides a consistent mechanism allowing advisers to make representations before either form of action is taken.

#### **4. Recommendations for improvement**

- 4.1. We recommend that the scope of the prohibition be narrowed by incorporating clear and robust safeguards for tax advisers who act reasonably, professionally and in good faith. Without such protections, the current drafting risks creating legal uncertainty and may have a chilling effect on the provision of legitimate tax advice.
- 4.2. One means of achieving this would be to introduce an explicit requirement that the prohibition applies only where the tax adviser has acted deliberately or recklessly in promoting arrangements that have no realistic prospect of success, or where the tax adviser knew or ought reasonably to have known that this was the case.
- 4.3. Alternatively, the legislation could include a statutory "reasonable care" defence, enabling tax advisers to demonstrate that they undertook appropriate analysis, exercised professional judgment, and reached conclusions based on a reasonable interpretation of the law and available guidance at the time the tax advice was given.
- 4.4. Such safeguards would ensure that the legislation is appropriately targeted at deliberate and abusive promotion activity, while avoiding unintended consequences for tax advisers who make genuine, good-faith errors.

- 4.5. These adjustments would support proportionality, maintain confidence in the tax advice market, and align the measure with established tax principles that distinguish deliberate non-compliance from reasonable professional judgment.
- 4.6. We also recommend that the legislation or accompanying guidance more clearly delineates the types of arrangements intended to fall within scope and ensures that the “harm” factors are assessed in the round and in the context of avoidance-type behaviour.
- 4.7. Finally, we recommend that clauses 159 and 160 be aligned so that a representations process applies consistently across both civil and criminal sanctions. This would promote fairness, procedural consistency, and transparency, and help ensure that criminal sanctions are reserved for cases involving deliberate or egregious misconduct.

**Association of Taxation Technicians**

**27 January 2026**

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**Note:**

**The Association of Taxation Technicians**

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.

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.

The Association has over 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.