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INTRODUCING A CRIMINAL OFFENCE FOR MAKING RECKLESS UNTRUE STATEMENTS OR DECLARATIONS IN DIRECT TAX

Response by the Association of Taxation Technicians

1 Introduction

1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the government consultation on *Introducing a criminal offence for making reckless untrue statements or declarations in direct tax* ('the Consultation') issued on 23 June 2026[1].

1.2 The primary charitable objective of the ATT is to promote education and the 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 The Consultation seeks views on proposals to introduce a criminal offence for making reckless untrue statements or declarations in relation to direct tax matters, thus aligning the legal framework with existing offences in indirect tax.

1.4 In this response, we have provided an Executive Summary in Section 2, followed by detailed responses to the Consultation questions in Sections 3-10.

2 Executive Summary

2.1 The ATT supports the government's objective of tackling tax fraud and promoting a tax system that is clear, consistent and proportionate. We also support legislative alignment between direct and indirect taxes where there is a demonstrable benefit to taxpayers, advisers and HMRC, and where such alignment is consistent with our 10 Principles for the Tax System.

2.2 However, we do not support the introduction of a new criminal offence for making reckless untrue statements or declarations in relation to direct taxes.

2.3 In our view, the Consultation has not established that the existing framework of civil penalties and criminal offences is insufficient to address the concerned behaviours. Rather than filling a genuine gap in HMRC's enforcement powers, the proposal risks creating unnecessary overlap with the existing civil penalties

[1] Introducing a criminal offence for making reckless untrue statements or declarations in direct tax - GOV.UK

regime and lowering the threshold for criminal liability by introducing criminal sanctions in circumstances where dishonesty is neither alleged nor capable of being established.

2.4 Equally, the Consultation does not clearly define the boundary between careless behaviour, which is appropriately dealt with through civil penalties, and criminal recklessness. Without a clear statutory definition of recklessness and comprehensive guidance on how the offence would be applied, there is a significant risk of uncertainty, inconsistent application and disproportionate outcomes. This could discourage taxpayers and advisers from taking reasonable positions where the law is complex or uncertain, increase compliance costs and encourage defensive behaviour without materially improving compliance.

2.5 We do not support these sanctions being available against tax advisers. We consider that the recent strengthening of provisions within Schedule 38 Finance Act 2012 now provides HMRC with a comprehensive and robust framework for addressing sanctionable conduct by advisers. In our view, these enhanced powers are more than sufficient to deal with any reckless behaviour by advisers, and the Consultation has not demonstrated why the introduction of a further, overlapping criminal sanction is necessary.

2.6 With a lower evidential threshold, it is possible that there would be an increase in criminal prosecutions, and this could place additional pressure on an already overstretched criminal justice system, which continue to experience significant caseload backlogs.

General observations and view on proposals

3 Question 1: Do you agree that a criminal offence for making reckless untrue statements or declarations should be introduced for all direct tax matters? And if not applied to all direct tax matters, why not? Please give reasons for your response.

3.1 The proposal is to introduce a new offence for direct taxes that mirrors the existing offences of recklessly making untrue statements or declarations under section 167(1) of the Customs and Excise Management Act (CEMA) 1979[2] and section 72(3) of the Value Added Tax Act (VATA) 1994[3].

3.2 The ATT supports efforts to reduce fraud and abuse in the system and is generally supportive of legislative measures that streamline, simplify, standardise and align the tax system across both direct and indirect taxes. This approach is consistent with our '10 principles for the tax system'[4], which set out the characteristics we believe should underpin the design, administration and operation of the UK tax system.

3.3 However, despite supporting greater alignment where appropriate, we do not support the introduction of a new criminal offence for making reckless untrue statements or declarations in relation to direct taxes.

3.4 In our view, the proposal risks creating uncertainty and unnecessarily overlaps with the existing civil and criminal penalties, which already provide a well-established distinction between careless, deliberate, and deliberate and concealed behaviours, and the criminal concept of dishonesty. The principal concern we have is in being able to sufficiently define the threshold for criminal recklessness in a way that clearly distinguishes it from the behaviours that currently attract civil penalties. Unless that distinction is both

[2] Customs and Excise Management Act 1979
[3] Value Added Tax Act 1994
[4] The ATT's principles for the tax system | The Association of Taxation Technicians

clear and robust, taxpayers, advisers and prosecutors may face uncertainty as to where the boundary between each of the regimes lies.

3.5 We consider that the proposal raises important questions about the proportionality of introducing criminal sanctions where dishonesty is neither alleged nor capable of being established in relation to direct taxes. In our view, this would significantly lower the threshold at which HMRC could pursue a criminal prosecution. It also calls into question the circumstances in which HMRC would consider it necessary to rely on existing criminal offences that require a higher evidential threshold, such as those involving dishonesty or cheating the public revenue.

3.6 We acknowledge the proposed continued important safeguards that prosecutors across the United Kingdom would review the evidence and make charging decisions, thus helping to ensure that prosecutions are proportionate and in the public interest, and that ultimately, guilt would remain a matter for the courts, applying the criminal standard of proof. While these safeguards remain welcome, they do not address our more fundamental concern that the proposed offence risks blurring the boundary between the existing civil penalties regime and a lower entry level for criminal liability.

3.7 We recognise that HMRC has its own criminal investigation policy[5] which sets out the circumstances in which it will generally pursue criminal investigation and prosecution. However, the policy does not currently address cases involving reckless behaviour, nor does it explain how such cases would be distinguished from those more appropriately dealt with through the existing civil penalties regime. If the proposed offence is introduced, we consider that the policy should be reviewed and updated to explain how HMRC intends to exercise its discretion in relation to this lower threshold for potential criminal liability. Greater transparency would provide taxpayers and advisers with increased certainty and help promote the consistent and proportionate application of the new offence.

3.8 We welcome the confirmation that innocent mistakes, misunderstandings and errors arising from a failure to take reasonable care would continue to be addressed through the existing civil penalty regimes.

3.9 However, we have concerns regarding some of the Consultation examples set out in Table 2: Examples of careless and reckless errors. One example suggests that a taxpayer who claims a significant relief (such as business expenses or losses), does not properly read the relevant guidance, does not seek advice or clarification, and submits the claim because they think "it's probably fine", would fall within the scope of the proposed offence.

3.10 In our view, this example does not clearly demonstrate the level of culpability that should justify criminal liability. A failure to read HMRC guidance or seek professional advice may amount to a lack of reasonable care, but it does not necessarily follow that the taxpayer recognised a risk that the claim was untrue and consciously decided to proceed regardless. Without evidence that the taxpayer was aware of such a risk and unjustifiably disregarded it, the behaviour appears more akin to carelessness than criminal recklessness.

3.11 This example therefore serves to illustrate our concern that the boundary between the existing civil penalties regime and the proposed criminal offence is insufficiently clear. If conduct of this nature could expose a taxpayer to the possibility of criminal prosecution, a custodial sentence or an unlimited fine, there is a real risk that behaviour currently dealt with through the civil penalties framework would instead become subject to criminal sanctions, with the resultant impact on the court system.

3.12 We would suggest that when considering the effectiveness of an offence based on reckless behaviour (which is already being applied for indirect taxes), it is important to review how the courts have previously interpreted and applied the concept of recklessness in those cases to assess whether it would

[5] HMRC's criminal investigation policy - GOV.UK

translate to direct tax cases. However, there appears to be very little reported case law analysing the elements of the offences under section 167(1) CEMA 1979 or section 72(3) VATA 1994. We therefore assume that these criminal cases are being dealt with within the crown courts or magistrates' courts and therefore do not result in published judgments. Consequently, there is limited judicial authority on how these offences have been interpreted and applied in practice.

3.13 The limited volume of reported litigation may suggest one or more of the following:

- the offences are sufficiently clear that disputed points rarely reach the court system;
- many cases are possibly determined in the crown court or magistrates' courts and therefore do not result in published judgments, meaning the full extent of the offences' use is not publicly known; or
- HMRC reserves prosecutions for the clearest and most serious cases, particularly where existing offences requiring proof of dishonesty are either not appropriate or cannot readily be established.

Understanding which, if any, of these explanations is correct is important when assessing whether extending the offence to direct taxes is likely to achieve the intended policy objectives. It would also help determine whether the proposed offence addresses a genuine gap in HMRC's existing enforcement powers or whether its principal effect would be to provide an additional criminal offence with a lower evidential threshold than offences requiring proof of dishonesty.

3.14 We also consider that the recent strengthening of the sanctions regime for tax advisers under Schedule 38 Finance Act 2012[6] (schedule 38) significantly reduces the need to extend the proposed offence to tax advisers. The expanded scope of Schedule 38, together with its increased penalties and enhanced enforcement powers, already provides HMRC with a more robust framework for tackling serious misconduct by advisers.

4 Question 2: What impacts do you foresee for taxpayers, advisers, and other stakeholders if an offence for making reckless untrue statements or declarations is introduced for direct tax?

4.1 Although we do not agree with the introduction of an offence for making reckless untrue statements or declarations in direct tax cases, we have nevertheless included our views on the potential impacts for taxpayers, advisers and other stakeholders below.

4.2 <u>Taxpayers</u>

We consider that taxpayers would experience uncertainty or anxiety regarding the threshold for recklessness versus genuine mistakes. This could lead to taxpayers feeling compelled to undertake additional verification before submitting returns, increasing compliance costs and potentially delaying submissions. This burden is likely to fall disproportionately on smaller businesses and individual taxpayers with more limited resources.

There is very little reported case law that would assist taxpayers in understanding how the proposed offence is likely to be interpreted and applied in the direct tax context.

Some of these concerns can partly be mitigated by detailed, clear and accessible guidance. This should provide multiple practical examples of when the legislation is likely to be used with respect to individuals and businesses of different sizes.

[6] Schedule 38 Finance Act 2012

4.3 Advisers

We consider that the recent strengthening of Schedule 38 already provides HMRC with a comprehensive and robust framework for addressing sanctionable conduct by advisers. In our view, these enhanced powers are more than sufficient to deal with the behaviours of concern, and the Consultation has not demonstrated why the introduction of a further, overlapping criminal sanction is necessary.

Additionally, professional advisers may adopt increasingly defensive practices, requesting more supporting documentation and declining to advise on areas involving legal uncertainty. While improved due diligence may be beneficial, excessive risk aversion could increase costs for taxpayers and reduce access to professional advice.

4.4 Other Stakeholders

For HMRC, the introduction of a new offence would require significant investment in training, operational guidance and governance to ensure that investigators and decision-makers consistently distinguish between careless behaviour, deliberate behaviour and criminal recklessness.

The proposed offence is also likely to have implications for the wider criminal justice system. Prosecutors, defence practitioners and the courts would need to develop an understanding of the criminal offence and the distinction between recklessness and dishonesty in the direct tax context. Given the limited reported case law on the equivalent indirect tax offences, there may initially be uncertainty regarding the interpretation and application of the legislation until the courts have had an opportunity to consider it.

Professional bodies and other representative organisations are also likely to experience an increased demand for guidance and support from members seeking to understand the scope of the new offence, particularly where clients are taking positions on areas of legal uncertainty. This may require the development of additional guidance, training and educational resources.

5 Question 3: Are there particular types of behaviour or circumstances that you believe should or should not fall within the scope of the new offence? Please give reasons for your response.

5.1 As explained in our response to Question 1, we do not support the introduction of a criminal offence for making reckless untrue statements or declarations in relation to direct taxes. Our primary concern is that the proposed offence would create unnecessary overlap with the existing civil and criminal penalties framework and lower the threshold for criminal liability in circumstances where dishonesty is neither alleged nor capable of being established.

5.2 Accordingly, we do not consider it necessary to identify particular behaviours or circumstances that should or should not fall within the scope of the proposed offence.

5.3 However, if the government decides to proceed with the proposal despite our concerns, we consider that the scope of the offence should be drawn as narrowly and precisely as possible. In particular:

- the terms "statement", "declaration" and "recklessness" should be clearly defined in legislation or supported by comprehensive statutory guidance and practical examples;
- the offence should not apply to genuine mistakes, differences of professional judgement, or reasonable interpretations of uncertain or complex tax legislation;

- it should be clear that the offence is intended only for the most serious cases where the individual's conduct demonstrates a conscious and unjustifiable disregard of a known risk that a statement or declaration is untrue;
- there should be clear guidance on how HMRC will distinguish cases appropriate for civil penalties from those that justify criminal investigation and prosecution; and
- the legislation should contain appropriate safeguards to minimise uncertainty and ensure that compliant taxpayers and professional advisers are not discouraged from taking reasonable positions on matters where the law is unclear.

5.4 Without these safeguards, there is a significant risk that the proposed offence would create uncertainty, undermine confidence in the boundary between the civil and criminal regimes, and have a distressing effect on taxpayers and advisers seeking to make reasonable judgments in areas of genuine legal uncertainty.

Use of 'Statement' or 'Document'

6 Question 4: We are interested to hear whether consultees find 'statement' or 'declaration' easier to understand. Please explain your answer and provide any alternatives.

6.1 Although not agreeing with the proposals, we have considered the merits of using 'statement' or declaration', and these are set out in 6.2 to 6.5.

6.2 The terms 'statement' and 'declaration' are both widely used in tax legislation, but neither is entirely self-explanatory when used in isolation. If one term were to be preferred, 'declaration' is likely to be better understood in the context of the direct tax system because it is already familiar to taxpayers and advisers through tax returns, claims and statutory declarations made to HMRC.

6.3 The definition of 'statement' in the Consultation, which includes "oral statements, written statements made in documents, and statements made implicitly by a person's actions", appears to be very broad. It would have been helpful if the Consultation had included examples of the types of statements that it envisaged would be caught by the proposed offence in the direct tax context.

6.4 Also, while the Consultation describes the forms that a statement may take, namely, an oral statement, a written statement or a statement made implicitly by a person's actions, this does not in itself define what constitutes a 'statement' for the purposes of the proposed offence.

6.5 Rather than relying solely on either 'statement' or 'declaration', we consider it would be preferable for the legislation to define the scope by reference to the types of documents or information covered. For example, the legislation could refer to:

'a tax return, declaration, claim, election, certificate or other document provided to HMRC for the purposes of establishing a person's tax liability or entitlement.'

This would then clearly set out the situations in which providing a reckless submission would potentially trigger the sanction.

Effects on Compliance, Challenges and Other Comments

7 Question 5: How might the introduction of a reckless untrue statements or declarations offence affect compliance behaviour among individuals and businesses?

7.1 The ATT supports efforts to assist taxpayers in getting their tax affairs right, and this can include greater legislative simplification and alignment, as well as clear guidance with practical examples.

7.2 As stated at 4.2 it is likely that uncertainty or anxiety regarding the threshold for recklessness versus genuine mistake could compel taxpayers to undertake additional (possibly unnecessary) verification before submitting returns, increasing compliance costs and potentially delaying submissions.

7.3 While HMRC has a published prosecution policy, it does not assist taxpayers or advisers in understanding how HMRC will determine which criminal offence is most appropriate where more than one offence could apply. As the proposed offence is based on recklessness rather than dishonesty, it introduces a lower threshold for criminal liability. This raises the question of when HMRC would seek to rely on existing offences that require proof of dishonesty, rather than the proposed offence, particularly where the prosecution may seek comparable penalties. It would be helpful if HMRC's policy included a flow chart illustrating the different offences and the circumstances in which each may be considered. This would provide greater transparency around the alternatives available to HMRC and help taxpayers and advisers understand how the proposed offence would fit within the wider criminal enforcement framework.

8 Question 6: What challenges or risks do you foresee in implementing this change, and how might they be mitigated?

8.1 We have indicated elsewhere (primarily with the response to Question 4) some of the challenges and risks associated with implementing this change.

8.2 In summary the principal risks associated with implementing the proposed offence are uncertainty, inconsistent application and the potential to discourage taxpayers and tax advisers from legitimate compliance activity. These risks could be substantially mitigated (though not completely removed) through precise legislative drafting, a clear definition of recklessness, comprehensive HMRC guidance, transparent prosecution criteria and strong procedural safeguards.

9 Question 7: Do you have any other comments or suggestions regarding the proposed change?

9.1 No further comments

Sentencing Options

10 Question 8: Do you believe this option best achieves proportionality and deterrence for a direct tax recklessness offence, and why?

Question 9: Do you agree that fines should be unlimited on indictment? If not, what alternative would you propose and why?

10.1 As explained in our response to Question 1, we do not support the introduction of a criminal offence for making reckless untrue statements or declarations in relation to direct taxes. Consequently, we do not consider the proposed sanctions to be proportionate or necessary.

10.2 While we recognise the government's objective of aligning direct and indirect tax legislation where appropriate, alignment should not be pursued for its own sake. Any alignment should demonstrably improve the operation of the tax system and be supported by clear evidence that the existing legislative framework is inadequate. In this case, the Consultation has not established why the current combination of civil penalties and existing criminal offences is insufficient to address the behaviour of concern, other than to introduce a lower evidential threshold (recklessness) when applying criminal sanctions.

10.3 We are particularly concerned that the proposed sanctions could represent a significant escalation in the consequences of behaviour that falls short of dishonesty. Under the existing direct tax civil penalties framework, deliberate and deliberate and concealed behaviour attracts substantial financial penalties. By contrast, the proposed offence would expose an individual to criminal prosecution, a custodial sentence of up to two years and/or an unlimited fine on the basis of recklessness alone. In our view, this represents an unnecessary and disproportionate extension of the criminal law.

10.4 We are also concerned that the proposed level of sanctions may have unintended consequences. The prospect of criminal prosecution for reckless conduct may discourage taxpayers and advisers from adopting reasonable positions in areas of genuine legal uncertainty or where legislation requires the exercise of professional judgement. Rather than improving compliance, the proposal risks encouraging defensive behaviour, increasing requests for HMRC clearances and guidance, and placing additional administrative burdens on taxpayers, advisers and HMRC alike.

10.5 Although charging decisions would be made by independent prosecutors and guilt determined by the courts, these safeguards do not address the more fundamental question of whether introducing criminal sanctions for reckless behaviour in the direct tax context is necessary or proportionate.

10.6 we do not consider that the proposed sanction of up to two years' imprisonment and/or an unlimited fine represents an appropriate or proportionate response to reckless behaviour in the direct tax context. If the government nevertheless decides to proceed with the proposed offence, we consider that the available sanctions should be reviewed to ensure that they are clearly distinguishable from those applying to offences involving dishonesty and remain proportionate to the level of culpability involved.

10.7 As an aside, and related point, we are also concerned that any increase in criminal prosecutions resulting from the lower evidential threshold could place additional pressure on an already overstretched criminal justice system, which continue to experience significant caseload backlogs, and increase the workloads at HMRC.

11 Contact details

11.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact Steven Pinhey on 07435 859060 or spinhey@att.org.uk.

The Association of Taxation Technician

12 Note

12.1 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.

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 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.