



Consultation Response

Enhancing HMRC's powers: tackling tax adviser facilitated non-compliance

September 2025



Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Tax law sub-committee welcomes the opportunity to consider and respond to HMRC's consultation on the draft legislation on *Enhancing HMRC's powers: tackling tax adviser facilitated non-compliance*.¹ The sub-committee has the following comments to put forward for consideration.

General Comments

We previously commented on HMRC's consultation: Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance². In our response, we expressed concern regarding the scope of the proposals and their potential impact on legal professional privilege and confidentiality whilst in principle, supporting HMRC's intention to tackle tax avoidance.³ We also observed that, as we have noted in previous calls for evidence,⁴ we consider that any changes to tax compliance and HMRC's investigatory powers should be framed so as not to cause extra compliance costs (in terms of time and financial costs in complying with further legislation) for the majority of tax advisers who do adhere to professional standards.

As we have highlighted in previous responses,⁵ Scottish solicitors who undertake tax services, including advising and representing clients on tax law related matters, are already robustly regulated under the provisions of the Solicitor (Scotland) Act 1980 (the 1980 Act). Scottish solicitors are also bound by the Law

¹ [Enhancing HMRC's powers: tackling tax adviser facilitated non-compliance - GOV.UK](#)

² [Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance](#)

³ [Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance](#)

⁴ [Raising standards in the tax advice market: professional indemnity insurance and defining tax advice](#)

⁵ i) [Raising standards in the tax advice market: strengthening the regulatory framework and improving registration](#)

ii) [Raising standards in the tax advice market: professional indemnity insurance and defining tax advice](#)

iii) [Raising standards in the tax advice market](#)



Society of Scotland's rules and guidance which, among other things, require solicitors to: (a) always act in a honest and non-deceitful manner so that their trustworthiness is beyond question (rule B1.2) and: (ii) always act in the best interests of their clients in giving independent and impartial advice (rule B1.4).

We note that in HMRC's response to the consultation, it affirms that "the proposed changes will therefore bring into scope only those who deliberately facilitate non-compliance, they do not target tax advisers who make genuine, one-off, accidental errors or differences of legal interpretation."⁶ We welcome this commitment and have further comments on the specifics of the draft legislation below.

Deliberate conduct

We consider that as drafted, the draft legislation provides HMRC with broad powers if 'deliberate conduct' (which brings about a loss of tax) is in point. This raises the question of what is in the scope of 'deliberate'. We would welcome further clarity on a number of points related to this.

- What is HMRC's precise intention behind the term 'deliberate conduct'?
- What is the precise difference between deliberate conduct and dishonest conduct?
- Does HMRC accept that good faith interpretation of tax legislation is not deliberate (mis)conduct?

We would highlight our comments in our previous response to HMRC's consultation, specifically our suggestion that the only conduct which should be in scope is that which either:

- deliberately aims to facilitate a situation which is known to be non-compliance; or
- entails a tax adviser adopting a position (interpretation of the law) which no reasonably competent adviser would reasonably endorse.⁷

In our view such a scope would cover the vast majority of objectionable conduct without unduly hampering the ability of advisors acting in good faith to support their clients. We would reiterate again our view that there is also merit in an independent body (such as the GAAR advisory panel) being set up to produce guidance and to act as an initial arbiter in cases where a decision is needed as around whether conduct is within scope.⁸

⁶ [Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance — Summary of responses - GOV.UK](#)

⁷ [Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance](#). See Q3 response there.

⁸ [Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance](#) See Q4 response there



Reason to suspect

We previously commented in the consultation concerning these proposals that the proposed concept of “reasonable suspicion of facilitating an inaccuracy” is a huge extension from the current need for dishonesty.⁹

We note from the consultation summary that many respondents shared our concerns around the term ‘reasonable suspicion’ and we note that the term does not appear in the draft legislation as drafted. However, we would observe that the term a ‘reason to suspect’, as included in the draft legislation at clause 5, is a much lower threshold than reasonable suspicion. We would also observe that it is still within the purview of the HMRC officer to determine if there is “reason to suspect” and we would reiterate our comments in the consultation response that consideration should be given to its use being subject to approval by a completely independent panel, operating according to guidance (with legal backing) which clearly sets out its remit.¹⁰

In line with our previous responses, we stress that any powers to tackle tax avoidance must not be used by HMRC to target reputable advisers and others who may be tangentially or inadvertently involved in the supply chain as being ‘softer’ targets than the promoters (either for information or for penalties), simply because they are UK based and subject to professional regulatory regimes (for example, solicitors or accountants) unlike many promoters of tax avoidance.¹¹ Similarly, we reiterate that we would be concerned that this could be used as a route to effectively challenge or have a chilling effect on good faith interpretations of tax law with which HMRC did not happen to agree (instead of HMRC taking the route of challenge in a tribunal). For these reasons we consider ‘reasonable suspicion’ is a preferable phrase and a particular body or group ought to be tasked with reaching that conclusion rather than individual HMRC officers.

Penalties

We specifically highlighted the term “Inaccuracy” as an exceptionally broad term. We note that the clause 7 of the draft legislation outlines further conditions for a person to be found to be guilty of filing inaccurate documents.¹²

We note that under clause 8 of the draft legislation, HMRC has proceeded with the option to charge a penalty for deliberate conduct based on potential lost revenue.

⁹ [Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance](#)

¹⁰ [Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance](#)

¹¹ [Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance](#)

¹² [Enhancing HMRC's powers: tackling tax adviser facilitated non-compliance - GOV.UK](#)



We reiterate our comments made in the previous consultation response that such an option will be inappropriate (and likely disincentivise tax advisers from providing reasonable advice in difficult situations) in the many areas where there are multiple genuine interpretations of the law.¹³ We consider there should be a building in of safeguards for advisers who have taken a reasonable interpretation of tax law and would refer to our earlier comments under the heading 'Deliberate conduct'.

¹³ [Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance](#)



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