

Finance Bill 2025-26

Representation from the Association of Taxation Technicians (ATT)

Clauses 247 and Schedule 21: Conduct of Tax Advisers, amendments to schedule 38 Finance Act 2012

Executive Summary

The Finance Bill 2025–26 proposes significant amendments to Schedule 38 Finance Act 2012, substantially strengthening HMRC’s powers to take action against tax advisers who facilitate non-compliance. A regime that was originally narrow and targeted at dishonest tax agents would be recast as a much broader conduct-based framework applying to almost anyone who assists with tax affairs, supported by significantly enhanced information powers, penalties provisions and a mandatory publication regime. These changes respond to concerns raised in recent consultations that HMRC’s existing powers have been under-utilised and lack sufficient deterrent effect.

The ATT supports robust action against tax advisers who deliberately undermine the tax system. However, we are concerned that the breadth of the new provisions may unintentionally capture advisers acting reasonably and in good faith, particularly in complex or uncertain areas of tax law. The absence of an explicit intent or reasonable care safeguard, combined with potentially uncapped financial penalties and the replacement of HMRC’s discretion to publish sanctions with a statutory duty to do so, risks disproportionate outcomes and a chilling effect on the tax advice market.

The proposals expand the scope of the regime from ‘tax agents’ to the broader category of ‘tax advisers’, lower the threshold for intervention from ‘deliberate misconduct’ to the wider concept of ‘sanctionable conduct’, and introduce a materially enhanced penalty framework based on ‘potential lost revenue’. At the same time, they remove HMRC’s ability to withhold publication in cases where it would be disproportionate or raise safeguarding concerns, representing a fundamental shift in both the reach and severity of the regime.

Targeted amendments and safeguards are therefore recommended to ensure the regime remains focused on deliberate or reckless behaviour, maintains proportionality, and provides appropriate procedural protections, including discretion around publication. These changes would help preserve confidence in the tax advice market while supporting HMRC’s objective of tackling persistent and abusive facilitation of non-compliance by tax advisers.

1. Background

- 1.1. Schedule 38 Finance Act 2012 came into force in 2013. It conferred powers on HMRC to issue conduct notices to tax agents who had engaged in dishonest conduct, to require the production of working papers, and to impose penalties of up to £50,000 where appropriate.
- 1.2. It is understood that HMRC has faced practical challenges in implementing this legislation, which has contributed to limited uptake and use by compliance officers.
- 1.3. Responses to the consultation ‘Strengthening the regulatory framework of the tax advice market and improving tax adviser registration’, which ran from 6 March 2024 to 29 May

2024, indicated that HMRC could take swifter and more robust action against tax advisers who facilitate tax non-compliance by their clients.

- 1.4. Subsequently, on 26 March 2025, the Government published a further consultation as part of the Spring Statement entitled ‘Enhancing HMRC’s powers: tackling tax advisers facilitating non-compliance’. This consultation examined options for strengthening the legislative framework to enable faster and more effective action against tax advisers who undermine the tax system, including the enhancement of penalties and the expansion of disclosure provisions relating to adviser misconduct.
- 1.5. The outcome of that consultation has resulted in the introduction of the provisions now set out in clause 247 and Schedule 21 of the Finance Bill 2025–26.

2. Changes introduced in Finance Bill 2025-26

- 2.1. The proposed amendments to Schedule 38 of the Finance Act 2012 represent a substantial strengthening of the existing regime. Broadly, the changes fall into four principal categories.
- 2.2. Firstly, the scope of the regime has been widened by extending its application from ‘tax agents’ to the broader category of ‘tax advisers’. This expansion significantly increases the number of individuals and entities potentially subject to HMRC’s powers, reflecting the wider range of individuals involved in providing tax advice.
- 2.3. Secondly, the threshold for intervention has been lowered by moving from a requirement of ‘dishonest conduct’ to the more expansive concept of ‘sanctionable conduct’. This materially broadens the range of behaviours that may give rise to enforcement action and enables HMRC to take action in circumstances that fall short of deliberate wrongdoing.
- 2.4. Thirdly, the penalty framework has been substantially enhanced. The existing maximum penalty of £50,000 has been replaced with a potentially uncapped penalty, calculated by reference to the potential loss of tax revenue attributable to the adviser’s conduct. This represents a fundamental shift in the scale of financial exposure faced by tax advisers and whilst it materially increases the deterrent effect of the regime, if applied incorrectly it could have a devastating impact on the tax adviser’s livelihood.
- 2.5. Fourthly, HMRC **must** publish information about an individual where a penalty exceeding £7,500 is incurred. This represents a significant policy shift from a discretionary power to a mandatory obligation. Mandatory publication removes HMRC’s ability to take account of the individual circumstances of a case.

3. General observations on changes

- 3.1. The Schedule represents a significant expansion of HMRC’s powers in relation to tax advisers, both in terms of the range of persons within scope and the nature of conduct that may attract sanctions. The shift from a focus on ‘dishonest conduct’ to the broader concept of ‘sanctionable conduct’ materially lowers the threshold for intervention and increases the likelihood that tax advisers acting in good faith may be affected.

- 3.2. The extension of the regime from ‘tax agents’ to a broadly defined category of ‘tax advisers’ risks capturing a wide population of professionals who provide routine, incidental, or ancillary tax advice in the course of wider professional services.
- 3.3. A tax adviser is an individual who, in the course of a business (whether carried on by the individual as a sole trader or by an organisation for which the individual works), assists other persons with their tax affairs (4(2)(1)(b)) and a person ‘assists’ who ‘provides assistance for non-tax purposes, if the assistance is provided in the knowledge that it will be, or is likely to be, used by the other person in connection with the other person’s tax affairs.’(4(2)(2)(d). ‘Tax adviser’ could therefore cover lawyers, accountants, book-keepers, payroll providers and consultants, along with non-tax professionals whose work is later knowingly used for tax purposes.
- 3.4. A key concern is the substantial lowering of the conduct threshold under the proposed amendments. The replacement of ‘dishonest conduct’ with the broader concept of ‘sanctionable conduct’, defined as ‘any act or omission intended to bring about a loss of tax revenue’, removes the requirement for dishonesty, fraud or deception and explicitly brings omissions within scope. This significantly expands the range of behaviours that may attract sanctions and risks capturing tax advisers engaged in legitimate tax planning or acting reasonably in areas of legal uncertainty.
- 3.5. The absence of an explicit requirement for intent, recklessness or negligence increases the risk that tax advisers could be sanctioned for outcomes that were not reasonably foreseeable at the time advice was given. This creates a near-strict liability effect.
- 3.6. We appreciate that HMRC has already provided the view that ‘with the intention of’ means that the legislation now has two elements before the sanction is invoked:
 - (1) Doing something, or omitting to do something, in the course of acting as a tax adviser (the ‘act’ element of the test); and
 - (2) Intending by that act to bring about a loss of tax revenue (the ‘mental’ element of the test).
- 3.7. However, our concerns are compounded by the removal of Part 2 of Schedule 38, which previously set out safeguards governing how dishonest conduct was to be established. Under the revised framework, HMRC would be empowered to determine that sanctionable conduct has occurred without prior tribunal involvement, with independent oversight deferred or limited in several respects, weakening procedural protections and increasing the risk of disproportionate outcomes.
- 3.8. The strengthened penalty framework, including penalties linked to potential lost revenue, represents a substantial escalation in consequences compared with the existing regime. In the most severe cases this can lead to an unlimited penalty. This raises serious concerns about proportionality, particularly given that potential lost revenue is a hypothetical construct rather than an amount of tax actually lost.
- 3.9. There is a risk that the breadth of the regime will produce a chilling effect on the tax advice market. Advisers may become increasingly reluctant to advise in complex or novel areas of tax law, leading to a reduction in the quality and availability of advice for taxpayers and potentially undermining wider economic and growth objectives.

3.10. HMRC must publish information about an individual where a penalty exceeding £7,500 is incurred. This represents a significant policy shift from a discretionary power to a mandatory obligation. Mandatory publication removes HMRC's ability to take account of the individual circumstances of a case, including:

- the individual's personal and family circumstances;
- safeguarding risks (including risks of harassment or harm);
- proportionality where the dishonest conduct is limited in scope or duration; and
- whether publication would serve any meaningful deterrent or public interest purpose beyond the penalty already imposed.

3.11. The absence of discretion risks publication becoming automatic and punitive in a way that goes beyond what is necessary to achieve the policy objective. This is particularly concerning given the reputational and personal consequences that publication can have for individuals.

3.12. Whilst it may appear limited, publication of a postcode can, in practice, enable identification of a person's precise residential location, particularly in rural areas or where the postcode covers a small number of properties. When combined with the individual's name, business activity, and the nature of the alleged dishonest conduct, this creates a real risk of:

- harassment or intimidation;
- targeting by disgruntled clients or members of the public;
- risks to personal safety; and
- unintended consequences for family members who are not involved in the conduct.

3.13. These risks are heightened where the individual operates from a home address, a common position for sole practitioners and small advisers.

3.14. It is difficult to see why publication of a postcode is necessary to achieve the policy aim of transparency or deterrence, particularly where the individual's name, trading name, and business description are already publishable. Publication of postcode appears disproportionate and inconsistent with safeguarding best practice.

3.15. It is therefore suggested that paragraph 28(2)(b) be removed, or alternatively that publication of location data be limited to a high-level description (for example, region only), subject to an explicit safeguarding exemption.

4. Recommendations for improvement

4.1. The legislation should be amended, or supplemented by binding guidance, to include a clear and explicit safeguard for tax advisers who act reasonably, professionally and in good faith. This would ensure that the regime is targeted at deliberate and abusive behaviour rather than genuine errors of judgement.

4.2. Consideration should be given to limiting sanctions to cases where the tax adviser has acted deliberately or recklessly, or where there has been a failure to take reasonable care. This would align the regime more closely with established principles of tax compliance and professional regulation.

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- 4.3. Alternatively, the legislation could introduce a statutory 'reasonable care' defence, enabling tax advisers to demonstrate that their tax advice was based on appropriate analysis, relevant authority, and prevailing professional standards at the time.
- 4.4. Greater clarity should be provided, either in the legislation or in authoritative guidance, as to the types of arrangements and behaviours intended to be within scope. In particular, it should be clear that mainstream commercial advice is not the target of these measures.
- 4.5. Procedural safeguards should be strengthened to ensure fairness and consistency, including a clear right for tax advisers to make representations before the imposition of penalties, publication, or other sanctions, and alignment of safeguards across civil and criminal enforcement routes.
- 4.6. These amendments would help ensure that the regime remains effective in deterring persistent and egregious non-compliance, while maintaining confidence in the tax advice market and avoiding unintended consequences for compliant tax advisers.

Association of Taxation Technicians

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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.