

Finance (No. 2) Bill 2025-26

Clauses 156 – 162

Prohibition of promotion of certain tax avoidance arrangements

BRIEFING FOR MPS ON THE FINANCE BILL BY ICAEW TAX FACULTY

WHO WE ARE

Please see Appendix 1.

EXECUTIVE SUMMARY

1. ICAEW supports efforts to challenge the 20–30 individuals and organisations involved in promoting aggressive tax avoidance arrangements. However, unless measures are properly targeted, they risk affecting all 85,000 tax advice firms.
2. ICAEW notes that in the evidence session with the House of Lords Finance Bill subcommittee on 8 December 2025, the Minister said that the new measure to prohibit promotion of tax avoidance schemes, "... will achieve some of our aims in going after the remaining promoters of these schemes, but without having consequences on those who are legitimately operating and acting within the rules to support people to make sure that they are paying their tax."
3. ICAEW does not think that the drafting of the legislation achieves this. On a strict reading, honest mistakes by any adviser (but which in practice could exclude lawyers providing advice under privilege) could become criminal.
4. Tax advice is complex and highly fact sensitive. Errors can arise from overlooking anti-avoidance provisions, incomplete or inaccurate client information and/or a misunderstanding of rapidly developing case law. There should not be the threat of custodial sentences for making innocent mistakes.
5. Currently, these issues are addressed through professional standards, the imposition of civil penalties and advisers facing negligence claims. ICAEW believes that criminalising such conduct for the vast majority of tax agents would be disproportionate.

THE MEASURE

6. This measure introduces a statutory prohibition on promoting avoidance arrangements that have no realistic prospect of success as well as a power to enable HMRC Commissioners to prohibit further arrangements in regulations.
7. Breaching the prohibitions attracts a range of sanctions including publication, penalties, and criminal prosecution.
8. If a penalty is levied under clause 159, this would also breach the tax adviser registration conditions set out in clauses 224(2)(d) and 225(7)(e) of this Bill.

OUR CONCERNS AND OUR RECOMMENDATIONS

9. ICAEW's primary concern is that the scope of clause 156(1)(a) is too broad. If a tax adviser makes an honest mistake and there is no realistic prospect of success for that advice, the only possible arguments that a tax adviser making a mistake is not caught by this provision are:

- a) that the arrangements have not been, or are not likely to be, marketed; or
- b) that the circumstances in which they gave the advice do not fall within the meaning of promotion set out in clause 157.

10. Marketed is not a defined term in the legislation. The normal dictionary meaning is to make something available to buyers in a planned way (eg, by advertising). Even if an adviser has not actually marketed something, whether something is likely to be marketed is very hard to disprove.

11. The definition of promotion in clause 157 is so broad that most activities of an adviser are within scope.

12. ICAEW appreciates that the drafting is deliberately wide to ensure that the bad actors cannot argue that their activities are not in scope of the prohibition. However, that does not justify giving HMRC the power to criminalise well-intentioned but ultimately incorrect professional advice.

13. ICAEW considers it essential that the Minister places a clear and unequivocal statement on the parliamentary record confirming that honest mistakes by advisers acting in good faith are not intended to fall within scope of clause 156(1)(a).

14. In addition, the legislation could be more tightly drawn by:

- a) removing the words "*or are likely to be*" from clause 156(1)(a); this is a hypothetical test whereas any actual criminal conviction should be based on actual bad behaviour.
- b) adding the words "*and are likely to cause harm to participants*" after "... *the tax advantage*" in clause 156(1)(a); this is a safeguard that HMRC has helpfully applied to clause 156(1)(b) and should be applied to (1)(a) as well.

FURTHER INFORMATION

As part of ICAEW's Royal Charter, we have a duty to inform policy in the public interest.

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APPENDIX 1

ICAEW TAX FACULTY – WHO WE ARE

Internationally recognised as a source of expertise, ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's *Ten Tenets for a Better Tax System* are summarised in Appendix 2.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of sustainable economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 172,000 chartered accountant members in over 150 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

APPENDIX 2

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as **TAXGUIDE 4/99**.