# *Finance (No. 2) Bill 2025-26*
# *Clauses 220 – 246 and Schedules 19 & 20*
# *Registration of tax advisers*

## BRIEFING FOR MPS ON THE FINANCE BILL BY ICAEW TAX FACULTY

### WHO WE ARE

Please see Appendix 3.

### EXECUTIVE SUMMARY

1. Strengthening the controls on access to HMRC's agent services is considered an important enabling first step towards ensuring tax practitioners meet existing basic standards before being able to interact with HMRC on behalf of their clients. For this reason, ICAEW has supported mandatory registration for all tax practitioners who interact with HMRC.
2. However, the legislation as introduced has the potential for "good" tax advisers to not be able to register, or to have their registration suspended or permanently removed for actions that are impossible to remedy and/or in situations where such a sanction is disproportionate having regard to the alleged breach and the ongoing ability of the tax adviser to service their clients. If a tax adviser cannot interact with HMRC act on behalf of taxpayers, this could significantly undermine taxpayer compliance.
3. For mainstream tax advisers, being able to liaise with HMRC is fundamental to their ability to service their clients and hence HMRC being able to prevent interactions with them is likely to be an existential risk for any tax adviser. It is therefore imperative that there are effective safeguards in place.
4. The legislation also imposes additional regulatory burdens on tax advisers with HMRC in a quasi-regulatory role – a role where HMRC has a clear conflict of interest. Registration systems in other jurisdictions are independent from the tax authority. For this reason, HMRC must exercise these powers reasonably and proportionately.
5. Mandatory registration is accompanied by a £36m investment to modernise existing registration services. The investment is welcome, but it needs to be accompanied by legislative commitments for HMRC to improve its performance in processing applications. However, the legislation contains no timescales for HMRC to process applications for registration and for response times.
6. It should be noted that the scope of this legislation is limited. The bad actors in the tax advice market are unlikely to feel the force of the sanctions imposed by the legislation as the requirement to register only applies to those who interact with HMRC. Those exhibiting the most egregious behaviours actively seek to distance themselves from interacting directly with HMRC.
7. The package of measures contained in the Bill (namely Registration of tax advisers (clauses 220 – 246 and Schedules 19 & 20); Conduct of tax advisers (clauses 247 – 250 and Schedule 21); and Prohibition of promotion of certain tax avoidance arrangements (clauses 156 – 162) materially change the risk profile for delivering certain tax services. Appendix 1 sets out how the tax advice market may respond to these risks.

### THE MEASURE

8. Currently, registration requirements for tax advisers vary by tax service and are non-statutory.

9. The legislation introduces a new requirement for all tax advisers to register with HMRC if they wish to interact with HMRC on behalf of a client, unless a limited exception applies. Various conditions apply at the time of registration and on an ongoing basis.

## OUR KEY CONCERNS AND RECOMMENDATIONS

### Make non-payment of a penalty — not its imposition — the trigger for loss of registration

10. As drafted, the mere imposition of a relevant anti-avoidance penalty automatically causes a firm to fail the tax adviser registration conditions, regardless of whether the penalty is paid (see clause 224(2)(d)).
11. This creates a form of double jeopardy and exposes firms to an existential risk that cannot be remedied once a penalty is triggered. The promoters of tax avoidance schemes, who are the policy target of the penalties, are unlikely to register with HMRC and therefore do not face the same jeopardy.
12. The DOTAS and DASVOIT regimes have made significant positive changes to the supply of and demand for aggressive tax planning in the UK market. The UK tax system is the better for it. However, the DOTAS and DASVOIT legislation is deliberately drafted in wide terms and requires significant judgement to apply. There is a risk that tax advisers will begin to make protective disclosures to make sure penalties will not apply even though the tax planning is not contentious. Thus, protective DOTAS and DASVOIT submissions may become 'the norm' which would, we believe, be a significant backward step in the government's attempts to stamp out aggressive planning and reduce the tax gap. It will cause HMRC to take time considering low-value notifications, making it harder for it to identify the higher value notifications on which to focus its efforts to tackle tax avoidance. This could widen the avoidance gap.
13. ICAEW's proposal is that loss of registration should arise only where a DOTAS or DASVOIT penalty remains unpaid after the due date. ICAEW supports amendments Gov 17, Gov 18, Gov 19, Gov 39 and Gov 40 that would achieve this outcome.

### Require suspensions for behaviour below standards to be linked only to HMRC's Agent Standard

14. In relation to standards, the draft legislation allows an authorised officer to temporarily suspend a registration if they consider the adviser's standards of behaviour to be below those reasonably expected in connection with an 'interaction with HMRC' (clause 229(2)).
15. The legislation allows, but does not require, the authorised officer to have regard to the provisions of HMRC's Standard for Agents (clause 229(3)).
16. This raises the concern that a tax agent's registration could be suspended for up to 12 months in a unilateral and subjective way. Clause 235 requires advisers to notify their clients about suspensions lasting more than 30 days. Even though a suspension is only temporary under this measure, it would be sufficient to cause many tax agents to be put out of business. Such a consequence could be entirely disproportionate.
17. The risk for tax agents could be reduced by requiring the authorised officer at HMRC to assess the behaviour only against HMRC's published "Standard for Agents".

### Place a statutory proportionality and reasonableness test on the use of suspension and exclusion powers

18. In discussions with HMRC's Intermediaries Directorate, it was accepted that the registration of tax advisers legislation should include a specific requirement that HMRC can only use the suspension and exclusion powers in a manner that is proportionate and reasonable, having regard to the nature of any alleged breach and the wider impact on compliance of suspending or excluding the

tax adviser. However, this did not make it into the Finance Bill as we understand that the Office of the Parliamentary Counsel advised that HMRC is already required to use its powers in such a manner. ICAEW does not think this approach is sufficient given that these are quasi regulatory measures which in the normal course of events would require independent governance and oversight given HMRC is clearly conflicted in undertaking such a role.

19. A clear requirement in law that HMRC can only use these powers where proportionate and reasonable would permit a tax adviser to defend themselves at a Tribunal without seeking to invoke matters of Public Law.
20. Examples of existing legislation that specifically impose reasonableness/proportionality obligations on public bodies, including HMRC, are set out in Appendix 2. Appendix 2 also suggests how similar obligations might be reflected in the Finance Bill.

### Improve safeguards for the use of suspension and exclusion powers

21. The Finance Bill provides for temporary relief from suspension of registration in certain, limited circumstances (paras 9 and 10, Sch 20). However, as the qualifying conditions for temporary relief are limited, there are a wide range of circumstances where HMRC could suspend registration without the adviser first being able to defend themselves in front of an independent arbitrator.
22. ICAEW suggests that the going concern condition in para 10(3)(a) should be replaced by a test that considers whether it is in the overall public interest for the tax adviser's clients to receive ongoing tax services from the adviser.
23. ICAEW considers that it is wrong in principle for HMRC to form a view on the prospect of the adviser's review or appeal succeeding as part of the decision-making process (para 10(4)(a), Sch 20) as to whether temporary relief should be available. Given the adviser is challenging HMRC's decision, HMRC has a clear conflict of interest in making a judgement on the likelihood of success. A refusal of a request for temporary relief is likely to cause a tax adviser's business to cease (as set out at paragraph 16 above), which may well mean that the adviser has no funds to mount any challenge to HMRC's original decision. Thus, HMRC can block access to justice unless the Bill is changed to remove (a) from para 10(4).
24. ICAEW notes that the review process has been copied across from other pieces of tax legislation. However, the existing review process is flawed and does not engender trust and fairness in the system. In particular, ICAEW is concerned about the provision which concludes reviews of HMRC decisions in HMRC's favour (i.e., upholding the suspension decision) if a HMRC officer fails to give their conclusions to the adviser before the deadline for the review to conclude. This means that HMRC can, by omission, deny the adviser the proper reconsideration of the suspension decision that a review process should provide. ICAEW suggests that para 6(7) should be deleted or the presumption reversed so that failure to conclude the review by the statutory deadline results in the suspension decision being automatically reversed.

## OTHER CONCERNS

### Scope and effect of legislation

25. Clause 220 prohibits unregistered tax advisers from interacting with HMRC. This means that the new powers introduced by this legislation are limited to those tax advisers that want and need to interact with HMRC to assist their clients. However, the bad actors that actively seek to distance themselves from interacting directly with HMRC fall outside the scope of the legislation.

### The requirement to inform clients is too soon

26. As set out above, suspension of a tax adviser's registration could end their business. Therefore, it is vital that there are effective safeguards.

27. Clause 235 imposes a requirement for tax advisers to notify their clients if their registration has been suspended or if they have been issued with a temporary or permanent ineligibility order. While it is possible to appeal or request a review of these decisions, the appeal or review process does not delay the requirement to inform clients. This means that a tax adviser could have their professional reputation ruined and their business destroyed, only to then find that on appeal HMRC's decision is overturned. A safeguard is required so that requirement to notify clients should only apply once the decision has become final (i.e., following the outcome of an appeal).

**Interaction of publication powers**

28. While publication of a tax adviser's details under clause 243 in this Chapter is limited to cases where a financial penalty or ineligibility order has become final, this is undermined by clause 248(1)(a)(ii) in Chapter 2 that provides HMRC with a publication power if an adviser's online services have been suspended (that suspension could only be temporary). Publication should be limited to the cases set out in clause 243.

**Independence and seniority of decision making**

29. Although an "authorised officer" is the decision maker for many of the provisions, it is just an officer of Revenue and Customs that can decide whether to accept an application for registration. ICAEW considers that the same level of authority should apply to all decisions made under this Chapter. A much higher level of authority should be required for all other decisions too (e.g., suspension). Given the potential impact for a tax adviser's business and the knock-on effect for taxpayers, the governance should be robust (i.e., the Tax Disputes Resolution Board or the Commissioners should be involved). Also, the officer dealing with any appeal/representations processes should not be the same one who issued the decision.

**Giving effect to decisions**

30. While it is possible for a tax adviser and relevant individual to appeal against suspension or an ineligibility order or to ask for that decision to be reviewed, clauses 229, 233 and 234 do not include a mechanism to withdraw an ineligibility order or lift a suspension in all circumstances. Such a mechanism is necessary to give effect to the outcome of a review or appeal if a decision is made in favour of the tax adviser.

**Consistency of safeguards**

31. When considering whether to approve an application for registration, clause 227(3) allows HMRC to take account of the reason why the registration condition in clause 224(2)(a) (amount of tax etc overdue) has not been met. This is not replicated in clause 229 when considering whether to suspend a tax adviser's registration. It is important that this safeguard is replicated when considering suspending an adviser's registration.

**Ensuring that HMRC improves its speed of response**

32. ICAEW members express significant frustration with HMRC's current tax agent registration processes – whether that is the time that it takes for HMRC to process an application when registering for the first time; delays when re-registering to reflect a change in legal entity; or simply updating business correspondence addresses (where different processes apply depending on the tax).
33. The £36m investment in agent registration is therefore welcome provided that the investment delivers significant improvements in service. Agents are being held to account under these

provisions, and the public interest needs to be served by HMRC also being properly held to account.

34. However, while the legislation sets time limits for tax advisers to take action, no time limits apply to HMRC for:
    a) processing an application (clause 227);
    b) issuing a notice to lift suspension of registration (clause 229(7));
    c) notifying an adviser of the withdrawal of a compliance notice (clause 230(3));
    d) agreeing to a review out of time (para 4(3), Sch 20); and
    e) a decision to agree to temporary relief (para 9(3) and para 10(3), Sch 20).
35. Timeliness of response from HMRC is particularly important where a tax adviser's registration has been suspended. As set out at paragraph 16, suspension of registration could end an adviser's business. That is why it is imperative that HMRC acts without delay.
36. To ensure that this significant investment delivers improvements in HMRC service for tax advisers and that reputational damage of tax advisers is not caused by HMRC delays, ICAEW recommends that time limits must apply to HMRC to take the actions set out in the legislation.

## SUGGESTED AMENDMENTS

37. ICAEW considers that the following amendments should be made to the legislation.

### Clause 225: Registration conditions: interpretation

38. ICAEW supports amendments Gov 17, Gov 18, Gov 19, Gov 39 and Gov 40 (see paragraph 13).

### Clause 227: Registration of tax advisers etc

39. A 30-day time limit should be inserted in subclauses (1) and (4) for the officer of Revenue and Customs to take action to mirror the general time limits in this part for tax advisers to take action (see paragraph 36).
40. Decisions under this clause should be undertaken by an "authorised officer" as defined in clause 245(1) (see paragraph 29).

### Clause 229: Suspension of registration

41. The ability for HMRC to suspend a tax adviser's registration under clause 229 should explicitly be subject to the requirement that such a suspension must be proportionate and reasonable in the circumstances (see paragraph 19 and examples in Appendix 2).
42. In subclauses (2) and (3), HMRC should only be able to assess the behaviour of a tax adviser against HMRC's published Standard for Agents (see paragraph 17).
43. Clause 227(3) should be replicated and adapted as appropriate in clause 229 to ensure that the same considerations apply before a decision is taken to suspend a tax adviser's registration (see paragraph 31).
44. A time limit for issuance of a notice under subclause (7) is required to ensure that there is no delay in reinstating an adviser's registration if the registration conditions are met (see paragraph 36).
45. A mechanism is required for a suspension notice issued under subclause (2) to be cancelled to give effect to the outcome of an appeal or review in favour of a tax adviser (see paragraph 30).

### Clause 230: Compliance notice

46. A time limit for notifying an adviser of the withdrawal of a compliance notice under subclause (3) is required to ensure that there is no delay in informing the adviser (see paragraph 36).

### Clause 233 and 234: Tax advisers and relevant individuals: ineligibility orders

47. The ability for HMRC to issue an ineligibility order should explicitly be subject to the requirement that such a suspension must be proportionate and reasonable in the circumstances (see paragraph 19 and examples in Appendix 2).
48. To give effect to the outcome of an appeal or review in favour of a tax adviser, these clauses should include a mechanism for an ineligibility order to be cancelled (see paragraph 30).

### Clause 235: Requirement for tax adviser to notify clients of suspension or ineligibility orders

49. The requirement to inform clients about suspension or ineligibility orders should only apply once a suspension notice or ineligibility order is final (see paragraph 27). A suspension notice or ineligibility order becomes "final" if—
    a) the time for bringing any appeal or further appeal relating to it expires (ignoring any possibility of an appeal being brought out of time with permission), or
    b) if later, any appeal or final appeal (other than an appeal brought out of time with permission) relating to it is finally determined.

### Clause 248: Power to publish information

50. Subclause (1)(a)(ii) should be deleted as it undermines the power to publish information and the effectiveness of the safeguards set out in this Chapter at clause 243 (see paragraph 28).

### Paragraph 6, Schedule 20: Review

51. Paragraph 6(7) should be deleted or the last word of subpara (7) should be amended so that "upheld" is replaced by "cancelled" (see paragraph 24).

### Paragraph 10, Schedule 20: Temporary relief: other cases

52. Replace the words in para 10(3)(a) with, "it is in the overall public interest of the tax adviser's clients to receive ongoing tax services from the adviser pending the final determination of the review or appeal, and" (see paragraph 22).
53. Remove (a) from para 10(4) (see paragraph 23).

## 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

### How the tax advice market may respond

Larger UK-based accounting firms are considering how they respond to these risks but any response would impact on the provision of cost-effective tax advice in the market and the potential to effectively withdraw from advising on large and complex matters – the exact kind of transactions where we believe the government would want a taxpayer to take professional advice as these transactions will drive growth. This would not be conducive to increasing the quality of tax compliance nor closing the tax gap.

Smaller firms cannot manage risks in the same way – due both to resources and the price sensitivity of their client base. Where their principals are approaching retirement, this increased risk may be the catalyst that leads them to retire early – a concern we are already hearing in the tax advice market. Where advisers do increase prices, some taxpayers may try to do without advice, which may lead them to make more mistakes causing an increase in the tax gap – particularly the SME tax gap – and more compliance work for HMRC.

These risks also mean that longer term it will be difficult for professional bodies such as ICAEW to be able to convince new members or students that tax is a service line in an accounting firm that they would want to work in, or start their own tax practice, thus choking off the supply of new advisers to assist taxpayers in complying with their obligations and delivering valuable advice.

If the number of UK accounting firms that are able to offer cost-effective support to taxpayers reduces, that raises the question of who will provide that support. Law firms, and others that can offer advice under legal privilege, are not affected by these measures in the same way. However, even though solicitors play a vital role in some areas, their share of the market is currently relatively small, and the capacity is unlikely to exist to expand to meet the shifting market demand.

International firms or boutique offshore advisers could respond by delivering UK tax advice from other jurisdictions and, by choosing to not interact with HMRC, could avoid registering. But moving the delivery of advice to UK taxpayers beyond the reach of these provisions will not deliver the policy intention of raising standards across the tax advice market. The use of advisers located outside the UK or those whose work is protected by legal privilege could also make it harder for HMRC to efficiently conduct compliance checks and therefore increase the tax gap.

## APPENDIX 2

## Examples of where reasonableness/proportionality obligations are imposed on public bodies by legislation

### (1) The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

These regulations *inter alia* establish a regime for disciplinary measures by both the FCA and HMRC and these include specific reasonable/proportionality limitations on their powers.

#### (a) Regulations 81 and 83

These regulations (at Reg 81(1) and Reg 83(1)) provide that, when determining the type of sanction and level of any penalty, the FCA/HMRC must take into account all relevant circumstances, including where appropriate the gravity and duration of the contravention, the degree of responsibility of the person, their financial strength, profits gained or losses avoided, losses for third parties, level of co-operation with the authority, previous contraventions, and any potential systemic consequences. This multi-factor assessment ensures that sanctions are tailored to the circumstances rather than applied mechanistically.

Adopting a similar approach in the Finance Bill would involve developing a list of appropriate criteria that would act as a guide to HMRC in deciding whether to suspend the registration of a particular tax adviser under clauses 229(1) and 229(2).

#### (b) Regulation 84 and 85

These regulations impose specific proportionality constraints on the FCA and HMRC respectively about whether they publish details of someone who has made a relevant breach. Information about a matter to which a final notice relates must be published on an anonymous basis where the FCA considers it disproportionate to publish the identity of a legal person or personal data of an individual following an assessment of proportionality, or where publication would jeopardise stability of financial markets or an ongoing investigation.

Adopting a similar approach in the Finance Bill would involve including a specific provision that says that HMRC should not suspend (for example under clauses 229(1) or 229(2)) where doing so would be disproportionate.

### (2) Promoters of tax avoidance schemes (POTAS) – Part 5, FA 2014

One of HMRC's primary tools in the fight against those who sell egregious tax schemes are the POTAS rules. The sanctions imposed under these rules are subject to specific reasonableness/proportionality limitations:

#### (a) Conduct notices

In considering whether to issue a conduct notice, HMRC is required to consider two tests and in most circumstances should only issue a conduct notice if both are met. These tests are:

i. the "significance condition" (ss237(5)-(5B)); and
ii. the "tax impact test" (s237(8)).

The latter, in particular, says that HMRC should not issue a conduct notice if "... having regard to the extent of the impact that P's activities as a promoter are likely to have on the collection of tax, it is inappropriate to give P a conduct notice". Therefore, this clearly requires HMRC to have regard for the wider context of the promoter's activities and allows sensible discretion to be applied where the issue of a conduct notice would be "inappropriate".

### (b) Monitoring notices

If HMRC considers that the conditions of a conduct notice have been breached, HMRC can apply to the Tribunal for it to approve the issue of a monitoring notice, which could have a very significant and adverse impact on the promoter. The Tribunal then may approve the giving of a monitoring notice only if "... the tribunal is satisfied that, in the circumstances, the authorised officer would be justified in giving the monitoring notice, …". The requirement to consider if something is "justified" "in the circumstances" is a clear requirement to consider the reasonableness or proportionality of the sanction.

## (3) Ability to appeal based on HMRC's decision being "flawed"

Linked to a number of HMRC's penalty regimes, the taxpayer is specifically given the ability to appeal against a penalty to the Tribunal and then allows the Tribunal to amend or remove the penalty if it considers that HMRC's decision is "flawed".

For example, see para 19, Sch 41, FA 2008. Para 19(4) then defines flawed to mean "... flawed when considered in the light of the principles applicable in proceedings for judicial review". This then allows the taxpayer to be able to defend themselves specifically against HMRC's decision based on judicial review principles. This formulation imports into tax appeals the full panoply of administrative law constraints on discretionary decision-making, including requirements of reasonableness, proportionality, and the proper exercise of discretion.

## (4) The Financial Services and Markets Act 2000

Section 391A of this Act contains special provisions for publication relating to breaches of capital requirements. Information must be published anonymously where a penalty is imposed on an individual and publication of personal data is found to be disproportionate following an obligatory prior assessment, or where publication would jeopardise stability of financial markets or an ongoing criminal investigation, or would cause disproportionate damage to the persons involved.

Adopting a similar approach in the Finance Bill would again involve including a specific provision that says that HMRC should not suspend (for example under clauses 229(1) or 229(2)) where doing so would be disproportionate – in particular where this would cause disproportionate damage to the persons involved.

## APPENDIX 3

## 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 4.

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 4

## 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.