Enhancing HMRC's powers: tackling tax advisers facilitating non-compliance

Consultation Response – 7 May 2025

About TaxWatch

TaxWatch is an independent think tank and registered charity, dedicated to promoting sound administration and compliance within the UK tax regime.

We conduct research and investigations, and have had a longstanding focus on unscrupulous intermediaries and enablers.

General comments

TaxWatch welcomes the opportunity to respond to HMRC's consultation on enhancing its powers to tackle tax advisers facilitating non-compliance. This response draws upon:

- our recent research on the tax advice market, including a major March 2025 report on regulation of tax advisers, drawing on interviews with advisers and regulatory bodies, and testimony from victims of mis-sold tax advice;[1]
- our direct experience of testing professional bodies' ability and willingness to monitor, regulate and impose sanctions on their tax adviser members;[2]
- our work on the administration of investigation and penalty regimes by HMRC.[3]

Our response covers the five major areas covered in the consultation: the scope of entities and activities to be covered (questions 1-6), investigation and information powers (questions 7-13), financial penalties (questions 14-23), disclosures to professional bodies (questions 24-25), and publication of information about advisers (questions 26-33).

However, we start from the overarching acknowledgement that the main existing statutory process for tackling tax agents' dishonest conduct under Schedule 38 of Finance Act 2012 - which this consultation proposes to expand - appears historically to have been used in only a tiny number of cases. As noted below in Question 1, the same is true of other penalty and publication regimes available against advisers who enable defeated abusive tax arrangements, or facilitate sanctioned offshore promoters.

The paucity of meaningful penalties or public exposure for tax advisers facilitating tax abuse or acting dishonestly should, of course, be an argument precisely for the expanded and streamlined powers that this consultation proposes.

However, sanctions will only change or deter conduct if they are used.

Though new HMRC powers may be more agile, statutory penalties cannot supplant professional sanction and censure for misconduct, particularly for restraining misconduct before it reaches the threshold of unlawfulness. We have therefore noted in several questions where measures proposed in the consultation document might interact with more effective regulation of the tax advice industry, and sanctions by a properly constituted industry regulator: including improvements currently under consideration following the 2024 consultation on strengthening the regulatory framework of the tax advice market.[4]

We also recognise that expanding HMRC powers and penalties against advisers will require safeguards: not only to protect fairness and due process, but also to ensure that honest tax advisers can still work with clients with compliance challenges, and that such clients are not pushed instead into a shadow advisory market with even less accountability, whose operators may seek to avoid direct contact with HMRC.

We stand ready to discuss any aspects of this response in more detail.

For any further information, please contact:

Mike Lewis, Director
TaxWatch
mike@taxwatchuk.org

Question 1: Do you agree that HMRCs powers to tackle tax advisors who harm the tax system could be more effective?

Yes.

The infrequency of their successful use makes it difficult to assess the effectiveness of the available penalty regimes against tax advisors who facilitate non-compliance, promote failed tax abuse, or act dishonestly. This lack of use nonetheless suggests that the current regimes are inadequate.

We understand that in each of the years 2020-21, 2021-22, 2022-23 and 2023-24, **fewer than five** Dishonest Conduct Notices (and possibly none at all in a given year) have been issued to tax agents under Paragraph 4(2) of Schedule 38.[5]

We do not have access to figures for penalties imposed under Schedule 38, and acknowledge that penalties may also have been imposed for dishonest conduct identified outside the Schedule 38 Conduct Notice/File Access process. However, other civil penalties for tax advisers facilitating tax abuse are also rare. For example, the number of financial penalties for enablers of abusive tax arrangements that HMRC subsequently counteracts in an assessment (Schedule 16 of Finance (No.2) Act 2017) imposed in each of the years 2020-21, 2021-22, 2022-23 and 2023-24 is also **fewer than five** (and possibly none at all).[6] As of June 2024, there had also reportedly been no penalties levied on enablers of offshore tax evasion or non-compliance (Section 162(1) and Schedule 20 of Finance Act 2016) in the previous five years.[7]

Similarly, details of dishonest agents, or those enabling abusive arrangements, are rarely published. There are currently no published details of tax agents who have been issued dishonest conduct notices, as provided for under Paragraph 28 of Schedule 38 (though we acknowledge that this may be because of reduced penalties below the £5000 threshold for publication - itself an indication of problematically low penalties). The current list of named tax avoidance schemes, promoters, enablers and suppliers appears to include no entries for 'enablers' (i.e. those receiving penalties under the Enablers of Tax Avoidance rules in Schedule 16 of Finance Act (No 2) 2017).[8]

Meanwhile TaxWatch research indicates strongly that non-statutory investigations and sanctions against advisers also remain wholly inadequate. Even for those advisers who are members of professional bodies, those bodies do not appear to be consistently identifying or sanctioning individuals or firms promoting tax non-compliance, or obstructing its identification and investigation.[9]

For example, in March 2022, TaxWatch submitted a complaint to two professional membership bodies regarding a tax adviser whose own tax affairs were under HMRC enquiry, and who the Upper Tax Tribunal had found failed to comply with an HMRC Information Notice under Schedule 36 of Finance Act 2008; who gave evidence to the Tribunal described in the judgment as “seriously misleading”, “evasive” and “lacking in candour”; and who was involved in marketing tax avoidance schemes contrary to the standards of Professional Conduct in Relation to Taxation (PCRT).[10]

Three years later, neither professional body has resolved the complaints, and the tax adviser continues to be a member of both professional bodies.

With inadequate professional regulation and sanctions, and in the absence of a statutory regulator of tax advisers, HMRC powers are therefore the only meaningful discipline and deterrent against tax advisers who harm the tax system and their clients. At present they are barely being used.

Question 2: Do you agree with the government’s aim that any enhanced powers should allow for swift, effective, and proportionate action in cases of tax adviser activities that result in harm to the tax system and facilitates non-compliance?

Yes.

Swift, effective and proportionate action should involve:

(a) Penalties proportional to the seriousness of the dishonest conduct, and large enough to be dissuasive;

(b) Published details of those penalised, to act as a deterrent and protect the public;

(c) Clear guidelines on when powers will be used, the independence of their use, and provisions for appeal.

Question 3: What actions that lead to harm being done to the tax system should be within scope of the proposals outlined within this consultation?

TaxWatch believes that a broad range of harmful actions should fall within the scope of the proposals: from deliberately concealing information about clients’ financial affairs and tax liabilities; to breaching regulations around aggressive avoidance schemes.

There are currently at least eight regimes for notification, investigation, civil penalties and publication/disclosure of various undesirable activities by tax advisers. Each has differing timescales, processes, thresholds and methods of determining penalties.[11] Bringing the following activities by tax advisers under a common regime for notification, information, penalties, disclosure and publication i.e. beyond Schedule 38, would provide simplification, and clarity for the tax adviser industry and its clients about what misconduct will be penalised:

1. **Deliberate misrepresentation or non-disclosure to HMRC**

2. **Repeated or systematic negligence in ensuring clients' adherence to tax obligations**

3. **Failure to comply with HMRC orders for information, or provision of misleading information**

4. **Failure to maintain proper records or documentation**

5. **Failure to comply with HMRC Notices or Stop Orders**

6. **Obstruction of HMRC information or investigations**

7. **Failure to notify or provide information about a notifiable Tax Avoidance Scheme**

We do not suggest that each of the activities listed above is equally serious, or should carry the same penalties. TaxWatch also recognises that, for other professions, sanctions by professional regulators might be expected to address some of these categories of misconduct, rather than investigations by HMRC. Some of these categories of misconduct are indeed breaches of the PCRT standards. However, since only two-thirds of tax advisers belong to professional bodies, and those bodies have in some cases failed to sanction or exclude members even after being found in court to have engaged in activities violating the PCRT standards (see Question 1 above), then including broader categories of misconduct and negligence within HMRC disclosure and penalty regimes provides a necessary backstop against misconduct otherwise left open by the UK's regulatory lacuna for the tax advice market.

(Conversely, a dedicated and effective regulator for the tax advice industry would relieve the Agent Compliance Team of some of what is effectively a professional regulatory burden, allowing it to focus on the worst adviser misconduct and the largest threats to tax revenues from such misconduct).

A unified system for publishing details of notices and penalties against tax advisers (see below Question 4 and 27) would also help protect prospective clients who currently have to seek information across multiple lists, and in some cases cannot find public information about a tax adviser's misconduct at all.

Question 4: Do you have any other suggestions for how HMRC might enhance its powers to tackle non-compliance facilitated by tax advisers?

TaxWatch believes that the enhanced powers envisaged by the consultation would be facilitated by better regulation of the tax advice industry, improved transparency, and broadened liability for lost tax revenues as a result of adviser misconduct:

1. A mandatory regulatory framework: Require all tax advisers to register with an independent regulatory body, with enforceable minimum qualifications and professional standards, and a functioning system for imposing sanctions or disqualification for professional misconduct.

(For more detailed regulatory proposals, see TaxWatch's March 2025 report on tax adviser regulation).[12]

2. A 'Fit and Proper Person' Test for all tax advisers: Similar to standards applied in financial services, such a test would prevent individuals with a history of misconduct or unethical behaviour from continuing to operate in the tax advice market, reducing the risk of repeated non-compliance without requiring HMRC to undertake the full statutory notification, investigation and penalty in all instances. The test should consider a tax adviser's qualifications, experience, past performance, publications and professional disclosures relating to their activities, and any history of criminal and civil penalties.

3. A Public Register of Sanctioned Advisers: Though publication powers exist in several penalty regimes applicable to advisers, the details of those penalised are not always published (see above Question 1) and are not brought together in one place searchable by prospective customers. This leaves the public unable to make informed decisions about prospective advisers, and to protect themselves from rogue advice.

This register could also usefully combine advisers' penalty records with information about whether they have promoted or facilitated notifiable schemes, received Stop Orders, or been sanctioned by a professional body.

4. Joint and Several Liability for tax debts: Make tax advisers jointly and severally liable for tax debts arising from deliberately false, dishonest or reckless advice. Customs agents are already liable in the ordinary course of business for clients' import or export duty debts, including import VAT.[13] Making tax advisers and tax agents liable for tax debts in this much more limited set of circumstances, where penalty regimes have found them responsible for dishonesty or misconduct, would be a proportionate deterrent.

Question 5: Do you have any comments on the proposed scope?

TaxWatch understands the rationale for confining the scope to advisers who "act by way of business."

However we can foresee: (1) the possibility that 'shadow advisers' might seek to exploit this approach by using voluntary advisers as a vehicle to avoid accountability; (2) the possibility that voluntary advisers might still cause disbenefits to the tax system through dishonesty or negligence, perhaps even believing it to be in the best interests of their clients.

We believe therefore that a cleaner and more principled approach would include all individuals who assist other persons with their tax affairs in the course of a business carried on whether or not for profit. This would be similar to the definition of regulated immigration advice in UK immigration and asylum law, which may provide a relevant model.[14]

Question 7: Do you agree that it should be easier for HMRC to obtain information from tax advisers where HMRC reasonably suspects the tax adviser's activity has facilitated an inaccuracy in a taxpayer's document or return?

Yes, with appropriate safeguards for taxpayer and adviser rights.

The very low numbers of Conduct Notices under the dishonest conduct regime (see Question 1 above) suggest that the current threshold for notification may be too high, and perhaps difficult to meet without having accessed the very information that HMRC is seeking through the Conduct Notice and subsequent File Access Notice.

The process under Paragraph 7(2) and (3) of Schedule 38 required before a File Access Notice can be issued may also take months or longer to conclude, during which time dishonest advisers may continue to practice and harm more taxpayers.

To enhance the effectiveness of this power while maintaining fairness, we suggest:

1. An independent reviewer of File Access Notices, who should not be an official operationally involved in Agent Compliance, who would examine a selection of Notices each year to ensure that they are being used proportionately.

2. HMRC should publish annual statistics on the use of Schedule 38 powers. These should include annual data on conduct notices, file access notices, penalties, and outcomes. This would show, in particular, whether large numbers of File Access Notices are being issued without then finding sanctionable dishonesty, which might indicate unjustifiable use.

Question 8: Do you believe that ‘reasonable suspicion’ is the right threshold to issue a conduct and information notice? Are there any alternatives HMRC should consider?

Yes.

Conduct and information notices are investigative tools rather than final sanctions, justifying a lower threshold than “reasonable belief” or “beyond reasonable doubt,” which are more appropriate for penalties. However, we recommend:

1. Clear, published guidance for HMRC officers on the application of the “reasonable suspicion” test (as with the "Code A” guidance for the “reasonable grounds to believe” threshold in Section 1 of the Police and Criminal Evidence Act 1984). This will ensure effective use and minimise risk of legal challenge. Such guidance could include examples of elements of evidence for reasonable suspicion, such as unusual patterns of tax returns, multiple client inaccuracies, or prior involvement with known defeated avoidance schemes. To take advantage of previous case law clarifying the application of the “reasonable suspicion” test, moreover, the legislation could refer specifically to other legislation using the same threshold, such as the PACE Act 1984.

2. A risk-based framework – if not already used - for differentiating and identifying advisers for investigation of potential dishonesty. This would help ensure that conduct and information notices are targeted at those whose activities and clients entail a significant risk to tax revenue. The Australian Taxation Office’s development of a risk differentiation framework for tax practitioners may provide one model.[15]

Question 9: Do you agree with the proposed changes to the powers to gather information from tax advisers?

Yes, with the guidance, risk-based approach and statistical reporting described above (Questions 7 and 8).

Question 10: Do you have any comments about the proposal to remove the safeguard requiring tribunal approval for a file access notice?

The requirement of tribunal approval for a file access notice is considerably higher than that required for HMRC's general powers to obtain information and documents from a taxpayer under Part 1 of Schedule 36 of Finance Act 2008, which do not have an automatic tribunal safeguard. Though we understand that information requests to third parties under Schedule 36 do require tribunal approval, we consider this to be a different situation: Schedule 38 File Access Notices are pursuing information about the conduct of the adviser themselves, not their clients i.e. it is not a third-party request.

We suggest that the systemic safeguard of an independent reviewer within HMRC (see above Question 7) would be proportionate, and already beyond what exists for taxpayers under Schedule 36 of Finance Act 2008.

Question 11: Are any other changes to safeguards needed to ensure Schedule 38 can be used more swiftly and effectively?

To enable swifter and more effective use of the regime while maintaining fairness, we recommend that **in high-harm scenarios, to protect the public from dishonest advisers, HMRC should be empowered to publish the names of advisers subject to conduct notices or penalties before final resolution**.

This would be consonant, for example, with the consumer protections intended by the power in Finance Act 2022 for early-stage publication of tax avoidance schemes and persons suspected to be promoters of those schemes, before these schemes have been defeated or certified as disclosable.

Question 13: Are there additional/alternative ways HMRC should gather information related to tax advisers who cause harm to the tax system?

Imposing penalties requires strong evidence of misconduct that can probably only be obtained from an adviser's files, documents and communications.

However, TaxWatch believes that additional intelligence sources and techniques -- in addition to reports from HMRC staff regarding poor agent behaviour, dishonesty or misconduct[16] -- can help identify potential misconduct for further investigation, and better targeting of Conduct Notices / File Access Notices.

TaxWatch strongly supports the following (which TaxWatch is aware are already part of HMRC's armamentarium in some contexts):

1. Enhanced Monitoring of online materials and fora: Some advisers openly advertise avoidance schemes or even tax non-compliance strategies online. TaxWatch is particularly aware of individuals and companies promoting such schemes and services via social media platforms as 'influencers' in the wealth management, 'professional mobility' and lifestyle arenas.[17] TaxWatch encourages HMRC to develop further its capacity to systematically monitor online forums, social media, company websites, and marketing materials where tax advisers promote aggressive or non-compliant tax schemes.

2. Mandatory Disclosure of Adviser Relationships in High-Risk Sectors: In sectors prone to avoidance (e.g., property, entertainment, cryptocurrency), HMRC should require taxpayers to declare all tax advisers as part of their return or registration processes, including advisers not acting as their tax agent with HMRC.

3. Partnerships with Professional Bodies and Regulators: TaxWatch supports stronger collaboration with professional bodies (e.g. ICAEW, CIOT, ACCA) and statutory regulators to share intelligence on advisers subject to complaints, sanctions, or suspected of unethical conduct. Such data-sharing agreements should be formalised where possible, and should operate in both directions: TaxWatch has documented several instances in which advisers have been penalised for dishonesty or breaching obligations to HMRC (for example under Information or Stop Notices), but have been subject to no sanctions from their professional bodies and have retained unbroken professional body membership, enabling them to appear as unblemished professional service providers to prospective clients.[18]

4. Whistleblower Incentive Programme: TaxWatch notes current proposals to enhance whistleblower incentives for informants of serious non-compliance in large corporates, wealthy individuals, offshore and avoidance schemes.[19] Extending these proposals to include insiders coming forward with information about dishonest advisers could help overcome obstacles to obtaining sufficient information to trigger a Conduct Notice / File Access Notice.

5. Strengthening Data Sharing and Analytics Capabilities: The various notification and penalty pathways for tax adviser behaviour generate a range of information and alerts about particular tax advisers for the Agent Compliance Team and/or FIS. Combining this intelligence stream with data analytics to identify related advisors or advisory entities – as with the mapping of other advisers/promoters related to DOTAS/POTAS-disclosed promoters – could help target scrutiny of returns for generating potential conduct/information notices, allowing targeted enforcement before further harm occurs.

More systematic information-sharing between Companies House and HMRC would also assist with this targeting.

6. Public Tip-Off Campaigns: HMRC should consider targeted public awareness campaigns inviting anonymous tip-offs about rogue tax advisers, particularly in sectors where unregulated advice is prevalent.

Question 14: Do you believe that the current penalties under Schedule 38 Finance Act 2012, Tax Agents: Dishonest Conduct provide an adequate deterrent against non-compliance that causes harm to the tax system?

No.

TaxWatch does not have access to information about Schedule 38 penalties imposed, but the current fixed range (£5,000 - £50,000) takes no account of the tax revenue at risk, or fees received. For dishonesty in relation to the tax affairs of wealthy individuals or medium/large businesses, this range is low enough to be a cost of business, particularly for categories of dishonest advisers such as promoters of avoidance schemes involving dishonesty or the provision of incomplete information, where fees may be 10 percent of multiple scheme users' gross income over a number of years.[20]

As the consultation document notes, the absence of tax-related penalties in Schedule 38 differs from the penalty regime for taxpayers who deliberately submit inaccurate documents (Schedule 24 of Finance Act 2007). The fixed Schedule 38 penalties for failure to comply with File Access Notices also differ from the tax-related penalties available in the Upper Tribunal for non-compliance with HMRC's general information powers to obtain information and documents in relation to a taxpayer's tax position (Schedule 36 of Finance Act 2008). Tax-related Schedule 36 non-compliance penalties have in some cases been in six figures, substantially higher than the Schedule 38 upper limit of £50,000.[21]

Absence of professional consequence mechanisms: Though the mechanism exists under Public Interest Disclosures, HMRC is not automatically required to notify relevant professional bodies or regulators when an agent is penalised under Schedule 38. Moreover, even when professional bodies have been notified in the past of HMRC penalties for advisers' misconduct - including from TaxWatch via their formal complaint mechanisms - they have not sanctioned those advisers.[22] In the absence of effective professional regulation, therefore statutory penalties for adviser misconduct are the only material deterrent and protection for members of the public against adviser misconduct, and must be robust.

Question 15: Do you believe that penalties should be introduced for tax advisers who have facilitated non-compliance that causes harm to the tax system?

Yes.

Beyond the two current elements of 'dishonesty' in Schedule 38 (dishonest omission, and knowingly advising a client to do something dishonest), advisers who have knowledge of taxpayer non-compliance and support that non-compliance, or fail to act to stop or prevent that non-compliance, should also be penalised. In practice, this applies to advisers who are often central to designing, marketing and implementing failed avoidance schemes, and to designing and implementing evasion arrangements. As the example of the Loan Charge has powerfully shown, the current system is too often narrowly focused on taxpayers while sometimes leaving enablers – including advisers – untouched.[23]

This is both a principled position, and a practical one in light of the unwieldiness and sparse use of other powers against enablers. While other powers exist to penalise enablers of non-compliance, such as the penalties regime for enablers of failed avoidance schemes introduced in Section 16 of Finance Act 2017, they are rarely used. (In the case of the 2017 enablers penalty regime, this is arguably because the penalty requires both the scheme to be defeated, and an opinion from the GAAR Panel, which took until October 2022 to issue its first opinion on an enabler, and has to date only published two enabler opinions).[24]

Many other jurisdictions — including the United States[25], Canada[26], and Australia[27] — impose direct penalties on tax advisers and promoters of tax non-compliance. These regimes have demonstrated both deterrent and revenue-protective effects.

Question 16: Should the government reassess how penalties for tax advisers are determined to enhance deterrence against non-compliance?

Yes.

As described above in Question 14, the current penalties are insufficient – even on the small number of occasions that they have been applied - to deter misconduct. Compensation that dishonest or non-compliant tax advisers may obtain from clients, which not uncommonly may reach 10 percent of their clients' gross income for some avoidance schemes, may dwarf the current £5,000-£50,000 penalty scale.

The current penalties are also inconsistent with the much higher tax-based penalties levied on taxpayers for various forms of non-compliance, and for non-compliance with Schedule 16 information powers.

As an example of alternative practice: the Australian Taxation Office[28] applies adviser penalties that are calculated by reference to adviser profit, the number of schemes facilitated, and the level of intentional or reckless behaviour. TaxWatch recommends adopting a similarly robust, graduated penalty structure in the UK.

Incorporate non-financial sanctions: A reassessment of penalties should also consider complementary (not alternative) sanctions such as:

- Mandatory naming of penalised advisers.
- Publication of Conduct Notices.
- Suspension or revocation of agent access to HMRC services.
- Mandatory reporting to professional regulatory bodies.

Question 17: Which approach do you think will be most effective to reduce tax advisers facilitating non-compliance in their client's returns?

A. a penalty based on the potential revenue lost
B. a penalty based on the tax adviser's fees
C. a penalty based on a business's global turnover
D. other (please specify)

D. Other

TaxWatch recommends penalties on a sliding scale, up to a significant percentage of a business' global turnover, determined along this scale according to:

- The amount of revenue lost
- Wider harms caused to taxpayers and others
- The degree of knowledge, recklessness, or deliberate facilitation
- The adviser's cooperation with HMRC
- Efforts to conceal misconduct
- Whether the adviser self-reported
- Whether the adviser has engaged in repeat or serial misconduct.

However, if a single preferred option must be selected, we would support **Option C** — a penalty based on a significant percentage of a business's global turnover — as the most effective deterrent in serious and systemic cases.

Option A (potential revenue lost) has practical limitations: while conceptually logical, penalties based on tax loss often underestimate the wider economic harm caused by avoidance schemes, which can distort markets, erode confidence, and undermine voluntary compliance. Additionally, tax loss calculations can be complex, contested, and delayed, reducing enforcement efficiency.

Option B (adviser fees) fails to capture broader incentives and harm: penalties based on an adviser's fees for a single taxpayer or act of providing services may be just a business cost in high-margin tax advisory markets. Advisers involved in avoidance schemes frequently profit far beyond disclosed fees, including through marketing arrangements, contingent commissions, and repeat scheme sales.[29]

Option C (global turnover) delivers potentially the largest deterrent: A turnover-based penalty — similar to sanctions under anti-money laundering and data protection[30] regimes — would better reflect the scale and systemic risk posed by tax advisers facilitating non-compliance. It avoids issues with tax loss estimation or fee disclosure, and directly targets the commercial incentives of high-volume, high-profit advisory firms.

This approach is already recognised internationally as an effective deterrent mechanism.[31]

Question 18: Do you believe there should be a maximum penalty amount?

No.

TaxWatch considers that penalties should be calibrated by harm and severity of misconduct, and capped by a significant percentage of a business' global turnover. A specified maximum penalty amount could fail to capture or keep pace with turnover of potentially large firms in a high-margin industry.

Other UK regulatory regimes, such as anti-money laundering and data protection, impose penalties as a percentage of global turnover with no absolute maximum, ensuring sanctions remain proportionate to the offender's size and market position.

Question 20: Do you agree the penalty should escalate in stages, based on additional instances of facilitation of non-compliance?

Yes.

Effective deterrence of an activity which can generate repeat income requires escalating sanctions for repeat misconduct. One approach could be to remove the turnover percentage cap for repeat, deliberate or large-scale misconduct, so that such misconduct risks becoming an existential financial threat to the most persistently non-compliant firms.

Question 22: Do you agree with the government's proposal to introduce an option to charge penalties on tax adviser business entities rather than individuals, except where it can be evidenced that the wider business was not aware of the individual tax adviser's actions?

Yes.

In other regulatory regimes, such as data protection,[32] courts have argued that corporate entities can be held liable for misconduct committed by their staff, reflecting the firm's duty to manage risk and ensure compliance. TaxWatch agrees with aligning tax adviser penalties with these established regulatory principles. Moreover, penalties will be economically dissuasive if they are calibrated to firms' revenues rather than individuals' resources (see above Question 17).

Any exceptions for businesses that can show they were wholly unaware of the adviser's misconduct should only be available where the firm can also evidence robust governance, supervision and compliance controls. Lack of awareness due to poor oversight, inadequate systems, or wilful blindness, should not fall within exemptions. The burden of proof for unawareness should rest with businesses.

Question 23: What else should be considered when looking at penalties charged on tax advisers?

In addition to liabilities for penalties of both individual advisers and their firms, Taxwatch recommends that HMRC should have the power to hold directors and owners of penalised firms individually liable for penalties.

Particularly under the POTAS/DOTAS publication schemes, there are several instances of listed, notified or penalised advisory firms being wound up or abandoned,[33] with advisers in some cases establishing or joining new un-listed or un-penalised firms. Making directors and owners of firms jointly and severally liable for penalties levied on firms for adviser dishonesty may be appropriate to prevent abandoned liabilities, especially in circumstances where misconduct appears to be firm-wide or systematic.

Question 24: Are there any reasons why HMRC should not make further non-PID disclosures to professional bodies, as well as continuing with PIDs (where appropriate)?

No.

TaxWatch supports information-sharing between HMRC and professional bodies about professional standards. TaxWatch welcomes the fact that both the number and proportion of possible PID cases resulting in a PID have been rising since 2020-21, but acknowledges that the proportion of possible PID cases resulting in a PID remains small (between one and five percent), indicating that PIDs remain reserved for very serious instances of misconduct. Professional regulatory bodies should receive information about other persistent carelessness, incompetence or non-compliance with HMRC requirements.

However, disclosures to advisers' professional bodies must be an addition, not a substitute, to HMRC's statutory pathways to penalising adviser dishonesty and non-compliance. This is because professional bodies are not reliably sanctioning or excluding non-compliant advisers through their own disciplinary processes, including advisers who have received substantial statutory penalties for non-compliance (see response to Question 1).

Question 25: What types of behaviours or activities do you consider it appropriate for HMRC to make further disclosures about?

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TaxWatch recommends that in defining parameters of disclosure, HMRC should take advantage of existing standards in Standards for Agents and the Professional Conduct in Relation to Taxation (PCRT) document. Where HMRC sees persistent and serious breaches of these standards – not limited to instances of proven dishonesty - it should be empowered to share this information with professional bodies.

While not every provision of the Standards for Agents and the PCRT may be sufficiently serious to warrant disclosure, important areas of disclosure may include:

Area of behaviour	Standards for Agents reference	PCRT reference
Facilitation of tax avoidance schemes, including: **planning that HMRC has designated under DOTAS/DASVOIT/VADR;** **planning that HMRC has challenged via the GAAR or other counteraction routes.**	**4.4.3** Tax Planning Standards	**3.2** Tax Planning Standards
Deliberate or negligent facilitation of taxpayer non-compliance or evasion	**4.2** Requirement to prevent errors, unsubstantiated or speculative claims; and report suspicions of tax fraud or evasion to HMRC	**2.23** Requirement to comply with all relevant legal and regulatory obligations and assist clients to do the same
Repeated or systematic provision of incomplete or misleading information to HMRC	**4.2** Requirement to prevent errors, unsubstantiated or speculative claims; and report suspicions of tax fraud or evasion to HMRC **4.3.2** Requirement to work constructive with HMRC in investigations, enquiries and reasonable requests for information	**2.23** Requirement to comply with all relevant legal and regulatory obligations and assist clients to do the same **3.2** Tax advice must not rely for its effectiveness on the relevant revenue authority having less than the relevant facts
Non-cooperation, obstruction, or delay in HMRC inquiries	**4.3.2** Requirement to work constructive with HMRC in investigations, enquiries and reasonable requests for information	**2.23** Requirement to comply with all relevant legal and regulatory obligations and assist clients to do the same

Persistent failure to advise clients accurately about their tax obligations	**4.4.1** Requirement to base tax planning on credible and realistic view of law and facts, and advise clients of material uncertainty in a tax position	**3.2, 3.6, 3.7, 4.4.1** Requirement to base tax planning on credible and realistic view of law and facts, and advise clients of material uncertainty in a tax position

In addition, TaxWatch considers that there should be mandatory notification to an adviser's professional body when an adviser is issued with a Conduct Notice, Information Notice, File Access Notice, Stop Notice, POTAS Monitoring Notice or civil penalty.

Question 26: Do you believe that it is in the public interest for HMRC to publish more information about its activity, such as the details of tax advisers subject to a formal sanction by, or a restriction on their dealings with, HMRC?

Yes.

As described above (Question 4) a unified, public register of notified and sanctioned tax advisers and tax agents would enable the public to make informed decisions about prospective advisers, and protect them from rogue advice. The public should be able to search this register, through a single portal.

Question 27: When considering where to set the threshold of proportionality for publication, which types of sanctions do you believe should be included, and which should be left out?

A unified public register (above Question 26) should enable taxpayers to determine whether a named adviser:

- Has received any civil penalty from HMRC (with a description of this penalty)
- Has received a Schedule 38 Conduct Notice
- Has received a POTAS Stop Notice
- Works for a firm that is or has been a POTAS Monitored Promoter
- Works for a firm which has been allocated a Scheme Reference Number under DOTAS
- Works for a firm which has promoted or facilitated a scheme defeated by GAAR or other HMRC action
- Works for a firm which has been listed as a facilitator or promoter of potential avoidance schemes under Finance Act 2022

- Has been restricted from dealing with HMRC, including limited or refused contact, and blocked access to HMRC agent services
- Has failed to comply with money laundering regulations or other statutory obligations.

Most or all of this information is presumably already centralised within the Agent Compliance Team, so its publication should not generate excessive cost.

Ideally this unified public register should also pull in published information about sanctions from professional bodies.

As well as being searchable by the information fields proposed below (Question 29), this portal should also include a full listing of the advisers and firms included in the data, as at present with HMRC's list of named tax avoidance schemes, promoters, enablers and suppliers.[34] This would encourage third-party reporting about listed advisers and their firms, such as risk/due-diligence databases; and would ensure that the sanctioned status of listed advisers appeared in web searches.

Sanctions or notifications that could reasonably be left unpublished include:

- Conduct and breaches of standards which may be subject to non-PID disclosure to professional bodies, but do not reach the threshold of notices, orders, restrictions or penalties listed above
- Notices or penalties overturned on appeal or subject to ongoing litigation
- Internal warnings or informal compliance interventions that do not result in a formal penalty or restriction.

Question 28: Is the short-form and long-form approach to publication sufficiently flexible to allow HMRC to take a proportionate response to different degrees of poor tax adviser behaviour?

Yes.

1. Short-form publication: To enable the public to quickly find all relevant information about an adviser, we suggestshort-form publication to take the form of a single searchable list or database of advisers with details with the identifying information set out in Question 29 below, aggregating in one place all the lists and data specified in Question 27.

2. Long-form publication: we urge clear, published criteria for when long-form publication will be used, recognising that long-form publication should reflect how the enhanced information can be used by others, and not just the severity of the misconduct. Thresholds may include the persistence or repetition of wrong-doing; the amount of tax revenue lost or at risk; or forms of particularly serious or novel misconduct whose details would help professional regulators and the public to detect or avoid the same misconduct in the future.

Question 29: What information about each tax adviser should be published, and is there anything that should not?

The information published about tax advisers subject to sanctions must be sufficient to: (1) protect the public, (2) deter poor practice, and (3) promote market transparency.

Information that should be published (all these are statements of fact):

- Full name of the adviser, including any known former names
- Trading/business name(s), including any known former names
- Trading/business address
- Professional body memberships or qualifications
- Nature of the misconduct
- Type of sanction or restriction applied
- Financial penalty amount, if applicable
- The periods when the inaccuracy, failure or wrongdoing that gave rise to a penalty occurred
- Date and duration of the notification, restriction or sanction
- Whether the adviser was acting individually or within a business structure
- Status of any appeal and its outcome.

Information that should not be published:

- Personal addresses or other personal data unrelated to the adviser's professional activities
- Information about minor or technical breaches that would disproportionately harm reputation without clear public interest justification
- Internal warnings or informal compliance interventions that do not result in a formal penalty or restriction
- Notifications, restrictions or sanctions still subject to ongoing legal proceedings (until concluded), with the exception of DOTAS, POTAS and 'Finance Act 2022' avoidance listings that are currently published prior to HMRC challenges or enabler appeals.

Question 30: For how long should details remained published and in the public domain for short-form publication, and for long-form publication?

Publication serves as much to protect the public as to deter. TaxWatch therefore recommends that procedures for publication should align with other bodies which publish details of sanctions to protect the public and consumers, such as the Financial Conduct Authority. Notably, the FCA expects notice statements not to be removed before six years, and requires prohibition orders to be left as long as they are applicable.[35]

Though the FCA's sanctions framework differs from the HMRC regimes applicable to tax advisers, nonetheless this two-fold criteria match the distinction between penalties vs. ongoing behaviour or restrictions.

TaxWatch therefore recommends that:

1. all the (short-form) information items listed under Question 27 should be listed for at least six years;

2. all long-form publications should remain published after that time unless removed by a review process;

3. POTAS Stop Notices, POTAS Monitored Promoter status, restrictions on dealing with HMRC, and advisors of firms with a live DOTAS scheme reference number, should remain listed as long as those notices or statuses are in force, if longer than six years.

All three should be subject to a publication review process that the adviser can trigger, similar to the FCA process, which may result in the details being removed from the HMRC website.[36]

Details of penalties and other sanctions should also be removed if overturned on appeal or via a court or tribunal ruling.

Question 31: Which criteria for publication would set a fair and proportionate threshold for using publication?

The threshold for publication should not be determined by the length of the sanction, as the Consultation Document recommends. Even in a two-month period that an adviser cannot access HMRC's online services, for instance, it would be important for prospective or current clients to know this during this period.

Instead, TaxWatch believes that criteria for publication should reflect (1) serious of misconduct, (2) patterns of behaviour, (3) whether the information serves to protect the public e.g. involvement in avoidance schemes.

Thus, as set out in Question 27, we recommend that only the following should be excluded from publication:

- Conduct and breaches of standards which may be subject to non-PID disclosure to professional bodies, but do not reach the threshold of notices, orders, restrictions or penalties;
- Notices or penalties overturned on appeal or subject to ongoing litigation;
- Internal warnings or informal compliance interventions that do not result in a formal penalty or restriction.

Question 32: Do the proposed safeguards provide for a fair, proportionate, and workable publication framework?

Yes, with the procedural safeguards recommended in Question 33.

Question 33: Are there any other safeguards which you think the government should consider for this publication power?

TaxWatch recognises that the publication power needs to protect the public but also have legitimacy with the tax advisory profession, particularly to prevent incentives for 'shadow advisers' to limit their contact with HMRC at all. We therefore recommend the following:

1. Publication review process: in light of the longer publication times we propose above (Question 30) compared to those envisaged in the Consultation Document, we recommend that individuals and entity subject to any publication should be able to request a review of the publication by a senior HMRC approving officer who has not been previously authorised the publication. This would align, for instance, with Financial Conduct Authority publication of notice statements and prohibition orders.[37]

2. Advance notification: advisers should be informed in advance of publication, and be accorded a short timeline to make representations to the approving officer about the publication.

3. Transparency: HMRC should publish statistics about how often advisers challenge publication in advance, activate the review process or other appeal processes, and the outcome of those challenges.

4. Independent oversight: As with the streamlined information powers discussed above (Question 7), HMRC could consider an independent external reviewer of the publication process, perhaps drawn from the professional bodies, to review a selection of publication decisions, and publish their findings.

Notes

[1] TaxWatch, *Regulation of the tax advisory market: the effect of non-regulation and the case for change*, March 2025, https://www.taxwatchuk.org/wp-content/uploads/2025/03/Final-report-for-website.pdf

[2] For a summary of nine complaints made by TaxWatch to professional bodies about alleged breaches of professional and ethical standards by tax advisers, see TaxWatch, *Regulation of the tax advisory market: the effect of non-regulation and the case for change*, March 2025, Section 3.2. Further details of each complaint are at www.taxwatchuk.org

[3] e.g. TaxWatch, 'Beyond the Loan Charge: Will the most recent proposals finally shut down disguised remuneration schemes?, 24 April 2023, https://www.taxwatchuk.org/disguised_remuneration_2023/; TaxWatch, 'TaxWatch welcomes proposals to tackle promoters of tax avoidance', 30 October 2023, https://www.taxwatchuk.org/finance-bill-tax-avoidance-proposals/

[4] HMRC, *Consultation Outcome: Raising Standards in the Tax Advice Market: strengthening the regulatory framework and improving registration – summary of responses* (30 October 2024), https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market-strengthening-the-regulatory-framework-and-improving-registration/outcome/raising-standards-in-the-tax-advice-market-strengthening-the-regulatory-framework-and-improving-registration-summary-of-responses#summary-of-responses-and-next-steps

[5] HMRC, response to FOI request FOI2024/21287, issued 21 March 2024.

[6] HMRC, response to FOI request FOI2024/21287, issued 21 March 2024.

[7] https://www.thebureauinvestigates.com/stories/2024-06-16/hmrc-fines-zero-enablers-of-offshore-tax-evasion-in-five-years

[8] https://www.gov.uk/government/publications/named-tax-avoidance-schemes-promoters-enablers-and-suppliers/information-hmrc-may-publish-about-tax-avoidance-schemes-promoters-enablers-and-suppliers

[9] TaxWatch, *Regulation of the tax advisory market: the effect of non-regulation and the case for change*, March 2025, https://www.taxwatchuk.org/wp-content/uploads/2025/03/Final-report-for-website.pdf

[10] Upper Tribunal (Tax and Chancery Chamber), judgement in [2022] UKUT 81 (TCC), Appeal Number UT/2019/0045, 14 March 2022.

[11] These include (1) conduct notices, information powers, penalties and publication powers for dishonest conduct by tax agents (Schedule 38, FA 2012); (2) penalties and publication powers for enablers of defeated abusive tax arrangements (Schedule 16, FA(2) 2017); (3) publication of tax agents issued with a Stop Notice under the Promoters of Tax Avoidance Schemes (POTAS) rules; plus penalties and, more recently, potential criminal liability, for failing to comply with obligations under a POTAS Stop Notice (Part 5, FA 2014); (4) penalties for facilitating the promotion of avoidance schemes involving non-resident promoters for which other penalties have been issued (Section 91 Schedule 13 FA 2022); (5) penalties for failing to disclose, or to provide HMRC with required information about, a disclosable scheme under VADR, DASVOIT or DOTAS; (6) penalties for failure to disclose, or to provide HMRC with required information about, certain opaque offshore arrangements or CRS-defeating arrangements under the Mandatory Reporting Rules (Section 84 FA 2019); (7) penalties and publication powers for enablers of offshore tax evasion or non-compliance (Section 162(1) and Schedule 20 of FA 2016); (8) publication of information about suspected tax avoidance scheme promoters (Section 86 Part 6 of FA 2022).

[12] TaxWatch, *Regulation of the tax advisory market: the effect of non-regulation and the case for change*, March 2025, https://www.taxwatchuk.org/wp-content/uploads/2025/03/Final-report-for-website.pdf

[13] See Roseline Logistics Limited vs HMRC [2025] UKFTT 00427

[14] See e.g. Part V, Immigration and Asylum Act 1999

[15] Inspector General of Taxation, *Review into aspects of the Australian Taxation Office's use of compliance risk assessment tools* (October 2013), Chapter 7 (Tax Practitioners and Advisers), pp. 129-140.

[16] HMRC, *Compliance Handbook*, CH860000 (Reporting Poor Agent Behaviour), CH860200 (Reporting Agent Misconduct), CH880400 (Dishonest Tax Agents: Reporting Dishonest Conduct).

[17] Examples available on request.

[18] TaxWatch, *Regulation of the tax advisory market: the effect of non-regulation and the case for change*, March 2025, Section 2.2.3 (Complaints), pp. 14-16, https://www.taxwatchuk.org/wp-content/uploads/2025/03/Final-report-for-website.pdf

[19] HM Treasury, *Spring Statement 2025* (CP 1298), March 2025, p. 22, https://assets.publishing.service.gov.uk/media/67e3ec2df356a2dc0e39b488/E03274109_HMT_Spring_Statement_Mar_25_Web_Accessible_.pdf

[20] https://www.gov.uk/guidance/tax-avoidance-schemes-aimed-at-contractors-and-agency-workers

[21] See e.g. the Upper Tribunal decision dated 4 October 2021 in HMRC v. Sukhdev Mattu, which imposed a tax-related Schedule 36 penalty of £350,000 (50% of the tax due); and the Upper Tribunal decision dated 17 March 2022 in HMRC v. AML Tax (UK) Ltd, which imposed a tax-related Schedule 36 penalty of £150,000.

[22] TaxWatch, *Regulation of the tax advisory market: the effect of non-regulation and the case for change*, March 2025, Section 2.2.3 (Complaints), pp. 14-16, https://www.taxwatchuk.org/wp-content/uploads/2025/03/Final-report-for-website.pdf

[23] TaxWatch, *Disguised Remuneration Tax Avoidance and the Loan Charge, March 2020*, https://www.taxwatchuk.org/disguised_remuneration/

[24] https://www.gov.uk/government/collections/tax-avoidance-general-anti-abuse-rule-gaar

[25] IRC §6694 penalises preparers who endorse "unreasonable positions" on a return.

[26] Canadian law imposes "third-party" civil penalties on advisors, accountants or promoters who knowingly make false statements to facilitate tax non-compliance. The Income Tax Act's section 163.2 creates penalties for anyone who "makes or furnishes a statement" (or causes one) they know to be false and that could be used by another for a tax purpose.

[27] Under Division 290 of Schedule 1 to the Taxation Administration Act, anyone who "promotes" a *tax exploitation scheme* (i.e. an arrangement with no real legal tax benefit) can be ordered to pay civil penalties.

[28] The penalty formula for a corporation or large entity is the greater of 50,000 penalty units, three times the benefit obtained from the scheme, or 10% of turnover (capped at 2.5 million units) https://www.ato.gov.au/about-ato/tax-avoidance/understanding-tax-schemes/promoter-penalty-laws

[29] e.g.https://www.gov.uk/government/publications/tackling-promoters-of-mass-marketed-tax-avoidance-schemes/tackling-promoters-of-mass-marketed-tax-avoidance-schemes

[30] Section 157 Data Protection Act 2018

[31] e.g. https://www.oxera.com/insights/agenda/articles/penalty-design-punishment-and-deterrence/ and https://www.elibrary.imf.org/view/journals/008/2019/001/article-A001-en.xml

[32] E.g. in WM Morrison Supermarkets plc v Various Claimants [2020] UKSC 12, the Supreme Court suggested that in principle companies could be vicariously liable for data breaches committed by employees in the course of their employment

[33] e.g. https://www.accountancydaily.co/tax-avoidance-promoter-hyrax-did-not-pay-ps1m-penalty ; https://find-and-update.company-information.service.gov.uk/company/11762908

[34] https://www.gov.uk/government/publications/named-tax-avoidance-schemes-promoters-enablers-and-suppliers/current-list-of-named-tax-avoidance-schemes-promoters-enablers-and-suppliers

[35] Financial Conduct Authority, *Enforcement Guide*, Chapter 6 (Publicity), para. 6.2.1.8, https://www.handbook.fca.org.uk/handbook/EG/6/2.pdf

[36] Financial Conduct Authority, *Enforcement Guide*, Chapter 6 (Publicity), para. 6.2.1.8, https://www.handbook.fca.org.uk/handbook/EG/6/2.pdf

[37] Financial Conduct Authority, *Enforcement Guide*, Chapter 6 (Publicity), https://www.handbook.fca.org.uk/handbook/EG/6/2.pdf