



The City of London Law Society

Furniture Makers' Hall
12 Austin Friars
London
EC2N 2HE

enquiries@cls.org
www.cls.org

15 September 2025

By email to: raisingstandardsconsultation@hmrc.gov.uk

Dear Sir or Madam

RE: CITY OF LONDON LAW SOCIETY'S RESPONSE TO HMRC'S POLICY PAPER "ENHANCING HMRC'S ABILITY TO TACKLE TAX ADVISERS FACILITATING NON-COMPLIANCE" AND ASSOCIATED DRAFT LEGISLATION

Please find below The City of London Law Society's ("CLLS") response to the HM Revenue & Customs ("HMRC") policy paper published on 21 July 2025 entitled "Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance" (the "**Policy Paper**") and associated draft legislation on the conduct of tax agents and publication of information about tax agents (the "**draft legislation**") also published on 21 July 2025.

INTRODUCTION

The CLLS represents approximately 22,000 City lawyers through individual and corporate membership including some of the largest international law firms in the world. These law firms advise a variety of clients from multinational companies and financial institutions to Government departments, often in relation to complex, multi-jurisdictional legal issues.

The CLLS responds to a variety of consultations on issues of importance to its members through its 17 specialist committees. This response has been prepared by the CLLS Tax Committee.

The current members of the Tax Committee are listed at <https://cls.org/committees/tax.html>.

PRELIMINARY COMMENTS

CLLS supports the Government's objective to raise standards in the tax advice market and deter tax advisers from harming the tax system. CLLS members meet the highest of professional and ethical standards and are subject to a comprehensive regulatory regime, supervised by the Solicitors Regulation Authority (**SRA**), as well as long-established duties both to their clients and to the Court.

We appreciate the opportunity to comment on the Government's proposals to strengthen HMRC's powers in respect of tax agents. We welcome the Government's decision, reflected in the draft legislation, to target those who deliberately facilitate non-compliance, however, we consider that certain aspects of the draft legislation require further refinement to ensure that robust safeguards are in place and that the policy objectives are achieved in practice.

While we share the policy objective of deterring poor-quality advice and combating non-compliance, any new or extended powers must be framed to ensure they are reasonable, properly targeted and proportionate, and must be underpinned by clear statutory safeguards.

In our response below we stress the importance of independence in the decision-making stages of this measure - both in determining the level of sanction and in authorising publication.

CONDUCT OF TAX AGENTS

First, we are concerned by the proposal to replace the existing requirement to establish dishonesty before issuing a conduct and information notice with a significantly lower test of "reasonable suspicion" of deliberate conduct.

"Reasonable suspicion" is inherently subjective and capable of differing interpretations not least among HMRC's officers currently tasked with overseeing this measure. The draft legislation does not identify the threshold or the quality of information that must underpin that belief. In our view, the legislation should state that the officer must have objectively verifiable grounds, supported by contemporaneous evidence, which would satisfy a reasonable third party in possession of the facts.

We are concerned that the measure as currently proposed would operate with limited safeguards. A mandatory prior review and approval by an independent senior HMRC official or, ideally, an independent oversight body would provide an important check and balance. Absent such procedural protections, lowering the threshold risks inconsistent, and potentially unfair, deployment of a powerful sanction.

Secondly, we note that certain existing safeguards (in relation to appeals) are removed at the same time as the bar is being lowered. This combination intensifies the risk of uneven or excessive use of the proposed powers across HMRC's compliance teams. We therefore recommend that any reduction in the threshold should be matched by strengthened procedural safeguards.

Thirdly, we note that the penalty regime attached to the measure is based on the potential lost revenue. Although we appreciate that a penalty system based on potential revenue lost might provide a greater deterrent, the fees an adviser charges do not always correlate to the potential tax at stake (for example, hourly charge out rates), therefore advisers may be disproportionately penalised on a large project. We accept that the current penalty may not operate as a deterrent but would suggest that a penalty capped at the amount of the adviser's fees would be more appropriate.

Finally we have a drafting point on the definition of "deliberate conduct". As drafted, this would cover paying tax in accordance with HMRC guidance and extra-statutory concessions to the extent these have any concessionary element. It also needs to be clarified that "with a view to" connotes that the adviser knew or ought reasonably to have known that the conduct would result in a loss of tax revenue. For example a conveyancer should not be engaging in "deliberate conduct" by (a) deliberately filing the return (b) knowingly doing so with a view to claiming the lower rates as instructed by their client where (c) those rates were not as a matter of law available to that client but the conveyancer neither knew nor ought reasonably to have known that.

PUBLICATION OF INFORMATION ABOUT TAX AGENTS

With regard to the proposed "power to publish" information about sanctioned agents, we accept that public-facing sanctions can have a deterrent effect, but the safeguards outlined in the consultation require further refinement.

The criterion that publication may occur whenever "the officer considers that publication would be in the public interest" provides a very broad discretion in individual officers, risking inconsistent

outcomes. The draft legislation should limit publication to cases where (i) a senior approving officer, independent of the case team, has certified that publication is necessary and proportionate, and (ii) the officer (or, in more serious cases, two senior approving officers) has considered the economic and reputational impact on the adviser's business.

The duration of publication must also be proportionate. The decision to remove a notice should be subject to periodic, transparent review by a body that is independent of the original decision-maker, thereby safeguarding against unnecessary or unjustified prolongation.

The application of the measure to scenarios where HMRC has taken "any other action in relation to the agent" is likewise too open-ended. The legislation should set out the range of "conduct-related actions" that falls within the scope of the measure, so that advisers can understand the potential consequences of their conduct and ensure that HMRC operates within clearly defined statutory boundaries.

CONTACT DETAILS

Should you have any queries or require any clarifications in respect of our response or any aspect of this letter, please feel free to contact me by telephone on 020 7296 5783 or by email at Philip.harle@hoganlovells.com.

Yours faithfully

Philip Harle
Chair of the City of London Law Society Tax Committee

© CITY OF LONDON LAW SOCIETY 2025

All rights reserved. This paper has been prepared as part of a consultation process. Its contents should not be taken as legal advice in relation to a particular situation or transaction.