14 August 2026

Introducing a criminal offence for making reckless untrue statements or declarations in direct tax

Response from ICAS

Introducing a criminal offence for making reckless untrue statements or declarations in direct tax

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 24,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. 12,000 of our members are based in Scotland and 10,000 in the rest of the UK.

2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.

3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. We welcome the opportunity to respond to the HMRC consultation – Introducing a criminal offence for making reckless untrue statements or declarations in direct tax.

5. We appreciated the opportunity to discuss the proposals with the consultation team at the stakeholder meeting on 6 August.

6. We do not support the introduction of the new offence as proposed in the consultation. It would involve a high degree of subjective interpretation to determine whether behaviour should be treated as reckless (within scope of the new offence) or careless (remaining within the civil regime). It is undesirable (for a criminal offence) that the scope and application should be unclear and difficult for taxpayers to understand.

7. The consultation provides no evidence to illustrate the use of the existing 'reckless' offences for indirect tax. There is no information on outcomes, compared to prosecutions for evasion. We suggest that further work should be undertaken before considering the introduction of a direct tax offence. Without evidence it is difficult to assess how effective such an offence might be and whether it would achieve the stated aims (without unintended consequences).

Specific Questions

Question 1: Do you agree that a criminal offence for making reckless untrue statements or declarations should be introduced for all direct tax matters? And if not applied to all direct tax matters, why not? Please give reasons for your response.

8. We do not support the introduction of the offence as proposed in the consultation. It would involve a high degree of subjective interpretation to determine whether behaviour should be treated as reckless (within scope of the new offence) or careless (remaining within the civil regime). This seems inappropriate for a criminal offence. We discuss this further in our responses to Questions 2, 5 and 6.

9. The consultation does not provide any evidence about how the 'reckless' offences for indirect taxes are used in practice. There are no published statistics for prosecutions – and the consultation does not include any information on outcomes compared to prosecutions for evasion. We understand that in practice the indirect tax offences have not generally been used on a standalone basis. This makes it difficult to assess how the new offence for direct taxes would be used and how effective it could potentially be.

10. The consultation states that the proposed approach would provide greater clarity for taxpayers "who could expect a consistent approach to enforcement across all tax types" but in view of the lack of evidence about the use of the indirect tax offences, it is unclear what this means. It is also

unclear how the proposed offence for direct taxes might be used, as discussed in our responses to the questions below. We are concerned that many taxpayers (and advisers) will struggle to understand the proposed new offence and how it might operate, which is undesirable for a criminal offence.

Question 2: What impacts do you foresee for taxpayers, advisers, and other stakeholders if an offence for making reckless untrue statements or declarations is introduced for direct tax?

11. The consultation emphasises the anticipated deterrent effect of the new offence. However, for this to be realised in practice taxpayers would need to be aware of (and understand) the offence. Most taxpayers will understand that dishonesty and fraud are criminal offences – it would be more difficult for many to assess when the proposed new offence might apply, particularly in the absence of any evidence relating to the existing indirect tax offences. Advisers would also need to understand when the new offence is intended to apply and how it would be used. This would require extensive communications, explaining the details and how the offence would be used.

12. As noted in our response to Question 1, we are concerned that it isn't apparent how behaviour within the scope of the new offence could readily be determined. There would need to be a very clear distinction between 'carelessness' and 'recklessness', given that the latter would expose taxpayers to the risk of prosecution.

13. One of the examples in the consultation states that the taxpayer does not read the relevant guidance 'properly'. Given the complexity of tax and the difficulty of covering every scenario in the main GOV.UK guidance (some complex areas are dealt with in other guidance), it isn't obvious how this could be determined in most cases. A taxpayer might read the guidance 'properly' but fail to realise that their interpretation was mistaken (or that they had missed more detailed guidance in, for example, an HMRC manual).

14. Taxpayers who want to comply and are already worried about the potential for making mistakes, would be concerned that getting something wrong could lead to prosecution. The consultation mentions (in Section 5) that the new offence might lead to more frequent consultation of guidance or use of professional advice. In view of the example in the consultation, unrepresented taxpayers might conclude that HMRC requires them to take advice that they cannot afford because consulting the guidance might be insufficient (and could lead to HMRC assuming that they had acted recklessly).

15. As the consultation mentions, legislation was introduced in Finance Act 2026 to amend existing legislation relating to the behaviour of agents by changing "the punishable behaviour of tax agents from 'dishonest' to 'sanctionable'". Sanctionable conduct is defined as "in the course of acting as a tax adviser, doing something with the intention of bringing about a loss of tax revenue." One of the reasons given for the amendment was the difficulty of establishing that conduct was 'dishonest'.

16. Numerous concerns were raised about the possibility that HMRC would seek to apply the 'sanctionable conduct' definition to cases where an agent had made a mistake or arrived at a different interpretation of the legislation to HMRC. Similar concerns have been raised with us about the proposed new offence for 'recklessly making a statement or declaration'.

17. As already noted, tax is complex – agents can make mistakes. They may also sometimes disagree with HMRC's interpretation of the legislation. Will HMRC assume that if an agent gets something wrong it must be reckless because they should 'know better'? Similarly, will HMRC want to treat any differing legal interpretation as reckless?

18. In response to the concerns about 'sanctionable' conduct, the Exchequer Secretary to the Treasury stated in the parliamentary debates about the Finance Bill that the new powers "will not affect advisers who act in good faith, or who take a credible view as to what the law requires". A similar statement may be necessary in the context of the proposed new offence. Our response to Question 3 discusses the potential for unintended consequences if agents are concerned that acting for some clients could leave them exposed to possible prosecution.

Question 3: Are there particular types of behaviour or circumstances that you believe should or should not fall within the scope of the new offence? Please give reasons for your response.

19. See our responses to Question 2 and Question 5. The definition of the proposed new offence lacks clarity. It appears that HMRC might make decisions about prosecution based on assumptions about behaviour which could be mistaken. It is difficult to see how the proposed offence could be applied fairly and consistently.

20. As noted in our response to Question 2, we have received feedback about concerns related to agents. A further issue raised with us in the context of the 'sanctionable conduct' measure, but also relevant to the proposed criminal offence, relates to agents acting for clients who find it difficult to comply (for example, keeping very poor records or not providing full information to the agent).

21. The consultation on 'sanctionable conduct' noted that it was an important principle that agents should still feel able to work with these clients. However, as with the 'sanctionable conduct' measure, advisers who adhere to professional standards may not be willing to work with difficult clients if this could potentially expose them to the proposed criminal offence. Difficult clients would then struggle to obtain assistance (which allows them to achieve a basic level of compliance) and would be likely to fall into outright non-compliance.

22. We assume that an agent would not be within the scope of the proposed offence if, for example, a client had not revealed that they had received rental income from letting a holiday home, so an incorrect return was filed. We understand that HMRC views the offence as targeted at the maker of the 'declaration' (and the client remains responsible for their return), so the agent would not be at risk of prosecution.

23. However, it is less clear what the approach would be where the client takes advice on a complex issue, perhaps the availability of a relief, but the return filed by the agent is incorrect because the agent has not applied the relief correctly. One of the aims of the proposals is to encourage taxpayers to take advice, so it would be counterproductive (and unfair) for the client to be in scope in this example. However, in some cases, HMRC has tried to impose (civil) penalties on taxpayers in this type of scenario – and the taxpayer will obviously have made a declaration.

24. If the agent is potentially in scope in this scenario, it raises the issues outlined in our response to Question 2 – agents would have to be confident that the distinction between 'carelessness' and 'recklessness' is clear, and that 'recklessness' would not include cases where an agent acted in good faith.

25. It would also need to be clear when the agent, rather than their client, might be in scope.

Question 4: We are interested to hear whether consultees find 'statement' or 'declaration' easier to understand. Please explain your answer and provide any alternatives.

26. HMRC would need to provide guidance on the meaning of 'statements' and 'declarations'. As set out in our response to Question 2, the offence would need to be explained in detailed communications. It should probably also be highlighted in guidance about completing returns. In that guidance, HMRC could explain the relevance of the offence to that return.

Question 5: How might the introduction of a reckless untrue statements or declarations offence affect compliance behaviour among individuals and businesses?

27. As set out in our response to Question 2, we have concerns about the examples used to illustrate the application of the proposed new offence. Both the examples where HMRC suggests that the new offence would apply seem to rely on subjective assumptions about the taxpayer's behaviour by HMRC.

28. As noted in our response to Question 1, one of the examples states that the taxpayer does not read the relevant guidance 'properly'. Given the complexity of tax and the difficulty of covering

every scenario in the main GOV.UK guidance (some complex areas are dealt with in other guidance), it isn't clear how this could be determined in most cases.

29. As noted, a taxpayer might read the guidance 'properly' but misinterpret/misunderstand it or fail to realise that their circumstances fell within more detailed guidance somewhere else (for example, in an HMRC manual). Rather than submitting the claim anyway because 'it's probably fine', they might be happy that they could claim, so even if they could afford to take advice, they might not recognise that they needed to do so.

30. As mentioned in our response to Question 2, unrepresented taxpayers might conclude that HMRC requires them to take advice that they cannot afford because consulting the published guidance might be insufficient (and could lead to HMRC assuming that they had acted recklessly). As discussed in our response to Question 6 below, the consultation refers to 'robust support channels' – would this include support for unrepresented taxpayers trying to understand the correct tax treatment?

31. The other example the consultation states would fall within the scope of the offence, refers to a taxpayer with multiple bank accounts who 'suspects' that some taxable income may have been paid into an account, but doesn't check. The example goes on to state that the taxpayer "does not intend to understate income or mislead HMRC." It is unclear how HMRC could know that the taxpayer had not simply forgotten about the account or forgotten that it might contain business receipts. This is clearly careless behaviour but far less clear that it is 'reckless' and would merit criminal prosecution.

32. In both examples, there would be severe consequences for the taxpayer, if HMRC decided that the right approach would be to seek to prosecute for a criminal offence based on what appear to be assumptions that the taxpayers were "aware of the risk of their statement's falsity". It is difficult to see how the proposed offence could be applied fairly and consistently.

33. Both the examples suggest that HMRC is interested in cases where larger amounts are at stake – referring to a 'significant' amount in one and a 'materially inaccurate' return in the other. Is HMRC suggesting that it would apply a de minimis threshold, below which it would not consider prosecution? Alternatively, is HMRC simply suggesting that taxpayers should exercise more care when significant amounts are at stake?

34. There is a further lack of clarity around the interaction between the proposed new offence and the civil regime – and HMRC's Code of Practice 9 process (COP 9). As set out in Table 1 in the consultation (existing sanctions), for 'deliberate' and 'deliberate and concealed' behaviour there are civil penalties but also the possibility of criminal prosecution. However, it is HMRC's policy, as set out in its Criminal Investigation Strategy, to deal with fraud by the use of the cost-effective civil fraud investigation procedures under COP 9 wherever appropriate. According to the strategy, criminal investigation will be reserved for cases where HMRC needs to send a strong deterrent message or where the conduct involved is such that only a criminal sanction is appropriate.

35. We do not support the introduction of the proposed new offence but if the government decides to proceed, we suggest that COP 9 and the Criminal Investigation Strategy should be reviewed and updated to ensure that they specifically refer to the new offence.

Question 6: What challenges or risks do you foresee in implementing this change, and how might they be mitigated?

36. See our responses to Questions 2, 3 and 5. We agree that there would be a serious challenge in ensuring clear communication about "what constitutes recklessness, distinguishing it from inadvertent mistakes, and providing accessible guidance to avoid confusion". We have serious concerns about the examples provided in the consultation to illustrate when the new offence would apply.

37. Based on the approach outlined in the consultation, the distinction between careless behaviour (within the civil regime) and 'reckless' behaviour is highly subjective and, in many cases, it

appears that it would depend on assumptions made by HMRC. Arbitrary decisions may not be perceived as fair.

38. We also have further concerns about perceived fairness, subject to clarification of the planned interaction with the existing civil regime and COP 9 (see our response to Question 5).

39. The consultation also mentions that mitigation strategies may involve “targeted education campaigns and robust support strategies”. Both would be essential. As outlined in our response to Question 2, there will only be a deterrent effect if taxpayers (and agents) understand when they might fall within the scope of the proposed offence. They would also need to understand what steps would be reasonable to check their position.

40. It is essential that HMRC clarifies what it means by ‘robust support strategies’. Would this include support for unrepresented taxpayers trying to determine the correct tax treatment, and concerned that if they misunderstand guidance and get it wrong, they will be prosecuted?

Question 7: Do you have any other comments or suggestions regarding the proposed change?

41. We have no comments on this question.

Question 8: Do you believe this option best achieves proportionality and deterrence for a direct tax recklessness offence, and why?

42. See our responses to the previous questions. The potential consequences of falling outside the civil regime and within the scope of the new offence would be severe. As set out in our response to Question 5, it is difficult to see how the new offence could be applied fairly and consistently. In that context, the proposed sentence options do not achieve proportionality.

Question 9: Do you agree that fines should be unlimited on indictment? If not, what alternative would you propose and why?

43. See our response to Question 8.

CA House, 21 Haymarket Yards, Edinburgh, UK, EH12 5BH
+44 (0) 131 347 0100
connect@icas.com

icas.com

ICAS – The Professional Body of CAS
ICAS_accounting
ICAS_accounting