



Response to

HM Revenue and Customs consultation “Enhancing HMRC's powers:
Tackling Tax Advisers Facilitating Non-Compliance”

7th May 2025

Introduction

The emergence and rapid growth of the well-functioning umbrella market has been a positive contributor to UK growth, productivity and wealth. Compliant bona fide umbrellas – also known as Specialist Payment Intermediaries (SPIs) – provide certainty and security to the workers engaged by them, ensuring that; they receive the full protections required by employment law, their tax affairs are simplified, and all required taxes are remitted to HMRC.

The Freelancer & Contractor Services Association (FCSA) is the UK's leading professional membership body dedicated to raising standards and promoting supply chain compliance for the temporary labour market. Our members provide umbrella employment (via an Overarching Contract of Employment), self-employed services, accountancy, and business support solutions to the contingent workforce.

At time of writing, FCSA has more than 80 Accredited Members who collectively represent circa 220,000 workers engaged as employees; making them, collectively, one of the largest employers in the UK. Around 1 in 3 of the workforce represented by FCSA are women. Annually, FCSA members alone collect circa £12.5 billion in taxes and NICs which are timeously remitted to HMRC.

FCSA has worked extensively with government and other stakeholders to promote the highest possible standards in the industry, most recently providing labour market intelligence and umbrella regulation advice to directorates in the Department for Business and Trade (DBT), such as Labour Market Enforcement and Employment Agency Standards and HM Treasury, as well as working with HMRC across a number of areas including the off-Payroll Working Forum.

It has also assisted Parliament, giving evidence to the All-Party 'Parliamentary Loan Charge and Taxpayer Fairness Group', 'Modernising Employment Group', and the House of Lords Finance Sub-Committee, as well as being an expert advisor to the DBT-supported JobsAware initiative, the Better Hiring Institute.

This submission outlines our position and recommendations, emphasising the need to balance enforcement with education to foster a system that drives compliance at source. Where penalties and deterrents are needed, we have included ideas to make them more robust and effective – we agree that more needs to be done to drive out non-compliance.

FCSA continues to promote compliance within the sector for the benefit of individual workers, HM Government, and the supply chain. As a representative of a unique subsection of the labour market, it has also submitted various bodies of evidence to Government with market-led recommendations on how to drive non-compliance out of the supply-chain.

Executive Summary

FCSA welcome the Government's efforts to take swifter and stronger action against professional tax advisers who facilitate non-compliance in their client's tax affairs. However, we must ensure that any new powers HMRC receive are not excessive against compliant firms, and that there are sufficient checks and balances in place.

Proportionate safeguards are vital to prevent unfair expense and reputational damage to compliant firms and individuals who have been incorrectly suspected of non-compliance. However, we are clear that the balance is not yet in the right place and non-compliant firms are, in many cases, able to evade accountability. FCSA support the Government's intention to address this and the feedback we provide is in that vein.

Perhaps our greatest concern is defining what constitutes "reasonable suspicion"? Clearly, this needs to be backed by something more tangible than an individual's gut instinct. A key safeguard would be to ensure that two separate individuals from separate teams are able to review a prospective case for investigation and come to the same conclusion independently of one another. It is important that an investigation does not get senior sign-off without passing this '2 sets of eyes' test.

The '2 sets of eye's test' will not only help to prevent unfair costs and reputational damage for firms but it will also help to ensure that HMRC's investigations are well founded and significantly increase the chance of convictions 'sticking'. Without this safeguard, there is a risk of tunnel vision and over interpretation of rules leading to investigations that are not well founded, ultimately wasting everyone's time – including HMRC's and the Judiciary's.

FCSA believe it is important to ensure that the scope of these proposals is sufficiently broad but also well defined. By that we mean the powers should be limited to clear legal breaches in relation to tax advice and not stray into areas where an opinion, or interpretation of the law may be necessary. Furthermore, we are concerned that exempting not-for-profit organisations from the proposal presents a significant loophole which could undermine the new measures entirely.

A careful balance for publication of sanctions also needs to be struck. There are two purposes to this a) to deter and punish the most flagrant breaches, b) to educate and inform those that wish to enhance their compliance. Limiting publications to 1 year in the public domain doesn't work. The default needs to follow accountancy publications (6years + the current year).

It is vital to consider the firm/individuals intentions when publishing – minor instances, particularly first offences, anonymity is fair and reasonable. Such publications should be detailed case studies to allow them to act as educational pieces. The policy aim must be to enhance compliance across the board – Education is fundamental to that.

Responses to Consultation Questions

Policy Intention

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

Yes – There are various issues at play. We believe the lack of effective education is perhaps the greatest driver of non-compliance but there is also a significant minority that wilfully provide advice to facilitate non-compliance. They are able to because:

- a) Existing enforcement lead times and loopholes allow bad behaviour to continue
- b) The system is too focussed on the ‘firm’ and less on the ‘individual’ – meaning an individual’s past does not necessarily follow them if they move to/set up a new firm.
- c) Existing punishments do not fit the crime (e.g. only being blacklisted for a year).

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 – We believe that there is an excessive lead time in addressing non-compliance and enforcement. The delays allows bad behaviour to continue and spread, which makes enforcement action harder still.

Intentionally non-compliant firms and individuals adapt their practices to work their way around HMRC and it’s processes. For example they may spread or move their activities between more than one company. This can be addressed by looking at the individual advisers themselves, rather than just an individual firm. We believe this approach will be more effective in tracking down and stopping wilfully non-compliant behaviour.

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

The scope should be limited to the facilitation of tax evasion / fraud – we shall explain why it is important to avoid mission creep. The scope should exclude areas where there is uncertainty in law as often, where there is uncertainty, a view has to be taken to establish a defensible position. If HMRC enforcers are left room for legal judgement as to their approach, all this achieves is exposing HMRC to the risk

of legal challenge which could compromise an entire investigation.

For example, if you're looking at a case that includes different types of employee expenses and employment status is also an issue, then it's quite easy to see how judgements/HMRC opinion could come into play. These types of scenarios should be out of scope, unless there is blatant fraud that can be clearly identified using law, i.e. clear legislative breaches.

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

1. Under very limited circumstances, we would like to see HMRC achieve the ability to review the advice given by a tax advisor across their entire client base in one single compliance intervention. This power should be reserved for instances when there is clear evidence to suspect that the individual/firm could be a repeat offender. There should be very strict and well-defined circumstances where these powers can be used; for example evidence of multiple instances of fraud or facilitation of tax evasion. Any instances of this power being used and no breaches are found, should be published publicly in an anonymised fashion. If used well, this would be a useful addition to HMRC's powers.

2. Whilst enhancing HMRC's powers there needs to be a new set of amnesty criteria – a softer approach – to facilitate members of staff raising queries so that they can receive guidance on how to address any suspected inadvertent non-compliance. There needs to be an absence of any assumptions that heavy enforcement is needed. In a complex system, it is possible for repeat breaches to be inadvertent, and when someone has voluntarily come forwards, the assumption needs to be that they need to be educated, not punished.

Scope of the proposals

5. Do you have any comments on the proposed scope?

FCSA are concerned that excluding organisations that act on a not-for-profit (NFP) basis creates a significant potential loophole in the scope of these proposals. A firm operating on a "not for profit" basis does not preclude them from charging consultancy fees. These organisations can potentially serve as a front or a referee for non-compliant individuals/advisers.

We feel it is important that the supply chain of any advice needs to be properly understood, that cannot happen if NFPs are excluded. This problem/risk is understood by other bodies such as the Immigration Advice Authority (IAA), many of whom who they regulate are indeed NFP – they are however granted a waiver from any IAA registration fees.

6. Are there any other groups HMRC should consider?

In addition to the point made in Question 5 the scope should extend to instances where any tax advice has been provided, i.e. not limited to the “label” or group to which the person or entity providing the advice asserts themselves out to be. In other words, HMRC need to follow the person not just the firm – how an individual present themselves matters less than the activity in question of ‘giving advice’.

Proposed changes

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 but there need to be safeguards. The process should be made faster and easier but we recommend that 2 separate HMRC teams should be doing the investigating to safeguard companies against unnecessary investigations. It is important that 2 different teams are able to come to the same conclusion, rather than just getting senior sign off – there needs to be review of evidence and rationale.

Given the potential burden and costs associated with a compliant tax advisor responding to the information requests, there should also be some form of appeals process to limit the occasions where these proposed powers may be used in error, or in incorrect circumstances.

It is important that investigating teams are not targeted on KPIs because it will skew their approach towards low hanging fruit and leave the complex cases with the most serious and flagrant breaches. E.g. HMRC NMW Team are known to have done this.

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?

No. There should be more than a reasonable suspicion, there should be actual evidence obtained before these powers can be used to ensure compliant advisors are not incorrectly subject to the additional workload, stress and potential reputational damage which may result from an incorrect notice being issued.

Reasonable suspicion would need to be properly defined and underpinned by some form of meaningful evidence or intelligence. FCSA believe that the 2 people/teams test outlined above is a necessary safeguard to ensure that two reasonably informed individuals have come to the same conclusion independently of each other. It is important not to rely on one person’s ‘gut’ instinct – too much is at stake should the firm/individual be innocent.

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

Yes – If there is reasonable suspicion, underpinned by some form of meaningful evidence or intelligence, then yes, it is ok to request information earlier without going to a Tribunal. We are generally of the view if there is nothing to hide, then firms should be relaxed about this. However, as per our answers above, serious consideration needs to be given to the burdens placed on a potentially innocent firm/individual. HMRC need to ensure there is just reason i.e. more than relying on a gut instinct to trigger this.

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

We agree that the current threshold is probably in the wrong place but are concerned about the pendulum swinging too far the other way. On the one hand we need to avoid there being a convoluted Tribunal process that enables fraud to continue unabated.

If there is a “reasonable suspicion” properly backed by tangible evidence or intelligence, HMRC should be able to query evidence without going to a Tribunal. In instances where these powers were found to be used incorrectly and there was indeed nothing to find, HMRC would need to anonymously publicise their mistake.

There should be periodic reviews of how the powers are being used (perhaps 2 and 5 years after implementation) and a provision for the powers to be repealed, should there be a pattern of the powers being used overzealously.

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

Yes, as above – we think it is really important that any one case receives two sets of eyes working independently of one another, as opposed to a single team/line management chain reviewing a case.

HMRC should also publish any incorrect decisions they make and introduce some form of accountability for officials (a form of negative KPI). Being overzealous in the use of investigatory powers can unfairly and wrongly damage the reputation of a company, something that may never be recovered – this must be taken very seriously.

12. Are there any unintended consequences of the proposed changes?

Yes as per previous answers. These changes could significantly impact a business if used incorrectly. Thought must be given to ensuring that compliant tax advisors can continue to offer accurate / timely advice to their clients without fear of a potentially time and resource consuming business wide audit.

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

HMRC need to make it easier for individuals and organisations to provide Tip-offs. It is also important that these tip-offs are acknowledged and an explanation of ‘what happens next is provided’ – this is important as not to dissuade further tip-offs – whistleblowers need to feel it is worth their time and effort. This could include whistleblowing and amnesty lines. This would very quickly help HMRC to focus its time and resources on the most serious cases.

HMRC amasses a significant amount of data, there are undoubtedly more intelligent ways this can be used. Existing data could potentially be used to spot trends in financial records of accountancy firms. For example, HMRC should be able to tell if a firms expenses are suddenly being inflated? If so this should spark questions such as, ‘has the accountancy firm changed?’. Perhaps systems can be trained to trigger

human review in instances such as these.

Transparency can go a long way towards prevention and detection. For instance, a line could be added to tax returns to confirm if advice has been given/sought, and if so by whom (both firm and named individual). This could be done using the new registration scheme announced by the Exchequer Secretary. This will help to spot further patterns and spot non-compliance by named individuals to other firms.

Financial Penalties

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. They are not proportionate to the tax evaded and fees generated in the most serious cases. Penalties should be set at a percentage with a minimum cap of say 60% of costs. It is vital to reduce the reward for risk to disincentivise the bad behaviour. We also feel this needs to be linked to tax adviser fees.

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 but it is important to distinguish between deliberate instances of non-compliance and errors/misunderstanding and to treat that appropriately. In this instance the definition of “non-compliance” should relate to proven circumstances of tax evasion or fraud.

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

Yes. The penalty should be proportionate to the tax evaded. That is not currently the case. Those intent on fraud will to some degree calculate their risk – currently there is too much reward and not enough risk. That can be addressed by robust penalties.

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

There are two ways of looking at this question, from the point of view of the firm and

the point of view of the adviser. Ultimately, we want the policy to influence both, so it makes sense to factor both A and B when designing a penalty matrix/framework.

To influence the individual, you need option 'B'. Linking a penalty to tax adviser fees, takes away their incentive to give non-compliant advice. If you purely go down the revenue route, you potentially just bankrupt the firm and send the non-compliant individual(s) off in different directions (potentially various firms) – this could potentially spread non-compliant behaviour into firms that do not currently have a problem. It is better to drive and improve compliance, than bankrupt firms.

To influence the firm to prevent and weed out non-compliant advice, you will need an element of option 'A'. When there is clear evidence of a firms negligence or that the wider firm has been complicit in the individual advisers non-compliant behaviour, then it makes sense to link a penalty to the tax revenue lost. This will ensure large scale tax evasion schemes are no longer commercially viable for the advisors who design them and take them to market.

If purely option A is pursued, we fear that HMRC will simply chase larger firms, trying to extract the largest one of fines, and not paying as much attention to the more common problem of small to mid-sized firms. Pursuing big conglomerates may appear to make sense from a revenue perspective but it does not from a compliance building and behaviour changing perspective.

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

Yes. The penalty should be capped at the total tax loss and/or fees (whichever is higher)

19. If you believe a maximum penalty should be in place, how do you feel it should be calculated?

See question 18.

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

Yes. One instance – more often than not – will be an accident and the aim should be to help those that intend to be compliant to improve their practices. An overly harsh penalty will likely deter an adviser or firm from asking compliance questions.

For repeat offenders, there should be higher penalties, the number of repeat offences should be a key factor in any penalty matrix/framework. There needs to be disincentives, especially for the individual like how the number of points on a driving license affect an individual's insurance premiums. Penalties should not be purely firm focussed if we are trying to change individual behaviour.

21. What other changes to the maximum and minimum financial penalty thresholds would be needed to ensure that a penalty charged in a case is more proportionate to the tax loss poor tax advice has caused?

Repeat offenders should be treated differently from first time. Penalties should be a percentage of fees or the tax lost (whichever is higher).

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?

You need both. Sometimes business can simply be a front for the individual – in such instances fining the business entity achieves nothing and lets the individual off – especially if the business folds. On the other hand, individuals could be made a scapegoat for wider bad behaviour within a firm.

However, we agree that company ignorance cannot be seen as a reasonable excuse, or there is no incentive/requirement for companies to develop and adopt robust policies and processes. It is important that firms are disincentivised from not being proactive enough in the ongoing monitoring and training of their employees.

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

Is it a first offence?

How many offences?

Have they worked for a previous employer that was reprimanded while they were there?

Are there any other patterns HMRC have identified?

Disclosures to Professional Bodies

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)?

None. It would be really useful to FCSA to receive any further disclosures, as we would want to be made aware if there were any issues with any of our members. We believe there should be a two-way flow of information between HMRC and the Trade Bodies in order to; a) build compliance, b) aide each other's enforcement activities and close each other's enforcement gaps.

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

If there is an unwillingness or failure to provide information when requested and their stated reasons. When a firm or individual have requested an extension to a deadline and their stated reason why.

If there are any injunctions in place, or any appeals process being followed.

Scope of Publication and Safeguards

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. Naming and shaming is a good way to encourage good behaviour to avoid reputational damage.

However, it is also important to publish the '*what*' and the '*why*' for educational purposes. This could be separated from the company and/or individual, i.e. it does not necessarily need to be published with the naming and shaming but case studies are helpful for education and building compliance generally.

In addition, when officials have got investigations wrong, these should also be publicised. It is important to take steps to avoid reputational damage for individuals and companies found to have done nothing wrong and so naming the individual or company should not be by default. It should be for the wrongly accused company or individual to decide whether they are named in any public acquittal.

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?

All sanctions could be published but using a layered approach. For example, accidental breaches should be anonymised to act as helpful case studies – these must be detailed as a high-level approach to case studies does not help. On the other hand, flagrant breaches should be named and shamed loudly, especially repeat offenders.

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?

Short Form should not be the default, publications have to mean something to the reader. Long form need to be educational pieces. When writing publications HMRC need to think about two different types of reader; a) those that want to be compliant and learn, b) those who are trying to commit fraud that they need to deter.

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

Broadly, all relevant company names need to be listed, along with a list of issues/breaches with clear summaries. It is also useful to know if an individual held and qualifications or licenses and whether or not they have been withdrawn.

It is important to note this should also depend on whether it relates to multiple offences or not. How long the publication will remain in the public domain is also an important consideration, current this is only for 12 months – for a minor first time offence this may be reasonable but not for more serious repeat offences.

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

The default should align with accountancy publications to become 7 years – or more specifically, 6years plus the remainder of the current year. For both short and long form publications.

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

Blatant intended fraud should always be published. Accidental first offences must be anonymised and treated as educational pieces. Intention is always key. To be more specific, any “mistake” above £500,000 regardless of accidental or fraud publicised in full – if it reaches that value it is at the very least severely negligent.

It is important to establish the principle that cases can only be publicised after any appeals processes have been concluded, as reputational damage is not always possible to reverse. If the Accused’s Appeal is successful, HMRC must publish their mistake, it should be for the firm/individual in question to decide whether or not they are named or anonymised in the publication.

Steps also need to be taken to make it harder for fraudulent firms to secure injunctions against HMRC to silence publications.

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

Yes, as long as the above comments are fully addressed.

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

Ensuring that there are two sets of eyes (on separate teams) that reach the same conclusion independently of each other, is a necessary safeguard to ensuring investigations are formally opened with just cause.

If the Accused wins their Tribunal, they should have the right to choose whether or not the judgement is published – HMRC should be given no say in this (unless of course they win).