

HM Revenue and Customs

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

Response from Propertymark

April 2025

Background

1. Propertymark is the UK's leading professional body of property agents, with over 18,500 members representing over 12,500 branches. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Consultation – overview

2. It is estimated that 12 million individuals and businesses rely on 85,000 tax advice firms to ensure they comply with their tax obligations. However, HMRC understands that some tax advisers' advice contributes to a gap in how much tax is being paid against which is the expected tax revenue, which was an estimated £39.8 billion during the 2022 to 2023 tax year. HMRC is currently considering options to expand their powers to act against professionals whose advice leads to their client's non-compliance with existing legislation. This would help ensure that fewer people are evading paying the right amount of tax to HMRC. Within the consultation, HMRC is seeking views on:
 - whether HMRC's current powers are effective in dealing with non-compliance facilitated by tax advisers
 - enhancing HMRC's powers to investigate tax advisers where HMRC suspects their actions have led to an inaccuracy in a taxpayer's document
 - to enable HMRC to request information from tax advisers where HMRC suspects misconduct
 - introducing stronger penalties against tax advisers who contribute to the tax gap
 - publishing details of HMRC sanctions on tax advisers
 - disclosures to professional bodies regarding concerns about their members' activities that falls below the normal disciplinary investigation thresholds of professional bodies

Propertymark response – summary

3. Propertymark welcomes the opportunity to respond to HMRC's consultation on enhancing their powers to tackle tax advisers facilitating non-compliance. This is a very timely consultation, as Propertymark written to the Exchequer Treasury to the Treasury on this issue the day prior to the publication of the consultation. In that sense, Propertymark is in agreement that HMRC's powers need to be enhanced.
4. Propertymark is concerned that some advice provided to landlords inadvertently risks agents breaching legislative requirements. Under existing HMRC rules, letting agents must be able to evidence that the rental income they send to landlords is to a bank account owned by the property owner. In the experience of our members, more landlords are being advised not to send rental income to their primary bank account but to an alternative account in order to reduce their tax bill. As a result, not only are these landlords breaching their requirement to disclose their income, but agents are required under Schedule 23 to the Finance Act 2011 to disclose a landlord's rental income to HMRC. If the agent is unable to demonstrate that the bank account belongs to the property owner, they are liable for a fine not exceeding £3000. When this is raised to landlords, it is not guaranteed that a landlord will understand and stay with the agent, often the landlord will move to a different agent who will allow them to change the bank account where rent payments are sent.
5. As Propertymark holds our members to a greater standard, our priority is that our members do not breach legislative requirements. However, our members have expressed concerns that remaining compliant with HMRC's rules is costing them clients. It is therefore essential that HMRC is able to take action to ensure that landlords receive advice that does not risk them breaching legislation. Considering this, our response to the consultation can be summarised by the following four points:
 - **Establish a reporting system where professional bodies and other organisations in contact with individuals and businesses can raise cases where dishonest advice is being spread** – this can help increase the capacity of HMRC to identify and take action against common cases of malpractice.

- **HMRC should produce clear statements on what explicitly breaches legislation so individuals and businesses can be better informed and can better identify when they would breach legislation** – larger organisations and professional bodies impacted by advice that breaches UK tax law can then share these statements with their clients who have received tax advice in order to clarify that the advice they have received will lead them to commit unlawful practices.
- **HMRC must work collaboratively with tax adviser professional bodies to tackle advice that unintentionally leads to the widening of the tax gap** – HMRC must work with professional bodies to raise cases where tax advisers did not realise their advice damaged the tax system to encourage a sector that openly seeks to encourage best practice while tackling poor practice when it is intentional.
- **HMRC must create a transparent list of breaches of existing tax advisers and firms** – this will enable taxpayers and businesses to identify tax advisers who should be avoided. The advice given must be included within any public list of breaches as this can help prevent the same advice being provided by other tax advisers.

Questions

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

- yes
- no
- maybe
- don't know

6. Yes, due to increasing pressures on the private rented sector, landlords are looking for additional ways to save money on their tax bill and have been seeking additional support from advice firms. In some cases, we are seeing that some advisers are suggesting methods which result in inaccuracies in the clients' returns. These methods include requesting that letting agents sent rent payments to a different bank account from the landlord's primary account. While some letting agents have refused, doing so would breach letting agents' own tax reporting responsibilities, this mostly results in landlords switching agents rather than ensuring their report their rental income

accurately. As a result, the tax gap grows while compliant letting agents lose business and non-compliant agents benefit from more clients.

7. Considering this, there are four clear gaps in HMRC's powers to tackle tax advisers who harm the tax system. Firstly, enforcement against tax advisers who are encouraging taxpayers to make decisions that lead to a rising tax gap is insufficient. If tax advisers are unaware that the advice they are providing results in inaccurate reporting of clients' funds, they are not being identified and advised appropriately by HMRC. Those who actively understand the implications of their advice are confident they will not face penalties. Secondly, advice to taxpayers is insufficient. In situations when letting agents have discussed how their actions would breach existing legislation, taxpayers often point out that they are more likely to trust their tax adviser in a situation where the legislation is unclear. Thirdly there isn't a sufficient mechanism for third parties to raise sector-wide issues, not one that has led to effective change. Fourthly, action taken to prevent agents from allowing landlords to change the bank account in which rent payments are made has not been effective in ensuring compliance from the entire sector.

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
 - no
 - maybe
 - don't know
8. Yes, we would welcome any enhanced powers that allow for swift, effective and proportionate action to be taken against tax adviser activities that result in harm to the tax system that facilitates non-compliance. In the experience of Propertymark members, landlords are not actively looking to breach tax legislation. Taking action against tax advisers who are providing incorrect advice that harms the tax system would be an effective way of ensuring tax advisers uphold high professional standards.

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? Please give reasons for your answer.

9. Our response focuses primarily on actions taken by tax advisers that lead to landlords to avoid declaring their rental income as part of their income. However, we would support any actions against tax advisers whose advice harms the tax system within the property sector.

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

10. There are three ways in which HMRC can enhance its powers to tackle non-compliance, in addition to taking direct action against unscrupulous tax advisers. Firstly, establishing a reporting system where third parties involved with clients who receive tax advice can report sector-wide issues to HMRC, this could potentially be facilitated via a cross-industry reporting group specifically set up to identify and suggest recommendations to reduce the number of tax advisers providing advice that harms the tax system and these businesses. This will help establish where there are potential loopholes or common practices from tax advisers which can be more effectively tackled. Secondly, HMRC should commit to producing clear statements on the illegality of certain industry practices. These can be shared and utilised by professional bodies and membership organisations to share with their members. Specifically relating to the issue of landlords changing bank accounts, it will enable agents to clarify the position held by HMRC to ensure landlords who have been misinformed do not continue to take the advice of their tax adviser. Thirdly, we'd like to see HMRC commit to clearer consumer guidance from the back of the new cross-industry reporting group. These can be used in a similar fashion to the statements for industry bodies but can be shared and promoted more widely with consumers in a clear way they can understand.
11. We would recommend avoiding requiring third parties to report individual cases to HMRC at this stage. This is for two reasons. Firstly, the landlord who received advice may be liable for an offence, which we don't consider fair during situations where they have received incorrect advice from an adviser. Additionally, the landlord may be less inclined to inform the agent of their adviser's actions or why they are changing their bank account if they are concerned, they could face fines or other penalties from HMRC. Secondly, agents who are more likely to report tax evasion by their clients would grow a negative reputation from landlords or unscrupulous tax advisers, leading to a reduction in business for the agent for complying with their regulatory duties.

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

12. We agree with the March 2024 consultation on raising standards in the tax advice market, which proposed that tax advisers who operate for profit and advise on UK tax must register with HMRC. This would enable HMRC to monitor tax advisers more effectively, preventing them from operating if they have breached UK tax regulations on multiple occasions. Additionally, any new standards, advice or requirements for advisers can be shared and enforced more effectively.

Question 6: Are there any other groups HMRC should consider?

- yes
- no
- maybe
- don't know

13. No, we feel that the scope sufficiently captures tax advisers.

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
- no
- maybe
- don't know

14. Yes, we agree that tax advisers who are reasonably suspected of facilitating an inaccuracy in a taxpayer's document or return should be required to provide information to HMRC. We agree the current requirement to seek approval from a tribunal before HMRC is able to issue a file access notice can delay notices, leading to fewer tax advisers being investigated.

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
- no
- maybe

- **don't know**

15. We have no issues with 'reasonable suspicion' being the threshold to issue a conduct and information notice.

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

- **yes**
- **no**
- **maybe**
- **don't know**

16. HMRC is considering making the following changes to the powers to gather information from tax advisers:

- combining the requirement to issue a conduct notice to a tax adviser with the issuing of an information notice (the 'file access notice'), streamlining the use of the power
- allowing HMRC to request information to assess the actions of a tax adviser where HMRC reasonably suspects the tax adviser has facilitated the inaccuracy in a taxpayer's document or return
- expanding the activity where information can be requested from dishonesty to include facilitation of inaccurate returns or documents
- allowing file access notices to be issued without tribunal approval, expediting the process to prevent unacceptable tax adviser actions from continuing
- reforming the amount of financial penalty for failure to comply with a file access notice so that it is proportionate to the tax loss

17. We are in agreement with the proposed changes to the powers to gather information from tax advisers.

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

- **yes**
- **no**

- maybe
- don't know

18. We have no additional comments about the proposal to remove the safeguard requiring tribunal approval for a file access notice. As stated previously, we agree that this will help increase the number of tax advisers who can be reviewed, helping to reduce the tax gap and prevent poor practice within the sector.

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

- yes
- no
- maybe
- don't know

19. Under Schedule 38 Finance Act 2012, where a tax adviser fails to comply with a file access notice, HMRC can issue an initial penalty of £300, and further daily penalties of up to £60. The UK Government is considering allowing HMRC to do the following:

- increase the amount of the daily penalty up to a maximum of £1000 per day where failure to comply with the file access notice extends beyond 30 days after the notice of the initial penalty was issued.
- Introduce a penalty of up to £3000 or a penalty proportional to the tax loss for each inaccuracy provided in response to an HMRC file access notice.

20. We agree with the proposed changes to Schedule 38 of the Finance Act 2012. We would propose one additional change that would safeguard tax advisers who have been notified but were unable to respond to the notice for legitimate reasons. We would recommend that, once the request has been responded to and HMRC concluded that the tax adviser breached no laws, that any fines would be revoked or greatly reduced. This would avoid instances where HMRC penalises compliant tax advisers.

Question 12: Are there any unintended consequences of the proposed changes?

- yes

- no
- maybe
- don't know

21. We are unaware of any additional unintended consequences.

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

- yes
- no
- maybe
- don't know

22. We are unaware of any additional effective ways HMRC should gather information related to individual tax advisers. We do however support greater action taken by HMRC to identify common methods that tax advisers use to help individuals avoid paying their full tax bill and use professional bodies to help share HMRC's position more widely. Propertymark members have been asking for a clear statement from HMRC that they can take to their clients which lays out the illegality of changing the bank account where rent payments are made. This helps to clarify to clients that the tax advisers are incorrect or intentionally providing false information, as the landlord is more likely to believe an HMRC statement than a letting agent's word.

23. We propose that HMRC creates a formal way for professional bodies to raise common recommendations that tax advisers are suggesting which lead to individuals or businesses to breach HMRC regulations. HMRC would then be able to provide a definitive statement that professional bodies can share with their members, helping to clarify to their clients that certain advice given by tax advisers is illegal. For Propertymark, this will enable our members to prevent landlords from changing agents as they will be more likely to understand that the decision not to allow the landlord to change the bank account rent payments are sent to is based on UK tax law and not an internal decision made by the agent.

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?

- yes
- no
- maybe
- don't know

24. We disagree that current penalties under Schedule 38 Finance Act 2012 provide an effective deterrent against non-compliance, considering the level of non-compliance from tax advisers. Currently, financial penalties for a tax adviser if they have been found engaging in dishonest behaviour that leads to a loss of tax revenue incur a maximum penalty of £50,000. We agree with proposals from the consultation that this should increase for the purpose of providing an additional deterrent for breaching UK tax law.

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
- no
- maybe
- don't know

25. We agree that penalties should be introduced for tax advisers who have facilitated non-compliance that causes harm to the tax system. This should help to deter tax advisers from providing advice that leads to a reduction in tax revenue and agents from choosing between retaining clients and breaching UK tax law.

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

- yes
- no
- maybe
- don't know

26. Yes, this would provide a good opportunity to introduce penalties that can act as greater deterrents which can be proportionate to the damage caused to the tax system.

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)

27. A – We propose a fine that is a percentage of tax losses which have resulted from the tax adviser's actions. This will mean that penalties are based on the level of dishonest actions taken by the tax adviser. In addition to this fine on individual tax advisers, we would recommend an additional penalty based on a business' global turnover should HMRC be able to evidence that the internal policies from the business have influenced or resulted in individual advisers within the business engaging in dishonest conduct. This means both individuals and businesses can face penalties, deterring both individual actions and businesses which promote dishonest practices.

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

- yes
- no
- maybe
- don't know

28. Yes, in certain circumstances, we would encourage the adoption of a maximum penalty or a penalty that can be paid in segments in order to prevent cases where an individual or business declares bankruptcy in order to avoid paying the penalty. A mechanism should be in place to judge the risk of high penalties on a case-by-case basis.

Question 19: If you believe a maximum penalty should be in place, how do you feel it should be calculated? Please give reasons for your answer.

29. We have answered this in our response to the previous question.

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

- yes

- no
- maybe
- don't know

30. Yes, we consider this an effective measure to ensure that tax advice firms and individuals do not see a fine as an acceptable business expense but as a deterrent that increases every time that they are found guilty of non-compliance.

Question 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?

31. We would consider that basing financial penalties on the amount of tax loss to be sufficient in ensuring the penalty charged is proportionate to the tax loss which poor tax advice has caused.

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
- no
- maybe
- don't know

32. Yes, we agree that there should be an option to charge penalties to businesses when it can be evidenced that the business was either aware of the actions of the individual tax adviser and especially if the kind of advice was encouraged by the business. This will help to improve compliance as entire businesses will have to change their business practices or be prevented from providing tax advice, rather than penalties just being imposed on individuals while the business remains promoting dishonest advice.

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

33. We have no further comments to make.

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)?

34. HMRC currently is able to inform professional bodies through Public Interest Disclosures (PIDs) in situations where members of the professional body have engaged in misconduct that the body was unaware of. The UK Government is considering the following situations where HMRC should disclose information about members of professional bodies to their professional body, which would be considered “non-PID disclosures”:

- repetition of similar errors despite HMRC intervention explaining that such errors must not continue, but where tax loss or harm caused falls below thresholds for using other powers
- low technical awareness/ability in an area where the tax adviser is particularly active in representing clients (it may be, for example, that only one aspect of an adviser’s work needs addressing, so a more severe sanction would not be appropriate)
- isolated incidents, or first instances, of unprofessional behaviour, or obstruction
- occasional instances where a tax adviser has failed to keep their own tax affairs or return filing up to date

35. As a professional body, Propertymark approves of expanding situations where HMRC would inform professional bodies of the misconduct of its members. HMRC is correct in saying there are situations where a professional body does not have the capacity to monitor each individual member on a regular basis and it would be in the best interest of professional bodies to receive information about the misconduct of members. This would enable professional bodies to take action against their members as they see fit.

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

36. We would consider any first or low-level breach of standards or instances where the tax adviser inadvertently breached UK tax law to be appropriate behaviours for HMRC to make disclosures to professional bodies. As members of professional bodies, tax advisers have signed up to higher standards and greater levels of scrutiny on their actions. This is not necessarily the behaviour of a tax adviser looking to provide dishonest advice. It would therefore be appropriate to enable the professional body to take steps to provide greater education and clarity to the adviser rather than

finer to promote a system where advisers are more open about the actions they take, rather than seeking to hide them to avoid extensive fines. For instances where the tax adviser has willingly breached UK tax law, fines and other penalties should be considered.

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
- no
- maybe
- don't know

37. Yes, we support greater transparency and the dissemination of public information about the illegal activities of tax advisers. Considering the situation where tax advisers are suggesting that landlords change the bank account where rent payments are made, disclosing that a tax adviser has faced sanctions from providing this advice would inform landlords that such advice could lead to them breaching UK tax law.

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?

38. The publication of sanctions should not be extended to PID and non-PID disclosures. This is for two reasons, firstly, publication should be limited to when a tax adviser or firm knowingly or intentionally breached UK tax law. This will make it clear to consumers that they risk receiving dishonest advice from a tax adviser or firm which has a public sanction issued against them. Publicising all sanctions or disclosures could lead to the tax adviser downplaying their sanction. Secondly, PID and non-PID disclosures should be used to promote greater transparency from members of professional bodies who may not fully understand the implications of their advice or have been given incorrect advice from another firm. Listing all PID and non-PID disclosures who reduce the number of tax advisers who would be open about the possibility they made an error in their advice.

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
- no
- maybe
- don't know

39. The short-form and long-form approach from HMRC is as follows:

- short-form publication: lists on GOV.UK, updated at regular intervals, of tax advisers that HMRC has imposed sanctions or restraints on, and why
- long-form publication: in more extreme and complex cases, censuring statements detailing the issues of concern about a specific tax adviser, similar to those published by the Financial Conduct Authority or Advertising Standards Agency

40. We have no issues with the approach taken by HMRC.

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

41. We encourage that as much information about each tax adviser be published as possible to enable their potential clients to identify them easily.

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

42. This should be up to the discretion of HMRC based on the severity of poor behaviour. For example, the duration of details should increase for each offence. Behaviour that led to larger penalties should also remain published for longer periods.

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

43. We propose that the following criteria should be considered:

- (For businesses) the number of advisers who were encouraged to provide dishonest advice

- The amount of tax that was not paid
- The number of clients advised
- Any other mitigating or exacerbating circumstances

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

44. The UK Government is considering the following safeguards for the publishing framework:

- publish short-form details or situations that are a matter of fact, rather than subjective interpretation (for example, where a tax adviser is not registered for anti-money laundering supervision with either HMRC or a professional body supervisor, and is therefore trading in breach of the MLRs)
- with the exception of the above, not publish at all where sanctions have a duration of less than 2 months (such as a temporary suspension of access to HMRC's online services)
- in all cases invite representations within 30 days against publication, for short-form publication of sanctions which have a duration of 2 months or more, and for all long-form publications
- obtain approval for publication from a senior approving officer, and in more serious cases from 2 senior approving officers, which should include an assessment of the impact upon the relevant business in order to consider the proportionality of the sanction
- short-form publications would remain viewable for 12 months after the end of the period to which they apply. Long-form publications would remain viewable until there is no longer a risk to the tax system from the tax adviser concerned

45. We have no comments to make on the framework.

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

46. We have no further comments to make at this time.