IFA REPRESENTATION 03/26

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

The IFA welcomes the opportunity to comment on this open consultation published on 23 June 2026.

We are happy to discuss any aspect of our response and to take part in any further consultations in this area.

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Established in 1916, the Institute of Financial Accountants (IFA) is an internationally recognised professional accountancy membership body. Our members work within micro and small to medium-sized enterprises or in micro and small to medium-sized accounting practices advising micro and SME clients. We are part of the Institute of Public Accountants (IPA) of Australia Group, the world's largest SME focused accountancy group, with more than 49,000 members and students in 100 countries.

The IFA is a full member of the International Federation of Accountants (IFAC), the global accounting standard-setter. As such, the IFA takes its place alongside the UK and Ireland's six chartered accountancy bodies.

The IFA have been approved by:

HM Treasury to supervise our members for the purposes of compliance with the Money Laundering Regulations, and by the Financial Services Authority in the Isle of Man;

The Charity Commission in England and Wales, for conducting independent reviews of charity accounts below the audit threshold;

The Scottish Charity Regulator, for providing independent examination of Scottish charity accounts; and

The Civil Aviation Authority (CAA) for IFA practising members to join the ATOL Reporting Accountants (ARA) scheme.

The IFA is represented on several UK Government committees and forums alongside other IFAC members, including the HMRC Agent Support Group, HMRC Compliance Reform Forum, HMRC Guidance Strategy Forum, HMRC Charter Stakeholder Group and Companies House Stakeholder group.

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General comments

1. The Institute of Financial Accountants (IFA) welcomes the opportunity to comment on HMRC's proposals to introduce a new criminal offence of recklessness for direct tax matters. As a professional body representing mainly sole practitioners and small-to-medium practices (SMPs), our members act as vital intermediaries ensuring compliance across the UK's micro-business and SME sectors.

2. In principle, the IFA supports the overarching aims of this consultation. We agree that closing the tax gap and ensuring a consistent enforcement approach between direct and indirect tax regimes is logical. However, because our members primarily support smaller, unrepresented, or less sophisticated taxpayers, we must ensure that the boundary between a genuine mistake/carelessness, and criminal recklessness is legally ironclad. Without explicit statutory safeguards, this measure risks exposing smaller practitioners and honest taxpayers to disproportionate professional anxiety and legal jeopardy.

3. Harmonising the rules between direct and indirect taxes creates structural clarity. However, direct tax matters often involve highly subjective interpretations (e.g., separating capital from revenue expenditure, or determining trading status) compared to the more transactional nature of indirect taxes like VAT. Therefore, while it should apply universally across direct tax to maintain system simplicity, it must be accompanied by a clear, legislative definition of recklessness that protects taxpayers dealing with complex or ambiguous direct tax legislation.

4. This response is provided by the Institute of Financial Accountants after consulting with an expert panel made up of IFA members engaged in Public Practice, as well as responses received from members after publicising the consultation.

5. We provide the following responses as a representative body and have indicated 'not applicable' where we feel responses direct from agents are more appropriate.

Responses to consultation questions

The proposed measure

Q1: 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.

6. The IFA broadly agrees in principle, but with critical caveats regarding safeguards for small and SME practitioners, which are set out below:

   a. **Policy Harmonisation:** The IFA acknowledges the logical rationale for aligning direct tax enforcement with the existing framework for indirect taxes under the Customs and Excise Management Act 1979 (CEMA) and the Value Added Tax Act 1994 (VATA). Creating a consistent standard across all tax regimes provides clarity and addresses the gap where gross recklessness causes harm to the Exchequer but cannot legally be prosecuted as deliberate dishonesty.

   b. **Application to All Direct Tax Matters:** If introduced, the offence should apply universally to all direct tax matters. Fragmenting the law by applying it only to specific taxes (like Corporation Tax but excluding Income Tax) would create deep confusion for small business owners and the SME practitioners who advise them.

   c. **The Need for Strict Statutory Safeguards:** While we support the principle of targeting truly reckless behaviour, our primary concern is protecting smaller practitioners from the risk of a "creeping" definition of recklessness. Micro-businesses and sole traders frequently provide their accountants with incomplete, disorganised, or late information. A clear statutory line must be drawn so that a practitioner who relies in good faith on poor-quality data provided by a client, any subsequent inaccuracy must not expose the agent to criminal liability. Unless there is clear evidence that the agent knew the data was highly likely to be false and chose to ignore it

7. The legislation must explicitly state that the criminal threshold of recklessness strictly requires an awareness of a high risk of falsity and a conscious, unreasonable decision to proceed regardless. It must completely exclude genuine errors, misunderstandings, or instances where an adviser was merely careless or failed to take reasonable care, which should remain strictly under the civil penalty regime.

Q2: 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?

8. While the IFA recognises that this measure aims to deter high-risk, non-compliant behaviours, we foresee significant, disproportionate operational and psychological impacts on small business taxpayers and SME practitioners if it is implemented without stringent safeguards.

9. The Key Impacts Identified are:

   a. **Defensive Practice and Increased Costs for SME Clients:** To protect themselves against the severe threat of criminal prosecution, small and SME practitioners will be forced to adopt highly defensive working practices. This means requesting extensive, exhaustive verification and transactional evidence for even routine direct tax filings. The time required to perform these extra checks will inevitably increase accountancy fees, raising the regulatory and financial burden on small businesses.

   b. **Anxiety and "Compliance Paralysis" for Small Taxpayers:** Many micro-businesses and sole traders already struggle with a complex tax system. The threat of a potential custodial sentence for "recklessness" rather than deliberate fraud will trigger severe anxiety. This risk is heightened for digitally or financially challenged clients who may misunderstand technical guidance but proceed with a filing in good faith, fearing they will miss a statutory deadline.

   c. **Friction in the Agent-Client Relationship:** SME practitioners frequently rely on information provided directly by clients. If a client presents disorganised records, the accountant faces an unfair burden. They must decide if submitting the return based on those records exposes the agent to accusations of turning a blind eye (recklessness). This dynamic will damage trusted relationships and may force practitioners to disengage from vulnerable or messy clients who need professional support the most.

   d. **Resource Strain on Professional Bodies:** As a representative body, the IFA foresees a substantial spike in demand for technical and legal helpline support from members. Small practitioners will require extensive educational resources, updated engagement letters, and strict risk-assessment frameworks to navigate where "carelessness" (a civil matter) ends and "recklessness" (a criminal matter) begins.

10. HMRC must mitigate these impacts by issuing clear, sector-specific guidance tailored to small businesses and unrepresented taxpayers. This guidance must explicitly reassure taxpayers and agents that standard, good-faith estimations or relying on unverified business receipts does not constitute criminal behaviour.

Q3: 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.

11. To ensure the tax system remains fair and proportionate, the statutory scope of this criminal offence must be strictly circumscribed. It must target only egregious, conscious risk-taking while explicitly excluding everyday operational challenges faced by micro-businesses, SME’s and small tax practices.

12. **Behaviours that SHOULD NOT Fall Within Scope:**

   a. **Good-Faith Reliance on Client Information:** SME accountancy practices act as agents, not auditors. If a sole practitioner prepares and submits a direct tax return relying in good faith on data provided by a client, any subsequent inaccuracy must not expose the agent to criminal liability. Unless there is clear evidence that the agent knew the data was highly likely to be false and chose to ignore it, this scenario must remain strictly out of scope.

b. **Estimations and Provisions Made in Good Faith:** Micro-businesses often lack sophisticated cash-flow tracking or inventory tools. They frequently rely on year-end accounting estimates or provisional figures to hit strict filing deadlines. The use of reasonable estimates, even if they later prove to be materially inaccurate upon final reconciliation, must be entirely excluded from the criminal definition of "untrue statements".

c. **Genuine Misunderstandings of Complex Tax Legislation:** The UK direct tax code is dense and subject to frequent adjustments. Innocent mistakes, uneducated misinterpretations of HMRC manuals, or errors made by digitally challenged or unrepresented taxpayers must remain under the civil regime. A lack of specialised tax knowledge should be categorised as a failure to take reasonable care (carelessness), never as criminal recklessness.

13. **Behaviours that MAY Fall Within Scope (With Strict Proof):**

a. **Conscious and Flagrant Disregard of Obvious Warning Signs:** The offence should only apply if it can be proven beyond a reasonable doubt that the taxpayer or adviser was subjectively aware of a substantial risk that a statement was untrue but proceeded anyway because they simply did not care. An example would be an individual claiming a specialised tax relief despite having read explicit guidance stating they do not qualify, without seeking professional advice.

14. Without these explicit boundaries, the line between civil carelessness and criminal recklessness becomes dangerously blurred. SME practitioners require legal certainty that they will not face criminal investigation for standard compliance work or for trying to help disorganised clients get their affairs in order.

Q4: We are interested to hear whether consultees find 'statement' or 'declaration' easier to understand. Please explain your answer and provide any alternatives.

15. The IFA finds 'declaration' to be a clearer and more appropriate term within the context of a criminal tax offence. However, we strongly recommend that HMRC clearly delineates how both terms are legally defined to avoid confusion among small business taxpayers and practitioners.

16. In tax administration, a 'declaration' has a distinct, formal, and solemn meaning. Taxpayers are accustomed to signing a declaration at the end of a Self-Assessment return, a corporate tax return, or a VAT submission, confirming that the information is correct "to the best of their knowledge and belief". Because a declaration requires a deliberate, conscious sign-off, it aligns more logically with a criminal offence predicated on "recklessness" where an individual knowingly takes an unreasonable risk when formalising a statutory submission.

17. The term 'statement' is far too broad and conversational. In everyday business, it can refer to a casual oral comment, an ongoing email thread with an HMRC officer, or an automated client bank statement. Applying a criminal recklessness offence to any generic "statement" creates severe legal uncertainty. It risks inadvertently trapping small practitioners who are simply engaged in exploratory, real-time correspondence or technical debates with HMRC staff before a formal tax position has even been finalised.

18. If both terms must be utilised in the legislation, HMRC should explicitly limit the scope of a 'statement' to formal, written representations made in response to statutory inquiries. Casual, oral communications should be entirely excluded. Furthermore, the term 'declaration' should strictly apply to the final formal attestation of a completed tax return or statutory relief claim.

Q5: How might the introduction of a reckless untrue statements or declarations offence affect compliance behaviour among individuals and businesses?

19. The IFA is concerned that the proposed offense is likely to cause severe over-caution among tax agents, slowing down compliance workflows and creating an advice gap for vulnerable clients.

20. Instead of promoting compliance, the threat of criminal liability for recklessness may drive a defensive, adversarial culture and increase the administrative burden on small practices, ultimately hindering rather than helping tax compliance.

Q6: What challenges or risks do you foresee in implementing this change, and how might they be mitigated?

21. The IFA identifies significant risks in implementing a criminal "recklessness" offense, primarily citing the blurred line between civil carelessness and criminal conduct, which threatens to penalise accountants for managing "messy" client records.

22. Proposed mitigations include adopting a strict subjective recklessness legal threshold, establishing robust safe harbours for authorised tax agents, and requiring a pre-prosecution panel to prevent overenforcement.

Q7: Do you have any other comments or suggestions regarding the proposed change?

23. The IFA argues that the proposed universal scope of the offence is too broad, advocating for an exclusion for qualified tax agents operating under strict codes of conduct. Instead of a blanket approach, the IFA proposes narrowing the focus to targeted promoters of tax avoidance, unregistered agents, and company directors engaging in active misrepresentation.

Proposed sanctions for the new offence of making reckless untrue statements or declarations for direct tax

Proposed sentence option for new offence

Alignment with CEMA level

Q8: Do you believe this option best achieves proportionality and deterrence for a direct tax recklessness offence, and why?

24. We suggest that proposed sanctions for reckless tax statements must be proportionate, distinguishing lower-culpability negligence from intentional fraud to avoid unfair penalties on small businesses.

25. The IFA advocates for uniform statutory maximum penalties across all UK jurisdictions to ensure fairness and certainty, rather than allowing geographical discrepancies in sentencing.

Q9: Do you agree that fines should be unlimited on indictment? If not, what alternative would you propose and why?

26. We believe fines should be unlimited on indictment to be consistent with similar measures in relation to indirect tax.

Contact details

Should you wish to discuss this response further, please contact Tim Pinkney, IFA Director of Professional Standards, by email at timp@ifa.org.uk.