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Dear HMRC

Response to consultation on 'Introducing a criminal offence for making reckless untrue statements or declarations in direct tax'

Adviser Radar welcomes the opportunity to respond to the consultation entitled 'Proposed offence for reckless untrue statements - Direct taxes', published on 23 June 2026 at the link below:

https://www.gov.uk/government/consultations/proposed-offence-for-reckless-untrue-statements-direct-taxes

Adviser Radar is an independent platform covering more than 400 UK Research and Development (R&D) tax advisers. It was founded by a former HMRC Senior Tax Inspector with 32 years' service at HMRC and previously the Inland Revenue, who now works in the field of R&D tax. We, therefore respond from a vantage point covering both the adviser market as a whole and R&D tax compliance as practised on both sides. We can confirm that we are happy for our name to be listed as a respondent in any outcome report that may be published and to provide follow-up clarification on anything we have written below, if necessary.

We broadly support the principle behind the proposal. There is a legitimate distinction between a person who makes an innocent or careless error and someone who identifies a significant risk that a material statement is untrue but consciously decides to proceed regardless. It is reasonable that the law should be capable of distinguishing between those behaviours.

However, this is a criminal offence carrying potentially serious consequences. It is therefore important that the boundary between carelessness, recklessness and dishonesty is exceptionally clear. The offence must not allow genuine technical disagreement, reasonable professional judgement or the benefit of hindsight to become a basis for alleging criminal conduct.

This is particularly important in complex areas of tax such as R&D tax relief, where claims can involve questions of judgement, interpretation and technical evidence about which reasonable taxpayers, advisers and HMRC officers may disagree.

Our responses are as follows.

Question 1: Do you agree that a criminal offence for making reckless untrue statements or declarations should be introduced for all direct tax matters?

Yes, in principle, subject to appropriate safeguards.

We do not see a strong reason for the basic principle to apply to some taxes but not others. However, we believe the legislation should contain an express materiality requirement.

The comparable CEMA and VATA provisions referred to in the consultation concern statements or declarations that are untrue or false in a "material particular"[1]. It would be concerning if the new direct tax offence were capable of applying to an immaterial factual error simply because the person was aware of some possibility that it was wrong.

Criminal liability should therefore require a materially untrue statement or declaration capable of affecting a tax liability, repayment, relief or HMRC's administration of the relevant tax.

We also strongly support HMRC's stated position that recklessness requires actual awareness of a risk of falsity and an unreasonable decision to take that risk. It must not be enough that a person ought to have recognised the risk or failed to take reasonable care.

Question 2: What impacts do you foresee for taxpayers, advisers and other stakeholders?

Properly targeted, the offence should encourage better compliance and deter people from consciously taking unreasonable risks with material information provided to HMRC.

There is, however, a risk of unintended behavioural consequences.

Taxpayers may become reluctant to make legitimate claims or adopt reasonable tax positions where there is genuine uncertainty of interpretation. Advisers may also become increasingly defensive in the advice they give and the level of evidence they require. Both effects risk increasing costs while discouraging behaviour that parts of the tax system are specifically designed to incentivise, without necessarily improving compliance.

R&D tax relief is a good example. It is a legitimate fiscal incentive intended to encourage additional business investment in R&D, with wider measurable benefits for innovation and UK productivity. The regime has also shown that genuine uncertainty can exist over the interpretation of the legislation.

The historic disputes over subcontracted and subsidised R&D expenditure[2] are an example where the courts ultimately reached conclusions that differed from interpretations previously advanced within HMRC. Even where a claimant has reached a considered and well-supported view, the possibility that a different interpretation may later prevail could cause some businesses to err on the side of caution and not claim relief to which they may properly be entitled. Against a background of already significantly reduced R&D tax claim volumes, from over 87,000 in 2020/21[3] to 46,950 in 2023/24, because of reforms and a much tougher HMRC compliance environment, care should be taken not to create a further chilling effect on legitimate R&D claims.

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[1] Customs and Excise Management Act 1979, [https://www.legislation.gov.uk/ukpga/1979/2/section/167] & Value Added Tax Act 1994, [https://www.legislation.gov.uk/ukpga/1994/23/section/72]
[2] Quinn (London) Ltd v HMRC [2021] UKFTT 437 (TC); Collins Construction Ltd v HMRC [2024] UKFTT 951 (TC); Stage One Creative Services Ltd v HMRC [2024] UKFTT 1059 (TC)
[3] HMRC, Research and Development Tax Credits Statistics: September 2025, [https://www.gov.uk/government/statistics/corporate-tax-research-and-development-tax-credit]

There is also a particular risk that acknowledging uncertainty could itself be misunderstood as evidence of recklessness. That would be the wrong outcome.

A taxpayer or adviser who identifies a point of uncertainty, considers it properly and reaches a reasonable conclusion should be in a better position than someone who ignores the issue. The fact that a taxpayer knows that HMRC might disagree with a claim is quite different from knowing that there is a material risk that a factual statement being made to HMRC is untrue.

Similarly, reasonable reliance on competent professional advice should normally point strongly away from recklessness, as should an adviser's reasonable reliance on information provided by a client or an appropriately qualified technical specialist after suitable enquiries have been made.

Question 3: Are there particular types of behaviour or circumstances that should or should not fall within scope?

Yes.

The offence should be capable of applying where a person identifies a specific and material risk that information being supplied to HMRC is factually wrong, has readily available means of checking it and deliberately chooses not to do so before making the statement.

For example, an adviser who is provided with information that clearly contradicts a material statement they intend to make to HMRC, recognises the problem but submits the statement without making reasonable enquiries could potentially fall within scope.

However, the following should not, without more, amount to recklessness:

- A reasonable interpretation of tax legislation or HMRC guidance that HMRC subsequently disagrees with.
- A reasonable technical or professional judgement that is subsequently challenged.
- An estimate, valuation or apportionment made transparently and on a reasonable evidential basis.
- Reasonable reliance on professional advice or on information supplied by an appropriately placed client representative or technical specialist.
- Genuine misunderstanding, clerical error or failure to take reasonable care.
- Awareness merely that a tax treatment or claim might be challenged by HMRC.

This distinction is particularly important for R&D tax relief. Whether activities meet the statutory and guidance tests may depend upon technical evidence and professional judgement. A later HMRC conclusion that a project does not qualify cannot itself demonstrate that the claimant or adviser was reckless when the claim was made.

There must be evidence that the individual was actually aware of a specific material risk that the relevant statement was untrue and nevertheless unreasonably chose to make it.

Question 4: Do consultees find 'statement' or 'declaration' easier to understand?

In our view, "statement" is easier to understand.

"Declaration" tends to suggest a formal declaration on a return or prescribed document, whereas the consultation intends the offence to extend more widely.

We would however separate the choice of term from the breadth of its proposed definition. While we prefer "statement", we have real concern about the inclusion of statements made "implicitly by a person's actions". Criminal liability should not depend on an unclear or retrospective interpretation of what someone's actions supposedly communicated. That limb should either be removed or defined with precision. Where an implied statement is relied upon, the prosecution should have to identify precisely what factual representation was made, why it was material and why the defendant was actually aware of the relevant risk that it was untrue.

We welcome the confirmation in the consultation that a statement of belief, such as "to the best of my knowledge and belief", is true so long as it genuinely reflects what the person believed at the time, even if that belief later proves wrong. This is an important protection for declarations on returns and supporting documents, including the additional information required with R&D claims, and we would expect it to be carried through into the legislation and accompanying guidance.

We would favour wording based around a material statement or declaration.

Question 5: How might the offence affect compliance behaviour?

For the relatively small number of taxpayers or advisers who knowingly take significant and unreasonable risks, the existence of a criminal offence should provide a useful deterrent.

It may also encourage better checking of significant factual claims before returns are submitted.

The risk is that the offence affects compliant behaviour as well as non-compliant behaviour. Taxpayers should not be discouraged from claiming reliefs Parliament intended them to receive simply because eligibility involves judgement or uncertainty.

HMRC's communications should therefore make very clear that an unsuccessful claim, a technical disagreement or the existence of uncertainty does not establish recklessness.

The key issue should always be what the individual actually knew at the time the statement was made and what they reasonably did in response to that knowledge.

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

The main challenge will be maintaining the distinction between carelessness and recklessness.

We are concerned that the second example in Table 2 risks blurring this boundary. The key facts given are that the taxpayer did not read the relevant guidance properly, did not seek advice and submitted the claim anyway. Those are classic indicators of carelessness. The conclusion that the taxpayer "recognises a risk" is asserted rather than demonstrated by the facts listed. Failure to read guidance adequately or failure to seek professional advice can be evidence of carelessness. It should only become criminal recklessness where there is evidence that the individual had actually recognised the relevant risk and consciously decided to proceed regardless. If this example is carried forward into published guidance or training material without correction, it will encourage exactly the conflation of carelessness and recklessness that the consultation says it wishes to avoid. We, therefore, suggest the precise wording of this particular example is considered carefully.

There is also a risk of hindsight influencing the assessment. Once HMRC has established that a return was wrong, it can appear obvious that further checks ought to have been made. That is not the same as proving that the taxpayer actually appreciated the particular risk at the time.

We, therefore, suggest that HMRC:

1) Retains an express statutory materiality threshold.
2) Publishes detailed guidance distinguishing carelessness, recklessness and deliberate behaviour, including examples involving complex reliefs and professional advisers.
3) Makes clear that actual subjective awareness of the relevant risk must be evidenced rather than inferred merely from the fact that an error occurred, from retrospective HMRC opinion or from a later challenge to the claim.
4) Provides clear guidance on reasonable reliance on professional advice and on information supplied by clients and technical specialists.
5) Requires suitably senior and specialist oversight before conduct arising during an ordinary civil compliance check is referred for consideration as a criminal offence.
6) Ensures that the possibility of criminal proceedings is not used by compliance officers as leverage in resolving an otherwise civil dispute.
7) Explains clearly how the new offence interacts with Schedule 24 penalties and the amended Schedule 38 regime applying to tax advisers.

We believe those safeguards would improve confidence in the measure without preventing action in genuinely serious cases.

Question 7: Do you have any other comments or suggestions?

We support stronger and faster intervention where there is clear evidence of harmful tax adviser behaviour, balanced by proportionality and procedural safeguards.

That balance is important here.

The Finance Act 2026 has already changed the Schedule 38 regime applying specifically to tax advisers. The consultation itself notes that the test has moved from "dishonest" conduct to "sanctionable" conduct involving an intention to bring about a loss of tax revenue. The interaction between that regime, existing civil penalties and the proposed criminal offence should be made particularly clear.

Criminal liability should also remain individual to the person whose conduct satisfies the offence. An adviser should not become criminally liable merely because a client's declaration proves incorrect, nor should a taxpayer automatically become liable because an adviser has made an incorrect statement. The necessary state of mind should be established in relation to the particular person alleged to have committed the offence.

The position of companies also needs to be addressed. Direct tax includes corporation tax, and most R&D claims are made by companies. The consultation does not explain who the maker of a statement is when a company files a return, nor how the required state of mind would be attributed to a corporate body. Clarity is needed on whether the offence is intended to apply to companies at all and, if so, how the identification principle would operate, particularly where knowledge of the relevant risk is held by one individual and the statement is made by another.

We would also encourage HMRC to publish statistics on the operation of the legislation after introduction, including referrals, prosecutions, convictions and cases discontinued or resulting in acquittal. A formal review after perhaps three years would help establish whether the offence is being used against the serious behaviour for which it is intended.

Question 8: Do you believe the proposed maximum sentence of two years and an unlimited fine best achieves proportionality and deterrence?

Broadly, yes.

If the offence is tightly defined and requires proof beyond reasonable doubt of the degree of recklessness described in the consultation, a maximum custodial sentence of two years appears capable of reflecting conduct which is serious but falls below dishonesty.

The fact that this is a maximum is important. The court should retain discretion to distinguish between very different levels of harm and culpability.

Our support is, however, linked to the safeguards discussed above. A maximum custodial sentence of two years would be difficult to justify if the underlying offence were capable of capturing immaterial errors or behaviour which in substance amounted only to a failure to take reasonable care.

We note that HMRC proposes the two year maximum to align with the existing CEMA offence, and we regard that as the right benchmark; the fourteen year maximum in the equivalent VATA provision would be wholly disproportionate for conduct falling short of dishonesty.

Question 9: Do you agree that fines should be unlimited on indictment?

Yes.

We do not believe an arbitrary statutory cap is necessary.

An unlimited maximum allows the court to impose a penalty that reflects the seriousness of the behaviour, the financial circumstances of the offender and the harm caused. In a serious case involving substantial tax at risk, a fixed maximum could significantly weaken the deterrent effect.

At the same time, an unlimited maximum should not imply that very large fines are appropriate in ordinary cases. Sentencing should remain proportionate to both culpability and harm.

This is consistent with our wider view that sanctions for serious tax non-compliance should be capable of reflecting the scale of the behaviour rather than being constrained by an arbitrary cap.

We hope that the above comments are useful in informing the development of the legislation and your next steps. We look forward to reading the outcome report in due course.

Yours sincerely

Jonathan Yeomans MSc, ATT
Founder
Adviser Radar Ltd (trading as 'Adviser Radar')