Low Incomes Tax Reform Group.

A voice for the unrepresented.

Proposed offence for reckless untrue statements – Direct taxes
Response from the Low Incomes Tax Reform Group (LITRG)

1. Executive Summary

1.1. We welcome the opportunity to respond to this consultation on the proposed introduction of a new criminal offence for direct taxes to mirror the offence of recklessly making untrue statements or declarations currently available for indirect taxes.

1.2. In its proposed form, we do not support the introduction of a criminal offence for reckless untrue statements for direct taxes. HMRC state that this policy would address an inconsistency between direct and indirect tax offences. We think there needs to be further consideration of why that inconsistency exists and whether it needs to be addressed, before pursuing this proposal.

1.3. The consultation appears to be aimed at addressing a concern that some cases undergoing criminal prosecution, or which HMRC would like to go to criminal prosecution, do not quite meet the standard for a criminal conviction. We are concerned that it is not immediately clear how HMRC will distinguish between cases of failure to take reasonable care (civil) and recklessness (criminal). There is a significant danger of creep. In this regard, we think it would be helpful to have an official record of the intent of this policy, in particular, that it is not intended to give HMRC the power to criminalise behaviour that is currently adequately covered by the existing civil penalty regime.

1.4. Unless there are adequate safeguards, we believe there is a risk that low-income unrepresented taxpayers will be affected by this new offence. This is because it appears to be reclassifying errors despite taking reasonable care as careless, and careless errors as reckless.

1.5. We are also concerned that errors that HMRC may classify as reckless might be introduced by unscrupulous agents without the awareness or knowledge of the taxpayer. This means this policy could have unintended and serious consequences for taxpayers.

1.6. We are not convinced that HMRC have made a case for introducing this policy across all direct taxes. We feel there is a strong argument that the test for criminal prosecution should remain restricted to those who have, beyond all reasonable doubt, acted dishonestly.

1.7. We recommend that, should HMRC feel the need to proceed with this measure, they scope it narrowly, such that it clearly only affects cases targeted by this consultation. There could also be a focus on higher value and higher risk areas of direct tax. There could then be a formal review of the effectiveness of the measure prior to making a decision as to whether to extend it more widely across direct taxes. If it is not possible to scope the measure narrowly, this raises a serious question as to whether HMRC should proceed with it.

1.8. In terms of the effects of this policy, we think it is likely to cause a lot of anxiety among taxpayers, particularly those who are unable to afford professional advice. It may also have unequal outcomes. Represented taxpayers may be less exposed to this offence in the first place than those who cannot afford professional advice. Where a taxpayer is accused of this offence, an unrepresented taxpayer will be less well-placed in terms of defending their position and behaviour. The policy may also have the unintended consequence of causing some taxpayers to disengage with the tax system completely.

1.9. There are some key circumstances that should be excluded from the scope of the offence, including cases of reasonable reliance, legitimate uncertainty, vulnerability and where the taxpayer is a victim of fraudulent or unscrupulous agent activity.

1.10. It is important that terminology is clear and supported by detailed guidance. Guidance should include real-life examples and help taxpayers understand all actions that might be encompassed by the terms “statement” and “declaration”.

1.11. We foresee significant challenges and risks in the implementation of this policy. We think that a maximum of two years imprisonment and an unlimited fine are very serious sanctions to apply to conduct that, by definition, falls short of dishonesty. This apparent reclassification of civil misconduct as criminality could have a significant impact on people’s lives. Before it progresses further, we think more work needs to be done to understand the potential impacts on taxpayers and how HMRC are going to distinguish between carelessness and criminal recklessness.

1.12. We recommend that clear, tested guidance is published well ahead of implementation of this measure. HMRC communications and messaging should be very clear about the purpose of the policy. Where a taxpayer is unrepresented, we think that all potential recklessness cases should be referred to HMRC’s Customer Compliance Group Extra Support Team for an initial assessment of the taxpayer’s ability to represent their case effectively. This should take place well before any decision is made as to whether to prosecute or not.

1.13. There should be a commitment to monitor and publish data on prosecutions. This should include details of tax at stake, income level of taxpayer, representation status (for tax purposes as well as at court) and whether the taxpayer has drivers of need for extra support. This should be reviewed on a regular basis to allow speedy identification of any disproportionate effects. Where such effects are identified, there needs to be an undertaking to address them appropriately and swiftly.

2. About Us

2.1. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those who are least able to pay for professional advice. We also produce free information, primarily via our website www.litrg.org.uk, to help make a difference to people's understanding of the tax system.

2.2. LITRG works extensively with key stakeholders such as HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the tax system. LITRG also considers the welfare benefits system, and other related systems, to the extent that they interact with tax.

2.3. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3. Introduction

3.1. HMRC state that the introduction of this offence would address an inconsistency between direct and indirect tax offences. However, the direct and indirect tax regimes have developed differently historically. It is important to consider whether consistency is appropriate or whether those differences that exist between direct and indirect taxes have a reasonable basis. Consistency may provide greater clarity for HMRC, as they deal with all tax types. However, the vast majority of individual taxpayers deal only with income tax on a regular basis, so consistency across tax types will not affect them. We are not in a position to comment further on the question of consistency, but our CIOT colleagues include some interesting observations on this matter in paragraphs 2.6 and 2.7 of their response which we support.

3.2. We welcome the stakeholder engagement in the development of this policy, and in particular the commitment to ensuring that the new offence is proportionate, effective and supported by appropriate safeguards.

3.3. The consultation appears to be aimed at addressing a concern that some cases undergoing criminal prosecution, or which HMRC would like to go to criminal prosecution, do not quite meet the standard for a criminal conviction. Section 3 of the consultation suggests that the civil penalty regime would continue to deal with innocent mistakes, misunderstandings and errors arising from a failure to take reasonable care, as well as deliberate errors. On the face of it, this sounds reasonable: if the proposed new offence is just to deal with cases currently considered for criminal prosecution but where the existing law does not quite allow HMRC to secure a conviction.

3.4. However, we have concerns, because, as we discuss at paragraphs 9.2 and 9.3 below, it is not clear how HMRC will distinguish between cases of failure to take reasonable care (civil) and recklessness (criminal), or where a case involving deliberate behaviour will be dealt with under the civil regime rather than the criminal regime. While the intention at the outset might be to limit the application of this new offence, over time there may be creep, particularly if there continues to be significant pressure on HMRC to close the tax gap. In this regard, we think it would be helpful to have an official record of the intent of this policy, in particular, that it is not intended to give HMRC the power to criminalise behaviour that is currently adequately covered by the existing civil penalty regime.

3.5. We represent the interests of low-income, unrepresented taxpayers, and our comments reflect that. Unless there are adequate safeguards, we believe there is a risk that unrepresented, low-income and / or vulnerable taxpayers will be affected by this new offence even though they may not fall into the category of cases that narrowly miss the standard for criminal prosecution currently. Based on the examples given in the consultation, it appears to us that this policy will reclassify errors despite taking reasonable care as careless and careless errors as reckless.

3.6. Moreover, errors in tax returns that might be considered 'reckless' (according to this consultation) are not always the result of a taxpayer's own actions. They may be introduced by unscrupulous agents seeking to exploit the 'process now, check later' approach of the self assessment system, or by other intermediaries – whether with legitimate intentions or otherwise – who are able to access online services accounts and file returns on behalf of others, in some cases without the taxpayer's knowledge or understanding.

3.7. Against this backdrop, we are concerned that introducing a new offence of this nature could have unintended and serious consequences for taxpayers who are not aware of and/or do not understand the inaccurate information submitted in their name and for those who make errors with no intention to deceive HMRC. In its proposed form, we do not support the introduction of a criminal offence for reckless untrue statements. Our answers to the questions in this consultation should be read in that light.

3.8. We recognise that HMRC aim to take a balanced approach to compliance, comprising prevention, support and enforcement. While we accept that there is a need for strong deterrents and enforcement measures, we believe that the most effective way to improve compliance more generally revolves around making it easier for taxpayers to comply (by providing services that are easy to use and access), using nudges and prompts to improve taxpayer awareness and understanding, acting in a timely manner and generally following the Charter standards.[1] These actions will help to build trust in the tax system, encouraging voluntary compliance and engagement with the tax system.

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

4.1. We think the proposal in this consultation raises a number of questions, which should be explored before proceeding further. In particular:

[1] See https://www.gov.uk/government/publications/hmrc-charter. It is to be noted that, according to a survey of members and the general public carried out by the member bodies of the Charter Stakeholder Group, there are significant improvements HMRC could make in terms of meeting the Charter standards: https://www.gov.uk/government/publications/hmrc-annual-report-and-accounts-2025-to-2026/charter-stakeholder-group-2025-to-2026-report

- What problem is this proposal aimed at?
- Will it tackle this problem effectively and achieve the desired outcomes; why do current powers not suffice?
- How effective is the equivalent measure for indirect taxes?
- Are there powers available for direct taxes that are not available for indirect taxes that compensate for the lack of this power?
- Are there specific direct taxes or policy areas for which HMRC envisage this power being particularly useful?

4.2. It is not clear from the consultation how HMRC will distinguish between cases where the taxpayer has made a careless error (the civil offence of failure to take reasonable care) and those where the taxpayer has acted 'recklessly' – see our comments at paragraphs 9.2 and 9.3. It seems to us that this is a very grey area that will involve subjectivity. It might be appropriate to have some objective criteria that assist with such judgements. These might include the amount of tax at stake. It should also be necessary to consider the abilities and circumstances of the taxpayer.

4.3. Given these questions, reflections and our comments in paragraphs 3.1, and 3.4 to 3.7. above, we are not persuaded that the information in the consultation document fully makes a case for extending the criminal offence to all direct tax matters.

4.4. It is important to bear in mind that many direct taxes involve self assessment or self-service, for example income tax self assessment and standalone claims for income tax relief. Errors are common, but are rarely indicative of criminality, whether dishonest or reckless. So, we have particular concerns about this measure as to the extent it might affect low-income and unrepresented taxpayers.

4.5. To that end, we feel there is a strong argument that the test for criminal prosecution should remain restricted to those who have, beyond all reasonable doubt, acted dishonestly.

4.6. However, should HMRC feel the need to proceed with this measure, we recommend they scope it more narrowly. The legislation should be drafted such that the measure only affects the cases targeted by this consultation document – those where there is serious non-compliance, the taxpayer has knowingly and recklessly made untrue statements or declarations, but the criminal standard for dishonesty is not quite met. The legislation should also be drafted to place a focus on higher value and higher risk areas of direct tax. There could then be a formal review of the effectiveness of the measure prior to making a decision as to whether to extend it more widely across direct taxes.

4.7. If HMRC are not able to scope this measure narrowly, such that it only affects the cases targeted by this consultation, that is an indicator that they should think carefully as to whether this measure is needed.

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

5.1. We foresee two main impacts on low-income, unrepresented taxpayers.

5.2. As acknowledged in section 5 of the consultation document, taxpayers may experience anxiety in respect of understanding the boundary between genuine mistakes and recklessness. Taxpayers with agents may be able to obtain reassurance, at a cost. Unrepresented taxpayers, and especially those who cannot afford to seek assistance from a professional adviser, are likely to feel this anxiety most. Moreover, they may not be sure of how to obtain, or capable of obtaining, reassurance from HMRC, whether from direct contact or guidance materials.

5.3. There is also a risk of unequal outcomes. Taxpayers with access to good advice and support are more likely to be steered away from actions and decisions that might be characterised as reckless. Indeed, the fact they are obtaining professional advice may afford them some protection in and of itself. Unrepresented taxpayers will be more exposed to the offence.

5.4. There are other areas where this measure might affect lower income, unrepresented taxpayers unequally compared to those able to afford professional representation. It is therefore essential that should this measure be introduced, in addition to it being narrowly targeted, there must be strong safeguards to protect taxpayers and prevent unfair outcomes. For example, unrepresented taxpayers may be less able to defend themselves against a suggestion by HMRC that they have acted recklessly. Unrepresented taxpayers may not always be aware of a complexity in their tax affairs, leading to a mistake. The mistake could be quite significant, but an unrepresented taxpayer cannot be expected to be aware of all instances when it might be appropriate to seek further help from HMRC or a professional adviser.

5.5. For tax advisers, this measure is likely to create increased demand for reassurance and pre-emptive advice. This may result in increased costs for clients. This might make it even more difficult for those on lower incomes to obtain professional advice.

5.6. There is also a risk that introducing a new criminal offence could have unintended consequences for taxpayer behaviour. In our experience, some taxpayers who receive correspondence suggesting that their tax affairs may be incorrect quickly assume that they are ‘going to prison’, even where clearly they will not. For unrepresented and vulnerable taxpayers in particular, the prospect of prison may cause them to disengage rather than seek help and bring their affairs up to date. This would surely run counter to HMRC’s wider objective of encouraging voluntary compliance and bringing taxpayers who are outside the system or have outstanding issues back into compliance.

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

6.1. If HMRC proceed with this policy, legislative drafting should ensure that the following circumstances do not inadvertently fall within the scope of the criminal offence, or should form a robust defence:

- Reasonable reliance on HMRC's published guidance (including GOV.UK chat), digital tools, HMRC webchat and helpline support, even where that guidance later proves to be incorrect or incomplete;
- Reasonable reliance on advice from a suitably qualified agent or adviser, absent any reason for the taxpayer to doubt that advice;
- Cases where agents have acted dishonestly without the taxpayer's knowledge and organised crime gang fraudulent activity;
- In line with HMRC's compliance professional standards,[2] circumstances involving vulnerability, including health conditions (physical and mental), bereavement, domestic abuse, low literacy or numeracy, limited English language proficiency, lack of digital access or capability, all groups supported by HMRC's own extra support team and referenced in HMRC's principles of support for customers who need extra help,[3] recognising that some individuals cannot be expected to engage with tax obligations in the same way as others;
- Circumstances where there is genuine uncertainty in the underlying law, or where HMRC's guidance is unclear, contradictory or silent on the point in question. In this regard, it is important that HMRC produce clear guidance in a timely manner. In relation to side hustles, HMRC were late in publishing guidance, which meant that many taxpayers were relying on misinformation in the mainstream press and from social media.

6.2. We would welcome confirmation that all of the above will be considered in the same way as they are currently considered under the provisions of reasonable excuse for civil penalties, so that the criminal and civil regimes remain aligned.

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

7.1. For unrepresented taxpayers, plain language is important. We think that most taxpayers are likely to understand the terms "statement" and "declaration" in their everyday sense. As defined in the consultation there are subtle differences between the two – they cannot be used interchangeably. The terminology used and definitions applied have the potential to affect the scope of the offence.

7.2. "Statement" is an extremely broad term. As defined in the consultation, it is somewhat nebulous, comprising statements made implicitly by someone's actions, as well as oral and written statements. We would be in favour of a narrower definition. If the intention is for the offence to apply only to formal declarations, such as occur when a taxpayer approves a tax return, then the legislation should make use of the term "declaration" only.

7.3. Using a broad term, like "statement", is likely to cause considerable uncertainty and anxiety among taxpayers. It appears that it could cover statements in correspondence with HMRC. If this were the

[2] https://www.gov.uk/government/publications/professional-standards-for-hmrcs-compliance-work
[3] https://www.gov.uk/government/publications/hmrc-charter/hmrcs-principles-of-support-for-customers-who-need-extra-help--3

case, taxpayers might be reluctant to make any kind of statement in relation to their tax affairs, for fear of making an inadvertently incorrect statement that HMRC might treat as reckless.

7.4. Whichever terms HMRC decide to use, we think that their definitions should be set out clearly in legislation. There should be guidance to support the legislative definitions. Guidance should be detailed and contain clear, concrete and relatable examples. In particular taxpayers will need to appreciate that the offence can be triggered via ordinary compliance process actions. For example, entering a figure in a box on a tax return can amount to making a statement; confirming a return is complete and accurate may amount to a declaration and so on.

7.5. The legislation should also set out clear definitions of the terms “untrue” and “reckless”. Again, there should be guidance containing examples that reflect common real-life situations to support the legislative definitions. The guidance should be clear, tested and consistent with the standards set out in LITRG’s report “Good guidance”.[4]

7.6. Clear guidance will play an essential role in trying to alleviate the anxiety and uncertainty that this measure is likely to create.

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

8.1. We would caution against assuming that a new criminal sanction will meaningfully improve compliance behaviour among low-income, unrepresented taxpayers. In our experience, non-compliance amongst this group is rarely a result of insufficient deterrents. It is far more likely to be a result of not understanding their compliance obligations, not knowing where or how to obtain assistance or facing personal circumstances that make it difficult for them to engage with the tax system. It is often the case that unrepresented taxpayers are unaware of the existence and / or nature of sanctions (civil or criminal) until they are imposed on them.

8.2. Awareness of a new sanction for recklessness may however lead to more anxiety among taxpayers that are diligent and more aware of their tax obligations. Such taxpayers may be driven to contact HMRC more frequently, if they are worried. On the other hand, it could have a detrimental effect on the behaviour or attitude of some taxpayers, even where their compliance is normally good. It may lead to fear of engaging with HMRC or voluntary disclosure and correction of genuine errors.

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

9.1. The application of this measure involves a significant degree of subjectivity. We are concerned that there is a high risk of inconsistency of application as a result, and that this inconsistency is likely to

[4] https://www.litrg.org.uk/reports/good-guidance-importance-effective-guidance-unrepresented-taxpayers

work against unrepresented taxpayers. It will be essential for recklessness to be viewed in the light of the particular taxpayer's abilities and circumstances, just as is the case for reasonable care.

9.2. Even with clear guidance, worked examples and training for HMRC caseworkers and prosecutors, there is a risk of inconsistency. Unrepresented taxpayers will be at a clear disadvantage and may be less likely to challenge HMRC and less able to challenge an incorrect classification of their behaviour should they decide to do so. It is not clear from the consultation how a taxpayer would go about proving that their error was a civil failure to take reasonable care, rather than a criminal failure.

9.3. Table 2 in the consultation sets out examples of careless and reckless errors, to demonstrate how HMRC would apply this measure. We think the second example in the table is problematic, "Claiming a large relief without proper checks". The column setting out the key facts suggests that in the example, the taxpayer has not read the relevant guidance properly and does not seek advice or clarification. The column setting out HMRC's view indicates that the taxpayer has recognised a risk of inaccuracy. Would this be an assumption by HMRC, or would they need to obtain an admission from the taxpayer that they knew there was a risk? We are not convinced that this example shows behaviour that is significantly different from the behaviour covered by the civil offence, "failure to take reasonable care". Moreover, how would HMRC determine whether the taxpayer had read the relevant guidance and had read it properly? It is conceivable that a taxpayer could read the guidance that they can find on GOV.UK and think that they have dealt with their claim correctly, but in fact, they may have misunderstood it. If they believed they understood the guidance, they would not seek advice or clarification. This will be a highly subjective judgement, and we think that there will be a very fine line between failure to take reasonable care and recklessness that may prove very difficult to negotiate in practice. We think there is a significant risk that unrepresented taxpayers will not have sufficient protections against this offence.

9.4. The second example in Table 2 refers to the taxpayer. But at LITRG, we continue to come across cases where unscrupulous agents have submitted income tax self assessment returns to HMRC containing excessive and erroneous tax relief claims. In some of these cases, the taxpayer seems to understand very little about what the agent has done and receives a fraction of the resulting repayment, because of the use of a nomination in the tax return. We understand HMRC's current position is that taxpayers are responsible for their own tax return under the law, but in some cases, they are vulnerable or have been led to believe that the agent is doing something that is legal and/or approved by HMRC. The taxpayers we have heard from often assume that there is little risk to them as HMRC would not pay out if the claim is not correct – so when HMRC make a refund payment, they assume everything is ok. They do not understand the 'process now, check later' approach.[5] Taxpayers may not really understand what the agent is doing, may not necessarily see the tax return that is submitted on their behalf and have no capacity to challenge the agent. While these cases are clearly creating a tax risk, we do not believe they should be tackled using this measure. HMRC need to tackle the high volume repayment agents perpetrating this activity. A taxpayer who has already

[5] There have been a few Tribunal cases recently that demonstrate the vulnerability of taxpayers to unscrupulous tax refund agents, such as A Nurse v Revenue and Customs ([2026] UKFTT 722 (TC)), Lucas v Revenue and Customs ([2025] UKFTT 702 (TC)) and Robson v Revenue And Customs ([2023] UKFTT 226 (TC)).

been the victim of a tax refund company, high volume repayment agent or other bad actor should not be subjected to a charge of criminal recklessness.

9.5. We recommend that clear, tested guidance is published well ahead of implementation of this measure. HMRC communications and messaging should be very clear about the purpose of the policy, as otherwise there could be misleading and negative coverage in the mainstream media and social media. Where a taxpayer is unrepresented, we think that all potential recklessness cases should be referred to HMRC's Customer Compliance Group Extra Support Team for an initial assessment of the taxpayer's ability to represent their case effectively. This should take place well before any decision is made as to whether to prosecute or not.

9.6. There should be a commitment to monitor and publish data on prosecutions. This should include details of tax at stake, income level of taxpayer, representation status (for tax purposes as well as at court) and whether the taxpayer has drivers of need for extra support. This should be reviewed on a regular basis to allow speedy identification of any disproportionate effects. Where such effects are identified, there needs to be an undertaking to address them appropriately and swiftly.

10. Q. 7: Do you have any other comments or suggestions regarding the proposed change?

10.1. This proposal cannot be considered in isolation from the wider penalty and compliance landscape.

10.2. We recommend that there is a pause with this proposal, while consideration is given to the cumulative effect on taxpayers (particularly unrepresented individuals) of an ongoing two-tier income tax self assessment late filing penalty regime, the ongoing review and consultation on behavioural penalty reform[6] and the changes to agent sanctions. LITRG has previously highlighted that the two-tier late filing penalty regime generally leaves those on low incomes, including those with no tax liability at all, exposed to disproportionately harsh penalties, while the new points penalty-based regime is rolled out.[7]

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

11.1. We think that a maximum of two years imprisonment and an unlimited fine are very serious sanctions, and the proposals currently lack the evidence to show why they are proportionate and appropriate for conduct that, by definition, falls short of dishonesty. Before progressing any further with the development of this policy, we think there should be much more work done on the impact assessment, which is currently inadequate on these points. The potential impact on individuals, their families and children should not be underestimated and highlights again the need for the clear and

[6] https://www.gov.uk/government/consultations/behavioural-penalties-reform
[7] https://www.litrg.org.uk/reports/self-assessment-late-filing-penalties-improving-fairness-unrepresented-taxpayers

narrow targeting of the measure if it is to go ahead. Impacts could include the effect on individuals' reputations and their ability to obtain and keep a job, for example.

11.2. We are also concerned that cases that are currently adequately and appropriately dealt with by the existing civil penalty regime will be brought within the scope of this offence, meaning that the sanctions are possibly going to be disproportionate in some cases. For example, we do not agree that the circumstances set out in the second example of Table 2 in the consultation (see comments in paragraph 9.3 above) necessarily fall within the proposed offence of recklessness. But if they did and the case involved an unrepresented taxpayer, it would seem somewhat harsh to put them through a criminal trial, with the possibility of a custodial sentence and significant monetary fine. Similarly, the first example in Table 2 of the consultation sets out a scenario that we think many tax advisers would argue was a failure despite taking reasonable care. Unfortunately, unrepresented taxpayers will not be best placed to make such an argument and are therefore more likely to face a penalty for carelessness.

11.3. Based on the examples in the table, it appears that part of this policy reclassifies failure despite taking reasonable care as careless, and carelessness as criminally reckless. Many unrepresented taxpayer cases are likely to end up as being categorised as reckless, according to the examples in Table 2.

11.4. We recommend that sentencing guidelines make clear that, for cases involving unrepresented taxpayers on low incomes, a custodial sentence would rarely, if ever, be a proportionate outcome, and the availability of civil penalties, for failure to take reasonable care, should continue to be considered by prosecutors as a matter of course before charging a taxpayer with this offence.

11.5. For a policy to provide an effective deterrent, taxpayers must understand it. We do not think this proposed offence is likely to deter taxpayers who are less concerned with compliance; however, it is likely to cause a great deal of anxiety among taxpayers who wish to comply, but find themselves dealing with an uncertain tax area or a genuine mistake.

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

12.1. We have no strong objection to unlimited fines being available in principle, on the basis that judicial discretion should ensure proportionality in individual cases.

12.2. However, we would ask that guidelines require consideration to be given to a defendant's means and ability to pay. Where two taxpayers have behaved similarly, there should not be a disproportionately severe outcome for a low-income taxpayer.

LITRG
14 August 2026