

New tax penalties - but will they work?

Published: January 17, 2026, 10:46 pm

As the Chartered Institute of Tax has noted this morning:

The Chartered Institute of Taxation (CIOT) has highlighted that two significant new penalties for tax non-compliance have come into effect following Royal Assent to Finance (No. 2) Act 2017.

The first of these is a substantial penalty for 'enablers of defeated tax avoidance' which comes into effect in relation to enabling actions carried out on or after the date of Royal Assent and tax arrangements entered into on or after that date.

The second is a penalty for 'failing to correct relevant offshore tax non-compliance' which applies to failures to correct inaccuracies and omissions existing at the end of the tax year 2016/17 within the period from 6 April 2017 to 30 September 2018.

I do, of course, welcome any measure targeting tax abuse, and the professional people who facilitate it. Of these two I happen to think the second regime may well be useful, precisely because it removes the defence that proper advice had been taken, which has let far too many off the hook of tax liability in the past. I suspect there will be some anxiety about getting some past misdemeanours corrected as a result of that one. It's the first penalty that concerns me a lot more.

That legislation is fundamentally flawed. What it does is impose penalties on anyone involved in a scheme to which the UK General Anti-Abuse Rule, introduced in 2013, applies. It does not apply to tax avoidance schemes notified under the Disclosure of Tax Avoidance Scheme rules of 2004. And it most certainly does not apply to anything widely thought to be avoidance, such as the practices of Google, Amazon and Apple. As a result this law is entirely toothless. So far the General Anti-Abuse Rule has been used once in four years. And that is not by accident, but by design. HMRC always wanted a GAAR they would not have to use because they knew that if they used it too often it may be challenged in the Courts and its absurd tests (that an arrangements entered into "cannot reasonably be regarded as a reasonable course of action") might prove to be of no legal worth.

That's why it's not being used by HMRC. Or rather, it is that and the fact that a panel drawn from the tax profession has also to give its consent to HMRC using it before it can be used to challenge a taxpayer - a case of putting the fox in charge of the hen house if ever there was one.

But the result is that this new law is also utterly toothless because the pre-condition of it being used is never going to exist. To put it another way, this law is knowingly useless and yet is being promoted as a solution to this problem when all in the tax abuse profession know it cannot work - as do HMRC and HM Treasury.

So it has to be asked why a law has been proposed to tax scams that is itself a scam? Is this deliberate? Is it incompetence? Or is it the government actually showing it is in hock to the tax abuse profession, onshore and offshore, who create these things?

We need to know because right now the government is misleading the public, who are rightly concerned about tax abuse, into thinking action is going to be taken when that is likely to never be the case. I'd suggest the government is avoiding the issue of tax avoidance - and that is wholly unacceptable.