



## Consultation: raising standards in the tax advice market

A public consultation issued by HMRC

Comments from ACCA to HMRC

15 June 2021

### About ACCA

ACCA (the Association of Chartered Certified Accountants) is the global professional body for professional accountants.

We're a thriving global community of **233,000** members and **536,000** future members based in **178** countries and regions, who work across a wide range of sectors and industries. We uphold the highest professional and ethical values.

We offer everyone everywhere the opportunity to experience a rewarding career in accountancy, finance and management. Our qualifications and learning opportunities develop strategic business leaders, forward-thinking professionals with the financial, business and digital expertise essential for the creation of sustainable organisations and flourishing societies.

Since 1904, being a force for public good has been embedded in our purpose. We believe that accountancy is a cornerstone profession of society and is vital helping economies, organisations and individuals to grow and prosper. It does this by creating robust trusted financial and business management, combating corruption, ensuring organisations are managed ethically, driving sustainability, and providing rewarding career opportunities.

And through our cutting-edge research, we lead the profession by answering today's questions and preparing for the future. We're a not-for-profit organisation. Find out more at [accaglobal.com](https://accaglobal.com)

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## GENERAL COMMENTS

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ACCA is required to work within its public interest remit, to pursue policy that will pursue wider good rather than solely representing the interests of our members. We also set and maintain the standards of their members in the provision of tax services.

The Association of Chartered Certified Accountants (ACCA) is a member of PCRT (Professional Conduct in Relation to Taxation). In accordance with this our members are required to comply with the PCRT Fundamental Principles and Standards for Tax Planning. Failure to comply with PCRT standards is a serious matter and could put their membership of the professional body at risk.

Ethical behaviour in the tax profession is critical. The work carried out by professional advisers and the bodies they belong to, need to be trusted by society at large as well as by clients and other stakeholders. What a member does reflects not just on themselves but on the profession as a whole.

ACCA's 2019 report 'G20 Public Trust in Tax' showed People continue to have the highest level of trust in professional tax accountants (55% trusted or highly trusted). Although accountants remain the most trusted group in the debate around tax policy and ethics, there are inevitably conclusions drawn that advisers must at the very least be complicit in complicit in the minimisation of corporate tax contributions.

ACCA members are already subject to robust levels of regulation and standards enforced by ACCA's rulebook as well as licensing, monitoring, investigations and disciplinary functions. All of which operate alongside the PII requirement for members in public practice to deliver high levels of quality assurance and protection for taxpayers.

In drafting our response to this consultation, ACCA surveyed members and held an in depth virtual roundtable discussion attended by over 40 practitioners across the UK who shared their experiences with unregulated advisers, professional indemnity insurance, client awareness about what constitutes professional advice and their interactions with HMRC when resolving issues caused by unethical or poor advice from advisers.

***Introducing a requirement for advisers to hold PII***

1. **Creating a robust framework for taxpayer protection:** ACCA believes the requirement for anyone offering tax advice to hold professional indemnity insurance (PII) to be a proportionate measure which will offer taxpayers a very basic level of protection against poor conduct.

However, the requirement for PII alone will not be sufficient to bolster public trust in the tax advice market. There is much work to be done around improving transparency for all parties interacting with HMRC. This measure must come alongside improved taxpayer education about the distinction and benefits of relevant qualifications for advisers, routes for legal claims and disputes against the adviser and the ability of the taxpayer to check which body has oversight of their adviser.

2. For most professional bodies, the requirement to hold PII cover is a component part of the overall framework that provides protection to taxpayers. For ACCA members PII provides a baseline level of protection and recourse for taxpayers which operates alongside promotion of the professional and ethical standards expected of chartered certified accountants to improve transparency about what customers should expect, legal recourse, accessible routes for complaints and robust (and where needed exclusionary) disciplinary measures. While the proposed PII requirement for unregulated advisors provides a basic level of protection, it should not be regarded as a solution in isolation of additional standard setting, effective monitoring and sanctions/ recourse for taxpayers.

3. **Appetite in the insurance market:** From queries with our approved brokers, ACCA believes there is sufficient appetite and capacity to manage the new requirement. Brokers have highlighted concerns that premiums are likely to be significantly higher for boutique firms focused more heavily on tax advice such as R&D compared to firms offering a range of services including general accounts and compliance.

Given that much of the activity which HMRC is aiming to offer taxpayers greater protection against takes place in the 30% of the industry that is not currently subject to professional body self-regulatory regimes, insurers may need to be more alert to the methods some promoters use to disguise activities which carry more risk. It may be appropriate for HMRC to conduct further queries within the PII insurer market about their understanding of these activities and how they plan provide adequate cover.

4. **Impact on members of professional bodies:** Many of ACCA's members in practice have held PII cover for many years and due to requirements under their membership of a professional body, current costs for PII are relatively low. HMRC has identified potential impacts to the cost of insurance premiums as a result of increased demand from unregulated advisers.

In the current market, unscrupulous and unregulated tax advisers are not required to cover professional fees, CPD costs or PII and are therefore often able to undercut qualified advisers and take advantage of a lack of professional body supervision to promote illegitimate schemes. Members of professional bodies typically charge comparatively higher fees to cover these professional costs and provide assurance to clients but would face further competitive disadvantage if forced to raise fees to account for a rise in premiums as a result of demand from unregulated advisers.

While increased costs may force some unaffiliated advisers out of the market, it would be extremely disappointing if increased premiums across the entire market due to heightened demand forced trustworthy, qualified agents out of the tax advice market or prevented newly qualified advisers from setting up a business. ACCA would welcome further clarity from HMRC on what further steps it will be taking to mitigate these risks.

### ***Setting levels of PII cover***

5. It is our view that those that offer unethical or bad advice do so in the knowledge that they are acting outside of the spirit of the tax regime which they seek to exploit. This section of the market is likely to opt for the lowest levels of cover or wrongly (whether intentionally or not) interpret 'appropriate' levels of cover.

While we acknowledge that these advisers do not represent the entirety of the unregulated market, this third of the market attracts a proportionally higher number of complaints and media scrutiny which affect public trust in the tax advice market compared to the remaining two thirds of advisers which belong to a professional body. Therefore in order to set clear and universal expectations for taxpayers as well as a robust level of protection that can strengthen public trust, thresholds should be clearly defined.

6. Customers of tax advisers that are a member of a professional body receive additional and adequate rights of recourse which would be absent for customers of advisers without professional body supervision. All ACCA members with a practising certificate are required to have professional indemnity insurance with minimum required levels of

cover set as well as meeting code of ethics, AML supervision and CPD requirements which mean they uphold the highest standards. For reference we have set out the requirements for ACCA members operating in practice in Annexe A at the end of this document.

7. In practice introducing different minimum requirements for different activities may create an overly complex system, making it more difficult for taxpayers to understand what advice their adviser is legally covered to offer (assuming an understanding of what constitutes different types of advice) and for more unscrupulous advisers, this could offer scope for individuals to manipulate the descriptions of services to fit activities which attract a lower premium.

***Setting definitions for which persons and activities the requirement will apply to***

8. **Identifying advisers:** Our preference for defining who the requirement will apply to would be to use a definition currently extant in legislation rather than setting a new definition. Either definition has the benefit of legal precedent which will be more likely to help advisers recognise when they may fall within the requirement. We would also wholly support HMRC's proposal to include a provision requiring offshore advisers to hold professional indemnity insurance for any work undertaken in the UK.  
In setting a requirement for which entity or individual should be required to hold cover, HMRC may wish to consider the application of the Corporate Facilitation Offence which applies to the 'relevant body' i.e. a corporate body or partnership, via the persons associated with or giving tax advice on behalf of that body.
9. **Setting a definition for advice:** ACCA is supportive of HMRC proposal to use the distinction between advice and guidance set out by the FCA. In setting such a wide definition it is likely that other regulated sectors, including financial and legal services, will be caught within the specification. HMRC may need to build in exceptions for these industries where sufficient consumer protection and routes for redress already exist (and would not benefit from additional regulation). It may be beneficial for HMRC to agree supervision arrangements with the relevant oversight bodies in order to draft appropriate carve outs that avoid duplicate levels of regulation.
10. **Niche areas of advice:** On the other hand, there may be other areas of high risk or niche tax advice that should fall within the definition and require cover. As outlined in the PCRT group response, HMRC may want to consider how the definition will invalidate the methods that promoters of tax avoidance schemes currently use to claim that their services do not constitute advice. Similarly, members highlighted other narrow areas of

advice such as R&D claim services which may profess to support the claim process rather than offer advice, though due to the nature of the work in applying tax law, should fall within the definition.

11. Separately, a crucial area will be the distinction set for software providers within the definition. It is important that the proposed definition does not diminish the responsibility of the adviser or taxpayer to take reasonable care when using software in the delivery of tax advice. It is important that HMRC does not set an expectation that software can be used as a substitute for professional advice from a qualified professional or create a scenario where software providers may seek to mitigate PII premiums through expansion of advisory capabilities which are by nature, void of human analysis and ethical judgement.

### ***Improving transparency and protection for taxpayers***

12. **Experiences of poor advice:** A number of members got in touch to share experiences with clients that had previously received poor advice from unregulated advisers and commented on the long-term financial and reputational effects that this has on the client. A frequent complaint against poor advice was the ability to track down the adviser at a later date to satisfy HMRC enquiries as many operated via phoenix companies or operate offshore.

13. **Taxpayer transparency and checks on professional status:** A survey of ACCA members undertaken in the drafting of this response (representing 21 practices with a client pool of 4,734 SMEs) reported that 50% of practitioners say clients rarely or never carry out checks on tax advisers.

Members cite low levels of awareness among taxpayers of the differences between qualified and unqualified advisers, with many assuming tax advisers operate under a protected title. It is vital that the policy objectives of 'raising standards' and 'improving trust' are not pursued solely through the insurance market without concurrent work by HMRC to monitor compliance with the requirement, offer taxpayer education around the benefits of professional advisers as well as routes for redress.

Members were supportive of an online portal that would enable taxpayers to check advisers held valid policy numbers and positively identify those that had not complied with the requirement.

14. **Checking advisers have appropriate cover:** ACCA is supportive of any steps that can improve transparency for taxpayers and broaden awareness of the differences between qualified and unqualified advisers. However, it is important that any required steps for submission and verification of the cover does not present a burden for appropriately

covered advisers. Members were supportive of digital solutions that would allow clients to find more information on their adviser from a trusted source but highlighted concerns around the functionality of existing HMRC portals and cited difficulties when contacting HMRC when trying to resolve problems with digital submissions or customer queries. Additionally, if HMRC were to administer this information there was concern that HMRC staff should be adequately trained to understand minimum levels of cover and the extent of protection this realistically provides a taxpayers compared to professional body membership status. Members cited previous instances of HMRC staff hanging up on queries they did not know the answer to.

To avoid duplication, professional bodies already hold the information needed to check members' compliance with the requirement which can be used to give taxpayers assurance on professional body members' PII cover.

- 15. Improving HMRC – Agent communication:** Additionally, members highlighted that taxpayer trust in tax administration and advice is greatly affected by appointed agents' ability to interact effectively with HMRC and resolve queries in a timely manner. Alongside these reforms it is important that HMRC seeks to improve channels of communication and response time with regulated agents, particularly where they are seeking HMRC support to remedy the impacts of poor advice.

### ***Enforcement***

- 16. Oversight across the market:** As stated on page 11 of the consultation document, if the intended benefit of the proposed course of action is that it should 'not affect tax advisers who are already subject to regulatory oversight or who are a member of a professional body' then it seems appropriate that those already holding the level of cover set out by their professional body should automatically satisfy requirements. Professional bodies already provide robust monitoring and disciplinary measures to ensure members have the necessary cover. Bodies would continue to supervise these members on this basis, applying the regulations and disciplinary procedures that sit alongside the requirement.

Therefore introducing measures to check the status of advisers' cover and apply sanctions for non-compliance is a reasonable step. However, in seeking to bring parity over the level of protection for consumers, there are outstanding questions about the Department's level of supervision and risk tolerance toward the remaining advisers that are not members of any professional body. HMRC needs to set out at which stage sanctions would be enforced.

17. **Examples from other industries:** While looking at complaints procedures from other industries may be informative, it is important to consider the unique dynamic created between taxpayers, advisers and HMRC in the tax advice market. Unlike bilateral disputes arising from common business or consumer contracts, the tax advice market is likely to generate unusual claims in which HMRC may stand as a complainant in the recovery of tax revenues, while the taxpayer also suffers the impact of poor advice which affects long-term trust in both HMRC and the market.



## **Annexe A**

The level of indemnity required by practitioners holding the above certificates/licences is calculated in relation to their annual fee income. Where a practitioner is in partnership, or has fellow directors in an incorporated firm, or employs full-time or part-time staff, cover must also include fidelity guarantee insurance (FGI).

The regulations define 'total income' as the aggregate of the firm's professional charges and all other income received by the firm in the course of the firm's business.

Commissions that are retained by the business must be included in the income figure.

The regulations require that the minimum limit of indemnity on PII in respect of each and every claim must be at least £50,000, and prescribe the following formulae for determining the required level of cover.

ACCA's sets the following requirements for ACCA members operating in practice:

### **Total income of up to £200,000**

The limit of indemnity on PII in respect of each and every claim must be the greatest of:

- 2.5 times the total income;
- 25 times the largest fee raised during the previous accounting year; and
- £50,000.

### **Total income of over £200,000 and up to £700,000**

The limit of indemnity on PII in respect of each and every claim must be the greatest of:

- the aggregate of £300,000 and the total income of the firm; and
- 25 times the largest fee raised during the previous accounting year.

### **Total income of over £700,000**

The limit of indemnity on PII in respect of each and every claim must be the greatest of:

- £1 million; and
- 25 times the largest fee raised during the previous accounting year.

### **Run-off Cover:**

Those ceasing to practise must make arrangements for the continued existence of adequate PII and FGI cover for a period of six years from the date of cessation.

Further information on minimum requirements can be found [here](#).