

## Call for evidence: raising standards in the tax advice market

A public consultation issued by HMRC

Comments from ACCA to HMRC  
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ACCA has 227,000 members and 544,000 students in 179 countries and works to help them to develop successful careers in accounting and business, with the skills required by employers. ACCA work through a network of 110 offices and centres and 7,571 Approved Employers worldwide, who provide high standards of employee learning and development. Through our public interest remit, we promote appropriate regulation of accounting and conduct relevant research to ensure accountancy continues to grow in reputation and influence.

The expertise of ACCA members and in-house technical experts allows ACCA to provide informed opinion on a range of financial, regulatory, public sector and business areas, including taxation (business and personal); small business; pensions; education; and corporate governance and corporate social responsibility. [www.accaglobal.com](http://www.accaglobal.com)

Further information about ACCA's comments on the matters discussed here can be requested from:

Jason Piper  
Head of Tax and Business Law  
Professional Insights  
[jason.piper@accaglobal.com](mailto:jason.piper@accaglobal.com)

Glenn Collins  
Head of Technical Advisory and Policy  
ACCA UK  
[glenn.collins@accaglobal.com](mailto:glenn.collins@accaglobal.com)

### ACCA



+44 (0)20 7059 5000



[info@accaglobal.com](mailto:info@accaglobal.com)



[www.accaglobal.com](http://www.accaglobal.com)



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

## 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 the minimisation of corporate tax contributions.

Our response to this consultation should be read in conjunction with the PCRT joint response and our input into the HMRC Charter consultation as well as the wider design of the UK tax system and policy developments.

### AREAS FOR SPECIFIC COMMENT:

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#### **Is the HMRC Standard for agents comprehensive enough to provide a baseline standard for all tax advisers?**

Trust and respect between tax agents and HMRC staff are vital, while respecting the different relationships between the three parties: taxpayer, agent and HMRC. We consider that 'tax agent' is a subset of 'tax adviser'; broadly, the distinction revolves around whether a tax return is being submitted on behalf of the taxpayer in which case it will be by the tax agent. A tax adviser may also offer tax planning services, which will often be based around certain events, such as the sale of a business or estate planning, or specialist areas such as EIS or R&D.

Agents who are being paid to act for taxpayers will have a legal duty of care to their client and the contractual terms governing the relationship with their clients will be set out in an engagement letter. Relationships between the three parties - HMRC, agent and taxpayer - may vary depending upon the precise circumstances. Some taxpayers use an agent only occasionally to deal with particular transactions, while others will want an agent to handle all their tax affairs and to deal with HMRC on their behalf.

In the UK there is no restriction on who can provide tax services. Members of the PCRT bodies must meet certain standards (including having adequate professional indemnity

insurance and undertaking continuous professional development); if they fall short a client (or any third party) can complain to the relevant body<sup>1</sup> and disciplinary action can be taken where appropriate. HMRC can also report members to their professional body, although it has only recently begun to make more use of this power.

It is very difficult to enforce standards when anyone is permitted to act as a tax agent. While HMRC expects all tax agents, including unqualified agents, to comply with HMRC's 'Standard for Agents', the scope of this does not fully replicate professional body standards. Further, even where an agent may breach the Standard for Agents, there is no obvious remedy or sanction that can be applied, which limits the practical use of this statement to help address poor standards. For example, in the worst cases HMRC should, rightly, seek to exclude agents from access to HMRC systems, but its powers to do so are not clear in respect of systems which are currently accessible on an unrestricted basis. This would also be a draconian power which it may be disproportionate to use in cases of poor, but not criminal, performance or behaviour. These cases might be better addressed through targeted interventions and support to improve performance.

In principle, therefore, it should be easier to maintain high standards and thereby improve taxpayer compliance if all tax agents are appropriately qualified and belong to one of the professional bodies that meets certain agreed criteria.

## **Options A-F**

HMRC's concerns span a number of areas, specifically cracking down on promoters of tax avoidance, poor standards in the advice market and the recommendations made in regard to the Loan Charge Scheme by Sir Amyas Morse.

It is ACCA's position that a distinction must remain between poor, unethical advice and bad, often illegal advice. In our view, the unregulated refers to those tax advisers offering advice that is unregulated. Tax advisers should be subject to suitable regulation for areas such as AML supervision/regulation.

### **Option A: Better use of HMRC's or Government's current powers**

In pursuing avoidance, HMRC has mechanisms such as Enablers' Penalties. As regards the broader issue of quality, HMRC has in place memorandums of understanding through which it can report those agents who have unacceptable standards (which under s.20, CRCA Act 2005 must amount to misconduct) to their professional body, with a view to the professional body investigating and potentially disciplining the member. ACCA has pursued greater cooperation and intelligence sharing via our MOU to ensure we are able to properly record and investigate alleged misconduct by our members.

There may be other obstacles to HMRC's reporting due to (i) issues of taxpayer confidentiality, (ii) concerns that any complaint about an agent's standards is sufficiently robust to prove that a referral should be made; (iii) lack of familiarity or incentivisation within HMRC or (iv) other factors or a mixture of factors. However, ACCA

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<sup>1</sup> Or to the Taxation Disciplinary Board in the case of CIOT and ATT

is well placed to communicate HMRC messaging to our members, particularly through our technical advice, leadership communications, member publications and CPD training. ACCA would welcome greater collaboration with HMRC that makes better use of the memorandums of understanding and visibility of HMRC messages.

### **Option B: improve rights of recourse for consumers**

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 and sets out minimum required levels of cover.

In cases of the most egregious bad advice (eg purported tax avoidance schemes which are bound to fail but marketed purely for the promoters to pocket the fees) speed of response is of the essence. It is not clear how additional tax regulations, as opposed to the exercise of broader controls on misleading marketing etc, would operate swiftly enough to constitute an improvement sufficient to justify the additional regulatory load.

### **Option C: improving transparency – helping consumers to make better choices**

Research recently published by KantarPublic into the behaviour of tax agents and those who use avoidance schemes identified that some individuals were often unaware that they were using such a scheme. This indicates that greater measures could be taken to raise awareness amongst UK taxpayers on ways in which they can ensure that they are accessing reliable tax advice.

ACCA supports the view that consumer choice can be improved through better understanding tax, their responsibilities as a taxpayer and the range of credentials and professional qualifications they might look for when choosing an adviser.

When devising a programme of consumer education, information should be conveyed simply, using clear language, remaining factual and neutral in its approach. Complexity in the tax system is often used to the advantage of ‘rogue’ advisers, using regular changes and loopholes in the system as a cover to offer schemes which seek to exploit them.

Guidance can include simple messaging on the ‘red flags’ taxpayers should be aware of. HMRC should promote general approaches customers take to can decide who is a suitable adviser. If this is successful, guidance might also highlight the additional responsibilities placed on those that are members of a professional body, including their duty to advise on risks and ethical considerations, including technical and reputational issues, associated with all available options.

To aid with reaching an informed decision, the information would provide an awareness of the different types of advisers and the advantages and disadvantages of each type. This would include an understanding of the available qualifications to look out for, membership of professional bodies, and available redress mechanisms to dissatisfied

consumers including whether a tax adviser holds Professional Indemnity Insurance and adheres to a Code of Conduct or is obliged to follow professional practice regulations.

We support the PCRT view that HMRC/ the government are the best source of this information and can make effective use of established channels for public information such as Citizens Advice Bureau or Trading Standards. This would raise awareness amongst consumers that the designations provided by professional body membership offer certification or their professional status and assurance, including the level of regulation and code of ethics provided by the PB, up-to-date learning backed by CPD requirements, and advantages of practising certificates and professional indemnity insurance.

ACCA invites further discussion with HMRC on 'kitemarking' or similar and improving assurance for customers and the standards of tax advice offered by qualified advisers.

HMRC should also continue to optimise the impact of all its existing powers by publicising verified examples of poor tax advice.

#### **Option D: penalties for tax advisers**

It is hard to see how the tax system could operate unless the fundamental principle remains that taxpayers remain responsible for their own tax affairs and any actions and omissions. However, if these result from bad advice, they should, separately, have recourse against advisers.

That said, there is an existing penalty regime aimed at those advisers and others who 'enable' tax avoidance. We note that there are separate proposals to enhance these, with published draft legislation, currently the subject of a separate call for evidence. We will engage positively in that call for evidence. However, we doubt that, so far as tax advisers specifically are concerned, the path of greater penalties will have much impact on the quality of services in the tax market. This is because the broad range of poor performance, as distinct from egregious avoidance, is not addressed at all. Most professional advisers are covered by PCRT (adherence to which, the government accepts, makes it unlikely that penalties will be in point), and because, as noted earlier, promoters of egregious avoidance increasingly do not operate as advisers in the normal sense at all.

#### **Option E: maximising the regulatory/supervisory role of current professional bodies**

The main problems HMRC seek to address relate to agents who do not belong to professional bodies and the main problems around standards arise disproportionately in those agents who are not members of any professional body.

As regards raising quality in the broadest sense, the benefits of using Option E would include that there is an existing regulatory regime in the professional bodies that works (and could be improved further, for example if HMRC made more 'public interest disclosures' and engaged in more positive ways, for example in relation to continuing professional development). In addition, the costs of regulation should be mitigated if the chosen option builds upon the existing model. As regards egregious avoidance, there is

a danger that it misses the target if promoters are able to argue that because they are not 'advising' they are not in scope of the expanded regulatory/supervisory regime.

Approximately 30% of tax agents do not belong to a professional body. A proportion of these agents undoubtedly provide a satisfactory service and help to improve tax compliance, so to 'outlaw' them would probably be highly disruptive to tax compliance and it is unlikely that their clients or HMRC would, generally speaking, be better served, by their immediate removal from the tax services market.

ACCA supports the PCRT view that any proposed increased supervision would first warrant more evidence around problems caused by this 30%. HMRC will be best placed to initiate this information gathering and will be in possession of much of the relevant evidence. As this 30% of tax agents are not members of any professional bodies, ACCA is not readily able to comment on their operations, market share, demographic profiles, or earnings and profitability (in contrast to the amount of public information there is about professional firms). So we are not well placed to judge which interventions, and over what period, would incentivise them to raise their game, and whether some such agents should be encouraged, or required, to withdraw from the market altogether. Different requirements might be imposed over time, starting perhaps with a requirement for indemnity insurance and to conform to the PCRT standards of tax planning. There could be an escalating series of interventions which could culminate in a restriction on who can provide tax services. Such a step would probably have to be phased in with a reasonable transitional period.

Most tax agents and advisers are members of professional bodies, but the number and diversity of different professional bodies (extending across accounting, law and tax specific) means that a key requirement will be to ensure that equivalent standards can be achieved and upheld by different bodies.

In considering a self-regulatory regime with the professional bodies, it may be noted that current regulation relates to both individual members and to their firms. Individual members of professional bodies that meet suitable criteria (and professional firms whose tax work is effectively controlled by such individual members) should be given recognition, for example by way of a kite-mark, that they are 'professional tax agents' who provide tax services to a recognised standard. Such recognition could be awarded, for example, by their professional body or if it was by way of a public register this might sit with an independent body which oversees which bodies are recognised professional bodies.

### **Option F: External regulation**

External regulation may have its advantages and disadvantages. The advantages include:

- Only those who are satisfactorily regulated could be tax agents (but we note that the requirements set out in the Call for Evidence would not seem to impose a particularly high standard, relative to existing professional requirements).
- A level of consumer protection would be prescribed (with the same proviso).

- There would be a level playing field for tax advisers – all would have equal costs of regulation (but professional body members would still bear the differentiating costs of conforming to higher professional standards).

There would be disadvantages, including:

- External regulation may lead not only to duplication with the professional bodies, but there is the further potential impact and costs for professional body members who have dual membership (for example, of both an accountancy and a tax professional body). There would need to be consideration of how any tax advice regulatory model would sit in relation to existing regulation.
- As around 70% of the market is already subject to professional body self-regulatory regimes, additional external regulation for the entire profession may prove costly and would present a disproportionate response. HMRC may face difficulties in targeting appropriate regimes at the 30% that remain outside of the scope and supervision of a professional body.
- Additional regulation may not be the most effective way to target poor behaviour. Although it may present an added deterrent, 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.
- It could be counterproductive if it drives taxpayers to do it themselves when any help would be better than none.
- The extra costs involved, and the fact that all advisers would derive a certain respectability from being regulated, might cause some professional advisers to abandon their professional body, and others starting out not to follow in this path, leading to a reduction of standards of (for example) competence which the regulatory regime may not seek to replicate. The need to accommodate the 30% of unqualified advisers would act as a brake on driving higher standards through the regulatory regime itself, as evidenced by the limited ambition in the articulation of this proposal in the Call for Evidence itself.
- As with Option E, a regulatory scheme might not address the problem of promoters of egregious tax avoidance (who we understand are typically not professional body members; and often do not hold themselves out as ‘tax advisers’).

Issues that would need to be resolved include:

- Additional clarity will be needed over where the cost for such schemes would be recovered. If the primary objective is to raise overall standards in the tax advice market to the benefit of customers, it is fair to assume these schemes should be centrally funded. More clarity around the extent of these costs and the overall cost benefit would need to be examined in greater detail.
- Tax policy and the advice market is complex and subject to ongoing change. In order to build customer confidence any new oversight would require sufficient external expertise with some level of neutrality and independence from the current system.
- Whether the individuals and/ or the firm/ company providing the tax advice would be required to be registered.
- Whether regulation of the service provider would be sufficient or whether there is a need to define the regulated services; if so, it is no easy task to set proper boundaries around ‘tax services’.

**What constitutes a professional body? / Criteria for Inclusion as a professional body**

Please refer to the PCRT response for a collective response from the associated professional bodies which sets out inclusive and detailed criteria, required technical competencies as well as measurement and application of professional body status.