

Raising standards in the tax advice market – strengthening the regulatory framework and improving registration

Response by the Chartered Institute of Taxation

1 Introduction

The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 20,000 members, and extensive volunteer network, in providing our response.

The objects of the Institute include:

- (i) to prevent crime and
- (ii) to promote the sound administration of the law for the public benefit

by promoting and enforcing standards of professional conduct amongst those engaged in the provision of advice and services in relation to taxation and monitoring and supervising their compliance with money laundering legislation.

Raising standards in the tax advice market is therefore at the heart of our aims as a professional body.

2 Context

We need to consider any requirement for regulation of tax services in the current context of the wider legislative and administrative framework. The UK has one of the most complex tax systems in the world. Guidance does not keep pace with changes in legislation, and GOV.UK's 'house style' of simple expression makes it difficult to convey the full picture accurately to taxpayers, something which can result in practice either in taxpayers not gaining their full entitlements, or being exposed to penalties for not having carried out their obligations in full. HMRC is resource constrained, gives high priority to maximising revenue and reducing the tax gap, and is under external political pressure to do so. This can lead some taxpayers to be frustrated in

approaching HMRC for explanations or understanding, as well as fears of not being treated fairly, any instances, real or perceived, of poor behaviour by HMRC officials themselves exacerbate this. All these factors both increase the demand by taxpayers to make use of agents' services in addressing their tax obligations, and also increase the imbalance of information and experience between taxpayers and their agents - which is a classic justification for regulation of any market. This in turn places more weight on the need for high standards and good behaviour from agents - but puts more pressure on them in their role of intermediating between the taxpayer and HMRC.

Over recent years, the CIOT has actively engaged in discussions with HMRC in relation to raising standards and has been pleased to provide extensive consultation responses including the following:

- [2020 call for evidence on Raising Standards in the Tax Advice Market](#)¹
- 2021 consultation on [Raising standards in the tax advice market: professional indemnity insurance and defining tax advice](#)²
- [Raising standards in tax advice: protecting customers claiming tax repayments](#)³

The CIOT is also one of the author bodies of [Professional Conduct in Relation to Taxation](#)⁴ (PCRT) which sets the high ethical standards which form the core of the tripartite relationship between tax adviser, client and HMRC. It supports the key role members play in helping clients comply with their tax obligations and their broader responsibilities to society. The guidance in the PCRT is based on five fundamental principles:

1. Integrity
2. Objectivity
3. Professional competence and due care
4. Confidentiality
5. Professional behaviour

PCRT includes tax planning standards which aim to set out high standards for members when providing tax planning advice.

It should be noted that the CIOT and Association of Taxation Technicians (ATT) are sister organisations with many CIOT members having previously undertaken ATT exams before progressing to take CIOT exams. Professional Standards material is worked on jointly for ATT and CIOT and regulations relating to matters such as Professional Indemnity Insurance (PII) and Continuing Professional Development (CPD) are the same for both bodies. A large proportion of our membership have taken accountancy qualifications provided by bodies such as ICAEW or ACCA before moving on to take their CIOT exams and therefore we seek, where possible, to ensure our regulations are sufficiently aligned with the requirements of those bodies to minimise any conflict for members of both bodies.

¹ <https://www.tax.org.uk/ref661>

² <https://www.tax.org.uk/ref774>

³ <https://www.tax.org.uk/ref993>

⁴ <https://www.tax.org.uk/professional-conduct-in-relation-to-taxation-pcrt>

Note that throughout this document the term tax practitioner is used. This term includes tax agents who directly represent their clients with HMRC and tax advisers who provide advice but may not interact with HMRC on the client's behalf.

Disciplinary action in relation to CIOT members is dealt with by the [Taxation Disciplinary Board](#)⁵ (TDB). The TDB is an independent body that runs the complaints and disciplinary scheme for both the CIOT and ATT.

The CIOT are pleased to be able to engage with HMRC in relation to their consultation [Raising standards in the tax advice market: strengthening the regulatory framework and improving registration](#)⁶

3 Executive Summary

- 3.1 The CIOT welcomes HMRC's comment that 'most tax practitioners who provide tax advice and services are competent and adhere to professional standards'. We acknowledge that there are problems within the market which do need to be addressed.
- 3.2 The consultation sets out three possible approaches to regulation and seeks views as to which model is preferable on the premise that regulation should be the solution to raising standards. The CIOT notes that the consultation does not debate whether regulation of the tax advice market is the only way of raising standards, whether there are alternatives or, indeed whether other measures alongside regulation are needed.

The focus of our response is therefore on a choice between the three options, rather than exploring the merits of regulation versus alternative or supplementary action. However, we suggest that none of the regulatory proposals will fully address the wide scope of the problem statement (and in the most egregious cases intervention cannot wait for the implementation of regulation, which is still at least three years off). A gap analysis of what the proposed regulatory models will not achieve will be important to make sure the policy objectives are met, potentially through additional measures. We have set out some of these below in section 6.1.

4. Choosing between the three options, the CIOT is broadly supportive of approach 1 as being the system which could be set up in the least amount of time and at the lowest overall cost. Our support of approach 1 is however subject to a need for further detail as the policy develops:

- a. We consider the problems to be addressed require greater research and articulation to ensure that the approaches proposed will address them.
- b. There are some problems which will not be addressed by the proposed regulation and we have set out in this response our initial thoughts on what these might be. These includes steps that need to be taken by HMRC (see section 8 in particular).
- c. CIOT has a number of questions as to whether the implementation timetable is quick enough to address certain issues or whether HMRC need to take more targeted urgent action in the interim (or in addition).
- d. The model of regulation/oversight of the professional body supervisors and recognition of professional bodies is not outlined in the consultation. We consider the conditions to be approved as a Recognised Professional Body (RPB) need to be high and we would welcome further consultation

⁵ <https://tax-board.org.uk/>

⁶ <https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market-strengthening-the-regulatory-framework-and-improving-registration>

on the detail of this, including on the process for application and how and by whom it will be arbitrated. Additionally, we expect there is a need for ongoing monitoring but this will need to be proportionate and cost efficient to avoid a drift from approach 1 towards approach 3 via the backdoor.

- e. There are currently no costings for the different regulatory approaches. We assume this is due to the need for more detail in the options but these will be a key factor in determining the feasibility of the models, proportionality and potential impact on the tax advice market, and the ability/willingness of the potential RPBs taking on the role. With this, any costings should carefully include an analysis of administrative burden for both the RPBs and tax practitioners within scope, as well as other affected stakeholders, such as HMRC, who will need to collaborate with the RPBs.
- f. HMRC expectations on what regulation means in practice are yet unclear. Widespread file reviews of technical work on practitioners' files would require considerable investment in time and additional, suitably skilled resource; a significant step from our current work on member standards. There would inevitably be a high degree of sampling, which may not identify some behaviours of concern and so may not be the most efficient way of raising standards. In our view, if this was the main enforcement method, in the early years it would require significant reliance on work done by firms themselves, which may not help build trust in the system. Proactive, outcomes-focused regulation should cover the setting of appropriate standards, and monitoring and enforcing of those standards – however, this will only identify some issues and the RPBs will need additional information to be more effective.
- g. HMRC are uniquely placed (only they hold the data and have access to the wider picture) to pinpoint substandard work, egregious tax planning, or thematic/common errors. HMRC and RPBs will need to work collaboratively to share information and intelligence to ensure efficient and targeted action can be taken. This may require an expansion of current data sharing rules.
- h. The outcome of the consultation on [Reforming anti-money laundering and counter-terrorism financing supervision](https://www.gov.uk/government/consultations/reforming-anti-money-laundering-and-counter-terrorism-financing-supervision)⁷ is key. If professional body anti-money laundering (AML) supervision continues under the OPBAS+ model then regulation of tax practitioners by professional bodies such as CIOT could fit within it, avoid duplication and draw from similar risk profiles, for example. If AML supervision responsibilities are removed from professional bodies on the basis that regulation can be better performed in another way then it would appear counterintuitive to give professional bodies an extended remit to regulate tax professionals. CIOT expects that its regulatory population would broadly mirror its AML supervisory population so this is an important point for us.

3.3 The CIOT is supportive of mandatory registration for all tax practitioners. This makes sense particularly as interaction with HMRC becomes more digitalised. A register is an initial building block, necessary to identify the population which need to be regulated. Once all tax practitioners have been identified then steps can be taken to raise standards amongst unaffiliated agents to require them to demonstrate the same standards as affiliated agents. This can then be built upon to improve standards where necessary, across all advisers whether previously affiliated or unaffiliated.

3.4 We consider that regulation at firm level is the most appropriate model although there are a number of nuances here which need to be considered. Firms operate in a wide range of ways and there will need to be consideration of a number of factors to ensure the registration and regulation system works appropriately.

⁷ <https://www.gov.uk/government/consultations/reforming-anti-money-laundering-and-counter-terrorism-financing-supervision>

- 3.5 We do not consider that other professionals (such as lawyers and IFAs) should be excluded from registration and regulation. This would be a very significant weakness in the regulatory framework. It is important that there is parity between advisers working in different industries, and if a different course is taken, it should be backed up by evidence that these groups are currently providing tax advice at a higher standard, and that any existing regulation of these groups is effectively providing the same level of protections and ensuring the desired high standards of the policy objectives of this consultation.
- 3.6 A transitional period or legacy system will be essential if any of the approaches outlined in the consultation are adopted. We would recommend that HMRC undertake a survey of unaffiliated agents to provide further data on which professional bodies those agents would seek to join if mandatory professional body membership is introduced under approach 1.
- 3.7 We undertook a survey of our members to inform our response to this consultation. This was completed in conjunction with our sister organisation the ATT. The results referred to in this response relate to 479 CIOT (and joint CIOT and ATT members). We would be very happy to engage further with HMRC following the close of this consultation to provide more granular information in relation to our survey.

4 About us

- 4.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 4.2 We are also an anti-money laundering supervisor for about 850 firms (who we expect would also form the basis for our regulatory population).
- 4.3 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

5 Responses to the Consultation

CIOT has also taken part in a proposed joint letter in response to the Consultation by the bodies which have responsibility for the Professional Conduct in Relation to Taxation code (PCRT).

We have also seen the response by the Association of Taxation Technicians (ATT) and support the observations made in that response.

Our Low Incomes Tax Reform Group is also making a response, which we support, focussed on the needs of low income groups.

We have also seen a draft of the response being submitted by the Taxation Disciplinary Board, the Independent body which deals with complaints in relation to CIOT (and ATT) members.

6 Responses to the Consultation Questions

Question 1: Do you agree the limitations in the partial framework across the tax advice market contribute to issues observed? Select all that apply.

- **no requirements of technical competence to practice**
- **no general deterrents for dishonest practitioners operating in the market**
- **disjointed monitoring of tax practitioners**
- **variations in the action taken against substandard and unscrupulous tax practitioners**
- **clients being unable to easily assess the competence of a tax practitioner**
- **other (please specify)**

Please give reasons for your answer.

- 6.1 We agree that there are limitations to the framework which currently operates across the tax advice market. The survey of our members indicates that over 60% had come across poor professional standards in the tax advice market.

The consultation refers to substandard work and unscrupulous tax advice and there are a wide range of issues associated with this. One solution will not work to deal with such a wide range of concerns.

The evidence of substandard tax advice is included in Annex C to the consultation. This annex includes limited amounts of data (as acknowledged), and we have concerns that it may require further critiquing and refining (for example, to consider whether the identified agent was the one who actually did the work resulting in errors). It is therefore difficult to see how this can be extrapolated across the whole market. However, taking it at face value, it is concerning that in all three sets of data there is a higher percentage of the cost of a relief that is non-compliant if a client uses a non-affiliated agent than if they had no agent at all. The extent to which this relates to substandard advice as opposed to other potential issues remains unclear for example:

- Did the clients give their agents complete information in all cases?
- Has any non-compliance been categorised as such because the client chose not to engage further with HMRC and withdrew a claim even though it was valid? For example, on R&D claims we are aware that some clients take a commercial decision to withdraw their claim rather than argue the point further (the professional costs of handling HMRC enquiries can be disproportionate to some valid claims, if points under enquiry cannot be resolved quickly).

The data includes no acknowledgement that in many cases agents will ensure clients will pay more tax than they would have if no agent had been involved with their tax affairs. We are aware that our members undertake a considerable amount of work to ensure clients do not overclaim tax relief and underpay tax and PCRT requires affiliated agents, who are subject to it, to correct errors they come across.

We note the comments that professional body membership improves compliance but on its own is probably insufficient. Our consultation response includes a number of suggestions which we consider would improve rates of compliance across the market.

In relation to each of the areas identified in the question and taking each issue in turn we would comment as follows:

Technical competence to practice

- It is a concern that anyone can set up as a tax practitioner without any minimum requirement in relation to technical competence – either on entry to the market or maintaining it on an ongoing basis.
- As outlined above, the UK tax system is complex and there is an imbalance between the information and experience of tax practitioners and their clients. Where clients are relying on tax practitioners to deal with their tax affairs competently then it is essential that tax practitioners have to meet minimum standards of exam training and practical experience before being permitted to practice as tax practitioners. It is also essential that competence is maintained via a system of continuing professional development (CPD).
- Without minimum requirements in relation to technical competence, clients are potentially exposed to the risk of poor or incorrect advice and without ongoing CPD requirements agents may not stay up to date and may make errors in their work which have an impact on the tax gap. It is important that CPD requirements are relevant to the tax practitioner's specific role to ensure that in addition to any up front qualification, any person providing tax advice remains up to date on the rules they are advising on.
- Professional body exams and CPD requirements not only include requirements in relation to technical knowledge but there is also a requirement for students to learn about codes of conduct such as PCRT and the CIOT [Professional Rules and Practice Guidelines](#)⁸ (PRPG). These set out a number of requirements on members, which the unaffiliated do not have to comply with, including:
 - Tax planning standards
 - The requirement to correct errors
 - The requirement to have PII
 - Best practice in relation to engagement letters

Adherence to these and other standards set out provide protection to the public from agents providing substandard work and egregious tax planning schemes. Breaches of membership requirements, including of PCRT and PRPG can result in referral to the independent Taxation Disciplinary Board which has a number of sanctions available, including expulsion. A serious flaw with the current system is that an expelled member can simply continue to practice. As an aside, there is a question for transition to regulation of what should happen to tax practitioners who have previously been expelled from one professional body, who now seek to join another for the purposes of regulation.

No general deterrents for dishonest practitioners operating in the market

- Ultimately HMRC have the option to not deal with tax practitioners they consider to be dishonest (see the section on gov.uk, which refers to [HMRC's "Refusal to Deal With" approach to agents](#)⁹). HMRC have also brought in a number of penalties which should act as a disincentive for agents to act inappropriately. These include penalties for dishonest tax agents under schedule 38 of the Finance Act 2012 and DOTAS and POTAS penalties.

⁸ <https://www.tax.org.uk/professional-rules-and-practice-guidelines>

⁹ <https://www.gov.uk/government/publications/raising-standards-in-the-tax-advice-market-hmrCs-review-of-powers-to-uphold-its-standard-for-agents/raising-standards-in-the-tax-advice-market-hmrCs-review-of-powers-to-uphold-its-standard-for-agents#hmrc-policies-that-address-poor-tax-agent-behaviour>

- We would like to see more frequent, and more publicised, appropriate use of the powers already in place to act as a deterrent against poor practice in the market.
- The term ‘dishonest practitioners’ covers a wide range of potential behaviour. The prosecution of tax practitioners in relation to tax services or in relation to financial crime is limited and more high profile cases would act as a deterrent.
- Having said that it is important that enforcement action against dishonest agents or other agents with poor standards results in remedial action being taken or their removal from the market. There is no equivalent to professional body disciplinary processes in relation to unaffiliated agents and those affiliated to professional bodies are already subject to disciplinary processes but, as mentioned above, removal from membership does not prevent the individual from continuing as an unaffiliated agent.
- Whilst the consultation notes that a tax practitioner can continue providing tax advice unless AML supervision is removed it should be noted that unless an offence has been committed under [Schedule 3 of the MLR 2017](#)¹⁰, which is a very high bar, then a supervisor (and in particular HMRC as an AML supervisor) has limited ability to turn away a firm for AML supervision. A member may therefore have been excluded by several professional bodies but unless the individual has a Schedule 3 offence they will almost certainly be accepted by HMRC for AML supervision and continue acting as an agent.

Disjointed monitoring of tax practitioners

- It is unclear what is meant by ‘disjointed monitoring’. We assume this refers to the fact that whilst there is some monitoring in the market the same monitoring is not applied to all tax practitioners. For unaffiliated advisers the only monitoring will be reactive in nature by HMRC, for those who are professional body members varying amounts of proactive monitoring takes place depending on the individual professional body.
- All of the author bodies of PCRT monitor their members through annual membership returns, audits of CPD records etc. Whilst they may undertake different types of monitoring activity, our main concern is the complete lack of monitoring of unaffiliated agents. There is no obligation for unaffiliated agents to undertake CPD or put PII in place.
- Monitoring through mandatory professional body membership might still be considered disjointed without clear minimum requirements on each professional body. It should be noted that the number of AML professional body supervisors in the market is seen as a risk by the Financial Action Task Force, which in turn led to the creation of the Office for Professional Body AML Supervision (OPBAS). We would see it as a strength that each professional body knows their own membership population well and can identify the associated risks. This strength in the system is why we supported the retention of the current AML supervisory regime with greater powers being given to OPBAS (an OPBAS+ model) when we [responded](#)¹¹ to the [consultation on reforming anti-money laundering and counter-terrorism financing supervision](#)¹².
- There is currently an expectation gap between the role which HMRC considers tax practitioners should take and the way in which they perform their roles. Appendix One sets out the typical role of a tax practitioner and the lifecycle of client engagement. Tax practitioners do not have the capacity

¹⁰ <https://www.legislation.gov.uk/uksi/2017/692/schedule/3/made>

¹¹ <https://www.tax.org.uk/ref1229>

¹² <https://www.gov.uk/government/consultations/reforming-anti-money-laundering-and-counter-terrorism-financing-supervision>

to audit every figure provided by a client. An element of risk based approach will be applied and certain elements checked whilst others accepted. The tax practitioner is reliant on the information provided by a client and then applies their technical knowledge and required professional standards in producing the work.

Variations in the action taken against substandard and unscrupulous tax practitioners

- As referred to above, HMRC already have access to information/data, the knowledge and powers to take action against substandard and unscrupulous tax practitioners operating in the market but we rarely see these powers used.
- Professional body disciplinary processes in relation to the PCRT author bodies have similar potential outcomes from their disciplinary processes ranging from matters being able to rest on file through to expulsion from membership. Action cannot be taken without proof of substandard work or unscrupulous practices. Whilst some monitoring activity may bring these to light, ultimately HMRC hold the information and evidence to enable action to be taken.
- Whilst HMRC are able to make public interest disclosures to professional bodies, they apply a high bar in relation to making disclosures. In addition, there is little insight provided on general themes on recurring errors which could inform the CPD offerings of the professional bodies and training providers, including better targeting of it. The current framework in the market would operate more effectively if HMRC were able to share more information with professional bodies. This will remain essential under any new framework.
- Law Enforcement are aware of agents acting illegally and acting as professional enablers. The CIOT welcome the NECC initiative on Professional Enablers as referred to in the [Economic Crime Plan 2 2023-26](#).¹³ Lack of prosecution of professional enablers and lack of effective information sharing is also a limitation in the current framework and we look forward to work in this area removing bad actors from the market.
- Professional body discipline is undermined by the fact that what should be the main penalty, expulsion, can be toothless if people can continue to practice outside of a professional body which is the situation which exists under the current regulatory framework.

Clients being unable to easily assess the competence of a tax practitioner

- Anecdotal evidence suggests that in general the public assume that all tax practitioners have to be trained and are regulated in the same way that, say, solicitors are for legal advice.
- There are some good advisers in the market who are not professional body members and many firms receive new clients by way of referrals from existing satisfied customers.
- Adding tax practitioners to a register, making professional body membership mandatory or putting in place a new regulator may not assist the public any further in assessing competence without considerable publicity. Members of the public are always likely to be attracted to firms promising large tax refunds, or offering the lowest fees, without concerns about their standards because they lack the understanding of the ways in which matters may 'go wrong'.

Other

13

https://assets.publishing.service.gov.uk/media/642561b02fa8480013ec0f97/6.8300_HO_Economic_Crime_Plan_2_v6_Web.pdf

There are other problems in the current system and these need special consideration to ensure the regulatory options being considered address these and in some cases it is not clear that regulation of the tax advice market will address these challenges:

- Increasingly software is taking over some of the work traditionally supplied by tax practitioners. Whilst this may be desirable in improving the efficiency of the tax system, the software prompts taxpayers to respond to questions in certain ways, which probably entails and builds in errors, and confronts them with choices which may not reflect the full range of their issues, or the nuances of their personal circumstances. We need to be aware that the software programme increasingly assumes the role of the law - if the law provides options or recognition of circumstances that the programme doesn't, it will be very hard if possible at all for those to be delivered to taxpayers in practice. Conversely to the extent that HMRC retain rights to make 'discoveries' on audit, the taxpayer will remain exposed if the law is tougher than the software implied.
- There will always be both taxpayers and agents who deliberately seek to look for ways to minimise their tax bills. As long as taxpayers want to 'push the boundaries' and are wealthy enough to pay significant fees for advice there will be advisers who are willing to help. Reputationally it is no longer seen as socially acceptable for those in the public spotlight to involve themselves with tax planning schemes but a number of wealthy taxpayers are not in the spotlight and may still be attracted by potential tax reductions and have sufficient wealth to risk an unsuccessful outcome. This does not mean that we should not seek to address these issues but no solution is likely to completely drive the problem out of existence.
- There will be agents who also seek to work round any regulatory system either by directing their clients on how to complete forms with the client using their own credentials or working through an alternative structure which does not require regulation. This consultation is about 'Raising Standards in the Tax Advice Market' and therefore does not cover regulation or the raising of standards for those who provide tax advice inhouse. As long as inhouse advisers remain completely out of scope of the requirements, some agents will seek to put in place a structure which makes them in house agents where possible and we can foresee unregulated agents acting in organisations fronted by affiliated agents or acting through umbrella type arrangements.
- In the current market the population of tax practitioners is not easy to determine and there are already challenges in policing the perimeter as demonstrated by the AML supervisory regime. Professional bodies can deal with this by asking all members to complete an annual return so they can determine who is a member in practice in business providing tax services. Identifying all unaffiliated tax practitioners is problematic. Where they are signing up for an agent account then proof of AML supervision is required but a number of agents never interact directly with HMRC and therefore determining all of the unaffiliated agents is already a challenge to bring them within AML supervision requirements, let alone agent regulation.

It should be noted that the [CIOT response](#)¹⁴ to the [Call for Evidence on Raising Standards in the tax advice market](#)¹⁵ in 2020 noted that the problems or problems being addressed related to:

¹⁴ <https://www.tax.org.uk/ref661>

¹⁵ [Call for evidence: raising standards in the tax advice market - GOV.UK \(www.gov.uk\)](#)

- Recalcitrant promoters of tax avoidance schemes who increasingly do not present themselves as advisers at all – there is therefore a risk of interventions targeted at advisers missing some of this target population.
- The broader range of problems identified in the market are specific to or at least more pronounced among those who are not members of professional bodies.
- Sometimes tax advice is embedded in wider advice or support including technology platforms.

7 Question 2: Are there other components of a regulatory framework that would support the delivery of these objectives?

7.1 The components of a regulatory framework set out in the consultation are:

- Establishing minimum standards
- Improved monitoring and enforcement
- Better routes for customer support

These three components will support, but may not completely resolve, the objects of:

- Taking action proportionate to the harms observed
- Providing additional ways to monitor and enforce minimum standards
- Remove substandard and unscrupulous tax practitioners from the market

The components of the regulatory framework set out appear to be appropriate but we do have some points to make in relation to these components.

a. Establishment of minimum standards

When establishing minimum standards in relation to qualifications we consider it important that the qualification undertaken has sufficient tax and professional standards content to ensure there is sufficient professional and technical competence. The CIOT exams are tax focused and equip individuals to work in the field of tax. We are aware that other professional bodies may have less tax content in their syllabus and whilst in some cases that may be sufficient for the type of tax work they undertake this would need to be considered carefully.

The nature of qualifications is important when considering the proposed exclusions from regulation and as set out in section 26.3 we would argue that the exam requirements or regulation of those individuals do not include tax skills or the professional standards requirements in relation to tax work.

CIOT members have to undertake an exacting set of exams which are set and assessed to the equivalent of Level 7, which is Masters degree level and have practical experience before they can become a member. They must also study and then adhere to the requirements in [Professional Conduct in Relation to Taxation](https://www.tax.org.uk/professional-conduct-in-relation-to-taxation-pcrt)¹⁶ and [Professional Rules and Practice Guidelines](https://www.tax.org.uk/professional-rules-and-practice-guidelines)¹⁷.

¹⁶ <https://www.tax.org.uk/professional-conduct-in-relation-to-taxation-pcrt>

¹⁷ <https://www.tax.org.uk/professional-rules-and-practice-guidelines>

Establishing a minimum standard at the outset is not sufficient, it must also be maintained and appropriate for the type of tax advice being given, so adequate CPD requirements placed on those who are regulated is a key standard.

There should also be appropriate minimum standards in relation to requirements such as having PII in place, the appropriate handling of client monies, client engagement letters, appointment of alternatives etc.

b. Improved monitoring and effective enforcement action

Monitoring and enforcement are already undertaken by the Professional Bodies and we can see the benefits of this being extended to tax practitioners who are currently unaffiliated.

We agree that the setting of standards and effective monitoring is important to prevent substandard work and poor client service. Enforcement also acts as a deterrent to act in this way.

One of the areas which remains unclear from the consultation is HMRC expectations in relation to monitoring. Regular risk-based reviews of firms makes sense under a regulatory model. This could include a review of the firm's policies and procedures, client engagement terms, handling of complaints, client money, sign off procedures and an exploration of whether they meet the principles set out in PCRT and the HMRC Standard for Agents (although it is worth noting that if a person complies with PCRT, they will be compliant with the Standard for Agents, but they are not identical standards). The more extensive exercise of reviewing of tax advice letters and tax returns etc would be much more resource intensive and presents a number of challenges under any system of regulation for the following reasons:

a. staff undertaking reviews would have to have extensive knowledge across the whole range of taxes. The complexity of the UK tax system and the knowledge required in each areas would mean no one reviewer would be in a position to review work on all taxes.

b. members already report the difficulties in recruiting tax trained staff and professional bodies also face challenges in staffing their AML and professional standards teams. We do not consider that there is a sufficient pool of suitably trained staff to undertake detailed file reviews. Whilst staff could be trained you would ideally need staff with practice experience in order to understand how firms should operate.

c. reviews could only ever cover a sample of files and that sample may not identify poor advice. To some extent, this issue could be mitigated by requiring firms to undertake internal reviews to a set model or standard, which are then checked at a high level by the regulatory body, accompanied by specific reviews where a high risk has been identified and a small number of random reviews. The larger firms of advisers generally already have some form of review system. This could help particularly in the early years of the regulatory framework, but runs the risk of accusations that the firms are 'marking their own homework'.

d. HMRC are uniquely placed to identify substandard advice and poor professional standards because HMRC knows who the agent is on all errors corrected (via disclosures or compliance checks) and knows the mistakes identified as well as their cause (due to the questions asked in order to ascertain if penalties are due). Information and intelligence sharing by HMRC with the regulator would therefore be an effective way for the regulator to target their monitoring activity and address issues. The increasing focus on information sharing under the Economic Crime Plan 2 demonstrates the importance of this mechanism when looking to remove bad actors from a market place.

Effective enforcement action will require more information sharing by HMRC and the disciplinary process should include information access powers. At present, for example, the disciplinary boards of accountancy and tax professional bodies do not have any statutory powers to obtain information in the same way that medical regulators have powers. This can make evidencing breaches very challenging.

c. Better routes for customer support

7.2 The government has previously rejected mandatory PII for all tax practitioners. The CIOT see this as a key requirement to provide consumer protection and we supported the introduction of a mandatory requirement for PII by all tax practitioners in our [response](#)¹⁸ to the consultation on [raising standards in the tax advice market: professional indemnity insurance and defining tax advice](#)¹⁹. If unaffiliated tax practitioners are brought within the scope of regulation we still consider that this requirement must be met under whichever model is chosen. There are a number of challenges we see in the PII market for tax practitioners and some work would need to be done to overcome these. Challenges include:

- Difficulty in obtaining cover at all for some types of work or prohibitive pricing of policies.
- The cost of run off cover on retirement.
- Withdrawal of insurers from the market.
- Checks on the standard of PII in place can be difficult to determine from the documentation.

Further details were set out in our response to the consultation but we understand that one of the main reasons for not moving forward with this previously related to concerns from the insurance industry. Consideration would need to be given to how insurance cover could be provided and enforced for firms.

The CIOT would have concerns about any introduction of a compensation scheme for taxpayers, particularly if there is any requirement for this to be funded or underwritten by professional body regulators. Such a system of redress would be likely to result in significantly higher membership fees and there would be potential duplication if the firm were already covered by their own PII policy. We see redress as being the responsibility of the individual firm from the fees earned or from their insurer.

8 Question 3: Is there anything else that the government should consider?

- 8.1 The CIOT consider that simplification of the tax system would support improved professional standards in the tax advice market. We set this out in our [response](#)²⁰ to the [consultation on Raising Standards in tax advice: protecting customers claiming tax repayments](#)²¹. Some of the harms seen within the market which HMRC are seeking to address through registration and regulation would not arise if there were a simpler tax system for taxpayers to comply with
- 8.2 Improvements in HMRC customer service standards, guidance and improved training of staff handling calls and correspondence would also raise standards across the market. Members report that clients or staff phoning HMRC can get different advice on the same issues on different days. In relation to R&D, for example,

¹⁸ <https://www.tax.org.uk/ref774>

¹⁹ <https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market>

²⁰ <https://www.tax.org.uk/ref993>

²¹ <https://www.gov.uk/government/consultations/raising-standards-in-tax-advice-protecting-customers-claiming-tax-repayments/raising-standards-in-tax-advice-protecting-customers-claiming-tax-repayments>

[we have raised concerns](#)²² that HMRC's handling of some R&D tax relief claims is not meeting HMRC's standards and commitments under their Charter.

- 8.3 Visible use of current HMRC powers and high profile cases would also act as a deterrent. HMRC can already charge penalties on tax practitioners who enable defeated tax avoidance, enable offshore tax evasion or non-compliance and those who facilitate avoidance schemes involving non-resident promoters. There are the Promoters of Tax Avoidance (POTAS) regime powers to penalise and sanction promoters of tax avoidance. HMRC can also issue a penalty if an error in a taxpayer's document is attributable to another person. HMRC can also charge penalties on dishonest tax practitioners. More visible use of these powers would act as a deterrent to agents proposing to provide similar advice.
- 8.4 At present anyone can call or market themselves a 'tax adviser'. If registration and further regulation is introduced we consider it is also important that the terms 'Tax Adviser', 'Tax Consultant' and 'Tax Accountant' become protected titles. Clients approaching individuals using these titles would then have some assurance of the standards being applied by individuals using these titles.
- 8.5 There are other measures which could be taken by HMRC in relation to the provision of agent codes to remove bad actors from the market and prevent firms led by individuals excluded by a professional body from retaining their agent code. Our understanding is that at present, agent codes are only issued when an agent confirms they have AML supervision in place. If a professional body excludes a member through disciplinary action then they can immediately apply for AML supervision with HMRC and our understanding is that HMRC cannot turn down that application unless the business owners, officers or managers have been convicted of a Schedule 3 MLR offence. As a result HMRC AML supervision will generally be granted and the member can continue to act as an unaffiliated agent. This is a significant weakness in the market which could be easily addressed by legislation to ensure AML supervision would not be provided where there has been exclusion from a professional body.

The GOV.UK website includes information on [how to choose a tax agent](#)²³ but more could be done to make members of the public aware of this guidance. For example, by referencing it on notices to file tax returns, or in relevant nudge letters where HMRC is suggesting the recipient shows the letter to their agent or seeks advice.

9 Question 4: Do you think the government should mandate the approach to registration for tax practitioners who wish to interact with HMRC?

- yes
- no
- maybe
- don't know

If no, please give reasons for your answer.

We can understand why HMRC would want to introduce a system of registration for tax practitioners. We have several points to make in relation to this:

²² <https://www.tax.org.uk/ciot-update-for-members-on-r-d-compliance-activity-and-hmrc-engagement>

²³ <https://www.gov.uk/guidance/how-to-choose-a-tax-agent>

- a. Registration per se does not address the problems set out in the consultation or provide any solution. Agents appearing on a register may imply to the public that they have met certain standards but a register in and of itself would not support this if there are no associated checks on the standard of the agent being registered. We note there were issues in the past where some unscrupulous advisers presented the fact they had notified an avoidance arrangement under DOTAS as that meant the arrangement was 'approved' by HMRC. If HMRC proceeds with registration and publishes a list of those registered then some firms may suggest that makes their work 'HMRC approved' or something similar.
- a. The registration requirement appears to give HMRC more information on who is operating as an agent and if registration assists in streamlining the process by which agents have access to HMRC services, particularly in relation to digitalisation, then a register does make sense. We know that not all areas of tax require registration with HMRC and there can be different systems of registration in different areas. It makes sense if this is standardised across all areas as HMRC would then have knowledge of how the agent is performing across all areas. We would also encourage HMRC to incorporate in this process further steps to address the issues where multiple agents act for a client.
- b. Having a register is an initial building block from which the regulation options can be developed as it should aim to provide information on the total agent population.
- c. The interaction of an HMRC register and registers of those within the remit of the devolved tax authorities will need to be considered carefully. There have to be the same standards under devolved authorities as there are in relation to an HMRC register to avoid any risk of advisers moving arrangements to an authority with different standards.
- d. We consider that registration should be applied at firm level rather than in relation to individual practitioners employed in a firm. This ties into contractual relationships as engagement letters are between clients and firms, PII is a firm policy, and regardless of which person submits a return or contacts HMRC the work is usually done by a team of people within the firm etc. See our comments in response to question 20 about the safeguards which will need to put in place if there is firm level registration.
- e. One area which will require special consideration is where there is a tax team providing services to the public within a larger non-tax specialist firm. For example, some of the estate agency and surveying firms have a small tax department working on capital allowances claims. None of the directors of the business are tax practitioners but tax advice is an important part of their service offering. Who should register and be responsible for the regulation of the firm would need careful consideration in these cases.
- f. While the CIOT does not advocate the registration of individual practitioners as opposed to firms it should be noted that those working on tax in-house in businesses will have no requirement to register. Whether that is within firms or within commerce and industry, HMRC etc so there will be no register of these individuals providing tax services and whilst those in practice can be supervised by the lead affiliated member in a firm those in industry will not have the equivalent supervision.
- g. Registration does not in isolation address the risk of less scrupulous advisers working in the background and having work submitted in returns prepared by others or by the client themselves.

10 Question 5: What are your views on the intention to apply the requirement to all tax practitioners who interact in any way with HMRC in a professional capacity?

If a register is introduced, it should include **all tax practitioners** not simply those who interact with HMRC for the following reasons:

- i. There are plenty of firms who do not submit returns or interact directly with HMRC but who provide tax advice (eg a law firm providing tax planning advice). If these firms did not appear on the 'registered agent' list – taxpayers may not understand the nuance of the criteria for why a firm is or is not on the list and may assume that they should avoid firms not listed there. This causes confusion and a two-tier system, which would not achieve the overall objective of raising standards/improving competence.
- ii. We would contend that some of the most egregious tax planning has been provided by promoters of tax avoidance schemes who do not interact with HMRC at all. Substandard work is also provided by firms who do not actually deal with the final submissions to HMRC. For example, a number of R&D advisers do not interact with HMRC and recent evidence has shown widespread substandard or even fraudulent claims (alongside genuine and accurate ones).
- iii. If there is not a wide scope for inclusion in the register this could seriously undermine the aim of raising standards. It should be noted that generalist agents are encouraged via PCRT to ensure their clients get specialist advice when needed and some advice is so specialist that the generalist will struggle to do much to check it has a sustainable basis (beyond the sorts of basic checks that the [Hicks UT decision](#)²⁴ said are needed). It is therefore important that specialists are required to be registered (and within scope of regulation) as well as those preparing and submitting tax returns. It should be noted that under a regulatory framework it will continue to be difficult to identify an agent who is a specialist in a particular field and qualified in that field.

11 Question 6: HMRC currently applies several checks at the point of registration including: whether the tax practitioner has outstanding debt and/or, returns with HMRC, and the status of their AML supervision. Are there additional checks that the government should consider for tax practitioners at the point of registration with HMRC?

- 11.1 We note that HMRC plan to introduce a single agent registration service that will allow a tax practitioner to register for all automated services. As part of this, automated checks will be performed at the point of registration and periodically thereafter.

We agree that HMRC should, as a minimum, maintain the checks currently undertaken but should also ensure they include:

- Confirmation of professional body membership details
- Details of disciplinary or other regulatory matters over a period of, say, five years prior to registration
- Confirmation that PII is in place
- Financial crime intelligence checks

²⁴ https://assets.publishing.service.gov.uk/media/5e1de05740f0b6115499f4d5/HMRC_v_John_Hicks.pdf

11.2 The CIOT considers that a very sophisticated automated system or an element of human intervention will be needed to ensure an effective registration process. The CIOT, for example, currently has a significant number of requirements and a number of checks are undertaken in relation to new AML supervision registrations. We consider that at least the same procedures and checks would be required to put a register in place. CIOT AML registration requirements include:

- completion of a detailed registration form which includes the requirement to declare a number of conduct issues
- the requirement for criminality check certificates for all business owners, officers or managers
- checks with other professional bodies
- internet searches and other background checks
- company website checks
- Companies House checks to ensure all business owners, officers and managers (BOOMs) have been declared and that any other potential tax advisory businesses owned or run by the individual have been declared and registered.

11.3 Given the risks of previously identified bad actors working in firms for professional body affiliated members there would also need to be regular checks of the details of all employees and contractors to ensure HMRC were not continuing to act with individuals which a regulator had previously worked to remove from the market.

11.4 We consider there would need to be a regular renewal of registration (say on an annual basis) checks on the information provided and a requirement to self-declare information in the intervening period.

11.5 We are aware that under current regulatory requirements some advisers aim to present themselves as not being tax practitioners to avoid AML supervision registration and reduce regulatory burdens therefore additional checks are essential rather than relying purely on self-reporting processes.

11.6 Any registration system should include a mechanism for HMRC to make clear why a registration has been turned down (where relevant). There should also be the ability to appeal to the Tax Tribunals (rather than by having to seek Judicial Review) against any refusals and a means for firms to discuss problems with their registrations with HMRC. We deal with a number of agents each year who run into problems with the suspension of their agent access and struggle to contact HMRC directly for a quick resolution.

12 **Question 7: Are there specific criteria or checks HMRC should apply if:**

- **an individual, who has previously registered a company with HMRC as a tax practitioner, and attempts to register a new company?**
- **a tax practitioner operating as a sole trader becomes incorporated?**

a. Where there was a previously registered company

12.1 There may be commercial reasons why an individual who has registered one company with HMRC as a tax practitioner then wishes to register a further company. This can include having different streams of business in different companies or a range of companies owned with different individuals depending on their specialism.

We understand that the area of concern here is the ‘phoenixing’ of companies. For example, a company might have provided egregious tax planning or substandard advice and has been forced to close as a result of the number of PII claims against it, reputational issues or other problems. The key players at the company may then set up a new company providing similar or alternative tax services. We consider the checks outlined in our response to question 6 would provide a safeguard as they would enable bad actors to be identified as part of the registration process and refused registration. A feature of registration could require disclosures of connected registrations, which would also help HMRC see linkages and potential other areas of risk when taking action against a registered firm for not meeting the required standards.

From the survey of our members, 39% agreed there were specific criteria or checks HMRC should do in these circumstances including:

- The reasons for a new company
- Tax compliance of the previous company
- History of cases with HMRC from the previous company

It was however acknowledged that it depended on the circumstances given that there could be commercial reasons for the additional company and that there was no reason why a tax practitioner could not have more than one company.

26% of members did not know if additional criteria or checks should apply, 23% answered maybe to this question and 12% answered no to additional criteria or checks.

b. Where a sole trader practitioner incorporated

It is quite common for unincorporated tax advice businesses to grow and later decide to incorporate. We would not want to see considerable additional checks and registration delays where a self-employed individual simply incorporated their firm.

- 12.2 From our member survey, 34% replied ‘no’ to additional checks being required with 21% considering there should be additional checks, 24% answered ‘maybe’ and 21% said they didn’t know.
- 12.3 Several members answered that this was a perfectly normal change but at least applying the same checks as on initial registered and understanding the reasons for the change was also referred to.

In an automated system HMRC could look to build something into the system to give them a ‘flag’ to review/indicate risk when say, three or more firms were registered the same year or over a five year period.

13 Question 8: Which approach do you think would best meet the objectives set out in chapter 4?

- **approach 1: mandatory membership of a recognised professional body**
- **approach 2: joint HMRC-industry enforcement**
- **approach 3: regulation by a government body**

Please give reasons for your answer.

13.1 The [CIOT response](#)²⁵ to the [Call for Evidence on Raising Standards](#)²⁶ in 2020 indicated that the CIOT considered that intervention in the market on the broader issue of poor standards (particularly amongst the unaffiliated) *‘needs to build on what the professional bodies have collaboratively built: principles governing behaviour to protect both the consumer and the public revenue; training, messaging, continuing professional development and ultimately disciplining to enforce high standards; and professional indemnity insurance to help provide redress where necessary. While we should always be open to ideas for improvement, the larger issue is ensuring more consistency of these standards across the whole market and not just those who are currently members of professional bodies.’*

Whilst the CIOT considers that approach 1 would best meet the objectives set out in the consultation this comment is qualified by the following observations:

- i. At present it is unclear what requirements there will be to become an RPB under approach 1, although we make some suggestions below;
- ii. The oversight of the professional bodies and the extent of regulation to be imposed at that level is unclear. The CIOT have concerns that any oversight regulation should be proportionate and should not impose undue burdens. The CIOT note that over the years that OPBAS has been in place the requirements on AML supervisors have increased significantly. This was not a clear risk, or expected, when AML supervision was originally brought in. CIOT’s decision to be a supervisor, following the Money Laundering Regulations 2007, did not originally factor in costs or other impacts on meeting this expansion.
- iii. HMRC expectations in relation to RPB regulation are unclear. Detailed file reviews of technical correspondence and computations would likely result in much more resource-intensive regulation (and result in higher costs and challenges with recruiting staff with the right technical skills) . We understand that practice assurance visits undertaken by other bodies do not include this at present. Minimum requirements, monitoring and enforcement would have a positive effect on standards but there are choices to be made as to the extent of monitoring. The tax system is highly complex, broad and subjective. This is not only relevant for defining the sort of ‘practice assurance’ that could be done under approach 1. This point is also highly relevant to approach 3 – a new third party regulator will have the same challenges with finding staff with sufficient knowledge and experience to do such checks. Clients may demand recourse against a regulator if the regulator reported an error to HMRC, which triggered a costly investigation (with or without a resulting tax appeal to the Tribunals) concluding with HMRC or the Tribunals/Courts determining there was no error.

It may be a more efficient and effective approach to use more indirect means, for example through looking at numbers of claims and payouts, analysing those that have occurred, and the time and other resources that firms have devoted to technical training and engaging with technical forums, rather than by specific review of an inevitably small and not necessarily representative sample of client technical files.

Under approach 1 assurance reviews would need to focus on a check that the firm’s policies and procedures support compliance with PCRT, PRPG (including PII) and the HMRC standards for agents; and checking that the firm has an appropriate CPD/technical knowledge sharing programme relevant

²⁵ <https://www.tax.org.uk/ref661>

²⁶ [Call for evidence: raising standards in the tax advice market - GOV.UK \(www.gov.uk\)](#)

to the service provided etc. This best fits in approach 1 and should go a reasonable way to supporting the raising standards aim of the consultation.

Ultimately HMRC see, and have the power to check, all tax submissions. Any process by which they reduce their monitoring will have implications on their risk management and it would be imperative under approach 1 that they had the powers to share information with the professional bodies about poor agent standards.

- iv. The CIOT has reservations about supporting approach 1 without knowing the outcome of the HM Treasury [consultation on Reforming anti-money laundering and counter-terrorism financing supervision](#)²⁷. The response to that consultation was due to be issued in March 2024 and as yet it has not been released. The regulation of tax practitioners would build on the work already undertaken by professional bodies in relation to AML supervision. At present it appears that the two areas are being looked at in isolation. If the CIOT were to lose AML supervision following the outcome of the consultation, we would strongly question our potential role as future regulators of the tax profession.
- v. The position of the regulation of taxes dealt with by the devolved authorities would also need to be taken into account under approach 1.

The response to our survey of members was that 84.4% indicated that regulation of the tax profession would improve professional standards (ie no one could provide tax services without being registered and required to meet particular standards, and subject to disciplinary action for any failings).

When asked who should regulate the tax market, 56% of members responding to the survey indicated that professional bodies should regulate the profession. Only 2% considered HMRC should be the regulator, 12% were in favour of a new government regulator and 30% considered regulation should be by a mixture of professional bodies, HMRC and a new government body.

14 Question 9: What are your views of the merits and problems of the 3 potential approaches described in this chapter?

All approaches – 1 to 3

One of the main problems in relation to all three approaches relates to the transition of currently unaffiliated agents into the new structure. The CIOT considers that it would be helpful if HMRC were to undertake a survey/market research of the unaffiliated population to determine which body they would seek to join or, for example, whether the changes would result in retirement from the tax market. This would give professional bodies the opportunity to comment further about the implications for them and have a better understanding of what regulation might do to their membership.

It should also be noted that none of the approaches would necessarily solve all of the problems which we outlined in section 6.1.

²⁷ [Reforming anti-money laundering and counter-terrorism financing supervision - GOV.UK \(www.gov.uk\)](#)

14.1 **Approach 1 – Professional Body regulation**

Our survey of CIOT members indicated that our members support regulation of the tax profession by professional bodies, with 56% of respondents indicating a preference for this option.

The main merit of this approach is that the professional bodies and the PCRT bodies in particular have already done a considerable amount of collaborative work to raise standards in the tax advice market. For example, PCRT – the main professional bodies’ code governing the tripartite relationship between advisers, their clients (or in some cases employer), and HMRC, is much more extensive than HMRC’s Standard for Agents. Professional bodies also have requirements in place to protect consumers including the requirements for minimum standards in terms of exam qualification and experience, ongoing CPD requirements, requirements for PII and other rules as set out in CIOT’s PRPG.

We therefore agree with the statement in the consultation that approach 1 would minimise extra costs and burdens to tax practitioner who currently meet expected standards.

Professional bodies have many years of experience in setting standards, monitoring them and enforcing the standards so approach 1 would not therefore need to be set up from scratch.

The AML supervisory professional bodies could move quite swiftly to add wider practice reviews to the current AML supervision. It is likely that firm level supervision would bring the same firms into the scope of regulation as are currently under AML supervision. Our experience suggests that risk assessment of firms for AML will tie in closely with the assessment of other regulatory risks and therefore the regimes would be complementary. It is for this reason that we believe it is key to know the outcome of the consultation on the future of the AML supervisory regime in order to consider professional body regulation of tax practitioners.

The professional body model has another advantage in that ‘policing the perimeter’ amongst their own membership is much easier than for a government body operating under approach 3. CIOT members for example are all required to submit an annual membership return detailing their employment status, whether members in practice have AML supervision and PII in place and answering a number of conduct questions. Having said this a professional body regulator will not have the powers to identify tax practitioners operating in the market who are not members. HMRC are uniquely placed to identify and police the perimeter here, albeit that they may then require agents to register with a professional body.

There are also potential problems with approach 1:

- a. Developing the standards required for regulated professional bodies would take time and work would need to be done to ensure the rules applying to different bodies are consistently high (although we do not consider they need to be identical).
- b. The role of any oversight body has not yet been set out and this could result in considerable additional regulation. This could start to shift regulation towards approach 3 if requirements imposed by this body increased over time (there are lessons to be learned here from the requirements of OPBAS for AML, as set out above).
- c. The expectations in relation to regulation and what would be expected by HMRC in terms of regulation in practice, are also unclear at present.
- d. The costs of this model and where they would fall remain undetermined. The CIOT considers that work would be needed with the other PCRT bodies to ensure resources are shared where sensible and necessary to achieve regulatory aims. It would be important that costs are not duplicated. Similarly a

full analysis of administrative burdens on all involved would be needed to ensure that these remain proportionate in the design of the policy.

- e. If there are considerable cost implications these would potentially drive competent tax practitioners (affiliated or currently unaffiliated) out of the market, as well as those the policy seeks to remove. This would reduce choice in the market, in particular at the lower fees end of the market where tax payers have limited resources to pay professional fees, and individuals may not be able to afford fee increases needed to cover additional costs to the agent. Those on low incomes do not always have straightforward tax affairs and a lack of affordable and accessible tax advice may result in lower levels of compliance or poorer standards for submissions by those needing assistance, fundamentally undermining the overall objectives of the policy. Our Low Incomes Tax Reform Group (LITRG) will be responding specifically on these points through a separate submission.
- f. As stated in the consultation, approach 1 is dependent on the willingness and capacity of professional bodies to both strengthen the regulatory framework to raise standards of current members and extend membership to new members. Approach 1 does carry with it the problem of how to transition unaffiliated tax practitioners. The CIOT does not consider it is in the public interest to lower their exam and membership admission standards as overall this would not improve standards in the market place. The CIOT exams are set at a high academic level and are therefore not easy to pass and would represent a considerable cost in terms of exam fees, study materials and time in order to be achieved. The CIOT does not expect many of the unaffiliated to see CIOT as their natural route to gaining membership on an RPB for regulation purpose - the normal route before taking CIOT exams would be to become qualified as a member of the ATT for example (our sister organisation) or one of the other accountancy bodies. Again, these requirements are not easy and would place potential obstacles to the unaffiliated continuing to act as tax practitioners.
- g. Where the unaffiliated do take professional body exams and come within regulation it seems likely that AML supervision will also move to that professional body. Our perception is that given the data in Annex C of HMRC's consultation suggests a higher degree of non-compliance in those advised by the unaffiliated, some of these previously unaffiliated firms are also likely to be higher risk for AML, particularly in relation to negligent or unwitting failure to comply with the Money Laundering Regulations. This is likely to increase AML risk and supervisory requirements.

Approach 2 – Joint HMRC - industry enforcement

Regulation by HMRC was the option least supported by our members, with only 2% of respondents to our survey indicating that HMRC should be regulators. When asked whether regulation should be undertaken by a mixture of professional bodies/HMRC and government 30% indicated they were in favour of this although this is still much lower than the 56% who supported regulation solely by the professional bodies.

The key merit in HMRC involvement with regulation is that they are uniquely placed to view all tax submissions and see where substandard work or inappropriate tax planning is in place. The unique position of HMRC also results in the potential conflict of interest that HMRC would face as a regulator between trying to ensure high quality service is provided to clients and their desire to behave economically as an administrator of the tax system: this conflict is very evident from some of the issues that have arisen in recent years, eg the slowness in dealing with assignments of tax refunds to high volume repayment agents.

HMRC regulation is likely to be lighter touch than professional body regulation as is the situation we currently see in relation to their AML supervised population. Lighter touch regulation is likely to be a threat to professional standards overall and unlikely to result in a general raising of professional standards.

We note that in Australia there is a separate Tax Practitioners Board which has been set up and whilst we understand that funding comes from the tax authorities it operates independently to ensure there is no conflict of interest.

The CIOT considers that HMRC will have a role in any future regulation in relation to passing information to regulators about the substandard or egregious practices which they see. HMRC may also have a role in regulating the unaffiliated during any legacy period as we move across to a new model of regulation and HMRC are best placed to identify and sanction those outside of a RPB who have not dealt with regulatory requirements and require criminal sanctions.

Approach 3 – government regulation

Only 12% of our member survey respondents indicated that regulation by a new government regulator was their favoured option.

- 14.2 We can see the merit of a government regulator as it would avoid potentially fragmented regulation by a range of professional bodies. The Financial Action Task Force have viewed this as a weakness in the UK's AML supervisory regime and the response to this was the introduction of OPBAS. If HM Treasury continue to consider this a weakness, which results in AML supervision moving away to either fewer professional bodies or one regulator then it is difficult to see why they would consider regulation by a range of professional bodies would be appropriate, or the optimum solution, for wider regulation of the tax profession. We await the consultation response on the future of the AML supervisory regime to see the outcome in this space but consider it is critical for reaching any conclusions on this consultation.

There are a number of potential problems with approach 3:

- At the outset, state regulation would struggle to impose the standards which the professional bodies already have in place – it would lack the structure and developed framework, and would lack valuable understanding of the profession.
- Policing the perimeter work will be more difficult than for the professional bodies or HMRC unless these parties share information with them.
- We expect this would be the most costly option and may undermine professional body membership - practitioners would have respectability merely by being regulated, so might do without professional body membership, even though at the outset the mere fact of being regulated might not mean much in terms of real life prompts to improve quality.
- It is unclear how government regulation would provide CPD material to firms in the same way that professional bodies currently do.
- The government regulation of other sectors has not always been widely recognised as solving the problems in those sectors. The regulation of IFAs has been in place for a number of years but we have not seen clear evidence to suggest a notable increase in competence in the profession.
- Finally, safeguards would need to be in place to ensure there was no possibility of government interference into regulation by an arguably connected body (also a potential problem with HMRC regulation).

The CIOT would like to understand the regulation of regulators which HMRC and the government would propose to introduce as it is a concern that over time, professional body regulation would move more towards approach 3 if extensive oversight of the regulators was put in place.

15 Question 10: Are there any other approaches to raising standards the government should consider?

- 15.1 The consultation does not consider whether regulation is the answer, or sole answer, to improving standards in the tax advice market. It works from the perspective that regulation is the solution and sets out three possible approaches. As stated earlier in our response we would have liked to see more information and figures set out in the problem statement to enable us to understand the problems which need to be addressed and to consider whether there are other approaches which might better address those areas.

The CIOT does support raising standards and believes there is a need for a mechanism which ensures that less scrupulous or inadequately qualified people cannot operate as (or claim to be) tax practitioners. We would welcome the correction of a flaw in the current system which allows those who have been expelled from a professional body for poor behaviour to continue to operate outside of the professional body without any repercussions (or any longer having to maintain the standards of PCRT expected by the professional body).

- 15.2 The CIOT considers that in terms of raising standards amongst existing professional body members information sharing is key. We welcome the small number of Public Interest Disclosures (PIDs) made to the TDB in relation to our members but we consider considerable improvements to standards could be achieved by:

- The disclosure of educational themes which should be addressed in our CPD programmes to improve member compliance and through raising the issues more broadly.
- A lower bar to making PIDs so the TDB who could work with the CIOT to focus on remediation where professional standards are not at the required level.
- The refusal to register members for AML supervision and a refusal to act with them as an agent where they have been removed from professional body membership via disciplinary processes.

The introduction of further regulation will take time and swifter action needs to be able to be taken by HMRC where abuses of the tax system are identified. For example, we are aware from discussions with our LITRG team that it took a long time for them to see any action on the issues they highlighted in relation to High Volume Repayment Agents. HMRC have the power to refuse to interact with a tax practitioner and greater use of these powers could avoid some of the problems in the system, and shut them down much more quickly protecting both taxpayers and tax revenue.

16 Question 11: Do you think membership with a professional body raises and maintains standards of tax practitioners?

- yes
- no
- maybe
- don't know

Please give reasons for your answer.

- 16.1 The CIOT's view is that membership of the PCRT author bodies in particular raises and maintains the standards of tax practitioners, given the high bar PCRT sets and our actions to ensure compliance with it.

The response to our survey of members indicated that 91% considered that membership of a professional body raises and maintains standards of tax practitioners. 2% answered 'no' to this question, 7% answered

‘maybe’ and fewer than 1% chose the ‘don’t know’ option. We accept that our membership has chosen to study our exams and see value in membership so the results might include a degree of bias.

There are several reasons for believing that professional body membership raises and maintains standards:

- Exacting exam and membership requirements. The CIOT exam requirements are set out [here](#)²⁸ and our membership requirements are set out [here](#)²⁹.
- Ongoing membership requirements including those set in relation to professional standards which in the case of CIOT includes requirements to:
 - i. adhere to the standards set out in [Professional Conduct in Relation to Taxation](#)³⁰ including tax planning standards, the need to correct errors etc
 - ii. adhere to standards set out in [Professional Rules and Practice Guidelines](#)³¹ which includes measures referred to below
 - iii. maintain competence by undertaking CPD
 - iv. have PII of an appropriate standard as a member in practice
 - v. be subject to the monitoring of professional standards through the requirement on members to submit an annual membership return for monitoring purposes and subsequent follow up work on non-compliance as well as monitoring compliance with CPD regulations on a sample basis
 - vi. self-notify a number of conduct issues in addition to submitting an annual return
 - vii. adhere to disciplinary scheme requirements
- In relation to CPD, the CIOT offers a programme of events, conferences and webinars to help members keep up to date.
- Our technical officers work with volunteers and members to feed back areas of concern to HMRC and assist in improving tax policy for the benefit of the system as a whole.
- Our AML supervision supports members to meet legislative requirements.
- The TDB receives complaints from the CIOT and ATT, members of the public and HMRC, and takes action against members who do not meet the required CIOT standards.

Unaffiliated tax practitioners are not subject to any of the requirements set out above. They are subject to HMRC’s [Standard for Agents](#)³² but this does not represent the same requirements as professional body membership with CIOT. Whilst HMRC have powers to take action where the Standard for Agents is not adhered to there is little, if any, information in the public domain about action taken here.

17 Question 12: What is your view of the capacity and capability of professional bodies to undertake greater supervision of tax practitioners?

17.1 The answer to this question depends on what HMRC expect from supervision and what is meant by greater supervision. As indicated in other parts of this response file reviews of technical work would require a

²⁸ <https://www.tax.org.uk/students>

²⁹ [Become a Member | Chartered Institute of Taxation](#)

³⁰ <https://www.tax.org.uk/professional-conduct-in-relation-to-taxation-pcrt>

³¹ <https://www.tax.org.uk/professional-rules-and-practice-guidelines>

³² <https://www.gov.uk/government/publications/hmrc-the-standard-for-agents/the-hmrc-standard-for-agents>

considerable investment of additional, skilled resource. A considerable amount of time and resource could be expended with no guaranteed outcome of raising standards. Any approach would require the provision of information and intelligence from HMRC, who are uniquely placed to provide and enable more effective targeted supervision and enforcement action.

The objects in the CIOT's Royal Charter include the following:

- (i) to prevent crime; and
- (ii) to promote the sound administration of the law for the public benefit

by promoting and enforcing standards of professional conduct amongst those engaged in the provision of advice and services in relation to taxation and monitoring and supervising their compliance with money laundering legislation.

The CIOT already undertakes a considerable amount of monitoring of standards but areas which would require consideration are as follows:

- a. The consideration of a practice assurance scheme including reviews of the standards of CIOT firms. If regulation is applied at firm level then we expect to have around 850 CIOT firms in this scheme, in line with the number of firms we supervise for AML. Practice assurance reviews by other bodies concentrate on procedural aspects such as client accounts etc and further checks could be undertaken where a firm would be required to demonstrate, for example, how they meet the requirements of PCRT and HMRC's Standard for Agents.
- b. Additional spot checks could be undertaken on the matters member self-report and our programme of monitoring CPD records could be expanded.

The CIOT is a relatively small professional body and our governance structure enables us to react quickly to changes in regulatory requirements on our members compared with some bodies. Given the lead time before changes in regulation could be brought in, the CIOT would have time to plan resourcing of supervisory changes and to discuss these further with HMRC once requirements become clearer.

In terms of the ability of the CIOT to supervise more members and in particular those currently unaffiliated, as mentioned in our response to question 9 we consider it would be helpful if HMRC surveyed the unaffiliated to determine which bodies they would seek to join. However as indicated in section 14.1 we would not expect to see significant increases in our membership given the qualifications are the highest level in the profession and often achieved through passing the professional body qualifications first.

It should be noted that the CIOT does not make a profit on AML supervision so the costing of increased supervisory activity would need to be considered carefully and the CIOT would also need to consider the extent to which this cost could be met by members. We consider it is important that costs are proportionate, particularly in relation to any oversight of professional bodies. As mentioned previously, cost analyses should include an administrative burden assessment of ongoing compliance with regulation, including where this will include meeting requirements of a regulator oversight body.

18 Question 13: What more could the professional bodies do to uphold and raise standards for their members?

- 18.1 Professional bodies need to continue to keep both their professional standards requirements and disciplinary processes under review to ensure they remain fit for purpose. They also play an important role in educating HMRC on how tax practitioners work.

The professional body AML supervisors in the accountancy sector work closely together to maintain consistent standards of AML supervision. The PCRT bodies already work closely not only on PCRT but on other standards such as PII and CPD requirements. Continuing dialogue is essential to uphold and raise standards.

Professional bodies could do more if there were increased numbers of PIDs from HMRC and increased information sharing by HMRC in relation to problems they come across with individual advisers (including lower level issues which may be simpler for the professional body to address).

Standards would also be raised if those expelled by professional bodies were then refused AML supervision with HMRC and if HMRC refused to deal with them as tax practitioners.

19 Question 14: What additional costs may professional bodies face if strengthening their supervisory processes?

- 19.1 Additional costs are difficult to quantify without knowing what is required in relation to regulation. Broadly speaking however, we would anticipate the requirement for additional staff and IT resources. Recruitment of these staff poses a challenge as experienced tax professionals require additional training to work effectively on supervision. Our recruitment experience over the last two to three years suggests that good candidates can be hard to find especially as we are competing with firms of accountants from the pool of skilled individuals. Our members regularly report the difficulties of recruiting new personnel at present.

A key question is what costs we will need to pass on to our members in relation to regulation plus the additional costs they would have to meet to satisfy raised standards. Ultimately it is likely that additional costs will be passed on to clients which in turn may price agents or taxpayers out of the market.

Arguably costs for professional bodies could be helped if reliance was placed on internal reviews undertaken by firms themselves, but this may not be seen 'from outside' as the best approach.

20 Question 15: What is the best way to ensure current and new professional bodies maintain high standards?

- 20.1 Current and new professional bodies would have to meet minimum standards in order to become Recognised Professional Bodies. We would expect these to be similar to those set out in the [Australian Tax Services Regulations 2022](https://www.legislation.gov.au/F2022L00238/latest/text)³³ in Appendix Three of this response.
- 20.2 Whilst the CIOT does not support HMRC as a regulator of the tax advice market, HMRC have an important role to play in setting out the initial standards set for RPBs. Once the system is established the CIOT supports the creation of an independent oversight Board with representatives from, for example, the RPB regulators, their disciplinary boards and HMRC. This Board could oversee applications of new professional bodies to register as

³³ <https://www.legislation.gov.au/F2022L00238/latest/text>

RPBs or actions to be taken against bodies whose members fail to meet the required standards. We welcome further consultation on this point.

- 20.3 The CIOT considers that the costs of oversight of the recognised professional bodies should be proportionate to the problems in the market place. Given that the consultation document acknowledges that *‘most tax practitioners who provide tax advice and services are competent and adhere to professional standards’* we consider that extensive oversight would not be proportionate.

While we support a facility for ensuring consistency and collaboration from a body suitability qualified to understand the challenges faced by the tax advice market and regulation of it, we would be concerned by any imposition of unnecessary, additional or duplicated requirements and initiatives, which can result in escalating regulatory actions and costs. Requirements of any oversight body must be clear, constructive and transparent from the outset and the body should have a clearly defined remit. We urge that any oversight remains proportionate to the resulting impact on agent standards and the tax gap, and does not draw the focus away from applying resources to addressing standards failings. We would encourage an annual assessment of costs and burdens imposed on RPBs by the regulator oversight body to ensure that these remain proportionate and do not increase more than necessary.

We would welcome further consultation on the role and remit of any proposed regulator oversight body and clarity of how it fits within the overall approach taken to regulation.

21 Question 16: What role could the professional bodies play in supporting the clients of their members?

- 21.1 Professional bodies already play a significant role in supporting clients through the professional standards in place, which safeguard both members and clients and through the CPD offerings which enable members to keep up to date. Professional bodies also provide complaints routes via their disciplinary process.

We asked our members this as part of our member survey in relation to the consultation. We need to undertake further analysis of the responses, which will also inform our own professional standards strategy, but following further analysis we will be happy to share any substantive feedback with HMRC.

As mentioned previously, it would be helpful if terms such as ‘tax adviser’, ‘tax consultant’ and ‘accountant’ were protected titles, which could only be used by members of RPBs. Different professional bodies currently have different designations (for example, CIOT members could be CTA, ATII, CTA Fellow) and having a standard name, which all tax practitioners could use, would be helpful to the public.

22 Question 17: Should government consider strengthening customer support options beyond the current complaints processes offered by professional bodies?

- yes
- no
- maybe
- don’t know

Please give reasons for your answer.

- 22.1 Our member survey showed a mixed response to this question. 27% of respondents answered 'no', 23% answered 'yes', 25% answered 'maybe' and 24% answered that they did not know.

This mixed response may be because respondents were unclear what might be considered here. There were several comments suggesting that there should be a complaints process for actions by unaffiliated agents.

- 22.2 The CIOT has reservations about any system of customer compensation being introduced particularly if this is to be funded by professional bodies. We consider that redress funds should come via insurance and the fees members receive, not from the PBs. If all firms were required to have PII in place (not just professional body members) this would strengthen customer support.

23 Question 18: What role should HMRC/the government play under approach 1: mandatory membership of a recognised professional body?

- 23.1 HMRC will have a key role in setting the standards of RPBs. HMRC also need to undertake more work in consultation with the professional bodies to understand what can be achieved through regulation and what will be expected of the professional body regulators. Inevitably regulation is not going to address all of the problems with the current market and HMRC will need to identify the gaps and consider supplementary ways to tackle them. In addition, some of the current egregious behaviours cannot wait for the implementation of regulation so HMRC will need to seek to address these as a matter of urgency, and not wait in the hope that regulation will solve the problem later.

The CIOT also considers that HMRC are uniquely placed to share information and intelligence so professional bodies can target regulatory action to areas of greatest risk. For example:

- HMRC are aware of the themes on the sort of repeated mistakes for each tax. That could help the professional bodies decide what courses/training/info to provide to members and raise standards
- They also have access to information to show which agents are producing substandard work generally or are providing egregious tax planning schemes.

- 23.2 The CIOT has been pleased to be taking a role in training HMRC staff in how firms operate and we see this as being a continuing process as regulation is developed.

24 Question 19: Do you agree that the requirement should only apply to those who interact with HMRC?

- yes
- no
- maybe
- don't know

Please give reasons for your answer.

- 24.1 No, we strongly disagree that the requirement should only apply to those who interact with HMRC.
- 24.2 When surveying our members they provided a very clear response on this question. 90% of respondents indicated that if regulation is brought in, all agents undertaking tax work should be included.

24.3 We can see why it would be simpler for HMRC to start by focusing on agents who interact with them but arguably some of the most egregious and substandard work is undertaken by those who have no direct interaction with HMRC. For example, whilst there are many good R&D tax practitioners in the market, a number of those providing poor service seek to remain less visible by suggesting their firm should not be included on the additional information form and by leaving their clients or their clients' main accountants to deal with filings, while they sit in the background.

We recognise HMRC proposed this narrow scope as a potential first step to wider regulation but consider that the restriction is likely to undermine the policy from the start by not reaching some of the most significant concerns driving it.

25 Question 20: Do you agree that the requirement should only apply to controlling or principals of firms?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

25.1 Yes, we consider that applying the requirement to controlling individuals or principals of firms makes sense although there will always be a place for professional standards requirements to be placed on individual professional body members working within firms.

The response to our survey of members indicated that 67% of respondents considered that regulation should apply at firm level.

From a commercial perspective the arrangements to provide tax advice are dealt with at firm level. For example, engagement letters are between clients and firms, PII is put in place by a firm, and regardless of which person submits a return or contacts HMRC the work is often done by a team of people within the firm who are answerable to their employer.

The operation of the CIOT AML supervision scheme demonstrates how registration and regulation at firm level can work. We require a nominated person to register with the CIOT. This person has to be a member and must be either a director listed with Companies House, self-employed sole trader, partner in a partnership or member of an LLP. The individual agrees to be accountable for the firm's compliance including compliance by any other principals in the firm who are not members. The CIOT supervises approximately 850 firms in this way but this covers a much higher number of Beneficial Owners, Officers and Managers (BOOMs) and staff members. The TDB disciplines individuals rather than firms and therefore the nominated individual is referred for disciplinary action where there are AML failings.

Firm level registration makes sense as not all staff should be expected to become members of a professional body. There are some staff who simply may not be able to pass the exams yet are performing competently in their roles, and there are many roles within a firm which might be best fulfilled by those with other qualifications rather than those specifically relating to tax. For example, firms might employ surveyors to assist with capital allowances work or ex-HMRC staff with specialist skills in an area.

Whilst we can see how firm level registration would work well there are a number of points needing further consideration:

- a. How would this work where firms provide services in relation to devolved taxes – would a separate registration be required with each authority?
- b. Rather than the registered individual at the firm being responsible for all work, would arrangements be like the audit model with the nominated individual or individuals within a firm ‘signing off’ the work? It may not be feasible for professional body affiliated individuals in a firm to check the work of all unaffiliated staff although we can see that a requirement for a firm to have procedures in place so that all work is appropriately supervised may need to be introduced by the regulator.
- c. Firms can be very complicated and the reference to controlling individuals or controlling minds suggests a hierarchy within firms where people at the top are involved in all aspects of client work. In big firms the most senior staff have a lot of influence but they do not get involved a lot in the day to day work presented to the client. In these circumstances it is the controlling mind in relation to the client’s affairs not just the business overall where regulation needs to be in place. Just having the leaders of firms registered maybe not be enough and further requirements might need to be in place for those who look at and control the work.
- d. The controlling minds of a firm may not be affiliated individuals but may have a number of affiliated staff so they do not need to be. Whilst it is possible the most senior affiliated person could be the individual accountable for the firm there are question marks as to whether they would have the authority to perform this role.
- e. There is a concern about when deregistration might be threatened or actioned by HMRC. This could be used as a lever where HMRC disagree with a firm over the tax treatment adopted as part of advice provided. There would also need to be safeguards to ensure that firms are not deregistered as a result of a misdemeanour by one staff member out of many thousands or due to a disagreement over a technical/legislative interpretation. Deregistration should be considered as an action of last resort and a system would be needed to assist firms to move to a compliant status. There would also need to be an appeals process where deregistration was threatened.
- f. As referred to in our response to question 6, registration processes would need to be detailed and robust. For example, if regulation is being undertaken by RPBs then part of that registration process would need to check someone is a member of that body.
- g. Firm level registration may not work well where there are specialist tax teams in a much larger organisation providing other services. Sometimes there can be a small tax team in, for example, a large surveying or estate agency firm. None of the Directors or controlling minds of the firm are tax specialists and none of them will be members of tax related professional bodies. Who should register in these circumstances as the tax team may not be able to control the firm’s standards on quality of work owing to lack of seniority but the controlling minds of the firms are unlikely to have the correct affiliations to enable them to register?

26

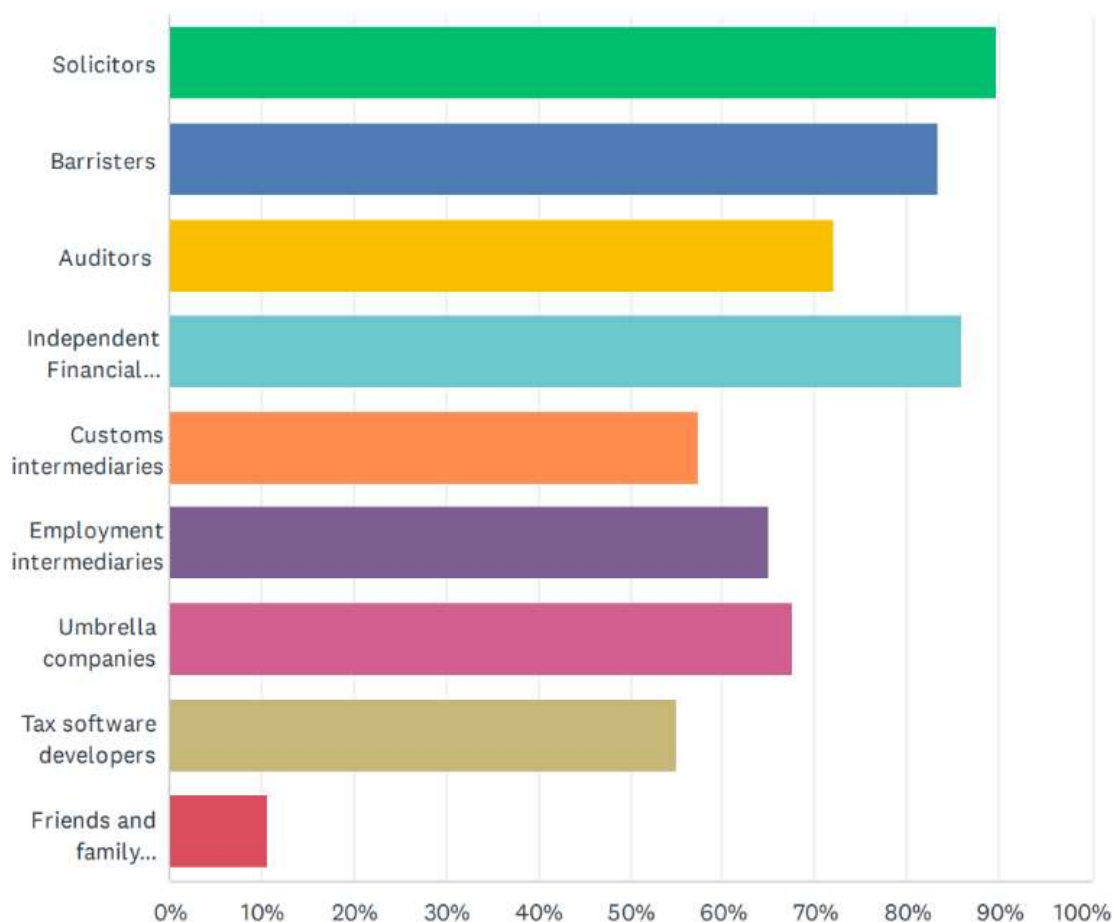
Question 21: Are there any other regulated professions that should be excluded from this requirement?

Question 22: How can the government ensure members of regulated professions have high standards in relation to their work providing tax advice or services?

Question 23: What are your views of the proposed exclusions?

Members of Regulated Professions

- 26.1 The CIOT does not agree that there should be exclusions from registration and regulation in relation to the other professionals referred to in the consultation document. This would be a significant weakness in the proposed framework. We consider that there should be parity between tax practitioners acting in different industries. If a different course is taken, HMRC should back the decision with evidence that these groups are currently providing tax advice at a higher standard, and that any existing regulation of these groups is effectively providing the same level of protections and ensuring the desired high standards of the policy objectives of this consultation.
- 26.2 When we surveyed our members we asked respondents to indicate whether any of the following groups, who were providing tax services, should be included in the requirement for regulation and the results were as illustrated:



- 26.3 Whilst we note that HMRC want to avoid increasing burdens on professionals that are already regulated we would argue that, for example, legal professionals are not specifically regulated in relation to taxation work.

We consider that the qualifications undertaken have to be tax focused and whilst legal professionals are trained in the interpretation of legal matters which is highly relevant to tax work we do not consider their exam studies or ongoing regulation have sufficient focus on tax to exempt them from registration and regulation. Similarly we do not consider that Independent Financial Advisers (IFAs) are qualified to submit returns. Other professionals may be well regulated in their specialist area but not in relation to taxation services.

Lawyers, barristers and other professionals potentially being considered for exclusion do not have to meet basic PCRT standards unless they are also members of a PCRT body. This is a key reason why they must not be excluded from regulation. At present these professionals are under no obligation meet standards, such as the requirement to correct

errors. Importantly they are also not obliged to meet the tax planning standards set out in PCRT. Kings' Counsel (KCs) provide generic opinions on which tax planning schemes are often based but unless they are part of a PCRT body they do not have to meet the tax planning requirement to provide client specific advice (see [PCRT helpsheet B](#)³⁴ paragraph 5).

Other work on professional standards internationally also does not apply to those in sectors outside of the accountancy field, for example the IESBA revisions to [the code addressing tax planning and related services](#)³⁵. Whilst CIOT is not an IFAC body subject to the IESBA code, our collaborative work with other IFAC bodies in relation to PCRT means that our members are also required to meet the high standards imposed internationally.

The exemption of some professionals (such as lawyers and IFAs) would create confusion. If customer protection is one of the aims of registration and regulation, then the exclusions do not make sense. From a consumer perspective the exclusions could give false assurances that those in other professions were trained to undertake tax work when in fact they are not suitably trained or regulated to do so. It should be remembered that there is already an extensive exemption as inhouse tax professionals working in Commerce and Industry and HMRC, who are not currently within the scope of regulation.

If other professions are to be exempt from registration and regulation, then it would be crucial for HMRC to work with the relevant regulators to ensure that the tax element of the professional training provided competence to deal with tax work and that PCRT standards were adopted as well as other requirements, which the PCRT bodies already have in place.

We understand that the list of exclusions being considered aims to avoid duplication of regulation. It should be noted that under current arrangements additional checks as a result of regulation could be added to the work we already do as AML supervisors. If AML supervision is removed from CIOT following the outcome of the consultation on the future of the AML supervisory regime then our members would be subject to dual regulation (assuming approach 1 was adopted and the CIOT became an RPB). This would not be efficient or helpful for our regulated population.

Customs Intermediaries

It is not clear to the CIOT that customs intermediaries should be excluded from regulation where they are providing tax services. We would refer to our response on the consultation relating to a [voluntary standard for customs agents](#)³⁶.

Software providers

The CIOT has previously indicated that the issue of including tax software providers within the scope of regulation requires careful consideration. While we note the comments set out in the consultation document, software providers do need to ensure that there are no 'glitches' in their software which for example then mean figures end up in the wrong boxes. We think this is an area that may need to be kept under review as the role of software in the tax advice market develops, and potential challenges with accuracy and the reliance placed by taxpayers on the software as giving 'tax advice' may emerge.

Umbrella Companies

³⁴ <https://www.tax.org.uk/professional-conduct-in-relation-to-taxation-pcrt>

³⁵ [Final Pronouncement - Revisions to the Code Addressing Tax Planning and Related Services | Ethics Board](#)

³⁶ <https://www.tax.org.uk/ref1150>

We note that HMRC are seeking to address concerns in relation to these companies using alternative methods. We do consider there are risks that some sort of ‘umbrella’ arrangement could be used by tax practitioners with them arguing that they are providing services in-house and are not therefore subject to regulation.

Friends and Family

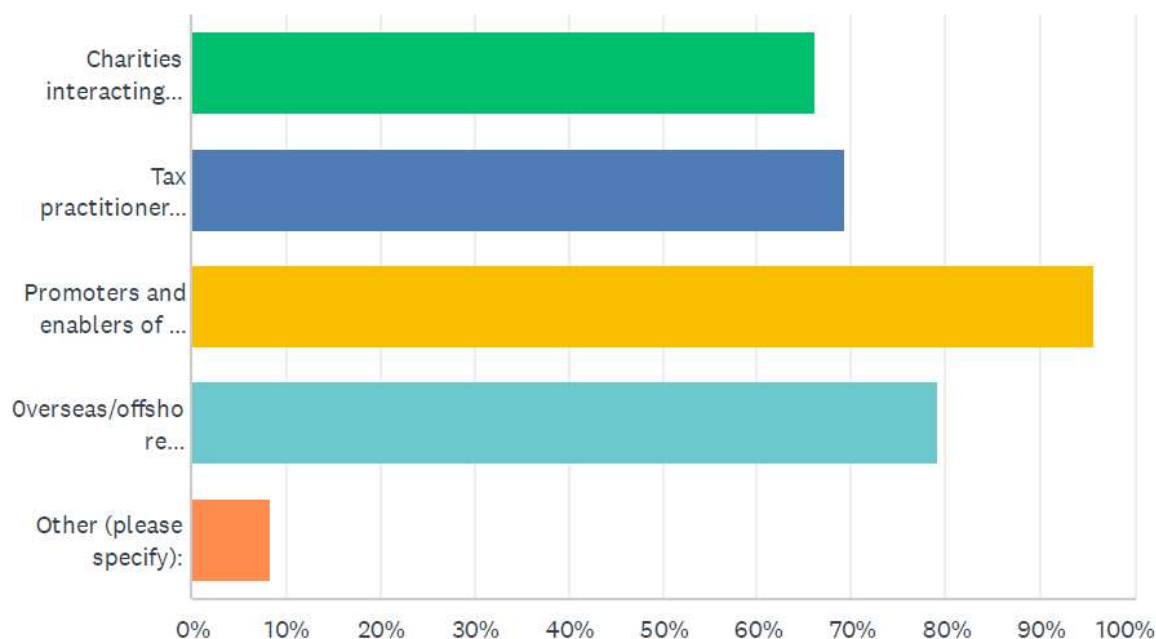
We cannot see the need for people supporting their friends and family (without remuneration) to register as they are not acting as agents ‘in a professional capacity’ (though they may be members of professional bodies and operate professionally in a broader sense). Friends and family often have 64-8s in place with HMRC to enable them to assist friends and relatives, who are elderly or otherwise needing support (often under a power of attorney), rather than providing them with advice per se. Some will be appointed Deputies by the Court of Protection and thus stand in the shoes of the taxpayer when interacting with HMRC, banks etc. It therefore feels appropriate that friends and family should be excluded. It would be simply too onerous to include them and expect them to get a tax qualification especially given they are not in receipt of payment.

27 Question 24: Do you think the following tax practitioners should be in scope of the requirement to become a member of a professional body member? Select all practitioner types you think should be in scope.

- **charities interacting with HMRC on behalf of taxpayers**
- **tax practitioners providing Pro-bono services**
- **promoters and enablers of tax avoidance**
- **overseas/offshore practitioners**
- **other (please specify)**

Please give reasons for your answer.

27.1 The CIOT asked members this question as part of our survey and the graph below illustrates their response:



You will note that there was strong support for all of these categories of advisers to be within the scope of regulation although some respondents indicated that there should perhaps be different requirements for charities and pro bono advisers than for tax practitioners in general. The CIOT considers that from a consumer protection position that even if tax advice is provided by a charity or on a pro bono basis, the consumer should be able to rely on the advice and trust that it comes from a place of competence. This is reflected in the fact that where members are acting in a pro bono basis, we amended our CPD and PII rules (with effect from 1 January 2023) to require individuals holding themselves out as members to make those they are helping aware if they are not maintaining CPD and PII.

28 Question 25: What could be the consequences of introducing a legal definition of a provider of tax advice and services?

- 28.1 The consequence of introducing a definition is that all those falling within that definition would then be the focus for registration with HMRC and regulation under whichever option is chosen. We covered the definition of tax advice extensively in [our response](#)³⁷ to the consultation on [Raising standards in the tax advice market: professional indemnity insurance and defining tax advice - summary of responses](#).³⁸
- 28.2 Our comments at that time and comments on a proposed definition are reproduced in Appendix Two. The wording in the definition opens with deliberately broad terminology and focuses on the purpose of the advice (seen from the perspective of the recipient) before providing that a combination of outcomes may be treated as a single outcome (thereby potentially being a main purpose) and identifying what activities which might otherwise fall within the broad opening definition should be excluded (these would be defined deliberately narrowly).

At this stage, the focus needs to be on the purpose of the definition (what's in and what's out) rather than on its format. The best route is to define tax advice through a 'default' type of definition - that all activities having anything to do with tax are caught, unless they fall within a limited range of exceptions. That approach would fit with the aim of consumer protection.

29 Question 26: What gaps or issues can you see arising because of this definition?

- 29.1 Our experience suggests that there will be advisers who seek to argue they are not providing tax advice and we have seen this in relation to AML supervision requirements. For this reason, any definition must be broad and must be consistently enforced under regulation.

30 Question 27: How could unaffiliated tax practitioners be transitioned into professional body membership?

- 30.1 We consider that it would be helpful if HMRC were to survey unaffiliated tax practitioners to obtain more information, which would assist in decision making here. It would be helpful to know which professional body they would seek to join if approach 1 to regulation is adopted, or whether they would seek to retire, exit the market in some other way, or perhaps seek to move to a firm (if regulation is at firm level), at that stage.

³⁷ <https://www.tax.org.uk/ref774>

³⁸ <https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market>

We note that when greater regulation of IFAs was introduced, a number took the steps required to continue but many retired and withdrew from the market. There would need to be more information to assess the potential impact of this.

We would expect that some unaffiliated agents would seek to become employees of affiliated members but some sole practitioners may not wish to do that and those unable or unwilling to undertake professional body exams and training are likely to leave the market. Some assessment of the impact this will have on the market is needed – it is counter to the policy objective if the overall quality of tax returns decreases or there is a loss of revenue through an increase in errors resulting from a number of taxpayers being unable to obtain tax advice, for example, if it makes tax advice unaffordable.

- 30.2 The CIOT has high standards in relation to exam and membership requirements. Under approach 1 we consider that tax practitioners would need to demonstrate that they meet them rather than us ‘watering down’ our requirements or providing an alternative route to membership. We would therefore expect the unaffiliated who wish to become a member of CIOT to take our exams and meet our full membership requirements. However, as indicated earlier in this document we think it more likely that the unaffiliated will apply to take ATT exams (or other routes) in the first instance.
- 30.3 The cost of the exams, study materials and time needed to study will be significant for the unaffiliated and we consider that support for this would need to be explored to encourage the unaffiliated to obtain professional body membership.

31 Question 28: Should a legacy scheme be adopted?

- **yes**
- **no**
- **maybe**
- **don’t know**

Please give reasons for your answer.

- 31.1 Yes, a legacy scheme is needed during the transitional period to move all practitioners across to any new regulator or to professional bodies under approach 1.
- 31.2 It will take time for the market to adjust and for unaffiliated practitioners to take exams. It seems a reasonable approach to us that from a certain date all new entrants to the market are subject to registration and regulation from day one but existing unaffiliated agents are given time to meet the new requirements.
- 31.3 Given some of the problems in the market we would expect HMRC to take early action to address those problems without waiting for the new system of regulation to be introduced. It would also seem reasonable to pilot regulation by starting with one group of tax practitioners and gradually expanding once initial problems had been identified and addressed.

32 Question 29: Do you agree a transition period of 3 years would give sufficient time for the market to adapt to the introduction of mandatory professional body members?

- yes
- no
- maybe
- don't know

Please give reasons for your answer.

- 32.1 The CIOT considers that at least three years will be required to give sufficient time for the market to adapt to the introduction of mandatory RPB membership. The timeframe will, to a considerable extent depend on the expectations of regulation and additional requirements beyond our current standards work, and any additional, trained resource needed to fulfil the role. Transitional provision will also be a factor and what is expected by Day 1.
- 32.2 Our member survey indicated that over 60% of respondents considered that three years would give sufficient time. 14% answered 'no' and 18% answered 'maybe'. There were some responses which indicated that a longer period may be required.

The CIOT does have concerns as to the overall timeframe for action to raise standards. A shorter implementation timetable may need to be adopted to target specific areas of poor practice such as poor standards in the R&D tax advice market.

33 Question 30: What future developments would need to be accounted for in implementing mandatory professional body membership?

- 33.1 The CIOT considers that there are several future developments which would need to be accounted for in implementing mandatory professional body membership:
- i. Increasing use of more sophisticated tax software means that in a number of cases the software is becoming a tax practitioner of choice rather than a relationship with a firm or individual. The professional standards of the software will need to be considered carefully and ensuring tax trained individuals are overseeing technical content and associated issues will continue to be important.
 - ii. Connected to software we have yet to see the full impact of artificial intelligence (AI) in the tax advice market and this will also need to be considered.
 - iii. The system will need to be able to accommodate the registration and regulation of advisers in relation to new levies and taxes and increased devolution of taxes.
 - iv. Once a new regime is in place attention may turn to some practical questions too, which may include:
 - If HMRC is seeing a pattern of mistakes of a particular type, does practitioners' CPD and /or the exam syllabus need to be changed to prevent such mistakes occurring in future?

- What more should practitioners and firms do to improve clients' engagement with tax compliance processes and the quality of the records that they keep? (again with the aim of reducing errors in returns and disclosures)
- What more should practitioners, firms and professional bodies do to help the public and HMRC better understand an agent's compliance role to avoid misunderstandings ie it is not a 100% check back to evidence or an audit and clients have to take responsibility to check submissions and ask questions if something appears wrong.
- Further consideration of possible obligations on firms to report common errors in their or other firms' work to their PB to inform CPD, recognising that this may be subject to a tension with the need to avoid breaching client confidentiality.
- What more can HMRC and professional bodies do to help taxpayers identify the most appropriate adviser to help them with the tax issue they face? Different advisers have different qualifications and specialisms. Some qualifications like CTA have different exam routes. The content of a person's studies and work probably influence the area of tax in which they are competent to practice so should all professional bodies provide more information on each members' specialism(s) or the levels of competency achieved through a particular body's exams?

34 Acknowledgement of submission

- 34.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

29 May 2024

Appendix One – The role of a tax practitioner

The charts below (the virtuous circle sets out the circle of an agent's life

In general they have to:

1. Win the work
2. Then take on the client if not already a client
3. Agree the terms for the work
4. Get the work done
5. Then get paid

Sole traders or small agent practices will need to do all of this so there is no guarantee of work, no guarantee of getting paid or earning an income.

If you work in a larger firm, you will generally get paid a salary, but you will have targets. Depending on your grade within the firm:

- There will be a certain number of chargeable or billable hours per week.
- They will typically have timesheets – recording every six minutes of the time spent in a day and what they've been working on.
- There is a need to win new work, or do marketing.
- Alongside this it is necessary to undertake CPD and other practice management work (PII renewal forms, engagement letter updates etc).

The ideal is that you have lots of these circles turning at different stages, so you have constant work and income.

New work does not just turn up and an agent needs to work hard to gain the work through competitive tenders, marketing and business development, taking over another practice or referrals.

It takes time and effort to win new work, that agents are not paid for.

There are already a considerable number of regulatory and other requirements to work through when taking on a client such as AML checks, professional clearance checks with the previous adviser etc. Engagement letters also have to be agreed setting out the scope of the work, fees, timescales etc. Again, meeting these regulatory requirements does not result in any fees.

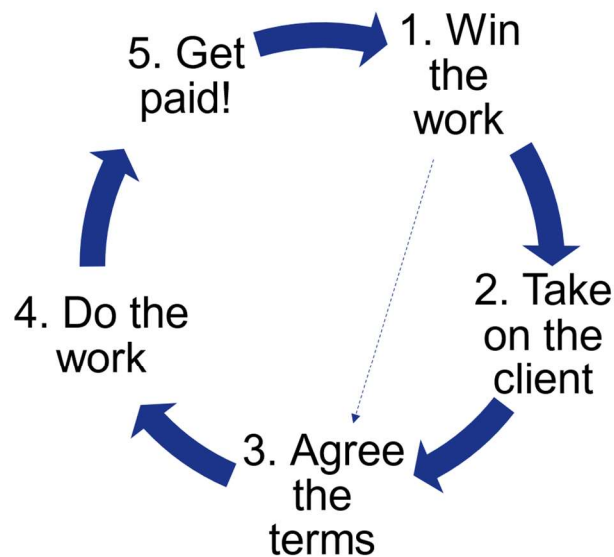
Having gone through all of the above an agent can finally do the work which they are due to be paid for (the second virtuous circle shown below) broadly:

1. Obtain the necessary information from client – this can take time, it might not be readily available, people may be on leave / have other priorities / responsibilities – consider this when requesting information. Note agents are very reliant on the information provided by clients.
2. Do some work – the agent will normally do the work as quickly as possible whilst also meeting the Standards required through PCRT and PRPG – typically because they want to get paid. So, if there are delays, the agent will usually be trying to move things forward.

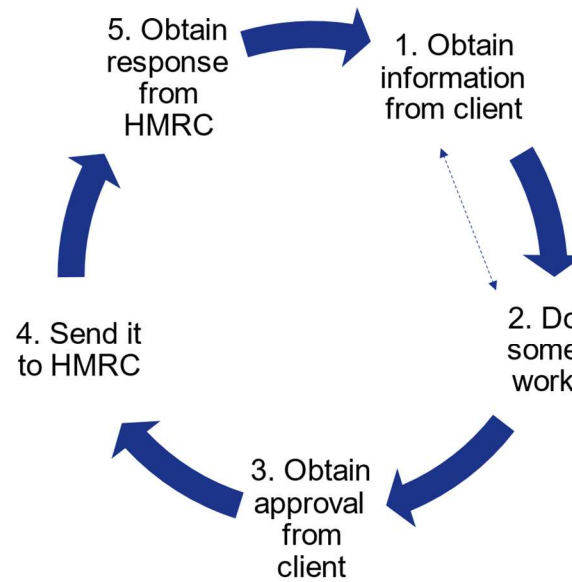
3. There could be a bit of to-ing and fro-ing between the agent and the client, to make sure that the agent has everything they need to do the work.
4. Obtain approval from client – this is important – the agent will generally need the client’s approval to send things to HMRC – whether returns, claims, correspondence, information etc. Remember, agents act on behalf of their clients, and so clients usually need to approve what is sent to HMRC.
5. Send it to HMRC...
6. Obtain response from HMRC – ideally, a response that has understood and deals with the particular issue. If it doesn’t, the circle continues and no-one is any further forward.

It’s in everyone’s interest to bring this circle to a close as quickly and efficiently as possible.

The virtuous circle



4. Do the work (at last!) Another virtuous circle



Appendix Two

Comments on Definitions of Tax advice

Q21. We intend to model the definition of who the requirement will apply to on one of the definitions currently extant in legislation. What a) benefits and b) issues are there with using the Dishonest Tax Agent definition or the Money Laundering Regulations definition? Do you have a preference or alternative and why?

22.1 The two definitions offered for consideration in the ConDoc (Dishonest Tax Agent and Money Laundering Regulations) are shown in Appendix B.

22.2 Both are framed as definitions of the provider rather than the service being provided although each offers some limited reference to the type of service concerned.

22.3 Whilst there can be an attraction in using an existing definition where an appropriate one exists, neither of those offered seems wholly appropriate.

22.4 If either definition required an element of modification in order to be applied in the context of mandatory PII, that could reduce the benefit (because of the loss of symmetry).

22.5 Borrowing any definition would introduce the risk of the definition for PII purposes being changed by events in the external regime from which it had been borrowed – for example a legislative change or a judicial decision relating to that other regime.

22.6 The **Dishonest Tax Agent** definition:

- a. Relates only to ‘an individual’
- b. Recognises that the activities must be ‘in the course of business’
- c. Majors on assisting clients with their tax affairs (without defining either tax affairs or tax position – but the latter could use something like FA 2008 Sch 36 para 64)
- d. Extends to where the appointment is indirect
- e. Defines assistance as including both:
 - i. Advising a client (without indicating what that involves) and
 - ii. Acting as agent (potentially introducing some confusion because of the meaning of ‘agent’ within the context of tax) but without indicating what might also come within the definition of assisting.
- f. Casually indicates that assistance includes assistance with any document without anything to suggest that this does not extend to someone who simply provides a copy of a pre-existing document or provides a copying or courier service
- g. Deals with the incidental provision of relevant assistance with a very expansive inclusion of nontax assistance – consider for example the provision by an architect or quantity surveyor of a factual analysis of building costs which they knew would be used in connection with a claim for relevant expenditure but which was made by reference to that specialist’s own discipline and without consideration of the tax implications.

22.7 Section 6 above identifies sufficient issues to suggest that modelling the definition on the Dishonest Tax Agent definition would require so much amendment that even its basic skeleton would be lost in the process.

22.8 The **Money Laundering Regulations** definition:

- a. Relates only to a firm or sole practitioner
- b. Recognise that the activities must be ‘by way of business’
- c. Identifies the type of service concerned as involving the provision of ‘material aid, or assistance or advice, in connection with the tax affairs of other persons’. This in turn:
 - i. Appears to be wide enough to include the provision of finance related to something which had tax consequences
 - ii. Uses the concept of assistance (without making any attempt to define it)
 - iii. Makes no attempt to define either ‘advice’ or ‘tax affairs’
- d. Extends to where the appointment is indirect
- e. Is partially interpreted in AMLGAS (see for example paras 1.2.3 to 1.2.5).

22.9 Unless the only adaptation made to the Money Laundering Regulations definition was going to be something as brief as ‘Tax advice means any service provided by a tax adviser in the course of their business’, any amendment of it would result in the original definition providing only a small part of the resulting definition. If it was as brief as that, it would provide no assistance in identifying what activities were and what were not within the definition for PII purposes.

22.10 In short, neither of the two existing definitions provides a form of words which could be used as a yardstick for determining whether an activity constitutes ‘tax advice’ without very substantial amendment. For that reason, it makes much better sense to create a bespoke definition which could take proper account of the context in which it is to be applied and was not vulnerable to being changed by external factors.

22.11 We suggest a possible alternative approach to the definition in Appendix C.

22.12 The wording provides particular examples of the manner in which the advice may be given and how the recipient of the advice may apply the advice they have received.

22.13 The wording also opens with deliberately broad terminology and focuses on the purpose of the advice (seen from the perspective of the recipient) before providing that a combination of outcomes may be treated as a single outcome (thereby potentially being a main purpose) and identifying what activities which might otherwise fall within the broad opening definition should be excluded (these would be defined deliberately narrowly).

22.14 At this stage, the focus needs to be on the purpose of the definition (what’s in and what’s out) rather than on its format. The best route is to define tax advice through a ‘default’ type of definition - that all activities having anything to do with tax are caught, unless they fall within a limited range of exceptions. That approach would fit with the aim of consumer protection.

Suggested approach to the definition of tax advice

1. Subject to sections 3 to 5, tax advice includes the provision for profit or otherwise for consideration¹ by whatever means and in whatever form² to any person directly or indirectly of any service, advice, recommendation, opinion, instruction³, prompt or encouragement⁴ the purpose or one of the purposes (including an incidental purpose) of which is to enable, facilitate, ensure or encourage that or any other person to:

- a. Understand or comply with their tax obligations including completing a tax return or doing so in a certain way⁵;
- b. Understand the tax consequences of business or personal events or circumstances or respond to these events or circumstances or otherwise arrange their business or personal affairs in order to obtain or otherwise in the expectation of a particular tax consequence or consequences;

- c. Obtain any tax repayment, allowance, exemption, relief, benefit or advantage;
- d. Deal with any enquiries raised by any revenue authority (including any devolved administration);
- e. Obtain comfort or greater certainty as to a tax treatment;
- f. Act in a way that produces for the person making the provision a tax advantage or a benefit commercially reflective of a tax advantage for any person.⁶

2. Any combination of the above outcomes whether or not also involving other outcomes may be treated as being for a single purpose.

3. For the purposes of section 1, tax advice provided on a pro bono basis (other than to a small number of family and friends) is to be treated as if the advice was provided for profit or other consideration. It is considered that this also includes anyone providing services and in receipt of honorarium (for example in relation to a position as a charity trustee).

4. For the purposes of section 1, and for the avoidance of doubt the definition includes:

- a. Specialist advice on a narrow field of tax (such as R&D or capital allowances)
- b. Tax avoidance services of any nature
- c. The provision of tax software

5. Also for the avoidance of doubt the definition should not be restricted to those who are registered as agents with HMRC.

6. Notwithstanding the above, the following are excluded from the definition:[this section is where any exclusions determined appropriate could be set out].

- a. Exclusion 17
- b. Exclusion 2, etc

Notes:

1 This would exclude pro bono work so the definition would need to be extended for any pro bono work desired to be included hence the inclusion of section 3.

2 This should include digital or electronic means in the part of the definition before the lettered indents, but has also been covered in point 4 to ensure the position is clear.

3 This is intended to include tax avoidance boutiques - who set up remuneration or other structures that people are put into - in the early part of the definition. However, for the avoidance of doubt this is also included in point

4 This is to ensure that software providers who include prompts or preferred responses in their software do not fall out of the early part of the definition.

5 Inclusion of the last few (italicised) words considering again software providers. However, for the avoidance of doubt this is also included in point 4.

6 Necessary to catch the tax avoidance boutiques. We suggest using the ss993-4 ITA 2007 definition of 'connected person' except that (with tax boutiques in mind) 'company' for the purposes of s993 (5-7) should include an LLP.'

7 Software providers or tax avoidance boutiques should not be excluded. There is scope in this section to include details of particular taxes which should be excluded (with the text above making it clear which taxes should be included as necessary).

Appendix Three Tax Agent Services Regulations Australia - Part 2—Recognised tax agent associations

201 The association is a non-profit association.

202 The association has adequate corporate governance and operational procedures to ensure that:

- (a) it is properly managed; and
- (b) its internal rules are enforced.

203 The association has satisfactory arrangements for ensuring appropriate professional and ethical requirement standards for its voting members, including:

- (a) voting members must undertake an appropriate number of hours of continuing professional education each year; and
- (b) voting members must be of good fame, integrity and character; and
- (c) each voting member is subject to rules controlling the member's conduct in the practice of the member's profession; and
- (d) each voting member is subject to discipline for breaches of those rules; and
- (e) if a voting member is permitted by the association to be in public practice, the voting member has professional indemnity insurance.

204 The association has satisfactory arrangements for dealing with complaints, including:

- (a) notifying clients of its members, or of members of its member bodies, about how to make complaints; and
- (b) receiving, hearing and deciding those complaints; and
- (c) taking disciplinary action if complaints are justified.

205 The association has satisfactory arrangements for publishing annual statistics about:

- (a) the kinds and number of complaints made to the association; and
- (b) findings made as a result of the complaints; and
- (c) action taken as a result of those findings.

206 The association is able to pay its debts as they fall due.

207 The management of the association:

- (a) is required to be accountable to its members; and
- (b) is required to abide by the corporate governance and operational procedures of the association.

208 An association is taken to have arrangements that comply with a requirement mentioned in clause 203, 204 or 205 if:

- (a) a law of a State or Territory that has the same, or substantially the same, effect as the requirement in that paragraph applies in relation to the association or its members (as the case may be); and
- (b) the association or its members (as the case may be) complies with that law.

209 The association has at least 1000 voting members, of whom at least 500 are registered tax agents.

Note: The term **registered tax agent** is defined in the Act.

210 At least one of the following applies in relation to each voting member of the association:

(a) the member has been awarded a degree or a post-graduate award in a relevant discipline (within the meaning of Part 2 of Schedule 2) from:

(i) an Australian tertiary education institution; or

(ii) an equivalent institution;

(b) the member has been awarded a diploma or higher award in a relevant discipline (within the meaning of Part 2 of Schedule 2) from:

(i) a registered training organisation; or

(ii) an equivalent institution;

(c) the member has the academic qualifications required to be an Australian legal practitioner;

(d) the member has at least 8 years of full time experience (or part time equivalent) in providing tax agent services in the last 10 years;

(e) the member has at least 6 years of full time experience (or part time equivalent) in providing tax (financial) advice services in the last 8 years.

Note: The terms **tax agent service** and **tax (financial) advice service** are defined in the Act.