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BEIS consultation: Restoring trust in audit and corporate governance

Joint submission by the Chartered Institute of Taxation and the Association of Taxation Technicians

Introduction

1. The Chartered Institute of Taxation (CIOT) is an educational charity, focussed on tax education, and a membership body promoting high technical and professional standards in taxation: its 19,000 members become members by examination and have the designation Chartered Tax Advisers. We are the premier professional body concerned solely with taxation.
2. The Association of Taxation Technicians (ATT) is a charity and the leading professional body for those providing UK tax compliance services. Its primary charitable objective is to promote education and the study of tax administration and practice. Our 9000 members are qualified by examination and practical experience and use the designation 'Taxation Technician' and the designatory letters 'ATT'.
3. The CIOT and ATT, are co-authors with five other accountancy bodies¹ of [Professional Conduct in relation to Taxation](#), the leading ethical standard in the UK concerned with the relationships between tax advisers, their clients or employers, and HMRC. All this represents a voluntary initiative on our and our members' behalf as there is effectively no state regulation of standards in tax.
4. As such, as tax bodies, we do not comment on the consultative document's analysis of or proposals for the audit market.

¹ AAT; ACCA; ICAEW; ICAS and STEP

5. However, we are very concerned at the reference to the tax advice market in paragraph 11.1.7 of the consultative document which implies a misleading diagnosis of the quality issues it faces:

“There is some evidence to suggest the existing self-regulatory regime does not operate completely satisfactorily, for example the current system has been assessed as accommodating significant risks around money laundering as well as issues of tax avoidance and poor practices in the tax advice market. The Government is already taking action to address these specific issues as part of the Economic Crime Plan, HMRC’s work to improve standards among tax agents and ongoing efforts to tackle tax avoidance”.

In the context of the document it suggests that these issues are corroborative of its diagnosis of the audit market. In reality whatever the application of that analysis to audit, the position in tax is very different, as set out below.

Summary

6. For the reasons below we do not consider that tax should be included within the remit of ARGAs. The problems within the tax advice market are very different from those noted as affecting the audit market and corporate governance in the current consultation document. Those issues are already being addressed by HMRC. It has embarked on an exercise to “raise standards in the tax advice market” having issued a [call for evidence](#) on the subject in March 2020. A follow up [HMRC consultation](#) on whether Professional Indemnity Insurance should be mandatory for tax advisers has just closed.
7. The professional bodies have worked and continue to work closely with HMRC on this project along with other relevant interested parties such as software developers to find an effective and workable solution with the minimum cost and disruption to all. As this exercise now has traction and momentum it makes sense for it to be completed before considering any other initiatives. The rationale for this is set out further below.

Background

8. There is no state regulation of the tax market apart from a requirement for tax advisers to be subject to AML supervision. As far as quality in the tax services market is concerned, given that in law anyone can set themselves up in practice as a tax adviser, it is left to the professional bodies to lead in setting, monitoring and enforcing high professional standards. Their effectiveness can be borne out by HMRC having identified that 70% of the problems they experience with tax advisers come from the 30% of the tax agents who are not affiliated to any professional body. The biggest quality issue is how to address that population.
9. It should be noted too that the professional bodies made a very significant contribution in the fight against tax avoidance in their 2017 update to [Professional Conduct in relation to Taxation](#) (PCRT). This edition included the Standards for Tax Planning which seek to

prevent members from engaging in egregious tax planning. Indeed, HMRC itself has adopted three of the five standards in their [Standards for agents](#). See Appendix 1 for the PCRT Standards. Furthermore, as HMRC's call for evidence acknowledges, increasingly tax avoidance is promoted by a small number of 'boutique' organisations who arrange abusive transactions and structures and increasingly do not present themselves as advisers at all, whether professionalised or otherwise.

Addressing raising standards in the tax advice market

10. In the CIOT's [response](#) and the ATT's [response](#) to [HMRC's call for evidence on raising standards in the tax advice market](#) we put the case for Option E 'Maximising the regulatory role of profession'. This approach builds on the work already carried out by the professional bodies, often in conjunction with HMRC, in respect of professional standards and ethics (eg [Professional Conduct in relation to Taxation](#)) as opposed to creating a new regulatory body. In short, under Option E, anyone wishing to act as a tax adviser would have to be a member of a recognised professional body. It is appreciated that this would have to be a phased exercise with a transitional period (which might involve a possibly escalating level of requirements common to professional body members being applied to the existing unaffiliated) to allow non-member advisers to adapt to the change.
11. The HMRC call for evidence also put forward, as an alternative, option F which was a proposal for regulation by a government regulator. In our view there would be significant costs associated with this without necessarily achieving the aims of increasing standards. For example, while some of the obligations of professional body membership were included as prerequisites they fell far short of current existing professional body obligations. Surprisingly there was no mention of continuing professional development. Perversely government regulation could lead to a falling off of standards if an adviser decided that regulation brought sufficient respectability without the need to belong to a professional body with their more stringent standards.
12. AML supervision does to some extent provide limited regulation of the tax market. Tax advisers in business must register with a professional body AML supervisor or in the absence of a relevant professional body membership, with HMRC. The professional bodies are in turn 'regulated' by Office for Professional Body AML Supervision (OPBAS). In terms of money laundering, our understanding from the National Crime Agency (NCA) that their systems have difficulty in distinguishing between the affiliated/qualified accountant (a term which is used to include tax advisers) and the unqualified so it is not possible to know to what extent, if any, professional body members working in tax contribute to "accommodating risks around money laundering". Further, we understand that it is the **inherent** (as opposed to the actual) risk that is an influencing factor in maintaining the sector's high risk rating following the FATF inspection in 2018.

13. The current proposal to make professional indemnity insurance mandatory for tax advisers represents in our view a first step in addressing the quality issues identified in the call for evidence. It is in effect an extension to those advisers outside professional bodies of a requirement that professional body members have already accepted as part of the 'price' of their membership. In our view that is still the right path to go on: focussing on the issue of quality outside professional bodies means firstly, focussing on the population where the evidence suggests the majority of problems lie, and secondly would strengthen the position of the professional bodies in promoting high quality technical and ethical standards to their membership: members who have studied, passed exams, and undertake continuing professional development; paid for professional indemnity insurance and professional body membership; and conform to ethical standards, would no longer feel they are exposed to competition from those able to practice without incurring any of these costs and efforts, and would no longer, in extreme cases, be tempted to join them. By contrast, confusing the issues in the tax market with those put forward as affecting the audit market, risks confusing and undermining the path that HMRC have begun to follow toward improving quality on tax.
14. If you wish to discuss any aspect of this submission please contact Heather Brehcist at hbrehcist@ciot.org.uk.

Appendix 1

Professional Conduct in relation to Taxation - the standards for tax planning

- Client Specific

Tax planning must be specific to the particular client's facts and circumstances. Clients must be alerted to the wider risks and the implications of any courses of action.

- Lawful

At all times members must act lawfully and with integrity and expect the same from their clients. Tax planning should be based on a realistic assessment of the facts and on a credible view of the law. Members should draw their clients' attention to where the law is materially uncertain, for example because HMRC is known to take a different view of the law. Members should consider taking further advice appropriate to the risks and circumstances of the particular case, for example where litigation is likely.

- Disclosure and transparency

Tax advice must not rely for its effectiveness on HMRC having less than the relevant facts. Any disclosure must fairly represent all relevant facts.

- Advising on tax planning arrangements

Members must not create, encourage or promote tax planning arrangements or structures that: i) set out to achieve results that are contrary to the clear intention of Parliament in enacting relevant legislation; and/or ii) are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation.

- Professional judgement and appropriate documentation

Applying these requirements to particular client advisory situations requires members to exercise professional judgement on a number of matters. Members should keep notes on a timely basis of the rationale for the judgments exercised in seeking to adhere to these requirements.