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Enhancing HMRC's powers: tackling tax advisers facilitating non-compliance

Response by the Chartered Institute of Taxation

1. Introduction

1.1. 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

2.1. Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

2.2. The CIOT is also one of the author bodies of Professional Conduct in Relation to Taxation (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

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

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

2.5. The CIOT is pleased to be able to engage with HMRC in relation to their consultation Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance - GOV.UK[1]. Our response to the consultation on raising standards indicated that we considered action was required in the interim whilst regulation continued to be considered and given the potential lead time for any regulatory model to be developed. We therefore welcome dialogue about the next steps and the chance to feed into this consultation. High level points were provided to HMRC by the deadline of 7 May 2025 and this document expands on those points to set out the views of the CIOT in more detail.

3. Executive Summary

3.1. CIOT welcomes HMRC's recognition that 'most tax advisers are competent and adhere to professional standards. They add value to the tax system by supporting people to get their tax right'.

3.2. Additional expenditure of £36 million to modernise HMRC's tax adviser registration services is also welcomed. CIOT commented on this and were supportive of it in our response[2] to the consultation on Raising Standards in the tax advice market[3]. We see such registration as an important first step that can be built on in relation to tackling poor practice in the tax advice market.

3.3. The exact target of the proposals is not fully clear from the consultation document, that is, which specific harms HMRC are seeking to tackle (or not tackle). From a review of the proposals and discussions to date, our understanding is that the harms targeted fall into two main categories:

1. aggressive deliberate harm by promoters and those submitting spurious claims to HMRC; and
2. harm caused by agents whose performance at their jobs does not meet adequate standards, and in extreme cases demonstrates very low levels of competence which causes or contributes to their clients being non-compliant with their tax affairs. *In addition to direct harm to individual clients, multiple mistakes across potentially numerous clients may amount to material loss of revenue to the Exchequer.*

These are distinct types of harms and as such warrant different, tailored responses. There is no one size fits all solution to the wide range of problems which HMRC are seeking to tackle.

3.4 We recognise that there are some tax advisers who fall into one or both of the categories outlined in 3.3, by providing advice which facilitates non-compliance by their clients and contributes to the tax gap. However more information as to HMRC's understanding of the agent population and how it contributes to each of the two types of harm would be helpful to inform solutions. We would welcome further evidence and statistics,

[1] https://www.gov.uk/government/consultations/enhancing-hmrcs-ability-to-tackle-tax-advisers-facilitating-non-compliance

[2] https://tinyurl.com/38xk2nrf

[3] https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market-strengthening-the-regulatory-framework-and-improving-registration

set out separately for each type of harm so as to understand the relative weight of the issues, and to better understand the demographic of those the policy is aimed at.

3.5 We also note HMRC's concerns that they struggle in certain circumstances to use their current powers for tackling poor practice by agents. Whilst we recognise the evidence barrier required in cases of 'dishonesty', which we accept is a high bar given HMRC's limited ability to seek further evidence, we would welcome further statistics and information about the current use of HMRC powers and instances where they have been unable to use them and indeed statistics and illustrations where they have been able to use them to show where the current powers can and are used. Setting this out alongside the publication of any further consultations or draft legislation, and illustrating how new provisions would operate differently, would assist us with giving further detailed consideration to these proposals.

3.6 CIOT notes that ultimately there is nothing set out in this consultation which tackles the fact that unqualified tax advisers, those unaffiliated with a professional body, and indeed those with no previous experience can set up in the tax advice market. The problem remains that there is nothing to prevent advisers excluded from professional body membership continuing to act as tax advisers, or to stop those subject to publicised penalties from their professional body or HMRC from setting up again under a different name.

3.7 In relation to the main areas covered by the consultation our main points in relation to each area are as follows:

3.7.1 ***Enhancing powers to enable HMRC to investigate and request information from tax advisers***

a) The CIOT does not have data or insights into HMRC's difficulties in applying the Schedule 38 legislation in relation to Dishonest Agents. However any changes should include a wide-ranging review of **all current powers and penalty provisions** that could impact on advisers. It is important that penalty regimes are coherent, and do not 'overlap' to ensure tax advisers are not potentially subject to more than one penalty and that it is clear to all parties which rules apply – including which penalty should be considered and applied and in which circumstances.

b) Clear definitions of 'non-compliance' and 'facilitation' and 'reasonable suspicion' are essential. The consultation has generated quite a lot of nervousness and anxiety that broad, uncertain definitions could inadvertently encompass cases outside the target of the consultation. For example, potentially catching cases where there is no harm, yet little protection from the possibility of disproportionate and/or costly requests for information.

c) Enhanced powers should not be applied where there are differences of opinion on technical areas or genuine mistakes. There is some concern that over time there will be mission creep and powers will be used to obtain information in wider circumstances. Clear targeting and guidance will be critical. There are also likely to need to be a number of defences – such as, where the agent has a reasonable excuse or has adhered to the standards set out in PCRT. We would welcome the opportunity to work closely with HMRC on how this could work in practice.

d) The scope of application should be wide and include all tax advisers whether they interact with HMRC directly or not. The legislation will require a clear definition of a tax adviser/tax advice.

e) LPP is a complex area but means that lawyers may not have to provide documents subject to privilege. Over time this may result in more advice moving to lawyers as opposed to tax advisers who are not lawyers, with the knock on effect that HMRC receive less information than they do under current powers.

f) Safeguards took some time to develop in relation to Schedule 38 powers and we are not in favour of increased powers being accompanied by reduced safeguards.

3.7.2 *Enhancing financial penalties for tax advisers who cause harm to the tax system*

a) CIOT considers that of the measures suggested, penalties should be calculated in relation to fee income. However this also needs exploring carefully, for example to consider where fees were not in fact paid or charged (or are repaid), or how this would relate to fees where the bad actor has committed multiple smaller harms. The penalty needs to be in some way proportionate and impactful to the circumstances.

b) We consider that penalties should in general apply at the firm level. This is in line with the contractual arrangements firms have with clients and PII arrangements etc. However we recognise that in some cases harms are caused by individuals without the knowledge of their firms. If the firm had reasonable prevention procedures in place which an individual had ignored then we can see that it may be appropriate for action to be taken against an individual.

3.7.3 Broadening disclosure of HMRC's concerns about tax advisers to professional bodies

a) CIOT supports more disclosures being made to professional bodies, and would refer back to our response[4] on last summer's consultation on wider regulatory models. However, there should be clear guidelines on what might be in scope of non-PID disclosures and how and what data HMRC would publish and record as to the data shared (and with which bodies it will be shared). We would welcome further discussion as to what sort of information would assist with our disciplinary processes and also the idea of sharing themes of errors, for example, where the response could be more on focused education, which we could support with.

b) The current scheme of PID and non-PID disclosures do not answer the problem of action to be taken in relation to unaffiliated agents. It should be noted that members disciplined by the TDB and excluded from the CIOT can continue to act as tax advisers and in some cases can continue to cause harm in the tax system. We cannot see that any of the outcomes from this consultation will prevent this from continuing in the future.

3.7.4 *Broadening the scope of publication of tax adviser details when they are the subject of an HMRC sanction*

a) CIOT supports publication of HMRC sanctions as being in the public interest. There does however need to be a clearer articulation of the purpose of the publication and acknowledgement given to the fact that it is easy for a person or business to change their name/address and continue operating, so it is not an effective method by which taxpayers can check that someone has not received a sanction.

b) Publication should be proportionate to the harms occurring and given the potential impact on the livelihood of the firms and individuals impacted, there need to be safeguards to ensure there is a process by which appeals can be made against decisions to publish prior to any publication.

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] https://tinyurl.com/38xk2nrf

4.2 We are also an anti-money laundering supervisor for about 850 firms.

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

5.1 CIOT has seen the responses submitted by the Low Incomes Tax Reform Group, the Association of Taxation Technicians and the TDB and endorses the comments made in those responses.

5.2 HMRC are also consulting on measures in relation to Closing in on Promoters of Tax Avoidance[5] and on the Reform of Behavioural Penalties[6]. We will be responding separately to these consultations but are aware there are areas of overlap.

5.3 Answering the consultation using yes, no or maybe answers does not permit the nuanced response which is generally required in relation to each question. Where we can provide a clear yes/no/maybe response we have answered the question accordingly but in most cases owing to the complexities to be considered we have simply included a comment.

6 Responses to the Consultation Questions

6.1 Question 1: Do you agree that HMRCs powers to tackle tax advisors who harm the tax system could be more effective?

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

Please give reasons for your answer.

6.1.1 Based on publicly available information it is not clear if or how HMRC currently use all the powers they have (including their civil powers) so it is difficult for CIOT comment on whether current powers could be more effective. However on the basis that there continue to be tax advisers in the market who are not operating to the high standards we would expect of our members under PCRT it seems reasonable that change must take place in order to tackle abuses in the system. Sharing examples of where current powers have not been sufficient or effective would be helpful to better understand both their limitations and how the new proposals will not feature the same issues.

6.1.2 Whether the change required is additional powers and penalties requires careful consideration. This consultation focuses predominantly on amending the Tax Agents: Dishonest Conduct rules (Sch 38, FA 2012) and the provisions for making PIDs to professional bodies contained in the Commissioners for Revenue and Customs Act 2005 (CRCA). However, there are other powers available for HMRC to use in relation to tax

[5] https://www.gov.uk/government/consultations/closing-in-on-promoters-of-tax-avoidance

[6] https://www.gov.uk/government/consultations/behavioural-penalties-reform

advisers as set out in the summary guidance on penalties and published on the CIOT website: 240422 Penalties Checklist CIOT FINAL.pdf[7].

6.1.3 CIOT considers there should be a wide-ranging review of all current penalty provisions rather than simply a 'bolting on' of additional new powers which might have similar problems to existing ones in terms of ease of use. This may help identify whether some existing powers could be repealed and replaced with more effective powers and ensure a coherence between the tools available to HMRC.

6.1.4 It is important that penalty regimes do not 'overlap' to ensure tax advisers are not potentially subject to more than one penalty and that it is clear which penalty should be applied in which circumstances. It would be inequitable for tax advisers if one HMRC officer were to use one set of powers and penalties in circumstances where another officer might choose to use a different set, and the added complexity would make it more difficult for HMRC caseworkers to be confident that they are taking the appropriate course of action. Advisers should also be able to understand how the rules apply to them.

6.1.5 CIOT also notes that whilst HMRC have had a number of powers available historically there are examples where they appear to have been slow to act to tackle abuses where they could have taken swift action based on the powers they already had. This was highlighted in the response of our colleagues in the Low Incomes Tax Reform Group (LITRG) when they submitted their response to HMRC's consultation on raising standards in the tax advice market - Strengthening the regulatory framework and improving registration[8]. They noted at paragraph 4.1.2 of their response that 'It seems to us that although the HMRC's Standard for Agents does set out consequences of non-compliance , in reality unscrupulous HVRAs have been able to continue and grow because they did not face any of these consequences early enough. Although we welcome the various changes that have now been made, this action was too late to prevent significant harm to many taxpayers, the public purse, HMRC's reputation and the tax system.'. LITRG have reiterated these points in their response to this consultation.

6.1.6 It is crucial that taxpayers and the public have trust in the tax system when it comes to how HMRC exercise their powers and impose sanctions, and how taxpayer protections and safeguards operate. In Appendix One we set out the CIOT's ten principles against which HMRC's use of its powers, sanctions and safeguards and any proposed powers, sanctions and safeguards can be compared. It is essential for building and maintaining trust in the tax system that the way HMRC use their powers and operate safeguards can be effectively monitored and subjected to appropriate oversight.

6.2 Question 2: Do you agree with the government's aim that any enhanced powers should allow for swift, effective, and proportionate action in cases of tax adviser activities that result in harm to the tax system and facilitates non-compliance?

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

Please give reasons for your answer.

[7] https://tinyurl.com/2sj6teuv

[8] https://www.litrg.org.uk/sites/default/files/240529_Raising_standards_submission.pdf

6.2.1 In order to answer this question it is essential to understand how HMRC define 'harm', 'facilitation' and 'non-compliance' for these purposes.

6.2.2 It is in the interest of both tax agents and their clients that HMRC powers allow for swift, effective and proportionate action, provided appropriate safeguards are in place to enable the tax adviser to defend and rebut any accusations, as well as be treated fairly, objectively and with rights of reply and appeal. Incorrect accusations (and any connected disproportionate and costly information requests or repeated challenge) could be devastating to an adviser's reputation and business. As referred to in paragraph 6.1.5 above we are aware that HMRC's current powers have not always been used on a timely basis; something that would need addressing in the use of any new powers but also revisited and the reasons why understood in relation to existing powers. Consumer confidence in both the tax profession and HMRC is undermined where problems cannot be addressed swiftly.

6.2.3 Any options for enhanced powers will need to be evaluated against their likely impact and effectiveness specifically in relation to the two areas of harm which we believe HMRC are seeking to address, to both ensure they can adequately address those harms whilst not also inadvertently catching other behaviours outside of the policy intent. Our understanding in relation to this is set out in paragraph 3.3.

6.2.4 Aggressive, deliberate harm by promoters and those submitting spurious claims to HMRC will always require more robust action than that required in relation to some of the other lesser harms HMRC may be seeking to tackle. Our understanding is that powers under Schedule 38 FA 2012 (Dishonest Agent Conduct Notice legislation) involve a very high bar before HMRC can obtain information from agents. Whilst this provides protection for tax advisers, the very low number of cases appears to support HMRC's conclusion that the power is too restricted to be effective at tackling this (or indeed most) types of harm (although as stated previously some examples might be helpful). It seems sensible to consider whether amendments to legislation might result in better use of this legislation to ensure swifter, more effective and proportionate action in relation to dishonest agents, and whether this would encompass the aggressive, deliberate harm by promoters and others, who are the target. We understand that part of the reason why these powers are not effective is because of the way in which the existing Dishonest Conduct rules are drafted and the behaviours of advisers who use obfuscation and delaying tactics to make it difficult for HMRC to progress their investigations. We have sympathy with this position but are keen to ensure that safeguards are not eroded as a consequence. We await draft legislation to understand how any new powers adopted by HMRC would retain appropriate safeguards currently afforded through the Schedule 38 process whilst resulting in swifter action.

6.2.5 In relation to action to address harm caused by incompetent or poor quality agents, it is unlikely that powers akin to those set out in schedule 38 will be the most appropriate.

6.2.6 In the full range of circumstances where harm may occur in the tax system, it is important that HMRC are not able to undertake speculative enquiries where they simply take a different interpretation of the law or for example, where a firm happens to have a client base where there are a large number of genuine repayment claim cases, or specialises in advising clients who are under investigation by HMRC.

6.2.7 Overall, the purpose of amended powers must be articulated clearly and stated in any proposed legislation. Members report to us some nervousness from experience of where HMRC has given reassurance at the time of introducing new legislation on the scope and purpose, but further down the line, this corporate history is forgotten and the legislation is then applied much more widely than originally intended. It should be specifically stated that HMRC should only be able to apply the law in line with the original policy objective. If the original policy objective changes in the future, then this should be clearly articulated and ideally subject to consultation (particularly if further changes to the law are proposed).

6.2.8 We understand that one of reasons why the Dishonest Agent Conduct notice legislation is rarely used is because HMRC wish to move more quickly than the justice system necessarily permits. Whilst CIOT supports

swift action in relation to harms in the tax system, new powers should not be introduced to circumvent the safeguards currently provided for in the justice system.

6.3 Question 3: What actions that lead to harm being done to the tax system should be within scope of the proposals outlined within this consultation? Please give reasons for your answer.

6.3.1 It would be very helpful when issuing further consultations and draft legislation if HMRC were to make clearer their focus in relation to the additional powers they consider they require and statistical evidence on harms and numbers of cases where current powers could not be used, and why.

6.3.2 The consultation document refers to the tax gap in the executive summary. However the tax gap statistics do not provide an estimate of the impact of adviser mistakes on the tax gap. It is difficult to know the extent to which non-compliance facilitated by advisers (whether members of professional bodies or not) contribute to the gap and therefore the extent to which the proposals are proportionate to the harm caused.

6.3.3 It is essential that 'facilitation' is carefully defined. It should involve behaviour that causes the loss of tax which is at least careless, but exclude mistakes that arise where the adviser took reasonable care (or has a reasonable excuse). If there is a tax gap breakdown available as between represented and non-represented taxpayers, then it would be helpful to understand if HMRC are able to estimate how many of the errors made by represented taxpayers were due to mistakes by the adviser versus omissions or mistakes in the information provided to the adviser by the taxpayer.

6.3.4 Differences of opinion on technical interpretation should be excluded. Similarly, agents should not be penalised for their client's mistakes/omissions (eg failing to give the agent details of interest arising on a new bank account which is then omitted from the tax return). It is important for HMRC to understand the role of a tax adviser or agent, for example, that they are not required to audit a client's figures, and therefore have and set clear expectations as to the standards of behaviour expected from advisers. Advisers need to be able to understand from the policy and legislation where the line is drawn for non-compliance.

6.3.5 As noted, the role of an adviser does not amount to an audit of the taxpayers' affairs in the preparation of advice, something which would be neither practical nor commercially viable. Therefore errors which occur based on information provided by the taxpayer to the agent, which were not obviously incorrect or incomplete and passed appropriate due diligence, should not be seen to constitute facilitation of non-compliance by the adviser, even where the outcome may be a loss (or excess) of tax paid. Equally, while this could sensibly be covered by a 'reasonable excuse' defence by the agent, it would be a concern if this sort of circumstance was routinely, or even frequently, giving rise to HMRC using powers to challenge the agents behaviour given the potential burden this could impose on the ordinary course of their business.

6.3.6 We consider that if a tax adviser is adhering to the requirements in PCRT this would be a good basis for them to be defined as compliant (ie outside the scope of the proposals for increased powers). HMRC endorses PCRT and it would seem reasonable that adherence to it is taken into account when applying new powers. CIOT would be interested to work with HMRC to develop procedures whereby a tax adviser could appeal against any intervention and, provided they can demonstrate that they acted in compliance with the PCRT, this would be seen as a reasonable and acceptable defence.

6.3.7 If greater expectations are placed on agents above and beyond the requirements set out in PCRT then this is likely to have a considerable impact on the profession. At present PCRT Helpsheet A[9] and paragraph 13 set out that 'where acting as a tax agent, a member is not required to audit the figures in the books and records provided or verify information provided by a client or by a third party'. Where clients have not provided

[9] https://tinyurl.com/4pxyrxmm

information and the agent has acted in good faith based on details provided the tax adviser should not be within scope of increased powers.

6.3.8 It is also important that inadvertent errors should not be within scope as the powers and penalties proposed could be career ending. The tax system is so complex, mistakes are somewhat inevitable. CIOT considers that simplification of the tax system should be considered alongside increased powers and penalties in order to make compliance by taxpayers and tax advisers easier from the outset.

6.3.9 There is a concern here on how the Guidelines for Compliance and other guidance issued by HMRC might be used in conjunction with enhanced HMRC powers and care must be taken to ensure the scope of additional powers does not creep into including any technically (or arguably so) correct approaches by agents which HMRC do not agree with based on non-statutory HMRC guidance.

6.3.10 As well as understanding HMRC's view on 'harms' and what constitutes 'non-compliance' care will need to be taken on the definitions of 'facilitated' or 'facilitation' which might bring an adviser within scope of the new rules. Facilitation should be much more than simply preparing a client's return or responding to an enquiry letter. Arguably, if a tax adviser acts in accordance with PCRT, then they are likely to have reached a position that could reasonably have been reached by a number of tax advisers with the relevant skills and knowledge so should not be seen to have facilitated the non-compliance.

6.4 Question 4: Do you have any other suggestions for how HMRC might enhance its powers to tackle non-compliance facilitated by tax advisers? Please give reasons for your answer.

6.4.1 As referred to earlier in this response CIOT considers that there should be a review of all powers and penalties currently applying to tax advisers to reduce complexity, ensure there is no overlap/potential duplication or inconsistency of application. This would also enable the repeal of legislation which is not delivering what it needs to do and provide a coherent and joined up approach to HMRC's powers.

6.4.2 CIOT will also be responding to the consultation on closing in on promoters of tax avoidance[10]. We note that in this consultation HMRC indicate that there are around 20 to 30 currently active promoter organisations who sell mass marketed tax avoidance schemes some of which are based offshore and hide behind corporate structures. We consider that there should be a triage approach, focusing on these most egregious entities first with specific rules to tackle the harms they bring to the tax system. New powers for the broader tax advice market should be secondary, and may not need to be as heavy handed to avoid unforeseen, and potentially disproportionate and unfair consequences.

6.4.3 Whilst not a suggestion as to how HMRC might enhance its powers, the CIOT continues to encourage HMRC to consider a number of actions which would aim to reduce non-compliance. These are set out in full in section 8 of our response[11] to HMRC's consultation on Raising Standards in the tax advice market[12] and include:

- Simplification of the tax system
- Improvements in HMRC customer service standards, guidance and improved training of staff handling calls and correspondence
- Visible use of current HMRC powers and high profile cases would act as a deterrent
- The protection of title for a tax adviser, tax consultant and tax accountant

[10] https://www.gov.uk/government/consultations/closing-in-on-promoters-of-tax-avoidance

[11] https://tinyurl.com/38xk2nrf

[12] https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market-strengthening-the-regulatory-framework-and-improving-registration

- Removal of AML supervision and inability to then maintain an agent code

6.4.4 Legislation continues to need thorough scrutiny in advance of being issued. Developments can reduce staff requirements for HMRC but resulting changes may leave the system open to more abuse. Self-assessment was a seismic shift in relation to tax reporting and compliance in the UK but the submit now and check later system has opened up the possibilities for abuse in a number of areas.

6.5 Question 5: Do you have any comments on the proposed scope?

6.5.1 CIOT's response[13] to HMRC's consultation on Raising Standards in the tax advice market[14] (question 5) made it clear we support the registration of tax advisers being wide in scope. We therefore agree that all tax advisers who act by way of business, whether in the UK or overseas and who provide tax advice or services in relation to UK tax should be in scope of any enhancement to HMRC powers. This is subject to the caveat that extra powers should start with a focus on the 20 to 30 promoters HMRC are aware of as set out in section 6.4.2 above.

6.5.2 The CIOT supported the view of the Low Incomes Tax Reform Group (LITRG) set out in their 2024 submission on Raising Standards in the tax advice market[15] (see in particular paragraphs 4.5.3 to 4.5.12) which covered the position on charities providing tax advice and other groups. When considering increased powers we would encourage HMRC to discuss further with LITRG appropriate powers to deal with pro bono advisers, charities etc where advice provided fails to meet required standards.

6.5.3 Tight legislative drafting of the definition of 'tax advisers' is needed to ensure all those within scope (including organisations and professions whose work includes giving tax advice but who may not see themselves as tax advisers) are clearly caught. It could be supported by guidance which illustrates the types of work which would not be expected to fall within the category, and indeed those which are. We covered the definition of tax advice extensively in our response[16] to the consultation on Raising standards in the tax advice market: professional indemnity insurance and defining tax advice[17]. It is assumed the definition to be used as a starting point is the one for the Dishonest tax agent penalty legislation but this will need updating to ensure all intended organisations and professions are firmly within scope.

6.5.4 It is important that the scope includes tax advice, compliance and enquiries (of all types), and activities which may be performed by those who may not consider themselves to be tax advisers. Particularly important will be a consideration of the inclusion of bookkeepers who will take a key role in ensuring MTD for Income Tax works successfully but will almost certainly not consider themselves to be providing tax compliance or advice services.

6.5.5 Again the scope needs to be considered separately in terms of the two sets of advisers whose behaviours could lead to the two different types of harm that we have highlighted in paragraph 3.3. When considering promoters of tax avoidance and agents making spurious claims, the scope of any powers needs to be very targeted and this can be supported with appropriate definitions for 'facilitation' and 'non-compliance' which will need to be clear and set based on the level of harm to the tax system and the evidence available.

6.5.6 In relation to those agents who are producing work of a poor quality, the scope may need to be wider to encompass all potential advisers where HMRC come across persistent instances of material errors in taxpayer

[13] https://tinyurl.com/38xk2nrf
[14] https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market-strengthening-the-regulatory-framework-and-improving-registration
[15] https://www.litrg.org.uk/sites/default/files/240529_Raising_standards_submission.pdf
[16] https://www.tax.org.uk/ref774
[17] https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market

submissions. However the bar should still be high and defined clearly enough that tax advisers have certainty as to when they would be, and would not be, in scope. It should be clear that innocent and inconsequential errors are not caught and it would be good to see some examples of possible scenarios worked through, which can be included in HMRC guidance.

6.5.7 CIOT notes that under Schedule 38 the individual tax agent is responsible for responding to information notices and is liable for penalties but the government is considering changing this to hold the company, firm or other business responsible. Please refer to our answer to question 22 in relation to our views on this aspect. Whilst in general we consider this change makes sense as this is the legal entity that is contracted to provide the tax advice or services there may need to be considerations of individual culpability in some cases.

6.5.8 CIOT considers the main difficulty in this area will be how enhanced powers and penalties can be applied to offshore agents. Thus the rules, if enacted, may incentivise some to advise from overseas unless HMRC enacts a rule to say that tax work can only be done in the UK by UK entities. However, it should be acknowledged that some tax advice needs to be provided by entities based overseas to enable UK taxpayers based in other countries to meet their UK tax requirements. We would suggest that any future proposal to limit the provision of tax advice to UK based agents should be the subject of consultation.

6.5.9 Our comments above relate mainly to the scope of advisers to be included in relation to any new powers. There are also questions to be considered as to what forms/submissions etc will be included. There are questions about whether MTD quarterly submissions will be included and what the position will be on standalone claims for relief. Further comments have been included in our response to question 7.

6.6 Question 6: Are there any other groups HMRC should consider?

- **Yes - subject to the comments below**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

6.6.1 As indicated in our answer to question 5 the drafting of a suitable definition of tax advice/tax adviser will be key here. Tax avoidance has historically been arranged by agents (such as employment intermediaries) who do not consider themselves to be tax advisers and we encounter similar arguments from capital allowances and R&D advisers (in relation to whether or not they should be subject to Anti-Money Laundering Supervision).

6.6.2 People and organisations who provide tax advice via software should also be considered for inclusion. For many taxpayers software is becoming the tax adviser of choice and this trend is likely to increase given developments in AI and the advent of MTD for Income Tax. Erroneous software has the potential to give rise to repeated errors in tax returns being processed and so a 'small' error could add to the tax gap many times over if the software has a large numbers of users. In many cases software options may be used by taxpayers with little tax knowledge, who treat the software as providing advice that they can rely on to get their tax correct. There are also considerations as to how the software provides sufficient safeguards so taxpayers can make sure, for example, that all of their income is included, their expenses are not overstated, and private use adjustments are made, where appropriate.

6.7 Question 7: Do you agree that it should be easier for HMRC to obtain information from tax advisers where HMRC reasonably suspects the tax adviser's activity has facilitated an inaccuracy in a taxpayer's document or return.

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

Please give reasons for your answer.

6.7.1 We understand that HMRC finds it challenging to apply the legislation in relation to dishonest agent conduct notices so recognise that some steps may need to be taken to make it easier for HMRC to obtain information from tax advisers they have reasonable suspicions about.

6.7.2 Again this needs to be considered from the viewpoint of the different types of harm which HMRC are seeking to address as set out in paragraph 3.3 above. Where there is deliberate harm to the tax system by promoters of tax avoidance or advisers making spurious claims, we agree that it should be easier than it currently is for HMRC to obtain information. Where there are potential harms because of lack of competence of a particular agent then care does need to be taken that the powers put in place are proportionate and well defined (albeit that this may still warrant an easier path than currently where there is clear evidence).

6.7.3 The consultation refers to 'an inaccuracy' in a 'taxpayer's document or return'. This looks very general and needs to be more specific. In particular:

- Where there is a concern about lack of competence there would need to be some bar to evidence repeated failures as opposed to a potentially one-off mistakes.
- HMRC may consider something is an error but it is not necessarily wrong and therefore the scope of the powers will need to be carefully defined to ensure it cannot be used to 'fish' for additional information. For example we are aware that HMRC at one stage reinterpreted the definition of subsidised expenses in relation to R&D claims and this took some time to get a binding precedent through the Courts. In the meantime claims were rejected by HMRC but were not necessarily wrong.
- The 'taxpayer's document' will need to be defined. Does it include, for example, a response to a One to Many nudge letter which is submitted on the adviser's headed paper? If so, is that just a nudge letter addressed to the taxpayer or does it include an agent nudge letter too?
- The CIOT considers that it should probably include representations made by an agent -such as a letter written by an agent during an enquiry which leads to an inaccuracy in the final figures (although this could be problematic if the agent is challenged during the enquiry – see our points in paragraph about potential conflicts of interest in paragraph 6.12.1).
- The consultation document makes it unclear whether HMRC would only use its powers in relation to inaccuracies which lead to the underpayment of tax or would they also consider use of them where a taxpayer has overpaid tax owing to the activities of their tax adviser.
- There will need to be clarification on the materiality of inaccuracies which are being considered and how these can be considered on a cumulative basis where a number of mistakes may have been made in relation to a number of clients.

6.7.4 Any information powers to request information from agents will need to fully consider implications of taxpayer confidentiality (this may necessitate formal powers and requests and a question as to whether the agent would need to notify their clients of the request) and what is in the possession and power of a particular agent (for example, what if the individual agent has left the firm by the time HMRC makes the request?).

6.7.5 If notices do not need to be approved by a tribunal, in light of issues like taxpayer confidentiality, file access notices and other requests for taxpayer data from the agent, agents should have a right of appeal to a tribunal to provide independent oversight and a safeguard.

6.7.6 It is our understanding that the current proposals do not include a third party power to request information from taxpayers relating to their agent's work. Any future plans to expand the powers in this way would require very careful consideration of the potentially devastating impact that this could have on an agent's business and significant safeguards would be required.

6.8. Question 8: Do you believe that 'reasonable suspicion' is the right threshold to issue a conduct and information notice? Are there any alternatives HMRC should consider?

- **yes**
- **no - subject to the comments below**
- **maybe**
- **don't know**

Please give reasons for your answer.

6.8.1 'Reasonably suspects', on the face of it, appears to be quite a low bar which may be understandable given the intention to give HMRC access to the adviser's files. The equivalent in HMRC'S information powers is para 21(6) Sch 36 FA 2008 'reason to suspect', which is a similarly low bar. It would be helpful for HMRC to provide some guidance on how they will interpret the term in the context of this power, if it is introduced.

6.8.2 HMRC may 'reasonably suspect' based on the legislation to entitle them to obtain information from the agent, but it may transpire that they have based their suspicion on facts that are wrong. If the adviser demonstrates that on appeal, the conduct and file access notice should be cancelled.

6.8.3 It seems reasonable to the CIOT that any adviser HMRC issues with a conduct and information notice should also be provided with the details of what they are reasonably suspected of.

6.9 Question 9: Do you agree with the proposed changes to the powers to gather information from tax advisers?

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

Please give reasons for your answer.

6.9.1 We understand that HMRC are seeking greater powers to be able to obtain information in wider circumstances and to be able to obtain information more swiftly. We can see the need for this in some circumstances but safeguards must be maintained.

6.9.2 If the proposed changes outlined in the consultation document are enacted, we would suggest that the existing 'conduct notice' provisions are reviewed to assess whether they should be changed so they work effectively and coherently alongside the new information powers.

6.9.3 We are aware that points in relation to LPP are covered in the related consultation on 'Closing in on promoters of marketed tax avoidance' but this consultation does not cover how HMRC envisage the change in powers interacting with LPP. As a result of applying LPP to the services lawyers provide, in many cases lawyers will not need to provide part or all of the information requested by HMRC eg in their file access notices. This will:

- further adversely impact the level playing field between tax advisers who are not lawyers and those that are lawyers; and
- it could encourage a shift towards tax advice being provided by lawyers and could then make the measures counterproductive with less advice and information being made available to HMRC as a result of LPP applying. Any shift away from tax advisers (who are used to working with HMRC and supporting clients) to pure legal advice may drive a shift away from the cooperative compliance model that works well in many cases for both taxpayers and HMRC.

6.10 Question 10: Do you have any comments about the proposal to remove the safeguard requiring tribunal approval for a file access notice?

- **Yes - subject to the comments below**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

6.10.1 CIOT considers that safeguards must be retained in relation to any new powers granted. Under the existing legislation, HMRC must seek approval from a tribunal to issue a file access notice to a tax adviser. Under the proposals a file access notice will instead normally be only authorised by a senior approving officer within HMRC (independent from the business area investigating the agent). We would question the independence of an HMRC officer in this role as they are not truly independent from the decision maker, who is also an officer of HMRC. This is the reason why historically the role of the independent tribunal process has been key. We would welcome more transparency from HMRC (ie publicity) about the role of the senior approving officer in this context as a means of helping advisers to have more trust in the process.

6.10.2 CIOT considers that tax advisers must be able to appeal the conduct and file access notices to the FTT and upwards. There needs to be independent oversight of these powers, which have the potential to impact tax advisers' businesses, both reputationally with their clients and through imposing considerable burdens. It is important that HMRC have the tools to address poor agent behaviour but given the potential consequences, there need to be appropriate safeguards without any potential, or perceived, conflict of interest or bias.

6.10.3 The consultation states that HMRC wants to bring the information powers for tax advisers in line with those for taxpayers and third parties in Schedule 36 FA 2008. At present tax advisers have a level of exemption (para 25 - 27 Sch 36) so the inference is that that disappears. Part 2 Schedule 20 FA 2016 deals with this for the enablers of offshore tax evasion rules – disapplying the tax adviser exemptions and the auditor exemptions. However, it retains the LPP exemption. There's nothing in the document which suggests the LPP exemption will be disapplied if the proposals become law. If this is HMRC's intention then, over time, more advice may then be delivered in a way that is subject to privilege (see point set out in 6.9.3 above).

6.10.4 It is good that HMRC have confirmed that they intend retaining the ability of the adviser to appeal against the notices. However, it is concerning that this does not apply to tribunal approved notices. The adviser should have a right of audience to the tribunal so the tribunal can understand their position, not just HMRC. This is an issue with third party Schedule 36 notices (the taxpayer and the third party have no right of audience, although in some cases the third party is given an opportunity to make representations in relation to the proposed notice but only an HMRC summary of those representations is presented to the Tribunal for consideration).

6.10.5 If there is also no right of appeal to the tribunal, it is likely that such a change could lead to more requests for judicial review (placing additional burdens on the state) as that would become the necessary course of action to appeal against HMRC's decision.

6.10.6 Whilst the consultation suggests that tribunal approval may be retained, more clarity is needed regarding when that will be used. The example given of 'a tax adviser has previously refused to provide information where requested' is vague. There may have been reasons why the information was not provided – for example the client may not have given permission for information to be provided.

6.11 Question 11: Are any other changes to safeguards needed to ensure Schedule 38 can be used more swiftly and effectively?

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

Please give reasons for your answer.

6.11.1 CIOT does not have access to evidence on how HMRC currently use Schedule 38. Further information and statistics in relation to this would enable us to consider this matter further if HMRC are able to provide this when issuing further consultations on draft legislation.

6.11.2 One important point is that it must be clear on the time limits relevant to any new powers to ensure that tax advisers maintain the records for an appropriate period.

6.12 Question 12: Are there any unintended consequences of the proposed changes?

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

Please give reasons for your answer.

6.12.1 CIOT considers there could be a number of potential unintended consequences of the introduction of the wider powers outlined in the consultation:

- Depending on the test set for 'facilitating' and 'non-compliance', the cost of compliance may increase and in turn may increase fees for clients which they may find unaffordable. This could then increase the number of unrepresented taxpayers which could result in poorer tax compliance in the market overall.

- Costs of doing business may increase for agents (potentially due to increases in insurance premiums or having to increase policies and procedures), most of whom are in fact making a positive contribution to compliance, supporting clients through an extremely complex tax system.

- Depending on how the new powers increase risks and compliance considerations for agents, some agents may be deterred from setting up in business or retire/exit sooner reducing choice in the market. This may over time reduce the availability of quality advice.

- Increased HMRC powers of the nature set out in the consultation could shift the risk appetite of agents. They may be more reluctant to suggest to clients that they consider pursuing claims, for example, which they perceive may HMRC disagree with even though they believe them to be permitted under the legislation, or to encourage clients to defend their position in an enquiry. They could put agents in a

position of conflict whereby they are concerned about getting a 'black mark' with HMRC themselves, rather than comfortably putting their clients' interests first.

- It may result in agents refusing to act for more challenging clients eg those who struggle with record keeping etc. These are the types of clients where it is in HMRC's interest for the client to receive support from an agent to ensure accurate tax compliance takes place.

- There may be potential conflicts of interest for advisers to handle. If a firm or adviser faces a conduct/information notice then they could be viewed as having a conflict of interest with their client. They will then need to cease acting for that client, on whose affairs they are accused of making a mistake. This will cause disruption to ongoing compliance checks and costs for the taxpayer to engage and brief a replacement adviser (and raises questions as to whether they would then be able to provide the information requested by HMRC as they may no longer have access to it albeit that this may be resolved through accountability at firm level).

- As actual compliance checks take months or years to complete, it can be a long time after the adviser undertook the work before HMRC starts querying it.

- There should be an equivalent to assessment time limits so that there 'is a deadline for HMRC to use these powers. This is not least so that firms can consider how long to retain records.

- It is unclear from the consultation document whether HMRC intends using the new power (if enacted) before or during the taxpayer's compliance check. The information that HMRC gets from the adviser could be used for their client's compliance check if that is not completed before the process against the adviser starts.

- The impact on professional indemnity insurance is unclear. Insurers may ask for details of any information requests from HMRC and this could this impact premiums.

- Fee protection insurance is often put in place by clients to cover the costs of enquiries. Notices to agents seem unlikely to be covered by this meaning there is no way for time spent in providing information to HMRC to be reimbursed to the agent in the way it would be if an enquiry into a client's tax affairs was opened.

- Tax advisers may have legally privileged documents on their files, even if they are not lawyers. Only the client can waive privilege. We understand that the current LPP process for resolving disputes over privilege in connection with information notices is not working well – see Tax Journal article on 21 February 2025. Will this process be adopted for these new powers and if so some improvements may need to be considered.

6.12.2 If the powers are enacted then HMRC should ensure that they are adequately publicised so that all advisers (including those who are not members of PCRT bodies) are aware of them. Otherwise they may not drive the intended behavioural change.

6.13 Question 13: Are there additional/alternative ways HMRC should gather information related to tax advisers who cause harm to the tax system?

- **yes**
- **no**
- **maybe**

- **don't know**

Please give reasons for your answer.

6.13.1 HMRC already gathers information related to tax advisers through enquiry activity into individual clients and activity in this area should feed into the justification for wider information gathering. The proposal for mandatory registration of all tax advisers (coming into effect in April 2026) is also likely to provide additional information although agents not directly interacting with HMRC will not be required to register so there will be a gap in knowledge in relation to these advisers.

6.13.2 HMRC have access to relevant suspicious activity reports made to the National Crime Agency and this could also assist in the gathering of information about dishonest tax advisers.

6.13.3 CIOT considers that the Cross system Professional Enablers Strategy[18] is an important area of work in relation to financial crime that will also provide HMRC with information and intelligence which will enable them to target work towards agents where financial crime red flags are identified and where, in turn, tax may be being lost to the Exchequer.

6.14 Question 14: Do you believe that the current penalties under Schedule 38 Finance Act 2012, Tax Agents: Dishonest Conduct provide an adequate deterrent against non-compliance that causes harm to the tax system?

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

Please give reasons for your answer.

6.14.1 CIOT does not have access to HMRC statistics and evidence in this area. However, if a tax adviser is a member of a professional body then getting even a low dishonest conduct penalty under existing rules would have such serious consequences for them in terms of disciplinary action, that it is a serious threat. Those who are Financial Conduct Authority (FCA) registered face a similar issue. The size of the penalty is not so much a factor in the deterrent effect for those advisers, rather it is the penalty itself that is the key deterrent. As alluded to in the consultation, we recognise that this may not be the case for a promoter intent on causing significant harm to the tax system (ie by making spurious claims) who may see the current level of penalties as an acceptable cost of doing business.

6.14.2 As a general point it is unclear that HMRC have considered how any changes to the current penalty regime are measured against the principles set out in paragraph 1.2 of HMRC Penalties: a discussion document.[19] We agree with these principles which are reproduced for completeness:

[18] https://www.nationalcrimeagency.gov.uk/who-we-are/publications/724-cross-system-professional-enablers-strategy/file

[19] https://assets.publishing.service.gov.uk/media/5a818e7640f0b62305b8f977/HMRC_Penalties_a_Discussion_Document_-_Summary_of_Responses.pdf

1. The penalty regime should be designed from the customer perspective, primarily to encourage compliance and prevent non-compliance. Penalties are not to be applied with the objective of raising revenues.

2. Penalties should be proportionate to the offence and may take into account past behaviour.

3. Penalties must be applied fairly, ensuring that compliant customers are (and are seen to be) in a better position than the non-compliant.

4. Penalties must provide a credible threat. If there is a penalty, we must have the operational capability and capacity to raise it accurately, and if we raise it, we must be able to collect it in a cost efficient manner.

5. Customers should see a consistent and standardised approach. Variations will be those necessary to take into account customer behaviours and particular taxes.

6.14.3 Whilst the penalty regime under review here is aimed at tax advisers, the penalty principles are just as relevant when assessing whether the penalty regime meets its desired objectives.

16.15 Question 15: Do you believe that penalties should be introduced for tax advisers who have facilitated non-compliance that causes harm to the tax system?

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

Please give reasons for your answer.

16.15.1 This is dependent on the definitions of 'facilitation' and 'non-compliance' and CIOT would expect to be able to comment further if HMRC issue further consultations which make the proposals clearer.

16.15.2 As referred to in paragraph 6.1.3 CIOT considers that all powers and penalties should be reviewed rather than simply 'bolting on' additional powers and penalties. HMRC also needs to ensure that any new legislation contains provisions which clearly set out which penalties will be imposed where another penalty could be charged in addition to the proposed penalties ie could a firm be charged an offshore enabler penalty and a penalty under the new rules? Other penalty rules include double jeopardy provisions such that the civil penalty is not charged where a criminal offence is proven – so a similar approach should be taken here.

16.15.3 CIOT notes that one of the most difficult areas for HMRC to tackle has been harms cause by firms based outside the UK and based on the details provided in the consultation document it is unclear how HMRC can enforce penalties against advisers based outside the UK.

16.16 Question 16: Should the government reassess how penalties for tax advisers are determined to enhance deterrence against non-compliance?

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

Please give reasons for your answer.

16.16.1 As referred to in paragraph 6.1.3 CIOT considers that all powers and penalties should be reviewed rather than simply 'bolting on' additional powers and penalties.

6.17 Question 17: Which approach do you think will be most effective to reduce tax advisers facilitating non-compliance in their client's returns?

A. a penalty based on the potential revenue lost
B. a penalty based on the tax adviser's fees – subject to the comments below
C. a penalty based on a business's global turnover
D. other (please specify)

Please give reasons for your answer.

6.17.1 CIOT considers that the most appropriate approach of those considered is for a penalty to be based on the tax adviser's fees for the advice or compliance work provided where HMRC have identified harm to the tax system.

6.17.2 Setting the penalty by reference to the tax liability is problematic although it is noted that this is the approach used in Schedule 20 FA 2016). Where the fees are lower than the tax figure (as will often be the case) the adviser may not be able to pay the penalty – so a penalty based on fees would be better – with the maximum penalty being the amount of the fee. This is the approach taken in the enablers of tax avoidance rules (Schedule 16 F(No2)A 2017).

6.17.3 Our response[20] to HMRC's discussion document in 2016 in relation to Strengthening tax avoidance sanctions and deterrents[21] set out our objections to making a penalty a tax geared penalty. In this response we quoted HMRC's penalty principles and commented on why a tax geared penalty did not align with these.

6.17.4 In terms of seriousness of the penalty this should take into account in some way the nature of the harm and it makes sense that penalties should differ depending on the seriousness of the adviser's conduct. We would expect that dishonest conduct will be penalised more heavily than careless errors.

6.17.5 Tax-geared penalties could be problematic if the adviser no longer acts for the client (particularly given the potential for conflicts of interest as referred to in paragraph 6.12.1) The adviser will not be able to independently verify if the tax figure presented by HMRC as the starting point for the penalty calculation is correct and final.

6.17.6 There are also points to consider on tax-geared penalties where a taxpayer decides (eg for reasons of their health or finances) to give up interacting with HMRC on a dispute and just pay the tax, even if the adviser in question thinks it is not due. This situation might arise if the matter is a technical dispute (legislative interpretation) or heavy factual dispute where the facts appear to back up a valid interpretation that the tax is not due (residence, for example). It would be difficult/impossible for the firm to challenge the liability without the taxpayer (who may not be their client at that point) being enjoined in the appeal, even if the legislation permits the adviser to launch such a challenge as part of their penalty appeal. Consequently, the adviser faces the risk of a penalty on tax which they consider is not due. There are some parallels here with the issues on personal liability notices (PLN) in Schedule 24 FA 2007, where business error penalties are moved onto the directors whose deliberate behaviour caused the error. The tribunals managed to read into the PLN

[20] https://tinyurl.com/fab3xe76

[21] https://www.gov.uk/government/consultations/strengthening-tax-avoidance-sanctions-and-deterrents-discussion-document

legislation a right to challenge the tax liability within the appeal – which is particularly important where the original business is in liquidation and the liquidator declines to contest HMRC's estimation of tax as there is no money for it. However an adviser is one step further removed compared to the (by then ex-) director.

6.17.6 Where penalties are based on fees there are still points which will require careful consideration as to what the position should be if the fees were not in fact paid or charged (or are repaid) or whether the adviser has committed multiple small harms.

6.17.7 We do not support a penalty based on a business's global turnover. This would be unworkable. Not only would it be challenging and time-consuming to calculate such a penalty, but it would also be viewed as unfair and potentially disproportionate if the part of the business responsible for the dishonest conduct in the UK is only a minor part of a much larger global business's operations.

6.18 Question 18: Do you believe there should be a maximum penalty amount?

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

Please give reasons for your answer.

6.18.1 On the basis that penalties are calculated based on a percentage of the fees charged by the adviser (our preference) then we would not expect this to be subject to a maximum figure.

6.19 Question 19: If you believe a maximum penalty should be in place, how do you feel it should be calculated? Please give reasons for your answer.

6.19.1 CIOT has no further comments to add.

6.20 Question 20: Do you agree the penalty should escalate in stages, based on additional instances of facilitation of non-compliance?

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

Please give reasons for your answer.

6.20.1 Refer to the answer set out at 6.18.1.

6.20.2 As well as a consideration of escalation of penalties it is important to consider whether there should be any stages prior to a penalty being issued – for example in the circumstances where an agent is not performing at the required levels of competence a warning may prompt them to seek additional technical training and avoid the need for penalties to be issued.

6.20.3 If no 'warning stage' is included then consideration should be given to 'suspended penalties' pending an adviser taking remedial action such as appropriate training etc.

6.20.4 Penalties developed should be based on the five principles outlined by HMRC and there needs to be consideration of what the next steps will be if an adviser pays the penalty but continues with the same inaccuracies as before. For a professional body member this could result in a PID disclosure but it is not clear what the outcome would be for an adviser who was not a member of a professional body.

6.21 Question 21: What other changes to the maximum and minimum financial penalty thresholds would be needed to ensure that a penalty charged in a case is more proportionate to the tax loss poor tax advice has caused?

6.21.1 CIOT has no further comments to add.

6.22 Question 22: Do you agree with the government's proposal to introduce an option to charge penalties on tax adviser business entities rather than individuals, except where it can be evidenced that the wider business was not aware of the individual tax adviser's actions?

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

Please give reasons for your answer.

6.22.1 CIOT considers that in the main the focus should be on the company or firm providing the services, rather than the employee thereof. This is in line with the contractual arrangements firms have with clients and PII arrangements.

6.22.2 We can however understand that HMRC may want to retain the ability to take action against an individual where the business was unaware of the individual's actions. We are aware that some individuals have moved from business to business and caused harm in each organisation and HMRC may require powers to deal with that individual. Having said this, firms should have procedures in place to undertake checks on employee work and employees who do not meet required standards are already subject to a firm's disciplinary procedures. If the firm had reasonable prevention procedures which an individual had ignored then we can see that it may be appropriate for action to be taken against an individual.

6.23 Question 23: What else should be considered when looking at penalties charged on tax advisers?

6.23.1 CIOT has no further comments to add other than those already outlined above.

6.24 Question 24: Are there any reasons why HMRC should not make further non-PID disclosures to professional bodies, as well as continuing with PIDs (where appropriate)?

6.24.1 The CIOT welcomes further discussion with HMRC about further PID disclosures and the possibility of non-PID disclosures. HMRC has access to information about our members which we cannot access through our routine monitoring activity. Disclosures would enable us to:

- consider whether full disciplinary action is appropriate in relation to a member; or
- work with the member to put in place remedial action to improve standards; or

- work with groups of members on areas where an improvement to standards or training is necessary
- provide webinars etc to cover themes which HMRC have identified through work with agents in general or our members in particular.

6.24.2 Complaints about CIOT members and the disciplinary scheme are dealt with by the independent body the Taxation Disciplinary Board (TDB)[22] and we would need to liaise with them in relation to any changes to disclosures made and how these would be handled. At present complaints made to the TDB mean that members cannot resign from the CIOT until disciplinary action is concluded. We would therefore need to consider whether non-PID disclosures should also be treated as being complaints to the TDB in order to ensure that effective follow up action could be taken rather than a member simply being able to avoid this by resigning.

6.24.3 The inference in the consultation document is that there are some issues which HMRC come across which the professional bodies are unlikely to investigate as disciplinary matters. We will be seeking to discuss this further with relevant colleagues at HMRC before draft legislation is issued to understand more about this.

6.24.4 The CIOT would want to explore with HMRC what data they would publish and record as to the data shared (and with which bodies it will be shared). We would welcome further discussion as to what sort of information would assist with our disciplinary processes and also the idea of sharing themes of errors, for example, where the focus could be more on education.

6.24.5 The CIOT would also need to consider the expected time and resources involved for both us as a professional body and our members in dealing with non-PID disclosures and HMRC's expectations in relation to the outcomes from these disclosures. We look forward to discussing this further.

6.24.6 The current scheme of PID and non-PID disclosures do not of course answer the problem of action to be taken in relation to unaffiliated agents. It should be noted that members disciplined by the TDB and excluded from the CIOT can continue to act as tax advisers and in some cases can continue to cause harm in the tax system. We cannot see that any of the outcomes from this consultation will prevent this from continuing in the future.

6.25 Question 25: What types of behaviours or activities do you consider it appropriate for HMRC to make further disclosures about?

6.25.1 The behaviours and activities set out in the consultation document make sense for disclosure to the CIOT. It would be helpful for professional body members if there is clear guidance on what events trigger a non-PID disclosure and the list should of topics should be publicly available.

6.25.2 The brief list of behaviours and activities included in the consultation document refers to low technical awareness/ability and whilst this seems a reasonable trigger there will need to be safeguards to ensure referrals are not made simply because HMRC do not agree with the tax adviser's interpretation of the law so cases involving technical disputes are unlikely to be suitable for referral.

6.25.3 We also note that the list refers to occasional circumstances where a tax adviser has failed to keep their tax affairs up to date. The guidance in PCRT help sheet E: Members' Personal Tax Affairs[23] refers to the fact that 'a member's own tax affairs should be kept up to date. Neglect of a members' own affairs could raise doubts within HMRC as to the standard of the member's professional work and could bring the member or their professional body into disrepute'. The help sheets represent guidance designed to help members apply the Fundamental Principles and Standards in their tax work. While not mandatory a member in a disciplinary case may be asked to explain why they did not follow the help sheet guidance and therefore we consider that PIDs

[22] https://tax-board.org.uk/

[23] https://tinyurl.com/a8byn3pe

could already be actioned and members put through the disciplinary process if they do not keep their tax affairs or return filings up to date.

6.26 Question 26: Do you believe that it is in the public interest for HMRC to publish more information about its activity, such as the details of tax advisers subject to a formal sanction by, or a restriction on their dealings with, HMRC?

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

Please give reasons for your answer.

6.26.1 There is a public interest in letting people know HMRC are actively enforcing agent standards and the names of tax advisers involved in harm to the tax system but there do have to be safeguards for the benefit of both advisers and their clients.

6.26.2 There does however need to be a clearer articulation of the purpose of the publication and acknowledgement given to the fact that it is easy for a person or business to change their name/address and continue operating, so it is not an effective method by which taxpayers can check that someone has not received a sanction.

6.26.3 Safeguards will be needed as publication could be career ending or have a significant detrimental impact on the adviser's ability to continue in business, regardless of their size – particularly if the press publicise the publication of the adviser's details. We would be interested in seeing statistics on page views and results of research undertaken on the impact of lists currently publicised (for example in relation to tax avoidance schemes and deliberate defaulters).

6.26.4 Information provided would need to be easily understood by clients or prospective clients and would need to convey the seriousness of matters being reported. The general public may not understand the serious implications of issues such as withdrawal of an agent code and it may not therefore impact their choice of tax adviser.

6.26.5 Consideration should be given to other ways in which information might potentially reach clients/prospective clients and these should be explored. Examples might include:

- whether HMRC should write to all clients of a tax adviser where an agent authorisation is in place. However some tax advisers provide services where there is no requirement for them to have an agent code or agent authorisation from clients.

- whether tax advisers should be required to publish details of formal sanctions to which they have been subject on their business stationery or websites.

6.26.6 If the matter has not already been raised with the professional body an individual belongs to there should be a system of notifying the professional body regarding the penalty prior to publication so referral for disciplinary action can be considered.

6.27 Question 27: When considering where to set the threshold of proportionality for publication, which types of sanctions do you believe should be included, and which should be left out?

6.27.1 The consultation document sets out a number of areas where sanctions for failing to meet professional standards could be published. There should be safeguards in place in relation to any publication given the potential impact on firms but subject to good safeguards being in place our comments in respect of the areas referred to in the consultation are as follows:

- Suspension of agent codes – suspension of a code already has a huge impact on a firm. Reasons for suspension can be varied including failure to have AML supervision in place. Whilst it may be reasonable to publish details where suspension of a code has been applied as a sanction for poor standards we do not consider it necessary to publish details of all code suspensions.

- Pausing of repayment claims – this would be useful information to publish and could assist members of the public in choosing alternative reputable firms to assist them.

- Investigations following a PID - The reports to professional bodies will not affect unaffiliated advisers so a two-tier system is reinforced. Professional bodies publish disciplinary outcomes anyway so HMRC do not need to. Also HMRC can already publish advisers details under Schedule 38 FA 2012, Sch 20 FA 2016 and Schedule 16 F(No2)A 2017. The non-PID referrals mooted in the previous part of the consultation should not be a reason for publication as the issues causing the referral will be more minor.

- Refusal to deal with - This would be useful information to publish and could assist members of the public in choosing alternative reputable firms to assist them.

6.27.2 The consultation document refers to the possibility of publishing details of tax advisers who fail to file more than two returns, or who have outstanding liabilities unpaid for more than two years. We would expect CIOT members in these circumstances to have been referred for disciplinary action and where disciplinary action is upheld against these members then details would be published on the TDB website. Unaffiliated agents are not currently subject to disciplinary action and therefore there is no publicity in relation to failures to keep their own tax affairs up to date. Publication of details of unaffiliated agents may therefore assist in bringing a more level playing field in this area but could also be viewed as disproportionate.

6.27.3 Overall, publication must be proportionate to the potential harm. In the consultation HMRC indicates that it does not want to publish an adviser's details for insignificant mistakes but this will need to be carefully defined. If a person makes a mistake then we would expect them to be given a chance to improve so publication should be reserved for deliberate wrongdoing by the adviser.

6.28 Question 28: Is the short-form and long-form approach to publication sufficiently flexible to allow HMRC to take a proportionate response to different degrees of poor tax adviser behaviour?

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

Please give reasons for your answer.

6.28.1 The details listed as proposed to be published are similar to those in existing regimes which are published, as well as s94 FA 2009, so they appear reasonable. The difference between the two approaches is the statement of the reason for publication. The detailed description may be unnecessary as members of the public may be unlikely to comprehend the details. HMRC must ensure that any descriptions are accurate.

6.29 Question 29: What information about each tax adviser should be published, and is there anything that should not?

6.29.1 The details listed as proposed to be published (which align with those set out in Publishing Details of Deliberate Tax Defaulters) appear reasonable. Whilst CIOT favours penalties being considered in the first instance in relation to the firm, if penalties are levied on individuals where a person acted alone without the firm being aware of it, then the firm's name should not be published.

6.29.2 Publication should only be possible after all appeals against penalties etc are exhausted.

6.29.3 Publication is unlikely to be able to cover any new firm which phoenixes from the original firm providing the advice and this is a weakness in the plan to publicise details.

6.30 **Question 30: For how long should details remained published and in the public domain for short-form publication, and for long-form publication?**

6.30.1 The CIOT ensures the outcomes of disciplinary action are now published for five years apart from where members are excluded from membership when details are published for an indefinite period. The timing of publication will depend on considerations in relation to GDPR and rehabilitation and is dependent on the nature of the member's behaviour.

6.31 Question 31: Which criteria for publication would set a fair and proportionate threshold for using publication?

6.31.1 As set out in paragraph 6.27.3 publication must be proportionate to the potential harm.

6.32 **Question 32: Do the proposed safeguards provide for a fair, proportionate, and workable publication framework?**

6.32.1 Publication could be career ending or have a significant detrimental impact on the adviser's ability to continue in business, regardless of their size – particularly if the press publicise the publication of the adviser's details.

6.32.2 HMRC should allow appeals against publication so that there is an effective, independent safeguard. Representations are just to HMRC, which is not independent.

6.33 **Question 33: Are there any other safeguards which you think the government should consider for this publication power?**

6.33.1 The CIOT has no further comments in relation to this question.

7 Acknowledgement of submission

7.1 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

16 May 2025

Appendix One - HMRC POWERS & SAFEGUARDS

The CIOT's 10 principles against which HMRC's use of its powers[24] and safeguards and any proposed powers and safeguards can be compared

1. Consistent – powers and safeguards should be applied consistently across HMRC, taxes and taxpayers.

2. Fair -–powers should help build trust in the tax system and achieve a fair balance between the powers of the tax authority and the rights of taxpayers[25], whilst being effective in identifying and dealing with non-compliance.

3. Proportionate – powers should be proportionate to the mischief they are introduced to tackle, used in a fair and even-handed way and are not abused.

4. Evidence based – decisions about when and how to use a power or operate a safeguard must be based on the available facts and evidence.

5. Be targeted appropriately and used for the purpose they were introduced for - the policy rationale for the power or safeguard should be clearly articulated at the outset and later deviations only considered exceptionally and after consultation.

6. Certain – there should be certainty about when and how a power or safeguards will and can be used; it should be set out in statute, with easily accessible and understandable guidance to supplement it.

7. Simple - so the rules can be more easily understood by taxpayers, agents and HMRC officers.

8. Transparent and communicated effectively – so taxpayers, agents and HMRC officers can understand and are aware of what taxpayers need to do to comply with their obligations or to challenge HMRC decisions.

9. Regularly reviewed – powers and safeguards should be reviewed regularly to ensure they are up to date and being used appropriately.

10. Access to justice – powers and safeguards should be subject to appropriate oversight, including the right for taxpayers to challenge HMRC decisions via statutory review, tribunal appeal etc.

[24] HMRC's powers are wide-ranging and cover the ability to undertake compliance checks, obtain information and documents, make decisions, raise assessments, resolve tax disputes and apply interest and penalties. As well as civil powers, HMRC have powers to prosecute taxpayers where criminal behaviour is suspected but criminal law powers are outside the scope of this document.

[25] Fairness includes being inclusive. Taxpayers' rights include their rights to challenge HMRC decisions (eg via statutory review, tribunal appeal etc).