

Consultation on: Raising standards in the tax advice market: professional indemnity insurance and defining tax advice

Response by the Chartered Institute of Taxation

1 Executive Summary

- 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 19,000 members, and extensive volunteer network, in providing our response.
- 1.2 We support the introduction of a requirement for tax advisers not currently affiliated to a professional body to hold Professional Indemnity Insurance (PII). We support the introduction of Professional Indemnity Insurance (PII) for tax advisers not currently affiliated to a professional body). We also see it as essential that this first step must then be built on to bring all tax advisers within the scope of other professional body requirements such as continuing professional development (CPD), monitoring and enforcing standards, education and disciplining. Whilst we accept that there is still work to be done by the professional bodies in maintaining and improving standards there are proportionally more issues with the smaller unaffiliated sector and professional body efforts are undermined if tax advisers have the option of operating in the unaffiliated sector to reduce costs and onerous compliance requirements.
- 1.3 PII requirements for the unaffiliated should be similar to those already developed for professional body members to ensure appropriate consumer protection.
- 1.4 A requirement to have cover in place together with the commercial pressure to minimise the cost of that cover should drive up standards as firms with poor internal policies, a poor claims history or dealing with riskier areas of work will need to review current systems and work in order to obtain cover at an economic rate and maintain their business. If they cannot get cover they will need to cease trading. HMRC enforcement of the PII requirement will be key to ensure firms who do not comply are removed from the market. We believe the current tax advice market has sufficient capacity to absorb any clients displaced where firms cease to trade – in many cases principals and employees of displaced firms might seek and obtain employment with

advisory firms with better quality arrangements and able to get cover. We consider those clients will in turn be better off by receiving better advice with appropriate consumer protection in place.

- 1.5 The insurance market is best placed to comment on its capacity to meet the demand for quality insurance and how they might be able to certify that firms meet legislative requirements regarding PII. We are aware of the hardening of the market in relation to providing PII for tax services and this will need to be addressed to ensure cover can be obtained.
- 1.6 We consider that PII should be required for all services coming within the definition of tax advice.
- 1.7 Whilst there are a number of challenges with the introduction of mandatory PII for all advisers we consider that not all of these are downsides to the proposal or would prevent the introduction of PII: it is more a case of raising the issues to ensure the proposal will be as effective and beneficial as possible.
- 1.8 The definition of tax advice should be widely drawn and principles based so it can be built on over time. It will need to be enforced actively to demonstrate that all tax advice comes within the definition unless specifically excluded. For the avoidance of doubt we consider that the definition must include:
 - The activities of the tax avoidance boutiques
 - Umbrella companies operating disguised remuneration schemes
 - Advice embedded in software
 - Advice embedded in wider advice

2 About us

- 2.1 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.
- 2.2 We are also an anti-money laundering supervisor.
- 2.3 Our members have the practising title of ‘Chartered Tax Adviser’ and the designatory letters ‘CTA’,

3 Introduction

- 3.1 The CIOT welcomes the opportunity to comment on the consultation on [Raising standards in the tax advice market: professional indemnity insurance and defining tax advice](https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market)¹ (the Consultation) which was published by HMRC on 23 March 2021.
- 3.2 The CIOT provided a detailed response in relation to the call for evidence [raising standards in the tax advice market](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873540/Call_for_evidence_-_raising_standards_in_the_tax_advice_market.pdf)² (the Call for Evidence) in 2020. The CIOT continues to work with HMRC collaboratively and looks

¹ <https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market>

² https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/873540/Call_for_evidence_-_raising_standards_in_the_tax_advice_market.pdf

forward to working on the next steps to raise standards as set out in [raising standards in the tax advice market – summary of responses](#)³.

3.3 Key points in relation to the market include:

- The UK has one of the most complex tax systems in the world. HMRC is resource-constrained and this amongst other factors leads to difficulties for taxpayers in accessing assistance from this source.
- Taxpayers make use of agents' services to address their tax obligations. Agents will have the information and experience to deal with the taxpayer's requirements within the UK tax system. The reliance placed by a taxpayer on their agent places weight on the need for high standards and good behaviour and puts pressure on the agent in their dual roles of interpreting the tax system for their client and representing their client in interactions with HMRC. In a market where the adviser possesses more or better information than the client this can lead in some cases to exploitation.
- Standards in the tax advice market are important. There is an obvious public interest in high standards, both to protect the specific taxpayer (the customer in HMRC terms) and the public revenue.

3.4 Much of the detail on existing problems in the market relates to the remaining recalcitrant promoters of egregious tax avoidance. Many of these do not present themselves as tax advisers but they need to be brought within the scope of any steps to raise standards.

3.5 In terms of the broader range of issues in relation to standards, these appear - from the very limited amount of publicly available information – to be more pronounced among those who are not members of professional bodies than those who are. Professional bodies have built principles governing behaviour to protect both the consumer and the public revenue. PII helps to provide redress where necessary but other essential requirements include training, monitoring and enforcing standards, CPD and disciplining. PII is but one part of a more complex professional body approach to upholding standards.

3.6 Tax advice is embedded in wider advice or support including Technology platforms and it is key to ensure any move to raise standards reflects the future increased use of more sophisticated tax technology.

3.7 Our response to the Call for Evidence made it clear that we favoured maximising the regulatory role of professional bodies (Option E) as the most effective way of raising standards. This would build on what has been achieved by the professional bodies working together with each other and with HMRC to raise standards. PII is one of the protections which professional body membership would bring and therefore we support the introduction of PII for all tax advisers as a first step. We also see it as essential that this first step must then be built on to bring tax advisers within the scope of other professional body requirements such as CPD, messaging, education and disciplining. In saying this we accept that the position is not always perfect in relation to Professional Body members but:

- a) The evidence shows that there are proportionally more issues with unaffiliated agents; and
- b) Professional body efforts to improve standards are potentially undermined by the fact that members have the option of moving into the unaffiliated sector if we are perceived of as too onerous. Our

³https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/934614/Raising_standards_in_the_tax_advice_market_-_summary_of_responses_and_next_steps.pdf

members have shown by getting qualified etc they have a commitment to quality but there are always limits to what can be achieved if everything is voluntary.

- 3.8 It should be noted that an alternative option to the current proposals might be to move straight away to the introduction of the full range of standards applied to Professional Body members. This would still be subject to the challenges set out in relation to PII as that is part of that suite of standards plus there would be additional practical challenges in relation to other requirements. The introduction of PII at the outset gives the opportunity to consider solutions in that context and build a framework which can be used as other requirements are introduced.

4 Responses to the Consultation

- 4.1 CIOT has also taken part in a proposed joint response to the Consultation by the bodies which have responsibility for the Professional Conduct in Relation to Taxation code (PCRT): this response by CIOT specifically is consistent with the joint response but provides more detail.
- 4.2 We have also seen the response by the Association of Taxation Technicians (ATT) and support the observations made in that response.
- 4.3 Our Low Incomes Tax Reform Group is also making a response, which we support, focussed on the needs of low income groups.

5 CIOT PII Requirements

- 5.1 Annex B of the Consultation compared the PII arrangements of a number of professional and regulatory bodies which includes the CIOT. We attach an updated version (Appendix A) indicating PII requirements for CIOT members in more detail. We would expect that any PII requirements introduced for unaffiliated firms would have similar requirements as poor quality PII would not provide the consumer protection required.
- 5.2 Given that our members have a specialist tax qualification, we are well placed to comment on the challenges for tax advisers in obtaining appropriate PII. Whilst many tax advisers provide other accountancy services alongside tax advice, many members provide specialist advice in niche areas such as R&D and capital allowances advice.

6 Challenges in extending the PII requirements

- 6.1 We have set out in our answers to the Consultation questions a number of the challenges we are aware of in relation to the PII market. However, not all of these are downsides to the proposal or would prevent the introduction of PII: it is more a case of ensuring the proposal will be as effective and beneficial as possible.
- 6.2 A key issue will be the response of the insurance market in terms of capacity to provide additional cover, willingness to provide cover and how the system will guard against unscrupulous insurance providers.
- 6.3 Enforcement of the requirements is also key to ensure firms not adhering to the requirements are effectively removed from the market place.

7 Challenges in defining tax advice

- 7.1 We have set out in the response to the Consultation questions our suggestions in relation to the definition of tax advice. Overall, we favour a wide definition which could then be built on over time.
- 7.2 We consider it is key that the definition brings within scope of PII:
- i. Tax compliance services
 - ii. Tax advice including advice provided by boutique firms for example firms which might deal with specialist areas of tax or those selling tax avoidance planning.
 - iii. Umbrella companies operating disguised remuneration schemes.
 - iv. Tax software given the role this plays in providing tax advice to the consumer.
 - v. Pro bono tax work provided by an organisation to members of the public where the provision of poor quality advice can have an adverse impact on the individual being advised.

Responses to the Consultation Questions

8 Q1: In your opinion, would introducing a requirement for anyone providing tax advice to have professional indemnity insurance satisfy the policy aims of improving trust in the tax advice market, by targeting poor behaviour and allowing taxpayers greater redress when things go wrong?

- 8.1 The CIOT views PII as a key requirement for their members to ensure the protection of the consumer which in turn should allow greater redress for taxpayers and improve trust in the tax advice market. If there is PII in place:
- i. The client may claim for loss from their adviser who has made mistakes or is found to be negligent and this claim will be met if substantiated
 - ii. It provides a clear process and mechanism for bringing claims
 - iii. It should give confidence that claims for loss (and complaints) will be dealt with thoroughly and appropriately at least to the extent of the PII in place.
- 8.2 The full impact of mandatory PII may take time to become apparent but it should from the outset offer a measure of protection to the consumer. It does support the provision of quality providers of tax advice in the market place and will impact behaviour over time. We agree with the statement in paragraph 27 of the Consultation that market forces may help to drive up standards as set out below.
- 8.3 PII can be a significant part of the cost base of the firms run by professional body members. The cost is directly related to the risk profile of the firm. Firms will seek to reduce their risk profile, for example by ceasing to deal with riskier areas of work, improving internal procedures and ensuring staff are well trained and appropriately supervised to reduce the risk of mistakes and reduce PII premiums.
- 8.4 Firms that have claims made against them for poor quality advice will find their premiums increase or face refusal of an insurer to renew. This could threaten their existence and potentially force them out of the market so it is in their interests to maintain high standards and reduce claims in order to continue in practice.
- 8.5 PII also improves trust in the tax market by ensuring the survival of firms when claims are made. Whilst the CIOT expect members to adhere to the high standards set out in Professional Conduct in Relation to Taxation (PCRT) and Professional Rules and Practice Guidelines (PRPG), mistakes do happen and clients do sometimes

make vexatious claims. Policies include cover for extensive legal costs of claims enabling firms to continue to provide a service to the public.

- 8.6 Given that we require all CIOT members in practice to have PII, we would see advantages to extending PII to all providers of tax advice. As consumers do not always appreciate that tax advisers do not have to belong to a professional body, the introduction of a mandatory requirement provides some level of protection whichever adviser they approach.
- 8.7 Provided the insurance market effectively differentiates the risks in tax advice firms and provided effective enforcement of the requirement to have PII is in place, poor behaviour will be targeted. Firms who cannot get cover because of poor internal procedures, a claims history or riskier areas of work will either be priced out of the market or refused cover and will need to cease or be removed from the market through enforcement action.
- 8.8 Whilst we consider that PII does provide greater redress for taxpayers the following points should be noted:
- a) Most clients dissatisfied with the standards provided by a current adviser will leave and move to another adviser rather than make a claims against the firm. The introduction of additional professional standards operated by the professional bodies such as mandatory CPD or referral of poor agents for disciplinary action would have more impact in these circumstances than PII and illustrates that PII is just one tool in relation to standards.
 - b) Making a claim under a PII is not an easy or automatic process. The consumer still needs to claim against the adviser in the first instance. Some claims may be excluded by the terms of the policy and insurers often defend against claims vigorously. Firms are not always permitted to make a quick and amicable compromise settlement as it could impact on the validity of their cover under the policy. The client may still need to take legal action against the adviser (with associated costs).

9 Q2: If the government introduces the requirement for professional indemnity insurance, what further steps would you recommend?

- 9.1 This question can be answered from a number of different angles and we have set out various comments below.
- 9.2 PII requirements themselves:
- a) PII cannot simply be introduced without regard to minimum standards such as the amount of cover required, minimum excess requirements, permitted exclusions etc.
 - b) It should not disadvantage those who have already been compliant and push up costs for compliant professional body members.
 - c) HMRC will need to ensure checks are made to ensure that the minimum terms of cover are being met.
 - d) Effective enforcement by HMRC in relation to those subject to the PII requirements is key.
 - e) A system will also need to be agreed with professional bodies to ensure minimum terms of cover and enforcement are consistent across the tax profession.
- 9.3 PII requirements in the overall framework of raising standards – PII cannot be left as the only step taken to raise standards. It is an important step but we would want to see some momentum then for the introduction of further standards in relation to areas such as education of agents, CPD and HMRC disciplinary action in relation to poor standards.

- 9.4 Complexity of the tax system – Paragraph 10 of the Consultation refers to “the government’s vision of a tax system that is straightforward and hard to get wrong” - further action to address the real complexity for those not choosing to embark on complex tax planning could remove or at least reduce the need for assistance in the part of the market which deals with very straightforward compliance. Also better availability of online and phone advice from HMRC for taxpayers just looking to “do the right thing” would help taxpayers comply.

10 Q3. Are there any alternative options you would recommend?

- 7.1 HMRC’s Standard for agents should be updated to bring it in line with the requirements of PCRT.
- 7.2 As indicated in our response to the Call for Evidence, we favour maximising the regulatory role of professional bodies (Option E) as the most effective way of raising standards. The introduction of mandatory PII should be the first step on the road to introducing the standards applying to professional body members already.

11 Q4: Apart from the costs and potential effects outlined above, are there any other costs you foresee for advisers?

- 8.1 We see examples where the PII market lacks the sophistication to distinguish between risks appropriately. If this were exacerbated under the mandatory introduction of PII then there is a risk that cover for the unaffiliated will drive up insurance costs for all advisers. This would impact both “ends” of the market:
- a) If costs in general increase this would be passed on to clients and could drive up the price of basic tax advice and compliance.
 - b) Skilled and knowledgeable advisers with high professional standards may not be able to obtain insurance at all as the insurance market perceives the services to be too risky (as a result of not fully understanding the service). An example could be provision of any “cutting edge” service, for example advice on cryptocurrency transactions - they need to be taxed, there is little guidance and the current legislation may not easily fit but there are some genuine businesses who want to pay the right tax and advisers who can advise them but would insurers either massively increase the premiums or exclude such advice?

12 Questions 5 to 11 – Not applicable

13 Q12. Do you think there are any lessons on how complaints are handled in similar industries that we can learn to help improve redress?

- 13.1 [CIOT's Professional Rules and Practice Guidelines](#) sets out the recommendations to CIOT members in relation to the handling of complaints. It is recommended that procedures are in place for handling complaints and that complaints are treated seriously and immediate action taken.
- 13.2 The CIOT have an independent body for handling complaints and we see this as providing an effective means for consumers to complain about poor standards experienced in their dealings with our members.

14 Q13. What is the minimum level of cover you recommend, and why?

14.1 CIOT PII Regulations require the following:

“5.1. Except where paragraphs 3.1 [£1,000 Honorarium exemption] or 5.2 [see below] apply, the annual minimum limit of indemnity for each and every claim is £1 million.

5.2. Where the firm’s gross fee income is less than £400,000, the required annual minimum limit of indemnity for each and every claim is the greater of:

- 2.5 x the gross fee income; and
- £100,000.”

This is in line with the requirements of other accountancy professional bodies and we consider that those unaffiliated with professional bodies should have standards comparable with professional body members.

15 Q14. What activities should it be mandatory to cover, and why?

15.1 See comments on the definition of tax advice. All work included within the definition should be covered.

16 Q15. Should the government set mandatory minimum or maximum levels of:

- cover
- run-off cover
- excess

16.1 Cover – a minimum level of cover should be put in place to ensure the policies taken out are of an appropriate standard to provide consumer protection. Consideration also needs to be given to what exclusions are permitted and cover should also be retroactive in relation to work undertaken in earlier years. There is no benefit to the consumer if an adviser is able to tick a box to confirm they have PII cover without there being some minimum terms required. PII requirements should also be comparable between firms already required to have PII as a result of professional body membership and the unaffiliated. We would not want to see the requirements brought in being more onerous than the current requirements of the CIOT.

16.2 We understand that obtaining full retroactive cover for practices who may have operated for several years without maintaining PII can be problematic for PI insurers because they look on that as poor risk in terms of quality, risk management attitudes etc. Normally in these circumstances we understand that insurers would then offer a new cover on the basis of ‘retro date inception’, i.e. covering work undertaken from inception of the policy only. If that were the case on the introduction of PII requirements unaffiliated practices would find themselves at a competitive advantage over professional body members who have incurred the cost of maintaining retroactive cover. Premiums are higher for retroactive cover and that would need to be built into the requirements and the insurer’s pricing to ensure adequate consumer protection.

16.3 We do not consider there should be a *de minimis* level below which members in practice are not required to have cover. Some practitioners may have very low fees but their clients should still be entitled to the same protection as those in larger practices. The CIOT do not relax the requirements for smaller firms but instead

have arranged for members to be able to access a low cost policy where fees are below £5,000 or where pro bono work is undertaken. See the CIOT website [here](#)⁴.

- 16.4 The CIOT do not currently set maximum levels of cover. However, in our PII guidance we do recommend that members undertake a risk assessment before deciding on the level of the firm's cover rather than simply opting for the minimum.
- 16.5 Run-off cover - insurance is on a claims-made basis - ie the insurance has to be in place at a time when a problem arises and a claim is required. It is not sufficient for it to have been in place at the time the work was undertaken. Minimum periods and levels of run off cover should be put in place as it can be some time following the completion of work before problems are identified. CIOT requirements are that members in practice must have PII in place for not less than 6 years after they cease to engage in public practice. Particular issues in relation to run-off cover which would need to be addressed are:
- Problems for some firms where 6 years' lump sum cover cannot be obtained at the date of retirement and they have to renew on an annual basis.
 - Where renewal is on an annual basis, how protection of the consumer is maintained where the insurer withdraws from the market during the run off period.
 - Members report to us that sometimes companies who have historically undertaken egregious tax planning are wound up and insurance only taken for a limited time which makes it difficult for clients to pursue the business and make a claim.
- 16.6 Excess – it is reasonable to permit an excess but minimum levels should be set to insure the excess is not above the level which firms could afford to pay from their own resources. The CIOT permits an excess not exceeding £20,000 per principal in the business. Limitation of liability clauses are also important commercially and this should be recognized. Firms can be advising on financially significant transactions for relatively small fees and have limitation of liability clauses to manage their exposure.

17 Q16. What levels should these be?

- 17.1 Please see the comments set out in the responses to questions 13 and 15.

18 Q17 Should the government specify what advice must be covered by the policy? What advice do you think should be covered?

- 18.1 Once a definition of tax advice has been agreed we consider that all the areas covered by that definition where liability could potentially arise should be covered by PII.

19 Q18. Are there any other insurance requirements the government should require?

- 19.1 Other requirements to be considered include:

⁴ <https://ciotmktgprodeun.azureedge.net/list-of-professional-indemnity-insurance-providers>

- Territorial coverage – both in terms of location of firms and insurance coverage of work relating to tax for, say, international clients
- Are levels of indemnity to be set per claim or aggregate?
- Will the level of excess set be per claim or aggregate?
- How is cover for defence costs dealt with?
- Innocent non-disclosure clauses are standard in professional body PII requirements (clauses which prevent insurance from being voided where information has not been disclosed by the insured innocently or negligently)

19.2 In addition to the requirements, we would also suggest that consideration be given to the following:

- How to help firms find the required insurance – recommended brokers or compliant insurance policy lists assist firms. The CIOT does not recommend particular providers and members are free to choose their own provider as long as the policy meets the requirements of the regulations but we are able to supply members with information on two possible options which assist them in obtaining compliant cover – see [here](#)⁵ on the CIOT website.. The brokers involved work very hard to assist members in presenting their information appropriately for underwriters and help where members are experiencing difficulty in obtaining cover.
- What procedure will be adopted enabling firms to notify problems in obtaining cover and how will these be resolved? Enforcement against firms for failure to comply is important but the CIOT also tell members to get in touch if they cannot get cover. This ensures we are aware of difficulties and can support the member as they seek to obtain compliant policies.

20 Q19. Who should be required to hold the insurance? Should it be the firm, the principal, everyone who is acting as a tax adviser?

20.1 The CIOT requires every “Member in Practice” to ensure that their “Firm” has compliant professional indemnity insurance.

‘Member in practice’ is a member who provides taxation services on a full-time or part time basis as a sole practitioner, a partner in a partnership, a member of a limited liability partnership, a proprietor of an unincorporated body, or a director (registered at Companies House) of a company providing taxation services.

‘Firm’ is a sole practitioner; a partnership; a limited liability partnership or a body corporate or unincorporated which provides taxation services.

20.2 We therefore consider the Firm should be required to hold the insurance but all the Principals should be required to ensure their Firm has it in place.

20.3 It should be clear that employees have no requirement to have PII as any claims made should be made against the firm and not against them in their capacity as an employee. The employee has limited control over ensuring the firm obtains PII cover. We understand in any case that PII policies will generally provide indemnity to employees without rights of subrogation.

20.4 The position of subcontractors should be considered. Subcontractors acting as self-employed individuals or through limited companies would generally come within the scope of CIOT PII regulations. We however give an exemption provided they have obtained written confirmation from the contracting firm that its own

⁵ <https://ciotmktgprodeun.azureedge.net/list-of-professional-indemnity-insurance-providers>

professional indemnity insurance policy complies with the CIOT's professional indemnity insurance regulations and that it covers them in their capacity as a subcontractor. This can provide a useful exemption for subcontractors and is similar to the [AML supervision exemption](#)⁶ for subcontractors working solely for Accountancy Service Providers.

20.5 We have mentioned earlier in the document that we do not consider pro bono advice should be excluded from the definition. There is a distinction between people, say, helping their parents with their tax returns (who should definitely be outside the definition) and voluntary groups/advice agencies who help people. It is possible that such groups may provide poor advice and leave unrepresented taxpayers worse off and unprotected. If such pro bono work is to be left out of the definition (and hence the requirement to hold PII) then those advisers could be dealt with by requiring them to make it clear that their volunteer advisers are uninsured; there may also be merit in HMRC licensing a limited number of such organisations (obvious examples are TaxAid and TaxHelp for Older People) who could be licensed to operate without PII in recognition of their overall organisation and standards. Care does need to be taken in this area as many organisations assist individuals who have difficulty in interacting online with HMRC. We aren't intending to catch people who support people to access HMRC digital systems where there is no provision of tax advice.

21 Q20. What impact do you think setting minimum mandatory levels of cover would have on:
- the market including availability of insurance
- affordability

21.1 We consider that representatives of the insurance market may be in a better position than us to comment on this question. However, we understand from liaison with both our members and insurance brokers that there has been a considerable hardening of the market and increased premiums over the last two years.

21.2 A key issue here is the level of sophistication in the market and the ability to differentiate between the risks posed by different firms. There is a concern that unaffiliated individuals will be higher risk either because of the niche tax planning work they do or because their general standards are poorer. If there are greater risks in the market, this may increase PII for our members which would be an unwelcome outcome. As we do not deal with unaffiliated members, we are not in a position to assess whether this is the case.

21.3 Another key factor is the standards/rules set around the insurer. We understand from the brokers we currently work with that they frequently lose out on work to a non-FCA regulated insurer given temporary permission to trade in the UK, offering cover across various professions at seemingly cheap premiums. They tell us that their experience is that such insurers tend to be around for a very short period only and their exit from the market can cause some real turmoil. A move to only allow 'approved' Insurers might be the answer here or specific criteria which Insurers would be required to meet.

22 Q21. We intend to model the definition of who the requirement will apply to on one of the definitions currently extant in legislation. What a) benefits and b) issues are there with using the Dishonest Tax Agent

⁶ <https://www.gov.uk/guidance/money-laundering-regulations-accountancy-service-provider-registration> - see section If all your customers are accountancy service providers or banks

definition or the Money Laundering Regulations definition? Do you have a preference or alternative and why?

- 22.1 The two definitions offered for consideration in the ConDoc (*Dishonest Tax Agent* and *Money Laundering Regulations*) are shown in Appendix B.
- 22.2 Both are framed as definitions of the provider rather than the service being provided although each offers some limited reference to the type of service concerned.
- 22.3 Whilst there can be an attraction in using an existing definition where an appropriate one exists, neither of those offered seems wholly appropriate.
- 22.4 If either definition required an element of modification in order to be applied in the context of mandatory PII, that could reduce the benefit (because of the loss of symmetry).
- 22.5 Borrowing any definition would introduce the risk of the definition for PII purposes being changed by events in the external regime from which it had been borrowed – for example a legislative change or a judicial decision relating to that other regime.
- 22.6 The ***Dishonest Tax Agent*** definition:
- a. Relates only to ‘an individual’
 - b. Recognises that the activities must be ‘in the course of business’
 - c. Majors on *assisting* clients with their tax affairs (without defining either *tax affairs* or *tax position* – but the latter could use something like FA 2008 Sch 36 para 64)
 - d. Extends to where the appointment is indirect
 - e. Defines assistance as including both:
 - i. Advising a client (without indicating what that involves) and
 - ii. Acting as agent (potentially introducing some confusion because of the meaning of ‘agent’ within the context of tax)but without indicating what might also come within the definition of assisting.
 - f. Casually indicates that assistance includes *assistance with any document* without anything to suggest that this does not extend to someone who simply provides a copy of a pre-existing document or provides a copying or courier service
 - g. Deals with the incidental provision of relevant assistance with a very expansive inclusion of non-tax assistance – consider for example the provision by an architect or quantity surveyor of a factual analysis of building costs which they knew would be used in connection with a claim for relevant expenditure but which was made by reference to that specialist’s own discipline and without consideration of the tax implications.
- 22.7 Section 6 above identifies sufficient issues to suggest that modelling the definition on the Dishonest Tax Agent definition would require so much amendment that even its basic skeleton would be lost in the process.
- 22.8 The ***Money Laundering Regulations*** definition:
- a. Relates only to a firm or sole practitioner
 - b. Recognise that the activities must be ‘by way of business’

- c. Identifies the type of service concerned as involving the provision of 'material aid, or assistance or advice, in connection with the tax affairs of other persons'. This in turn:
 - i. Appears to be wide enough to include the provision of finance related to something which had tax consequences
 - ii. Uses the concept of assistance (without making any attempt to define it)
 - iii. Makes no attempt to define either 'advice' or 'tax affairs'
 - d. Extends to where the appointment is indirect
 - e. Is partially interpreted in AMLGAS (see for example paras 1.2.3 to 1.2.5).
- 22.9 Unless the only adaptation made to the Money Laundering Regulations definition was going to be something as brief as "Tax advice means any service provided by a tax adviser in the course of their business", any amendment of it would result in the original definition providing only a small part of the resulting definition. If it was as brief as that, it would provide no assistance in identifying what activities were and what were not within the definition for PII purposes.
- 22.10 In short, neither of the two existing definitions provides a form of words which could be used as a yardstick for determining whether an activity constitutes 'tax advice' without very substantial amendment. For that reason, it makes much better sense to create a bespoke definition which could take proper account of the context in which it is to be applied and was not vulnerable to being changed by external factors.
- 22.11 We suggest a possible alternative approach to the definition in Appendix C.
- 22.12 The wording provides particular examples of the manner in which the advice may be given and how the recipient of the advice may apply the advice they have received.
- 22.13 The wording also opens with deliberately broad terminology and focuses on the purpose of the advice (seen from the perspective of the recipient) before providing that a combination of outcomes may be treated as a single outcome (thereby potentially being a main purpose) and identifying what activities which might otherwise fall within the broad opening definition should be excluded (these would be defined deliberately narrowly).
- 22.14 At this stage, the focus needs to be on the purpose of the definition (what's in and what's out) rather than on its format. The best route is to define tax advice through a 'default' type of definition - that all activities having anything to do with tax are caught, unless they fall within a limited range of exceptions. That approach would fit with the aim of consumer protection.
- 23 Q22. What activities do you think should be excluded from the requirement for compulsory professional indemnity insurance and why?**
- 23.1 The question focuses on the *activities* in question. It is possible that it should additionally focus on the *context* of the service. There are situations where the service itself could be the same regardless of whether it was being provided inside or outside of a business relationship.
- 23.2 Some of the scenarios referred to in the Consultation as requiring possible exclusion (for example family and friends) would be excluded by the inclusion in the basic definition of a phrase such as 'the provision for profit or otherwise for consideration'.

- 23.3 Others, such as employees, charities and third sector bodies will require specific consideration. In relation to charities and third sector bodies more discussion may be needed and workshops with those involved in this area.
- 23.4 Pro-bono work raises an interesting issue. Is there any less duty of care in a formal pro-bono situation? What about informal advice provided at the school gate, pub or social gathering? Don't the guidance rules of professional bodies assume that liability can arise there?
- 23.5 Outside of the situations where the context may alter the question of liability and/or the appropriateness of mandatory PII cover, the question about which activities should be excluded from the requirement for compulsory PII should primarily be answered by those seeking to exclude themselves from the definition.
- 23.6 There would appear to be various alternative reasons for possible exclusion of (within-business) activities. The following are noted as possible reasons which might require consideration and not as recommendations for exclusion:
- a. The activities in question do not naturally fit within the definition of tax advice – so their exclusion is recognised in the definition simply to confirm this fact. It would be important to define these in terms of particular functions rather than simply assert that all services of Widgetserviceproviders are outside the scope of the definition;
 - b. Liability cannot arise as a matter of law – so their exclusion is recognised to prevent any misunderstanding that mandatory PII had changed the situation;
 - c. Any liability which might arise from the activities is already adequately covered by alternative, well-publicised and irrevocable arrangements – so mentioning them within the exclusions would signpost those alternative arrangements;
 - d. The services in question are being provided to another business (other than a business of a single individual) and the terms of the engagement freely negotiated between them include specific and prominently displayed indications that:
 - i. the provider of the services in question does not have PII cover in respect of those services, and
 - ii. the recipient of those services understands and accepts the implications of this fact and has specifically certified such understanding and acceptance.

(The intention here would be to avoid interfering with normal commercial contractual arrangements at the same time as emphasising to the recipient of the services the consequence of their acceptance.)

24 Q23. Would there be any benefit in having different minimum requirements for different activities?

- 24.1 Q23 does not relate directly to the definition of tax advice (or any wider definition of tax services) but to the possible benefit of having differential requirements in respect of different activities. As such, it is more appropriate to address it in the wider context of compulsory PII than in the definition of tax advice.
- 24.2 In terms of consumer protection, the strongest case for any such differential(s) would be to ensure that consumers of modest means were not priced out of the market for good advice because that advice had to be costed to include a level of PII cover which was vastly more than any liability which could reasonably be expected to arise from the service being provided.

- 24.3 We have no evidence base for the following observation but we assume that this concern would be of greatest relevance to the clients/potential clients of practices:
- a. which do not currently have PII cover;
 - b. whose clients:
 - i. are (almost) exclusively of relatively limited means and
 - ii. (almost) all have relatively straightforward tax affairs and
 - iii. could not reasonably be expected to suffer substantial financial loss which was attributable to the provision (or lack of provision) of tax services.
- 24.4 This raises the question as to whether some form of limitation of liability should be acceptable in order to enable an appropriate level of PII to be purchased by the service provider at a premium level which did not make their services out of reach for their client base.
- 24.5 It is important to note that clients with these identified characteristics are those in respect of whom professional bodies and the courts are likely to be most wary in terms of the fairness of limitation of liability.
- 24.6 The wider question of whether particular activities should not require PII cover at all is considered in the comments on Q22 and Q24.

25 Q24. What benefits or issues would there be in considering the financial services regulatory distinction between advice and guidance for tax advice?

- 25.1 A clear definition of tax advice will make clear what does require PII and what does not. It would not be our expectation that guidance (information) on issues such as tax free allowances included on websites would be included within the definition of advice.
- 25.2 The distinction within financial services between guidance and advice (referred to on page 22 of the ConDoc) is described in para 60 as determining who can offer it. Only regulated firms can provide advice.
- 25.3 It is difficult to see how considering that distinction would usefully inform the subjects of the Consultation which focus not on who can offer a service but which services require the offeror to have PII cover in respect of the services offered. The approach in the two contexts is fundamentally different. Whilst both are designed to provide consumer protection, the distinction is essential in financial services to ensure that advice is only provided by those appropriately qualified whereas in the context of the Consultation it would not assist at all in the objective of ensuring that cover exists where liability arises.
- 25.4 In the context of consumer protection, the key question is not the categorisation of the particular tax service (using that as a neutral term) but whether as a matter of general law (typically contract or tort) the provider of that service has a liability to the consumer if the service fails to meet contractual obligations and/or a duty of care. If the provider has such a liability, the existence of PII is very relevant. The obvious but fundamental point is that PII does not create the liability; its purpose is to ensure that any liability that is created can be funded so that the consumer is not (as) out-of-pocket.
- 25.5 It may be worth considering situations when liability can be created within the context of a business which provides tax services. A couple of examples may help to illustrate that seeking to define a dividing line between advice and guidance (even if desirable) could be very difficult:
- a. If a business client meets with their adviser to discuss a specific matter and the adviser has prepared in advance (and will be charging for that preparation time) it is clear that what the adviser provides is advice. But if at the end of that discussion (maybe in the process of leaving the building) the client (who is also a personal tax client) asks a non-specific question concerning their personal tax to which the adviser gives a generic but inaccurate/incomplete answer on

which the client relies to their detriment, would the adviser assert that no liability could have arisen as what they had provided was (at the very most) guidance?

- b. The notion that liability might not attach to *guidance* is brought into question by our customary disclaimers in presentations to gatherings where there is certainly no provision of advice (“a service which recommends a specific course of action based on consumers' individual circumstances and goals”⁷). Is the disclaimer simply a polite way of reminding the audience that *liability cannot possibly exist as a matter of law* (in which case the disclaimer is not necessary) or is it intended (possibly ineffectually) to introduce a contractual term under which each member of the audience agrees that as they haven't paid the going rate for *advice* they forego any right to compensation if they act or refrain from acting in a particular way by reference to the *guidance* received?
- c. If a payroll bureau shares generic guidance on the tax treatment of (say) termination payments with a client who has indicated that they are currently going through a relevant situation, would they have no liability to their client if that guidance was misleading and their client suffered financial loss as a consequence of relying upon it?

25.6 What these simple examples illustrate is that the key question is not how a particular tax service is described but whether the manner of its performance (or non-performance) can give rise to a liability in law. If that possibility exists, the starting point is that PII cover should be in place.

25.7 We are not in a position to comment on the existence of potential liability but we think that it may be appropriate to consider whether there are relevant principles in general law concerning liability in respect of loss arising from specific activities or in certain circumstances – particularly any exemptions from liability. There should not presumably be any obligation to have PII in respect of activities which cannot create a liability in tort or contract law?

25.8 Rather than trying to define the distinction between advice and guidance, should the starting point be the presumption that the provision of any tax service in the course of business (other than an excluded activity) can create a liability to consumers (however defined) and therefore require PII. That presumption would then be displaced by the existence in general law of:

- a. A principle in general law that no liability (or only a minimal liability) could arise from the particular activities
- b. Acceptance that limitations of contractual liability were fair and appropriate in relation to the particular activities (in which case the PII could be tailored accordingly provided that the limitations were adequately described in the terms of the relevant engagement contract and agreed in writing)
- c. Etc (lawyers to consider and complete).

25.9 We have no expert knowledge in relation to the potential for liability in the context of software. We do, however draw attention, by way only of examples, to internet advertising of insurance for software developers (see [Axa advert](#)) and internet commentary on limitation of liability in IT contracts (see [Taylor Wessing article](#)).

25.10 It may be appropriate to consider the provision of tax services in the context of publishing – for example subscription services which provide guidance/advice.

⁷ See Figure 4 in para 60 on page 22 of the HMRC Condoc.
Technical/documents/subsfinal/PS/2021

26 Q25. What benefits or difficulties do you foresee with the inclusion of a provision around UK taxation in the definition?

- 26.1 Although Q25 refers to 'UK taxation', section 62 of the Consultation refers to 'all tax work undertaken in the UK or related to UK taxation'. We assume that the extended phrase is introduced to ensure that compulsory PII would apply in respect of advice provided from outside of the UK but in respect of UK taxation.
- 26.2 Whilst we can see that there would be monitoring and enforcement issues in relation to advice provided from outside of the UK we consider that all tax work undertaken in the UK or related to UK taxation should be included in the definition.
- 26.3 Our view would also be that the definition should extend to include advice provided from the UK but in relation to non-UK tax but should make it clear, for example that an Australian adviser advising on Australian tax in Australia would not be within the requirements.
- 26.4 The CIOT do require members in practice to have PII covering all of their work whether that relates to UK tax or overseas tax. A consumer might reasonably expect that their UK tax adviser giving Spanish tax advice on their Spanish holiday home would be covered by the adviser's PII and therefore any restriction of PII to UK tax matters would need to be made clear to a consumer.

27 Q26. Do you agree with the 3 elements of enforcement?

- 27.1 We agree with the 3 elements of Implementation (referred to as enforcement). We do however consider that education is a key 4th element which is not sufficiently covered here.
- 27.2 Unless public awareness of the relevance of PII (and additionally HMRC's Standard for agents) is significantly increased, the ability of taxpayers to check that their adviser has appropriate PII cover could be no more than a theoretical ability. Harnessing public awareness at the outset could contribute significantly to the effective introduction of mandatory PII and its intended impact on the market. It could also reduce the burden on government of checking by effectively enlisting the public as volunteer checkers which may ultimately reduce HMRC requirements to check and sanction.

28 Q27. What are your views on the enforcement options described above?

- 28.1 Transparency – there will be a need to raise awareness amongst consumers of the importance of PII and the checks which should be recommended. Insurers will have a view on the information they are comfortable for firms to share with clients and this will need to be taken into account. As regards the specific options suggested:
- A certificate of insurance will indicate that PII is in place but does not signify a policy meets particular requirements (unless there is a requirement for the document to also certify that the policy meets legislative requirements).
 - We agree that the requirement for PII should be added to the HMRC Standard for agents although we would question how many consumers refer to this standard and would be aware of the requirement from this information.
 - PII could be added to the [CCAB guidance on what to look for in an Accountant or Tax Adviser](https://www.ccab.org.uk/choosing-an-accountant/)⁸ but again we suspect there is limited awareness of this document by consumers.
 - Online checks via portals may be helpful but again would need the raising of awareness.

⁸ <https://www.ccab.org.uk/choosing-an-accountant/>

- Reviewing HMRC lists of non-compliant agents may be helpful but we would expect that effective enforcement would ensure removal of these firms from the market place.

28.2 One possible solution would be for there to be public access to an HMRC Register of Agents which required annually updated evidence of PII (or membership of a professional body which requires the same) as a condition of registration. Such registration would be equally open to advisers who do not interact with HMRC as agents (provided they have PII). See below in sanctions for consequences of non-registration.

28.3 Checking that advisers have insurance is essential and we note the following:

- We agree that HMRC should automatically consider the requirement for insurance satisfied if the adviser can prove they are a member of a recognised professional or regulatory body that already requires insurance. Members currently self-certify to CIOT that they have met the requirement and we follow up on non-compliant answers. We also indicate to members we may ask for their PII records. We accept that proposals for mandatory PII may also require further consideration by CIOT about monitoring requirements and enforcement action.
- Checking PII requirements at times when agents register with HMRC for AML supervision, agent codes, compliance enquiries etc would be sensible and declining services until cover can be confirmed appear to be sensible options. Requiring PII as part of the Standard for agents combined with adherence to that Standard as a condition for interaction with HMRC are essential steps in raising standards and consumer protection. However, we agree that there would be a challenge in relation to those who never interact with HMRC's systems.
- Having a system of agreed compliant policies with a number of insurers would make the position much easier in terms of HMRC checks and would also be of assistance to firms seeking PII. Our experience is that checking individual insurance policy documents for firms is specialist work and it is not always clear that requirements have been met without detailed scrutiny.
- A central register of all firms and confirmation that they have compliant PII in place would be the simplest approach to enable consumers to check the position see 28.2 above. This register would require a registration process which brought all advisers within scope not just those requiring agent codes.

28.4 Consequences of operating without insurance – effective enforcement is key in order for the policy intention of changing behaviour to be effective. Firms who cannot or will not obtain cover represent a higher risk to consumers and action must be taken to remove these firms from the market. It would seem sensible to suspend agent access to HMRC systems where PII is not in place but enforcement will need to go further to ensure those firms do not then operate “under the radar”. Appropriate alternative or additional enforcement action will be needed where an agent code is not in place. Making tax advisers jointly and severally liable with the taxpayer in relation to egregious tax planning conflates the issue of an agent who does not have PII but carries on dealing with compliance work with the avoidance scheme provider. Whilst this may be appropriate to consider in relation to the providers of egregious tax planning it is not clear how this would apply in relation to lack of PII and it is difficult to see how this sanction improves outcomes for consumers in this context.

29 Q28. Do you agree that advisers who already hold professional indemnity insurance as it is required by their professional or regulatory body should automatically satisfy the new requirement? How could we check?

- 29.1 This appears to be a sensible suggestion but the process may miss advisers who have not notified their professional body if they have been unable to obtain compliant cover. Automatic notification by insurers to HMRC would get round this problem.
- 29.2 This option may come with requirements for each body to do more monitoring/checking of its members which would be an additional cost which would need to be passed on to members and ultimately to clients.
- 29.3 HMRC could check details directly with professional bodies but based on the present systems at CIOT we would only be in a position to confirm that the member had self-certified compliance. We would not be able to confirm anything further.

30 Q29. The government's ambition is for HMRC to share information about the adviser with the client digitally. What are your views of this?

- 30.1 Digital sharing of information reduces costs but more detail on what is proposed is needed here. Whether it will be effective depends on the stage at which it is done. A consumer needs to know whether a firm is compliant before it provides agent authorisation so it can choose a compliant firm at the start.
- 30.2 Providing any more information than the simple existence of a PII policy would necessitate the creation and maintenance of a very extensive digital register. Do HMRC have the resources to undertake that additional role?
- 30.3 The inclusion of detail about professional body membership could provide false confidence in the consumer protection available unless membership of all professional bodies involved adherence to common high standards and rights of recourse.

31 Q30. What effects do you foresee of introducing the requirement for everyone at the same time?

- 31.1 Introducing the requirement at the same time might be difficult for insurers as shown in the Consultation. Tax advisers in practice who are members of professional bodies will not be a significant problem. The burden will fall on insurers and on nearly 30,000 tax advisers and customs intermediaries who do not have insurance for whom obtaining insurance could be an arduous and stressful chore. The insurers are better placed to comment further on this question.

32 Acknowledgement of submission

- 32.1 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

15 June 2021

Appendix A – CIOT PII Requirements

Regulatory requirements	Our requirements are the same as our sister body (ATT) and the website link is here
Latest version	Effective from 31 January 2013
When is cover required?	Members in practice : 'Member in practice' is a member who provides taxation services on a full-time or part time basis as a sole practitioner, a partner in a partnership, a member of a limited liability partnership, a proprietor of an unincorporated body, or a director (registered at Companies House) of a company providing taxation services.
Tax work included?	Yes
Territorial extent	Not covered in the regulations
Participating insurers required	No
Brokers – do members have to use a particular broker/are any recommended?	We have AXA and Hiscox policies which meet our requirements and particular brokers who deal with these.

Minimum level of cover required	<p>The annual minimum limit of indemnity for each and every claim is generally £1 million.</p> <p>However, where the firm's gross fee income is less than £400,000, the required annual minimum limit of indemnity for each and every claim is the greater of:</p> <ul style="list-style-type: none"> • 2.5 x the gross fee income; and • £100,000.
Where not already stated are levels of indemnity per claim or aggregate?	Each and every claim
Level of excess permitted and whether this is per claim or aggregate	<p>The insurance policy may include an excess provided that this excess does not exceed £20,000 per principal (if the excess exceeds £20,000 per principal, the Member should notify the CIOT or the ATT as soon as practicable).</p> <p>Where a firm has subsidiary firms or associated firms and holds a group PII policy the excess may be calculated on a group basis. Before agreeing the level of excess, if any, to be included in the policy the firm must satisfy itself that it would be able to meet the cost of the excess element of any claims which might arise.</p>
How is cover for defence costs dealt with (inclusive or exclusive)	The regulations state the policy must covers all civil liability, including costs and expenses, incurred in connection with the provision of or the offering of taxation service
Is cover subject to minimum terms and conditions?	Covered in section 4 of the regulations.
Insurance cover declined - procedure and time limits for member notification and professional body procedure on receipt of information	<p>No assigned risks pool</p> <p>If unable to obtain cover members must notify the CIOT and ATT Professional Standards Team as soon as possible. Limited time is then given to enable them to try and sort out cover.</p>

Extended Policy Period if cover declined?	
Run-off	6 years
Monitoring	Members have to confirm PII is in place on their annual membership return. They may also be asked to supply their insurance certificate/policy document.
Enforcement	Disciplinary action
Easements	None
How does the body oversee the PII rules	Professional Standards Team works with volunteers on their Professional Indemnity Insurance working party and the Professional Standards Committee
How does body liaise with insurers	Regular catch ups with the brokers administering the Axa and Hiscox policies.
Sanctions applied where members do not have PII in place	Members unable to obtain PII are referred to the independent Taxation Disciplinary Board .

Appendix B Existing Statutory definitions

Dishonest tax agent penalty legislation (schedule 38 of Finance Act 2012)

Tax agent

2

- (1) A “tax agent” is an individual who, in the course of business, assists other persons (“clients”) with their tax affairs.
- (2) Individuals can be tax agents even if they (or the organisations for which they work) are appointed—
- (a) indirectly, or (b) at the request of someone other than the client.
- (3) Assistance with a client's tax affairs includes— (a) advising a client in relation to tax, and (b) acting or purporting to act as agent on behalf of a client in relation to tax.
- (4) Assistance with a client's tax affairs also includes assistance with any document that is likely to be relied on by HMRC to determine a client's tax position.
- (5) Assistance given for non-tax purposes counts as assistance with a client's tax affairs if it is given in the knowledge that it will be, or is likely to be, used by a client in connection with the client's tax affairs.

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) regs 2017 (as amended by the Money Laundering and Transfer of Funds (Amendment) Regulations 2019)

Auditors and others

11. In these Regulations—
- (d) “tax adviser” means a firm or sole practitioner who by way of business provides material aid, or assistance or advice, in connection with the tax affairs of other persons, whether provided directly or through a third party, when providing such services.

Appendix C Suggested approach to the definition of tax advice

1. Subject to sections 3 to 5, tax advice includes the provision for profit or otherwise for consideration¹ by whatever means and in whatever form² to any person directly or indirectly of any service, advice, recommendation, opinion, instruction³, prompt or encouragement⁴ the purpose or one of the purposes (including an incidental purpose) of which is to enable, facilitate, ensure or encourage that or any other person to:
 - a. Understand or comply with their tax obligations including completing a tax return *or doing so in a certain way*⁵;
 - b. Understand the tax consequences of business or personal events or circumstances or respond to these events or circumstances or otherwise arrange their business or personal affairs in order to obtain or otherwise in the expectation of a particular tax consequence or consequences;
 - c. Obtain any tax repayment, allowance, exemption, relief, benefit or advantage;
 - d. Deal with any enquiries raised by any revenue authority (including any devolved administration);
 - e. Obtain comfort or greater certainty as to a tax treatment;
 - f. Act in a way that produces for the person making the provision a tax advantage or a benefit commercially reflective of a tax advantage for any person.⁶
2. Any combination of the above outcomes whether or not also involving other outcomes may be treated as being for a single purpose.
3. For the purposes of section 1, tax advice provided on a pro bono basis (other than to a small number of family and friends) is to be treated as if the advice was provided for profit or other consideration. It is considered that this also includes anyone providing services and in receipt of honorarium (for example in relation to a position as a charity trustee).
4. For the purposes of section 1, and for the avoidance of doubt the definition includes:
 - a. Specialist advice on a narrow field of tax (such as R&D or capital allowances)
 - b. Tax avoidance services of any nature
 - c. The provision of tax software
5. Also for the avoidance of doubt the definition should not be restricted to those who are registered as agents with HMRC.
6. Notwithstanding the above, the following are excluded from the definition:[this section is where any exclusions determined appropriate could be set out].
 - a. Exclusion 1⁷
 - b. Exclusion 2, etc

Notes:

- 1 This would exclude pro bono work so the definition would need to be extended for any pro bono work desired to be included hence the inclusion of section 3.
- 2 This should include digital or electronic means in the part of the definition before the lettered indents, but has also been covered in point 4 to ensure the position is clear.

- 3 This is intended to include tax avoidance boutiques - who set up remuneration or other structures that people are put into - in the early part of the definition. However, for the avoidance of doubt this is also included in point 4.
- 4 This is to ensure that software providers who include prompts or preferred responses in their software do not fall out of the early part of the definition.
- 5 Inclusion of the last few (*italicised*) words considering again software providers. However, for the avoidance of doubt this is also included in point 4
- 6 Necessary to catch the tax avoidance boutiques. We suggest using the ss993-4 ITA 2007 definition of 'connected person' except that (with tax boutiques in mind) 'company' for the purposes of s993 (5-7) should include an LLP.'
- 7 Software providers or tax avoidance boutiques should not be excluded. There is scope in this section to include details of particular taxes which should be excluded (with the text above making it clear which taxes should be included as necessary).