

IFA REPRESENTATION 3/20



HMRC Charter

The IFA welcomes the opportunity to comment on the [Call for evidence: raising standards in the tax advice market](#) issued for consultation by HMRC on 19 March 2020.

We would be happy to discuss any aspect of our comments and to take part in all further consultations in this area.

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The IFA is a full member of the [International Federation of Accountants \(IFAC\)](#) the global accounting standard-setter and regulator. We are also recognised by HM Treasury and the Financial Services Authority in the Isle of Man to regulate our members for the purposes of compliance with the Money Laundering Regulations.

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General comments

1. We are pleased that this call for evidence recognizes that the diversity of the tax market, both in terms of scope and different providers. Raising standards of advice in a diverse market is not easy to achieve since there will not be one solution to the problem. The government and HMRC need to consider options for raising standards in the tax advice market which could also benefit other high priority policy areas such as the prevention of economic crime.
2. To raise standards in the tax market, a number of improvements may need to be considered and implemented for different segments of the tax advice market. Some key considerations to improve the tax advice market are :
 - raising and upholding standards for tax advisers that are not members of a professional body by education, support, monitoring and disciplinary mechanisms;
 - tackling poorly performing tax agents and tax abusers through intelligence sharing with other professional accountancy bodies, publicising promoters of tax avoidance, tax evasion and other financial crimes such as fraud;
 - conducting an education programme aimed at taxpayers and the general public on how to choose a tax agent/accountant in collaboration with professional accountancy bodies and supported by stakeholders such as Companies House;
 - protecting the title of 'tax agent'/ 'accountant', something which is a given in many countries.
3. The IFA acts in the public interest and expects its members to adhere to high ethical and professional standards, including the Personal Conduct in Relation to Tax (PCRT) which is endorsed by HMRC. If the PCRT guidance is to be promoted and adopted more widely across the tax advice market, a more inclusive approach to its development should be considered. The IFA has expressed interest in becoming more involved with the development and promotion of the PCRT without much success. To improve tax advice in the market, it is imperative that HMRC, the professional accountancy bodies and government collaborate to avoid any further unnecessary segmentation and confusion without clear benefits.

Specific questions

Question 1: Is the HMRC Standard for agents comprehensive enough to provide a baseline standard for all tax advisers?

4. We don't think the standard for agents is comprehensive enough since it only covers three out of the five fundamental principles our members would follow when providing tax advice. The principle of objectivity and confidentiality is not included in HMRC's standards for tax agents. Furthermore, IFA's Code of Ethics, which is based on the IFAC Code of Ethics adopted by all other IFAC member professional accountancy bodies, includes significant amounts of guidance as does the PCRT. Without such guidance which includes standards of behaviour, it is difficult to envisage how HMRC will be able to enforce the standard for agents which are very high level.
5. HMRC should also consider whether any amendments to the HMRC Charter which was recently consulted on will lead to amendments to the HMRC Standard for agents since the two are closely linked and should be cross-referenced to one another.

Question 2: What clear distinction can be drawn between tax advice and tax services?

6. We don't think a clear distinction can be made between advice and tax services since this is a matter for interpretation depending on who is receiving/giving the advice or service. For example, a client may view tax advice as a tax service or vice-versa while a professional accountant may have a contrary view. In addition, given that the tax market is so diverse, it is extremely unlikely that a definition for tax advice or tax services will capture every situation or circumstance.
7. It may be possible to draw a distinction between tax compliance and tax advice. For example, submission of a tax returns of individuals and organisations. However, when submitting tax returns, it may be necessary to provide tax advice. Therefore, it is still difficult to have clear cut distinction between the two.
8. Even if a distinction was possible, we are not clear about the need or benefits associated with drawing a distinction between tax advice and tax services, in terms of standards of service and quality of advice. Having a distinction drawn between them could further complicate the tax advice market, leading to additional segmentations in the market and related confusion, administrative burdens and additional costs.

Question 3: From your professional point of view, how do standards differ between types of tax advice? Could you provide examples?

9. The IFA expects all members to follow the IFA Code of Ethics, irrespective of what services are being provided or whether the member is providing those services in a voluntary capacity or not. The Code sets out fundamental principles of ethics for professional accountants, reflecting the profession's recognition of its public interest responsibility. These principles establish the standard of behaviour expected of a professional accountant. The fundamental principles are: integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour. The Code also sets out requirements and application material on various topics to help accountants apply the conceptual framework to those topics. Therefore, the IFA does not have different standards between types of tax advice.
10. IFA has also adopted the PCRT which consists of the fundamental principles and standards of tax planning which is aligned with the Code of Ethics. Compliance with the PCRT is also mandatory for IFA members.

Question 4: Please share any data which would help develop assumptions on the market share, volumes or impact or on the value added by different sectors in the market?

11. The IFA has supervises over 1,800 accountancy firms for AML, most of which provide tax services.

Question 5: What more could the government do to promote the work of good advisers?

12. More could be done to promote the work of good advisers. Tax agents support HMRC and in turn the government in achieving its strategic objectives by improving tax compliance and the effectiveness and efficiency of the tax framework through their work and also by contributing to responses to tax consultations.
A number of discussions over the last 3 years or so have been had with HMRC on the subject of HMRC's tax agent strategy and helping consumers make informed choices about tax

agents. However, there has been little progress on this area, primarily due to limited resources and different government priorities. HMRC has an opportunity to ask for resources to support this initiative as part of the forthcoming government spending review which we understand to be later this year. It is hoped that the government will support this request for additional resources by HMRC to further promote the work of good advisers.

13. In terms of specific suggestions, given that the protection of professional title for an accountant as opposed to a tax agent is not being considered, then the IFA would support the notion of a kite mark or recognisable symbol that could be used for advisers that meet certain criteria which would include adherence to the PCRT and/or Code of Ethics, having adequate Professional Indemnity Insurance (PII) and undertaking CPD.
14. The government could also do more to help consumers make an informed decision about their tax agents to ensure that they are aware that the taxpayers are aware of key considerations when appointing a tax agent, such as qualifications, experience, membership of a professional accountancy body and professional indemnity insurance. Therefore, the government could do more to educate taxpayers about the tax advice market.
15. In the past, HMRC website pages included reference to 'choosing an accountant or tax advisor' which linked to the CCAB page which did not mention all professional accountancy bodies. Although this page is still hosted by the CCAB, due to the workings of the CCAB and drafting of the PCRT, it excluded professional accountancy bodies such as the IFA.
16. Going forward, the IFA would be pleased to work with the government to provide guidance about key criteria for consideration when 'choosing an accountant or tax advisor'. Being a member of a CCAB body which includes only five professional accountancy bodies is very limiting and could be regarded as anti-competitive by other professional accountancy bodies.

Question 6: Where else do good agents add value – for customers, HMRC and the wider economy? How could this be extended further?

17. Tax agents help their customers, HMRC and the wider economy by being ethical, competent and acting in the public interest. They help to improve tax compliance and provide good quality advice to their client which adheres to PCRT tax planning guidance endorsed by HMRC.
18. As part of acting in the public interest, they play an integral part in the prevention of money laundering and terrorist finance through their due diligence, compliance, education and reporting to the proper authorities.
19. Tax advisers also provide other accountancy services which support the wider economy and add value such as bookkeeping, audit, assurance, insolvency, investment advice, probate and so on.

Question 7: What are the general characteristics of good and bad advisers?

20. The general characteristics of a good adviser include:

- adherence to ethical and professional principles, standards and guidance such as those that are required of a member of a professional accountancy body such as the IFA;
- being competent to undertake the work and acting with integrity;
- providing support to their clients to ensure they meet their tax obligations through clear communications, being diligent and mindful of deadlines and operating in an

organisation with good practice management standards, including letters of engagement and record keeping;

- advising their clients on tax planning based on ethical principles, Code of Ethics and PCRT guidance. Within this context tax planning includes making clients aware of tax reliefs and legitimate tax planning arrangements made available by Government;
- exercising professional scepticism and judgement, acting in the public interest and making appropriate reports to the proper authorities, for example, submitting suspicious activity reports to the National Crime Agency (NCA) or reporting Modern Slavery and Human Trafficking (MSHT) to the Modern Slavery team of the NCA.

21. The general characteristics of a bad adviser include:

- not adhering to ethical and professional principles, standards and guidance;
- incompetence and dishonesty;
- a history of non-compliance with laws and regulations which may include prior disciplinary matters and criminal proceedings;
- lack of professional scepticism and judgement, agreeing to whatever the client wants them to do even it is not legally acceptable;
- failure to take responsibility and/or rectify problems when they arise;
- no professional indemnity insurance or not having a separate bank account for identifying clients' money.

Question 8: Are there any parts of the tax advice market where there are particular problems? Please share any evidence you have.

22. The areas of concern primarily relate to tax avoidance schemes. Some tax avoidance schemes such as the loan and employment/contractor schemes but others may materialise such as fraud relating to grants from the Self-Employment Income Support Scheme and the job retention scheme which may start to materialise as HMRC start their investigations.

23. Other areas of concern identified by the [National Audit Office report](#) on 14 February 2020, included abuse of R & D credit claims. The report claimed that 'R & D tax reliefs have been subject to increased levels of abuse' and recommended that HMRC and HM Treasury increased 'their oversight of tax expenditures and actively consider their value for money.'

Question 9: Do you have any evidence about the impacts of unqualified agents or agents that don't meet standards?

24. The IFA has received anecdotal evidence from their members of tax agents that are not members of a professional accountancy body. This anecdotal evidence suggests that sometimes the previous tax agent has provided incorrect advice and that they now have to

rectify the matter. We have also received reports of members losing clients to tax agents who do not appear to have AML supervision.

25. Having said this, we also have evidence that some of our members have not met our standards and we have therefore taking disciplinary action, which would not be recourse for tax agents who are not members of a professional accountancy body.

Question 10: How could HMRC and the professional agent community work together to identify poor practice at an early stage?

26. Professional accountancy bodies and HMRC could work more closely to identify poor practice at an early stage by:
- identifying whether poor practices are caused by tax agents or whether these practices can also be attributed to other key stakeholders such as taxpayers, employers, volunteers, HMRC, Student Loans Company and other government agencies;
 - frequent communication from HMRC of trends on poor practice, including how to prevent these practices from taking place, for example, reviewing exiting guidance particularly in areas where the legislation is not sufficiently clear;
 - co-ordinating key messages and publicity to educate tax agents and prevent poor practice from happening through the usual communication channels such as updates, newsletters, blogs and webinars; and
 - reviewing the scope of legal gateways to improve information sharing on poor practices, incompetence, professional misconduct, criminal proceedings and AML supervision issues. This action is also linked to the Economic Crime Plan 2019-22 action points on information sharing.

Question 11: How effective are HMRC's interventions? Are there other interventions that the government should be using to tackle poor practice?

27. The effectiveness of HMRC interventions can be partially measured by the downward trend in the tax gap. In total, HMRC collected £628bn in tax revenue in 2018-19, with £31bn outstanding. The tax gap estimate for 2018-19 is 4.7%, falling from 7.5% in 2005-06. According to HMRC, 95% of the tax due was paid in 2018-19. This data demonstrates that HMRC interventions in the widest sense are having a positive influence in the alleged tax gap.
28. Further analysis of the tax gap suggests that around £8.6bn of the tax gap relates to taxpayers not getting things right through error or a failure to take reasonable care. Further analysis of why this happens may be helpful for future HMRC interventions. For example, there may be a need to improve customer service or provide clearer guidance to help taxpayers navigate a complex tax system.
29. Sharing relevant information of poor practices by tax agents with professional accountancy bodies would also be of help to tackle poor practice. Poor practices may be of interest to professional accountancy bodies since they may indicate incompetence, lack of continuing professional development and at worst dishonesty. Sharing such information will enable professional accountancy bodies to take appropriate action.

Question 12: Is there more that HMRC could do to manage agent performance through its transactional services (such as IT systems)?

30. Without adequate IT systems and reporting mechanisms, it would be extremely difficult for HMRC to manage agent performance. Our experience has been that HMRC departments and systems sometimes operate in silos which data analysis and sharing of valuable information/intelligence within HMRC. For example, sharing of data between tax agents, AML supervision, compliance and investigations.
31. Managing agent performance should be a collaborative process with involvement of professional accountancy bodies. However, due to limited scope of legal gateways between HMRC and professional accountancy bodies, this is not possible.

Question 13: How might increasing consumer protection affect individuals taking responsibility for their own tax affairs, and what behavioural changes might you anticipate?

32. Ultimately individuals need to be responsible for their own tax affairs. Increasing consumer protection may unintentionally lead to individuals not being as diligent with their tax affairs as they might otherwise be.
33. It should also be noted that individuals who have engaged a professionally qualified tax adviser (member of a professional accountancy body), already have a significant amount of consumer protection via the professional accountancy bodies due to ethical and regulatory requirements and enforcement from its disciplinary functions. This may not be the case for individuals who are not members of a professional accountancy body.
34. There is limited evidence that further consumer protection is needed nor any suggestions for what type of consumer protection is being envisaged. If HMRC is considering further consumer protection to individuals, we strongly suggest that an impact assessment of such an initiative is considered prior to implementation.

Question 14: Who should take the primary role in improving consumer protection, government, the profession, or another third party?

35. Improving consumer protection should be done by way of public-private partnership. Professional accountancy bodies are responsible of setting the requirements for consumer protection for their members but do not have jurisdiction beyond this. Therefore, the government and agencies should have a primary role in improving consumer protection for tax agents who are not members of a professional accountancy body.

Question 15: What do professional bodies currently do in respect of customers who need extra support?

36. IFA members support clients that need extra support such as the digitally excluded, elderly and disabled by volunteering as a family and friend, volunteering for charities and reducing their fees.

Question 16: Is there anything the government can learn from other examples of market intervention, including those led by industry?

37. HMRC should adopt a risk-based approach to interventions, which is supported by evidence and intelligence from key stakeholders. Interventions should be proportionate, taking into account aggravating and mitigating factors. The impact of these interventions should be evaluated and monitored to ensure effectiveness.

Question 17: Are there other enforcement or regulatory agencies that you think should have a role in this area, and what are the advantages, disadvantages, benefits or risks of any of these organisations taking on a regulatory role?

38. We are of the strong view that HMRC should not be a regulator for the tax market since there would be a clear conflict of interest between their role as tax collector and regulator. Furthermore, having another enforcement and regulatory agency in the tax market would add another layer of complexity not only in the tax market but in the accountancy profession without benefits, actual or perceived.
39. We are also of the view that enforcement will be enhanced if better information and intelligence sharing was possible between public and private legal gateways. Currently, there are significant limitations as to what can be shared by HRMC and professional accountancy bodies. The need for better information/intelligence sharing is something that the IFA, and other professional accountancy bodies, have been advocating for a while and progress has been limited. The IFA would be happy to work with HMRC and other partners on this area to improve the monitoring of poorly performing agents and take appropriate action.

Question 18: Do you know of examples of effective law, or enforcement, from other countries or jurisdictions?

40. The consultation document includes examples from other countries. Since the IFA is part of the IPA Group, the IFA has previously provided feedback to HMRC in 2019 about how the Tax Practitioners Board (TPB) in Australia works and the tax market in Australia. The key points are as follows:
- the term tax agent is governed by law and individuals need to meet eligibility criteria to enable them to use the term tax agents. Eligibility criteria are a mix of education and qualifications, involving six entry pathways. One pathway is membership of an accountancy professional body.
 - All providers of tax advice, regardless of whether it is incidental, must be registered with the TPB. This includes valuation specialists, financial advisors, quantity surveyors etc.
 - TPB monitors complaints and undertakes compliance checks. It relies on the revenue authority (ATO) to provide leads for poorly performing tax agents as well as professional accountancy bodies and the public.
 - TPB also relies on the work of professional accountancy bodies. Members of a professional accountancy body are perceived to be less of a compliance risk.

Question 19: What future changes do you consider will most impact the standards expected of tax advice profession?

41. Advancements in IT and digital technology will have an impact on the tax advice market as will MTD implementation. Being aware of cyber-security and data protection considerations

will also be important as will continually reviewing and enhancing policies, procedures and processes and controls, given changes in the external environment. Brexit and associated transitional measures will also have an impact on the tax advice profession. It is imperative that communication is timely and clear and that sufficient lead times are given of potential changes relating to Brexit.

42. The one constant of change is change. Professional accountants must meet their continuing professional development requirements, which would involve keeping up-to-date of changes in the tax market and provide high quality services and advice. This is not a requirement for tax agents that are not members of a professional accountancy body. Given the speed of change, this distinction, may lead to a long term impact on the standards of the tax profession.

Questions on Option A

Question 20: What other examples are there of existing powers (HMRC or government powers) that could be used to tackle poor adviser behaviour?

43. It is our view that HMRC has sufficient powers to tackle poor adviser behaviour. However, there are limitations on how HMRC can share the outcomes of using these powers with professional accountancy bodies.
44. Other suggestions which HMRC might want to consider is publishing details of advisers who have a history of providing poor advice and suspending the tax agent code for a period of time or indefinitely.

Question 21: What is your view of the effectiveness of HMRC's current powers?

45. It is our view that HMRC has sufficient powers for enforcement. However, the process of enforcement does appear to take a while. We are not clear why this may be the case.

Question on Option B

Question 22: What evidence do you have of problems clients have experienced due to lack of redress and what solutions do you propose?

46. Clients of tax agents who are members of a professional accountancy body can seek redress by making a complaint. Members of the IFA are subject to regulations including requirements of ethical and professional standards, including continuing professional development and professional indemnity insurance (PII).
47. Having compulsory PII as well as more comprehensive standards for tax advisers who are not members of a professional accountancy body may also help clients. For example, HMRC could require that all tax agents have compulsory PII. Failure to have adequate PII cover may result in the suspension/withdrawal of the tax agent code.

Question on Option C

Question 23: How could consumers be helped to make better choices?

48. Consumers could be helped by having guidance on what to expect from a tax adviser and what criteria should be considered when choosing a tax adviser. An educational programme will significantly help consumers make better choices as will a kite mark (depending on the criteria for eligibility).
49. The IFA would be pleased to engage with HMRC on both these options.

Question on Option D

Question 24: Are there any circumstances where a penalty should be levied on the adviser instead of, or in addition to, the client?

50. The only circumstance where a penalty should be levied against an adviser instead of the client is when it is absolutely clear that the client was not responsible for the outcome. Such an approach would seem fair and proportionate.
51. Advisers already have penalties levied against them by HMRC. Further analysis of the effectiveness of powers and related penalties should be conducted prior to discussing additional penalties on advisers and/or clients.

Question on Option E

Question 25: What scope is there for the professional bodies to take on a greater regulatory role in a similar way to anti-money supervision?

52. The IFA, and other AML supervisory bodies, have an agreement that helps supervisors identify the appropriate supervisor and also ensures consistency of approach. If a firm has no professional accountancy body members who are partners, directors or principals of that firm, then the appropriate supervisor will be HMRC. Therefore, it is unlikely that professional bodies would take on a greater regulatory role if a similar approach was followed.
53. The IFA would be happy to explore this area further in conjunction with government, HMRC and other professional accountancy bodies. The IFA does regulate and supervise for AML a small number of firms by legal contract, in line with the agreed anti-money supervision protocol referred to above.
54. However, it is very unlikely that the IFA would consider regulating high risk firms and tax agents. Government and HMRC will have to consider other mechanisms for regulating and raising the standards of these firms and individuals.

Questions on Option F

Question 26: What would the impacts be of introducing external regulation, particularly on clients and on those agents already meeting high standards?

55. The impact of introducing external regulation is hard to assess since it is not clear what would be the scope and objectives of introducing external regulation. As detailed previously, members of professional accountancy bodies are subject to regulations and professional

56. standards, so one possibility might be to introduce external regulation for tax advisers who are not members of a professional accountancy body.
57. The benefits and costs of introducing external regulation on the whole or segments of the tax advice market need to be considered in detail in order to ensure that the desired outcomes of raising standards in the tax advice market are achieved. In the absence of such analysis, we do not support additional external regulation.
58. In general, introducing external regulation increases compliance burdens and costs, which are likely to be passed on to clients in the form of higher client fees. It is not clear that external regulation would improve standards of behaviour and advice in the tax market. Therefore, resulting in increased costs for no benefit, both for tax advisers and taxpayers.

Question 27: Are there any existing bodies that might be well-placed to act as a regulator? What potential conflicts of interest could you see?

59. We don't think HMRC should be a regulator for the reasons detailed above. In addition, there are no existing bodies that are well-placed to act as a regulator, unless it becomes a legal requirement that all tax advisers must be members of a professional accountancy body. However, as detailed in question 25 and 26, we have concerns about this approach, both in terms of need, cost and impact.

General questions about the options

Question 28: The government is particularly interested in views on the following questions:

(28a) the benefits of the options set out above

(28b) whether there are sectors or types of tax advisers which would face particular challenges, and what those challenges would be

(28c) views on the impacts of each option, for example: - costs for customers, advisers or other costs - impacts on any particular groups effects on competition and the paid tax advice market - how any impacts could be mitigated behavioural effects – what might advisers or customers do in response?

(28d) alternative options which meet the objectives outlined above.

60. Please refer to our comments to the above questions. The IFA would be pleased to work together with HMRC to discuss possible options to help raise the behaviours and standards of tax advice in the market.

Questions on next steps

Question 29: Can you suggest or support any activities which should be considered?

61. One possible area of activity for consideration is the protection of the title 'accountant' and/or 'tax advisor'. This has been suggested to government and HMRC on several previous occasions and not taken forward. The reasons for not considering the protection of title are unclear to the IFA.
62. The lack of protection of the title impacts the tax advice market and the UK's assessment of money laundering risk. One of the reasons the National Risk Assessment assesses

accountancy services to be at high risk of exploitation for money laundering is that this sector has low barriers to entry. The accountancy sector is likely to remain at high risk of exploitation for money laundering indefinitely if progress is not made on protecting the title of 'accountant' and/or 'tax agent'.

Question 30: What market failures need to be addressed?

63. Please see comments in question 29.

Question 31: What evidence is there that will enable understanding of customer and agent behaviour and likely responses to any intervention?

64. To date, there isn't a framework to track inputs, outputs, outcomes and impact of HMRC interventions on customer and agent behaviour. Therefore, to gain an understanding of likely responses to HMRC interventions from customers and agents, HMRC needs to develop a framework that is robust, cost-effective and appropriate. This framework would have to be integrated into HMRC's strategy, objectives, business and planning as well as policies, procedures and controls. As well as developing such a framework, HMRC may have to enhance IT systems and data capture, analysis and reporting mechanisms.

Contact details

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