

IFA REPRESENTATION 04/21



HMRC raising standards in the tax advice market: professional indemnity insurance and defining tax advice

The IFA welcomes the opportunity to comment on the [Consultation Raising standards in the tax advice market: professional indemnity insurance and defining tax advice](#) issued for consultation by HMRC on 23 March 2021.

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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General comments

1. We welcome the fact that HMRC is seeking to raise standards in the tax advice market, and we are pleased to read that the government's aim 'remains to help taxpayers to make informed decisions when seeking tax advice, providing them with reliable reassurance that the advice they receive is competent, professional and trustworthy'.¹
2. It is also worth noting that raising standards in the tax advice market should also help HMRC with its strategy to create a modern, trusted tax administration system and promote tax compliance from anyone who represents and provides advice to taxpayers.
3. The background to this consultation is that tax advisers are members of the accountancy profession, and it is widely understood that a profession is an occupation that is founded on a period of specialised education and training. There are also other indicators that an individual is a professional, and so there are reasonable expectations placed upon professionals by the layman. In short, a professional holds a position of trust in relation to their client. So, any client *expects* their accountant (including their tax adviser) to have a high level of technical competence and – equally as important – adherence to an ethical code.
4. Yet, in the UK, anyone without a criminal conviction may legally practise as an accountant. In fact, even an unscrupulous individual with a relevant conviction (according to regulation 26 of the Money Laundering Regulations²) may be able to practise 'under the radar' without being noticed, due to the misplaced confidence of most members of the public.
5. The forward to the current consultation notes that 'there is a minority of incompetent, unprofessional and malicious advisers whose activities harm their clients'. But we assert that the wider public is also harmed, because the activities of that minority undermine public trust in the accountancy profession as a whole. The requirement of professional indemnity (PI) insurance among those incompetent, unprofessional and malicious advisers will do nothing to maintain or restore the trust of those who have suffered at their hands. Nor will it protect consumers from ongoing poor practice and bad advice – it merely offers a potential recourse for compensation from the PI insurance providers.
6. Seeking to raise standards among tax practitioners will, if attempted in isolation, be a demanding task, and it will not meet the objective of protecting the public without excessive cost and complexity. The protection that comes from greater clarity for all consumers of accountancy services, and the ability of consumers to make an informed choice, is long overdue.
7. The IFA and other professional bodies have been involved in numerous meetings relating to HMRC's overall tax agent strategy and tax advice standards for several years. These discussions included HMRC evidence of poor standards, the value added by professional bodies in the tax system, international approaches to the agent market, academic evidence and other regulatory models. During these meetings a number of options were discussed at length which have not been included in formal consultations

¹ HMRC, *Raising standards in the tax advice market Summary of responses and next steps*, November 2020, Page 3

² The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

for raising standards in the tax advice market. It is not clear to the IFA why these options are not being considered as part of HMRC's desire to improve standards in the tax advice market and if these options are being considered, what are the timescales for such considerations.

8. Paragraph 17 of the consultation document reminds us that the outcomes sought from the call for evidence included 'that taxpayers who want to engage a tax adviser can access reliable advice from an appropriately competent professional *who maintains high ethical standards*' [emphasis added]. However, there is no mention of ethics or ethical standards after that point. The only proposed enhancement is the requirement for PI insurance. More effective in raising standards would be requirements for ethical compliance (with accompanying guidance), continuing professional development, complaints-handling procedures, safe custody of clients' assets, etc.³
9. The forward to the current consultation states that 'PII can help to create better market incentives for poor performing advisers to improve standards'. According to HMRC, the benefits of compulsory PI insurance include:
 - immediately improved customer protection,
 - taxpayers being given confidence to rely on advice obtained,
 - a strong incentive for tax advisers to raise their standards, and
 - a reduced likelihood that advisers promoting avoidance schemes would be able to obtain cover.⁴We are not clear how most of these conclusions have been reached.
10. A PI policy is in the name of a practitioner or their firm. The effectiveness of holding PI depends upon both the firm's willingness to engage with a client's complaint, and its compliance with the terms of the PI policy. There is also a considerable burden placed on the client to file a complaint in the first place, and to obtain a decision in their favour.⁵
11. Paragraph 14 of the consultation document reveals a misunderstanding of the benefits of PI insurance, when it states that, without PI cover 'taxpayers have no means of recovering money lost ... unless they can afford to take legal action'. PI cover does not necessarily avoid the need to take legal action; it simply increases the availability of financial compensation where a claim is successful. It is difficult to imagine how the requirement for a minority of tax advisers to hold PI insurance in isolation might raise technical and ethical standards, or to see much benefit to a client whose tax adviser is not regulated by a professional body.
12. Among the other proposals for raising standards in the tax advice market is that of raising awareness of the HMRC Standard for Agents (although it is also suggested that some tax agents may not fall within the definition of a 'tax adviser' and vice versa). But this presupposes that the HMRC Standard is effective and that there is a means of enforcing it. A review of the HMRC Standard would have to take place alongside the

³ According to the HMRC Standard for Agents, 'around 70% of agents are members of professional bodies'. Almost all of these agents will already be required to have adequate PI insurance.

⁴ HMRC, *Raising standards in the tax advice market Summary of responses and next steps*, November 2020, Page 19

⁵ HMRC's *Summary of responses and next steps* assumes, on page 5, that PI insurance always removes the need to resort to the courts to seek redress.

review of HMRC's powers. But we believe that this process would result in a significant amount of duplication (ie regulatory overlap) between HMRC's role and that of the professional bodies. In addition to the disproportionate costs that would arise, this would surely create a framework that is more complicated (and opaque) than it needs to be.

13. When considering proportionality, it is worth noting the data in paragraph 21 of the consultation document. Around 30% of the tax advice market are unaffiliated agents, and it is thought that half of these may already hold PI insurance. (Paragraph 43 suggests that there are only around 10,500 uninsured tax advisers.⁶) This reinforces the likelihood that the current proposals will be seen as 'tinkering around the edges'. A proportionate response can only be achieved by looking at the bigger picture – the regulation of accountants and the informed choice of consumers.
14. It is also suggested that HMRC must do more to understand the role of the professional bodies in raising (and maintaining) standards. We understand there is no fixed timeline for this work,⁷ although it is clear to us that such an understanding must be gained *before* HMRC's project to raise standards in the tax advice market can credibly progress. An effective review of the work of the professional bodies will also identify areas in which reliance on (and understanding of) their existing regulatory frameworks could support other high priority policy areas, such as fighting economic crime.
15. In the interests of effective, proportionate and targeted regulation, we remain of the belief that the professional bodies are best placed to regulate accountants (including tax advisers), and so maintain the high technical and ethical standards of their members. The public interest is served by making clear to consumers of tax advice whether (and how) their adviser is regulated.
16. It is not unusual for professional accountancy bodies to collaborate to raise standards in regulation, as it is a common characteristic of professional bodies that they (and their members) seek to serve the public interest. Such collaborations include the drafting and promulgation of *Professional Conduct in Relation to Taxation* (PCRT), which is acknowledged in the HMRC Standard for Agents (updated January 2018) as more stringent than the HMRC Standard. We suggest that those professional bodies that require their members to comply with PCRT, and have adequate enforcement arrangements, are likely to be assessed as competent to regulate their members who are tax advisers.⁸
17. We recognise that potentially restricting the ability of 'unqualified' tax advisers to practise is a sensitive area, but we must recognise that this is already the case for accountants (and some others) who have a relevant conviction that prevents them from gaining approval under section 26 of the Money Laundering Regulations. Clearly, an individual's right to earn a living as a tax adviser must be weighed against the public interest.
18. We also recognise that many unqualified accountants, including tax advisers, practise competently and ethically, even though they are not governed by a code of ethics or a regulatory framework (beyond anti-money laundering supervision). Most such practitioners would find it possible to join a professional body – one that provides both technical support and regulatory oversight and enforcement – such that there is no

⁶ 21,000 x 50%

⁷ Page 6 of the consultation document simply states 'We expect to publish outcomes or updates on this work later in 2021.'

⁸ This will require any future development of PCRT to include a public consultation process.

realistic threat to market access. In achieving this, a transitional period, in which practitioners would regulate their positions and professional bodies would consider relevant regulatory changes, would be reasonable.

19. We remain unconvinced of the benefits of imposing PI obligations on those tax advisers who are not members of a professional body (and therefore already subject to PI requirements). There has been no evidence given that providing a form of recourse to consumers (while useful to them) raises the standards of the practitioner. Indeed, it might be assumed by some that PI cover could give rise to complacency. Therefore, PI cover is beneficial only in the context of other regulatory arrangements.
20. The measures finally introduced by the government to raise standards in the tax advice market must be seen to be effective and not introduce additional complexity and opacity. We recognise the fears that clients' costs may increase, but anticipated increases must not be exaggerated. Expanded competition from increased membership of professional bodies would be likely to counter (to some extent) increases in costs. However, the professional fees of the tax advisers joining the professional bodies will increase, due to the regulatory costs they will incur, and this increase must be weighed against the benefits of higher technical and ethical standards, and the fairer and clearer perspective of consumers.

Specific questions

Question 1: In your opinion, do you agree that introducing a requirement for anyone providing tax advice to have professional indemnity insurance satisfies the policy aims of improving trust in the tax advice market, by targeting poor behaviour and allowing taxpayers greater redress when things go wrong?

21. Key to this question is an error in HMRC's Summary of responses. The relevant text is reproduced here:

'Most respondents agreed that taxpayers generally assume, incorrectly, that the market is regulated. In this respect, professional body-affiliated advisers commented that professional body membership already provides a degree of taxpayer protection to their clients. Many respondents suggested that making it compulsory for all tax advisers to hold professional indemnity insurance would provide a baseline level of taxpayer protection.'⁹

The final sentence in this paragraph is unconnected with those that precede it. The taxpayer protection provided by professional bodies is derived from the effective and transparent regulatory policies and procedures that they implement. The requirement to hold adequate PI is one of *many* regulatory components. Simply extending the PI requirement to unregulated tax advisers would be seen by many as 'tinkering around the edges' and would do nothing to address the general misconception of taxpayers that the market is regulated.

22. It appears that the proposal to introduce a PI requirement is supported by the claim that it is a targeted response. But regulation must not only be targeted; it must be proportionate. A measure that is blind to the robust regulation already exercised by most professional accountancy bodies cannot be described as proportionate.
23. We strongly *disagree* that HMRC's proposal in respect of PI insurance satisfies the policy aims of improving trust in the tax advice market.

Question 2: If the government introduces the requirement for professional indemnity insurance, what further steps would you recommend?

24. This question is founded on an assumption that the government will push ahead with its proposal in respect of PI insurance. While we are, of course, in favour of all professional practitioners holding PI insurance, our strong opposition to the governments proposal means that we cannot respond to this question.

Question 3: Are there any alternative options you would recommend?

25. We welcome this question and are pleased that the government is still open to views on what further steps it could take to raise standards.¹⁰ However, we also note that, according to paragraph 25 of the consultation document, '[t]he government believes that the case for going further has not yet been proven'. There appears to be a level of

⁹ HMRC, *Raising standards in the tax advice market Summary of responses and next steps*, November 2020, Page 6

¹⁰ Paragraph 26 of the consultation document

contradiction between these paragraphs, and we believe there is a weight of evidence that suggests there is, in fact, a very strong case for 'going further', founded on the public interest.

26. The first step in understanding what 'going further' might entail would be constructive engagement with the professional bodies with the objective of obtaining a better understanding of their regulatory frameworks.
27. A sensible alternative to the 'patchwork' approach of applying a PI requirement to unaffiliated tax advisers would be to leverage the benefits of existing regulatory arrangements wherever possible. This must start with constructive engagement with the professional bodies.

Question 4: Apart from the costs and potential effects outlined above, are there any other costs you foresee for advisers?

28. We have discussed already the high costs (around complexity and misconception) and limited benefits of this proposal. It is also worth highlighting here that not all claims on PI policies are successful.
29. We believe there is a high level of unconscious bias within the consultation document. Paragraph 27 includes the following:

'taxpayers can be reassured that their adviser has a method of redress should things go wrong, as the possession of appropriate cover should give clients confidence in the firm and its work.'

We are not convinced that taxpayers will feel 'reassured', and we are concerned that any 'confidence' gained may be misplaced, given that unaffiliated tax advisers will not be subject to requirements for ethical compliance, continuing professional development, complaints-handling procedures, safe custody of clients' assets, etc.

30. We are pleased to see, in paragraph 28, the recognition that the increased costs of PI cover will not only impact those who currently do not have cover, but also those who already hold cover because they are held to a higher standard generally. As stated in the consultation document, 'insurers may find it difficult to distinguish between good and bad advice'. This appears to acknowledge that the current proposals are likely to lead to confusion among PI providers, as well as the general public.

Questions for tax advisers:

Question 5: What are your experiences of obtaining professional indemnity insurance or of the market for professional indemnity insurance?

31. This is a broad question, and one best answered by practitioners (to whom it is directed). However, it is worthy of note here that practising members of the IFA are required, under the Public Practice Regulations, to hold PI cover in accordance with the Regulations. They prescribe the level of cover, the limit of any uninsured excess, the period of cover and the requirement to comply with the IFA's monitoring process. The detailed

requirements are appropriate for IFA members, and would not necessarily be the same for a member of another professional body (eg an insolvency practitioner).

Question 6: *If you are a tax adviser who practises without insurance, why is this?*

32. We have already referred to the level of bias within the consultation document. In addition, figures 2 and 3 are, in our opinion, very misleading. Figure 2 assumes that the adviser notifies their insurer at the appropriate time and complies with the terms of the insurance contract in all respects. It also assumes that the insurer authorises the tax adviser to settle with the client. Figure 3 chooses to illustrate a scenario where the tax adviser 'ignores' the client's complaint. This is an emotive word, and an extreme reaction to a complaint that would not be tolerated by most professional bodies. Therefore, these two examples have little to do with the argument in favour of PI insurance.
33. It appears likely that a tax adviser who currently practises without insurance would be reluctant to follow the spirit of the requirements if they were to be compelled to acquire insurance.

Questions for the insurance industry:

34. Questions 7 to 9 are for the insurance industry, and so have not been specifically addressed in this consultation response. However, we are concerned that the consultation includes these questions without establishing that a requirement to hold insurance would provide a solution to the problem of raising standards.

Questions for people who use tax advisers:

Question 10: *What checks do you carry out when you engage a tax adviser? Do you check whether they are insured?*

35. We should be interested to read any responses to this question from those who use tax advisers. However, we caution against overreliance on responses to this question because the question is incomplete. It assumes the client is engaging a tax adviser that is *not* affiliated to a professional body. When engaging a member of a professional body, it is usually reasonable to assume that PI insurance is held in accordance with the requirements of that body (and therefore unnecessary to check).

Question 11: *Do you have any experience of making claims or complaints against a tax adviser for bad advice that you would be happy to share with us?*

36. We have declined to answer this question.

Questions for everyone:

Question 12: Do you think there are any lessons on how complaints are handled in similar industries that we can learn to help improve redress?

37. We suggest the only relevant comparisons are with the wider accountancy profession. Like many professional bodies, the IFA requires its member firms to implement adequate procedures to handle client complaints in respect of fee, service and contractual disputes. Measures such as these illustrate the importance of the wider regulatory framework when assessing the benefits of PI insurance.

Question 13: What is the minimum level of cover you recommend, and why?

38. This depends on many factors, and there are risks associated with prescribing a minimum level of cover that would apply to all tax advisers. This is best contained with the bye-laws and regulations of each professional body.
39. There is even a suggestion, in paragraph 48 of the consultation document, that setting a minimum level of PI cover for tax advisers could *impact* the bye-laws and regulations of professional bodies. Instead of supporting the objective of raising standards, this sort of clumsy intervention - perhaps an unintended consequence - would undermine the regulatory policies and procedures of the professional bodies (many of whom have been overlooked in Annex B).

Question 14: What activities should it be mandatory to cover, and why?

40. Any professional accountant in public practice, including tax advisers, should carry PI insurance. However, this should be mandated by each professional body, and accompanied by guidance, according to the nature of its membership. PI requirements should not be imposed in isolation, but in the context of a comprehensive regulatory framework.

Question 15: Should the government set mandatory minimum or maximum levels of:

- **cover**
 - **run-off cover**
 - **excess?**
41. Mandatory PI cover carries little significance without clarity concerning the level of cover, the period of that cover and the level of uninsured excess that is reasonable. However, we are strongly opposed to the introduction of a PI requirement in isolation.
42. If the government does, in fact, proceed to introduce such a requirement, it must relate only to the small number of tax advisers (around 10,500) that do not already hold PI insurance. In that case, we would expect there to be clear guidance concerning the level of cover, etc.

Question 16: What levels should these be?

43. In our opinion, this consultation process (which now requires detailed engagement with professional bodies) has not reached the point at which this question should be addressed. We remain opposed to the proposal to introduce mandatory PI cover.

Question 17: Should the government specify what advice must be covered by the policy? What advice do you think should be covered?

44. In respect of accountancy services, we believe there should be no excluded activities or claims. However, the example of the SRA given in the consultation document (paragraph 50) demonstrates that each professional body is best placed to determine the detailed provisions relating to PI cover. In the case of tax advice, that must always be included within the PI cover.

Question 18: Are there any other insurance requirements the government should require?

45. We believe we have adequately addressed this question elsewhere.

Question 19: Whom should be required to hold the insurance? Should it be the firm, the principal, everyone who is acting as a tax adviser?

46. It is the ethical obligation of a professional in practice to ensure that they hold adequate PI cover. Where they are a principal in a firm (not being a sole practitioner), they are responsible for ensuring that the *firm* holds adequate cover.

Question 20: What impact do you think setting minimum mandatory levels of cover would have on:

- **the market including availability of insurance**
- **affordability?**

47. We do not believe this to be the most relevant question, as it places too much emphasis on financial cost, and none on the complexity and potential confusion concerning the regulation of tax advisers and professional accountants. Nevertheless, it is likely that setting a minimum mandatory level of PI cover would increase insurance premiums – not only for unregulated tax advisers but for the whole of the accountancy profession.

Question 21: We intend to model the definition of who the requirement will apply to on one of the definitions currently extant in legislation. What a) benefits and b) issues are there with using the Dishonest Tax Agent definition or the Money Laundering Regulations definition? Do you have a preference or alternative and why?

48. We cannot answer this question directly because we are strongly opposed to the PI proposals assumed by the question. The definition of ‘tax advice’ is unimportant (as well

as difficult to construct); it is more important to establish effective and proportionate regulation, including monitoring and enforcement. A title such as 'registered tax practitioner' could be used to indicate appropriate regulation (including PI cover).

Question 22: What activities do you think should be excluded from the requirement for compulsory professional indemnity insurance and why?

49. Regulation 8 of the Money Laundering Regulations includes external accountants and tax advisers within the definition of 'relevant person' (for the purpose of anti-money laundering supervision). 'External accountant' is defined as 'a firm or sole practitioner who by way of business provides accountancy services to other persons, when providing such services', and 'tax adviser' is defined as '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'. These definitions are not explicit, although each of the professional accountancy bodies provides an explanation of what is meant by 'public practice', so that its members in practice may be regulated.¹¹
50. In our opinion, a proportionate approach to raising standards would be to ensure that a tax adviser must be a member of an accredited professional body before HMRC will recognise them as a tax agent. However, the competent authority for that accreditation could not be HMRC, due to the conflict of interest that might be perceived.
51. The focus on the wide range of activities listed in Annex C is problematic. It is simpler to consider roles that are widely understood by consumers. For example, the public would not expect an employment intermediary, customs agent or family member to be regulated for incidental tax advice; on the other hand, the public expects an accountant, 'registered tax practitioner' or a tax adviser to be subject to regulation (regardless of whether they hold PI insurance).

Question 23: Would there be any benefit in having different minimum requirements for different activities?

52. We firmly believe that this level of prescription and complexity would have no benefits, but would carry significant risks, including reputational risks for the accountancy profession.

Question 24: What benefits or issues would there be in considering the financial services regulatory distinction between advice and guidance for tax advice?

53. We see no benefits to (or reasons for) considering this distinction between advice and guidance.

¹¹ HMRC's Supervised Business Register includes approximately 15,000 businesses categorised as 'accountancy service providers'. It is thought that many of these will be small self-employed bookkeepers. According to the *Summary of responses and next steps*, the Supervised Business Register includes only 13,000 tax agents (not already supervised by a Professional Body).

Question 25: What benefits or difficulties do you foresee with the inclusion of a provision around UK taxation in the definition?

54. We reiterate that the focus on activities, such as those that relate to UK taxation, would be problematic. Instead, the focus should be on roles with titles that are understood by members of the public. This provides clarity for the public, as well as regulators, who would expect an ‘accountant’ or a ‘registered tax practitioner’ to be subject to robust regulation.

Question 26: Do you agree with the 3 elements of enforcement?

55. If, despite opposition to the current proposals, the government continues to focus on mandatory PI insurance, then the three elements of enforcement are necessary. We would caution against overuse of the word ‘transparency’ as this is more often used in the context of the better regulation principles.¹² There should be transparency around HMRC’s PI requirement and its monitoring and enforcement processes. Therefore, consumers would know the regulatory obligations placed upon tax advisers, and the fact that they hold PI insurance would be a given.

56. Sanctions for noncompliance are, of course, an important element of enforcement. Professional bodies have developed a range of effective, proportionate and dissuasive sanctions, which must always include the ability to exclude an individual from membership. However, the impact of this sanction is diminished while the title of ‘accountant’ (or ‘registered tax practitioner’) remains unprotected.

Question 27: What are your views on the enforcement options described above?

57. We are concerned by statements such as:

‘The government’s ambition is that taxpayers will be fully informed about their advisers, with information readily available about that adviser.’¹³

The fact that the government’s proposals are referred to as its ‘ambition’ suggests a closed mind regarding the outcome of this consultation.

58. Suggestions around transparency include whether a tax adviser is a member of a professional body. Such transparency already exists, and we strongly urge the government to make best use of the established regulatory arrangements of the professional bodies. In most cases, these have been established over many years, and have evolved with regard to the better regulation principles.

¹² Five principles were identified by the Better Regulation Task Force in 1997 as a test of whether regulation is fit for purpose, namely:

Proportionality: Regulators should intervene only when necessary, and measures should be appropriate to the risks posed

Accountability: Regulators must be able to justify their decisions and be subject to public scrutiny

Consistency: Regulators should be consistent with each other and work together; new regulations should take account of other existing or proposed regulations.

Transparency: Regulators should be open, and keep regulations simple and user-friendly.

Targeting: Regulation should be focused on the problem and minimise side effects.

¹³ Paragraph 64 of the consultation document

59. The consultation document makes no reference to the existing requirements of the Provision of Services Regulations 2009, in which regulation 8(1) states:

‘The provider of a service must make the following information available to a recipient of the service ... (n) where the provider is subject to a requirement to hold any professional liability insurance or guarantee, information about the insurance or guarantee and in particular (i) the contact details of the insurer or guarantor, and (ii) the territorial coverage of the insurance or guarantee.’

Question 28: 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?

60. We have made clear our opposition to the government’s focus on PI cover alone. However, if the government is to pursue its ambitions in this area, it must make full use of existing regulatory measures, and make best use of the established policies and processes of the professional bodies.
61. To the greatest extent possible, HMRC must be able to take advantage of a tax adviser’s membership of a professional body – moving towards a future in which all practising accountants (including tax advisers) are subject to a robust regulatory framework, in accordance with public expectations. It is already easy to check a individual’s membership of a professional body through the professional body’s website. The same is usually true in respect of a *firm*’s regulator, although direct communication with a professional body may be required (as is common in the case of anti-money laundering supervision).
62. Membership of a professional body is attractive to most accountants, as it demonstrates that they agree to be held to high technical and ethical standards. The IFA’s Code of Ethics provides clear guidance for members to meet their professional obligations based on five fundamental principles, which guide members’ behaviour:
- Integrity
 - Objectivity
 - Professional competence and due care
 - Confidentiality
 - Professional behaviour.

The professional bodies regulate their members robustly, and will expel members who do not maintain the expected standard, in order to uphold the reputation of the collective membership. The bodies (and their disciplinary committees) exercise caution before expelling a member – not because the body will forgo a member’s fees, but because it will often not serve the public interest to do so. This is because, currently, an individual who is expelled from a professional body will be able to practice completely unregulated (regardless of whether they hold PI insurance).

Question 29: The government’s ambition is for HMRC to share information about the adviser with the client digitally. What are your views of this?

63. It is not the government's role to share information about accountants. Transparency is the responsibility of regulators, including the professional bodies. For the government to adopt such a role would be expensive and inefficient.

Question 30: What effects do you foresee of introducing the requirement for everyone at the same time?

64. Paragraph 79 suggests that around 21,000 tax advisers and 8,400 customs intermediaries would be required to take out PI policies as a result of the government's proposals. While we agree that the consequences of an increase in demand must be considered, we have already explained that a figure of around 10,500 appears more reasonable, and less alarming.
65. However, we remain firmly of the view that the current focus on PI cover among unaffiliated tax advisers is not the correct approach. We believe the appropriate and proportionate solution is to require all tax advisers to seek membership of a recognised professional body over a transitional period.

Conclusion

66. Central to this consultation is the question of how a member of the public may be able to recognise a competent and regulated tax adviser. It is for a competent authority (not HMRC) to recognise those professional bodies that are able to regulate their members (and perhaps others) who are tax advisers. HMRC has acknowledged that '[h]aving up to date knowledge, and following ethical principles, [is] seen as particularly important.'¹⁴ Therefore the focus of this consultation on PI insurance is inadequate and inappropriate.
67. The objectives of this consultation are best achieved (and achieved most efficiently) through the established regulatory frameworks and procedures of professional bodies.
68. We should like to reiterate that the IFA has previously provided feedback to HMRC on the functions of the Tax Practitioners Board (TPB) of Australia. The key points we have made are as follows:
- The term 'tax agent' is governed by Australian law, and individuals must meet eligibility criteria to be able to use the term. The eligibility criteria are a combination of education and qualifications, involving six entry pathways. One pathway is membership of a professional accountancy body.
 - All providers of tax advice must be registered with the TPB.
 - The TPB monitors complaints and undertakes compliance checks. It relies on the revenue authority (the Australian Tax Office) to report poorly performing tax agents, as well as the professional accountancy bodies and the public.
 - The TPB relies, to a great extent, on the work of professional accountancy bodies, and considers members of such bodies to be less of a compliance risk.

¹⁴ HMRC, *Raising standards in the tax advice market Summary of responses and next steps*, November 2020, Page 6

69. Raising standards in the tax advice market will inevitably give rise to increased professional fees for taxpayers. But it will also give rise to a superior service, which is fairer for taxpayers (assuming undue reliance is not placed on PI insurance), with some taxpayers paying less tax and others paying more.
70. It may be difficult to measure the success of any changes made, as there will not be a direct correlation with the levels of tax raised. Instead, success will be in the *right* taxpayers paying the *right* amount of tax.
71. The current proposals in respect of mandatory PI cover (focused on a small number of unregulated tax advisers) will be widely regarded as 'tinkering around the edges' of the problem – perpetuating misunderstanding and confusion among consumers, risking regulatory overlap and giving rise to disproportionate expense. In order to make meaningful progress towards raising standards in the tax advice market, it is necessary for the government to start working closely with professional bodies in the near future.

Contact details

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