



Chartered
Institute of
Taxation

30 Monck Street
London SW1P 2AP
T: +44 (0)20 7340 0550
E: post@ciot.org.uk

The Independent Review of Legal Services Regulation 'Findings, Proposals and Consultation'

Response by the Chartered Institute of Taxation and Association of Taxation Technicians

1 Introduction

- 1.1 As charities, our primary purposes are to promote education in taxation, to prevent crime and to promote the sound administration of the law for the public benefit by promoting and enforcing standards of professional conduct amongst those engaged in the provision of advice and services in relation to taxation and monitoring and supervising their compliance with money laundering legislation. We are also supervisors of certain tax advising firms under AML legislation.
- 1.2 We accept that advice on tax is advice on one part of the law. However, we see regulation as being a matter of weighing costs and benefits, and the balance may be different for advice on different areas of law. Currently, except in relation to tax litigation, the tax services market is only marginally affected by the current legal regulatory rules around reserved activities.
- 1.3 As the large work caseloads of tax advisory charities demonstrate, the huge complexity of the UK tax system means that there is already a serious need of advice that taxpayers find difficulty in paying an economic price for: it would be a counterproductive result if this problem were worsened by the costs of regulation.
- 1.4 As with wider law, protection both of the consumer and the State are at issue in considering regulation of tax. As a working proposition, we have assumed that if a scheme of regulation addresses one issue but not the other, the other will be at even greater risk than in an unregulated situation. However, because the State largely requires funding from tax, arguably the importance of State protection (revenue protection as it is usually described) is much greater, both absolutely and relative to the need for consumer protection, than it is in many or even most other parts of law.
- 1.5 Historically, suggestions of regulating the tax profession (or *tax services industry*, to include those practising outwith a professional body), have tended to come with a revenue protection perspective (though we do not think that that should in fact be its sole focus).

2 Scope - agents, advisers and promoters and 'enablers'

- 2.1 Tax services are frequently categorised into compliance¹ work on the one hand and *advisory/consulting/planning* work on the other. Some firms practice in both, others only at one or other end of the spectrum. But compliance work almost inevitably involves the giving of some advice, even if at a rudimentary level, such as whether a financial amount should be included in a disclosure on a return, and if so, how to calculate and disclose it.
- 2.2 Advisers providing compliance services are typically appointed as tax agents, which is a status recognised by HMRC, who will then correspond with the agent acting on behalf of their taxpayer client, and will, in principle, give the agent access to compliance systems on their client's behalf (though the reality of this often lags behind technological developments). Much HMRC information on the tax services market, and discussion of possible regulation emanating from HMRC, is couched in terms of agents, who are a category visible to and indeed registered with them.
- 2.3 While many tax advisers will prepare some tax returns for all or nearly all of their clients, others (including some of the largest firms) may only prepare tax returns for a minority of their clients and some may prepare none. In those cases where the adviser has not prepared any return for a particular client, they would still not be classified as 'agents' by (or necessarily even visible to) HMRC even if they had reviewed draft tax returns prepared by the client. Thus, tax advisers can give advice on the tax implications of a whole range of business, family and personal matters - with the tax returns reflecting the implementation of any advice being prepared by the clients themselves or by different advisers - and again this would not, generally speaking, present information systematically captured by HMRC in the way that agents' services would be.
- 2.4 Although a great deal of tax work may well be purely 'advisory', provided by someone who is not acting as 'agent' to their client for the work in question, nevertheless an advisor, or advisory firm, need only have one client for whom they act as 'agent' to be recognised as such by HMRC. So we should not assume that there is huge population of tax advisors invisible to HMRC or falling totally outside their statistics.
- 2.5 Except that provision of tax advice requires supervision for anti-money laundering purposes, there is little statutory recognition of tax advisory activity. (An arguable exception to this arises in the context of tax avoidance. So-called 'enablers' (of tax avoidance) are exposed to potential penalties if they do indeed facilitate tax avoidance. However not only some advisers, but many others including naked 'promoters' who do not purport to give genuine advice, would also be part of this group.
- 2.6 One issue for potential regulation (not developed further here) is what to do about those who (without purporting to give advice) propose transactions which may produce a tax benefit, and indeed potentially how to distinguish cases where the benefit is secondary to commercial selling points, from those that are tax-motivated. Indeed, one might also then distinguish those tax-motivated cases which are regarded as legitimate (eg claiming a relief specifically introduced to encourage particular activity or expenditure) from those that are not (eg exploiting unintended 'loopholes' or designing complex arrangements in the hope of avoiding tax - see eg section 7 below on the loan charge). HMRC do not particularly distinguish between advisers, introducers and promoters, and indeed this is reflected in the terminology of much anti-avoidance legislation.)
- 2.7 A final 'borderline' issue is the position of tax technology providers. As tax is increasingly 'digitalised', more and more compliance processes will be technology based, and more and more 'advice' as to what amounts

¹ In contrast, HMRC use the term 'compliance' to describe their own activities against 'non-compliance'.

have to be disclosed and how, will be embedded in the technology. In principle, this still leaves both the consumer and HMRC in need of ‘protection’.

3 Extent of regulation that might be required

- 3.1 People can lose a lot of money on the basis of bad tax advice and it is unlikely to be possible to categorise any part of tax services as low risk in terms of this review. However, some areas of tax are less high risk than others. At least in relation to straightforward compliance work, compulsory PII cover might well adequately provide the level of consumer protection required.
- 3.2 Such mandatory PII cover would reflect a requirement that already exists under professional rules (for those who are members of professional bodies who are principals of firms) and could achieve three things:
- Give a basic level of consumer protection
 - Achieve this without the costs of arguably more comprehensive schemes of regulation, costs which ultimately in whole or in part can be expected to be borne by the consumer
 - By extending to all tax advisers who are principals of firms (whether or not registered as agents with HMRC) a PII requirement that already exists, certainly for our members and for most or maybe all who are members of a professional body, this forms an important first step in a process of professionalising the whole industry, a theme which we develop below.
- 3.3 As with any suggestions for introducing any form of regulatory regime, we do believe that there should be cost benefit analysis to compare the costs of PII cover (which, we suggest, although falling immediately on agents and advisers, will ultimately likely be largely borne by consumers) with the extent of need. So far as need is concerned, it is a given that when tax advice goes wrong, the numbers can be very large, but it will be important to distinguish how often in fact it is ‘advice’ that goes wrong as distinct from ‘promotion’ of arrangements (either for tax avoidance purposes or to capitalise on available reliefs), which can be practiced by firms and people not even purporting to give advice (and who might therefore escape regulatory obligations applying to those who give it).

4 The status quo

- 4.1 About 70% of registered tax agents are believed by HMRC to be members of professional bodies - these include members of the legal professions, accountants and tax advisers. 30% are ‘unaffiliated’ to any professional body. Our understanding is that these percentage calculations are based on a simple unweighted count of agents without taking into account the volume of clients for whom they prepare returns. Thus a large firm preparing returns for very many clients will count equally as a single agent just as much as a part-time sole-practitioner who has only a handful of clients.
- 4.2 Seven tax and accountancy professional bodies co-author *Professional Conduct in Relation to Taxation* (‘PCRT’), a professional code which governs the ethics of the ‘tripartite relationship’ between a member of one of these professional bodies, their client and HMRC. It has generally been and currently is endorsed by HMRC. It thus contains both consumer and revenue protection elements, and tries to create an appropriate balance between them, though some more detailed aspects of the ‘consumer protection’ professional rules

are contained in other codes - eg principally *Professional Rules and Practice Guidelines* ('PRPG') in the case of CIOT and ATT.

- 4.3 PCRT is constructed on the basis of a clear distinction between giving dispassionate, professional advice and 'promotion'. Longstanding provisions require adviser members to warn of all material risks in any course of action proposed. More recent provisions introduced to address issues of tax avoidance more directly prohibit creating, promoting or encouraging clients into, broadly, egregious tax avoidance arrangements.
- 4.4 HMRC (as with other third parties) has long had the ability to bring cases of alleged professional misconduct by members to their professional bodies (or in the case of CIOT and ATT to the Taxation Disciplinary Board ('TDB'), a body established by both of them to hear disciplinary cases independently). Until recently, HMRC rarely if ever brought such cases, although they have now begun to do so in a small way (which they suggest might expand) and have negotiated Memorandums of Understanding (MOUs) with TDB and other professional bodies which have in-house disciplinary arms, to facilitate this.
- 4.5 HMRC has articulated its expectations of agents² which are based largely on highly summarised versions of those elements of PCRT which are focussed on revenue rather than consumer protection.

5 AML and OPBAS

- 5.1 CIOT and ATT (and another four of the PCRT co-authors) are anti-money laundering ('AML') supervisors. The one exception to a picture of complete absence of statutory regulation is that all tax agents and advisers require to be supervised for AML purposes. In fact, CIOT/ATT supervise only a small fraction of our membership (mostly sole traders or very small firms) as most of those who work in firms requiring supervision fall to be supervised by accounting or legal supervisors.

6 Recent developments

- 6.1 From time to time over the years there have been discussions within and between our own and other professional bodies, and we have had the impression also within HMRC, about the merits of greater regulation of tax. In the event, these have not led to any scheme of outright regulation. It would be unfair to state that there is a clear consensus within or among the various bodies on these issues. Clearly there is a need to weigh costs and benefits to the consumer and the public purse. That said, there is a view within both our bodies and the profession more widely that the best way of achieving an increase in the quality of tax advice at a relatively low level of cost and disruption would be along the following lines:

- a publicly announced decision that from some point in the future (maybe say 10 years' hence), only members of qualifying professional bodies would be allowed to give tax advice or perform tax compliance services,
- criteria for establishing which professional bodies would qualify for this purpose (crucially, these criteria would include having a robust disciplinary scheme, reliably accessible to HMRC and to the public), and

² HMRC Corporate Report [HMRC: the standard for agents](#) – last updated in January 2018.

- interim arrangements for those outside professional bodies to be subject to progressively greater assurance requirements over the prolonged transitional period, perhaps starting with a universal requirement for PII cover.

7 The 'Loan charge' issue

7.1 The 'loan charge' anti-avoidance legislation brought in to counter extensive trust-based avoidance of employment taxes caused a political backlash which culminated in an independent review led by Sir Amyas Morse. Many of those affected by the loan charge claimed not to have fully understood the aggressiveness of the position they had taken and perhaps to have been misled on this count by some employers, promoters and advisers.

7.2 In December 2019, Sir Amyas reported³ recommending some significant mitigations of the loan charge. In addition, his review noted:

'17 The Government must improve the market in tax advice and tackle the people who continue to promote the use of loan schemes, including by clarifying how taxpayers can challenge promoters and advisers that may be misselling loan schemes. There should be a new strategy published within 6 months, addressing how the Government will establish a more effective system of oversight, which may include formal regulation, for tax advisers.'

7.3 The Government's response⁴ (also published in December 2019) included:

'2.45 The Government and HMRC are determined to continue to tackle promoters of tax avoidance schemes. It is not acceptable for promoters to market these tax avoidance schemes which do not work and deprive the Exchequer of tax that is owed. Facilitating an advantage for some people is unfair to the vast majority of taxpayers who pay in full and on time.

2.46 Increasingly, HMRC are seeing promoters who are prepared to use every opportunity to sidestep the rules that require them to disclose these schemes, looking to turn a profit quickly, while selling schemes that are not effective. Too often they sell artificial schemes that do not work, leaving taxpayers with large tax bills when HMRC defeat the schemes, and HMRC with tens of thousands of cases where taxpayers have not paid what they should.

2.47 The Government is announcing today further measures to tackle promoters of avoidance schemes that will reduce the scope for promoters to market tax avoidance schemes. The Government will:

- Ensure HMRC can more effectively issue stop notices to promoters to make it harder to promote schemes that do not work;
- Prevent promoters from abusing corporate entity structures that sell schemes to avoid their obligations under the Promoters of Tax Avoidance Scheme (POTAS) rules;

³ [Independent Loan Charge Review: report on the policy and its implementation](#)

⁴ [Independent Loan Charge Review: Government response to the Review](#)

- Ensure HMRC can obtain information about the enabling of abusive schemes as soon as they are identified, and enabler penalties are felt without delay when a scheme has been defeated at tribunal;
- Ensure that HMRC can act decisively where promoters fail to provide information on their avoidance schemes; and
- Make further technical amendments to the POTAS regime so that it continues to operate effectively and to ensure that the General Anti Abuse Rule (GAAR) can be used to counteract partnerships as intended.

2.48 Further detail on these measures will be set out at the Budget.

2.49 Furthermore, the Government will consider carefully the wider implications of the Review for the market for tax advice. The Government will launch a call for evidence on what steps it can take to raise standards in this market to give taxpayers more assurance that the advice they are receiving is reliable.'

8 What form should regulation take?

- 8.1 Clearly, if things go wrong in a relatively unregulated world, it is seen as creating a case for more regulation. It may be that political support for the idea of regulation of tax services is growing (and indeed some people express surprise when they are told that by and large it does not exist currently). But it still remains the case that regulation only makes sense if it can be effective in producing improvements and if it can achieve this at proportionate cost. In addition, to the extent that the supposed 'evidence base' for regulation reflects tax avoidance of the 'loan charge' type, it is worth considering whether it would be better to focus efforts on the minority activity of promoting such arrangements, rather than on the giving of advice which is a greatly more common activity. Indeed, we think that focusing on the broad range of tax services provided by the vast majority of agents and advisers might well miss the real target insofar as promoters can avoid presenting themselves as advisers.
- 8.2 The typical key downside of regulation is cost, which ultimately will largely fall on the consumer. Costs can be mitigated here by building on the existing pattern of voluntary efforts, while focussing on existing gaps and necessary improvements. In particular, HMRC need to do more to bring forward appropriate disciplinary cases against agents and advisers who fall short of the standards required, and professional bodies need to make sure (and if necessary be required to make sure) that their disciplinary processes are robust enough to receive and process more such cases.
- 8.3 In addition, regulation of tax services in particular must deal with the fact of 30% of registered tax agents being outside any professional body (and consequently, of the ability of their clients and of HMRC to have recourse to professional body disciplinary schemes in respect of their work). To 'outlaw' these advisers overnight would likely be highly disruptive to compliance with the tax system. Whatever their inadequacies (and we make here no particular assertion about that, though naturally we favour tax services being provided by qualified persons), it is unlikely the clients or HMRC would, generally speaking, be better served, taken in the round by their total and immediate removal from the scene.
- 8.4 Most tax agents and advisers are members of many professional bodies (accounting, law and tax specific) and a key requirement will be to ensure that equivalent standards can be achieved and upheld by different bodies.

RESPONSES TO 14 QUESTIONS ON PROPOSITIONS

- 1** *Do you agree with Proposition 1 that promoting and protecting the public interest (as outlined in paragraph 4.2) should be the primary objective for the regulation of legal services?*
- 1.1 Yes, in principle. Both protection of the state - its revenue - and protection of the consumer - there is a fundamental imbalance of information between the supplier and consumer of tax services so an unfettered market is unlikely to be optimal. The key question is whether the costs (which ultimately will be largely borne by the consumer) are worth the protection (or perhaps, how to design the system so that it is).
- 2** *Do you agree with Proposition 2 (paragraph 4.3.5) that consumer expectations and regulatory reality should be aligned by at least allowing access to the Legal Ombudsman for all consumers of legal services offered to the public?*
- 2.1 Not necessarily. Currently for CIOT/ATT, all consumers (and others) can complain to TDB (see 4.4 above), an independent body which can investigate and, after due process, discipline a member. While we would not rule out that the Legal Ombudsman alternative might be attractive to some consumers, it is for consideration whether the results in practice would be different or better and what the cost implications would be (bearing in mind the likelihood that costs will ultimately be borne economically by the consumer).
- 3** *Do you agree with Proposition 3 (paragraph 4.3.5) that all legal services should be capable of falling within the regulatory framework, irrespective of who provides them?*
- 3.1 Yes, in principle but subject to cost/benefit analysis in particular areas.
- 4** *Do you agree with Proposition 4 (paragraph 4.4) that there should be an alternative or additional form of entry into regulation for those who do not hold a professional title?*
- 4.1 Not necessarily on a permanent basis as a matter of principle.
- 4.2 In tax, some other form of entry is essential on a temporary basis unless something of the order of 30% of suppliers are to be shut down. However, many of the features of professional body membership (which combine BTE, DTE and ATE elements) are arguably essential in tax.
- 4.3 From a revenue protection perspective, it is all very well to articulate expectations of agents, but what happens if these expectations are not fulfilled? The disciplinary schemes of the professional bodies offer a lever which HMRC is only now beginning to use. The ultimate sanction of expulsion would carry more weight if professional membership were essential. From a consumer perspective, even basic compliance mistakes can be extremely costly and it is difficult for those who have not undertaken some relevant professional exams, who are not subject to CPE requirements and are not constantly receiving prompts and guidance to remain up to date, to appreciate the massive complexity and constantly changing nature of the law, even as it regularly affects millions of people.
- 4.4 Consumers of tax services regularly have to file tax returns and are exposed to penalties if they get it wrong, even though gov.uk struggles (and sometimes fails) to provide accurate guidance and HMRC's systems cannot

keep pace with the complex calculations (even of supposedly basic personal allowances and reliefs) provided by the law. Costs of mistakes can easily exceed enforceable (and in relation to the size of the fee, not unreasonable) liability caps and indeed the ability of many suppliers to pay, however thoroughly pursued. In summary, a market with 30% unaffiliated agents is almost certainly better than a market with 30% fewer agents, and many such individual agents may do a good job, but it is not a structure of a market for services such as tax which is likely to deliver a good, or even acceptable result.

5 *Do you agree with Proposition 5 (paragraph 4.5.1) that a future regulatory framework should allow the differential application of before-, during- and after-the-event regulation to reflect the importance or risk of any particular activity or circumstance?*

5.1 Yes, in principle but we would suggest that some elements of each are essential in tax: structured training and examination to ensure appreciation of complexity (BTE), standards of behaviour in dealing with HMRC (DTE), and PII cover and exposure to disciplinary schemes (ATE).

6 *Do you agree with Proposition 6 (paragraph 4.5.5) that professional title should no longer be the only route to personal authorisation, even in respect of those important or highest-risk activities for which BTE authorisation would continue to be required?*

6.1 Not necessarily. If such access is to be 'easier', will its availability (with the added respectability of being regulated) not undermine the standards already achieved in the professional sector? And if it is just as hard, what benefit is being achieved?

6.2 Can the necessary beneficial elements of professional membership be recreated for an alternative model at acceptable cost? The answer may be different in different areas. In tax, risks to the revenue and the consumer are high, and the development, mainly through PCRT, of common standards across so many professional bodies is extensive, while the range of professional bodies operating in the area (but to largely common relevant standards) is sufficiently broad to mitigate against the potentially monopolistic effects of reserving activities.

6.3 It seems to us likely to be better to build on the current model by establishing criteria for the professional bodies to conform to and develop a plan to bring the unaffiliated into the fold, than to undermine it by offering a new route to respectability, likely without many of the elements that should be required.

7 *Do you agree with Proposition 7 (paragraph 4.5.5) that the appropriate regulator should determine what qualification or assurance of (continuing) competence, experience and integrity would need to be demonstrated by any provider for particular legal services on a BTE basis, and the additional requirements that would be applied on a DTE or ATE basis to the relevant providers?*

7.1 Not sure. It is clear that someone should determine these things on a systematic and impartial basis, and the tax community should not be immune to the challenge of wider perspectives.

7.2 Legal services constitute however a very wide area and this is a lot of power without broader public oversight. There is also a danger of a one size fits all approach failing to recognise the extent and specific nature of exposure to risk both to the public revenue and to consumers of tax services.

8 *Do you have a view on (paragraph 4.6) a revised definition of 'legal activity' or 'legal services'?*

8.1 It seems that tax services including compliance would be legal services and this seems right: completing a tax form on an execute-only basis would not be easy and may not be ethical. The main concern with definitions would be to ensure that the impact of technology was addressed.

9 *Do you have a view on (paragraph 4.7) what should be the minimum conditions attached to after-the-event regulation?*

9.1 At a minimum, PII cover, an ethical code protecting the consumer and the revenue, and an effective complaints/disciplinary mechanism. We would add that some minimum requirements beyond ATE might also be appropriate, eg CPD requirements – an aspect of BTE regulation.

10 *Do you agree with Proposition 8 (paragraph 4.8.3) that the application of regulatory requirements could be supported by the existence of a public register of who is regulated and for what, such that:*

(a) ATE regulation and voluntary registration should extend to all providers of low-risk legal services; and

(b) BTE and DTE regulation and mandatory registration should apply to providers of higher-risk legal services?

10.1 Yes, on the basis that tax services are high risk.

11 *Do you agree with Proposition 9 (paragraph 4.9.2) that:*

(a) the current list of reserved activities should be reviewed to identify clearly the public interest basis of the continuing need for prior authorisation by reference to public good or consumer protection;

(b) other activities should also be reviewed against these same criteria to see whether prior authorisation should in the future be extended to them (and do you have any suggestions for what those activities might reasonably be)

11.1 Although as stated earlier the reserved activities list has relatively little impact in tax, we have no issue with reviewing it. However, while we remain keen for the costs and benefits of any proposals to be reviewed carefully, we suspect that a case for some form of prior authorisation on tax, probably through professional qualifications and membership, would prove strong.

12 Do you agree with Proposition 10 (paragraph 4.10.2):

(a) that the future primary focus of regulation should be the ‘provider’ of legal services, whether an individual, entity, title-holder, or technology; and

(b) if so, how might a definition of ‘provider’ be constructed, and what would it need to include and exclude?

12.1 Yes. The provider is the legal entity or business providing the tax services. It should be required of providers that employees and subcontractors conform to the required codes and standards.

13 Do you agree with Proposition 11 (paragraph 4.10.3) that:

(a) for the purposes of a future single register of providers of legal services, the registration should be in the name of the entity, partnership or individual subject to regulatory requirements or with which a client has terms of engagement; and

(b) BTE authorisation should only be granted to individuals?

13.1 Yes

14 Do you have a view on whether there should be a continuing need for separate registration of alternative business structures or prior approval of ‘non-lawyer managers’ for ABSs? (Paragraph 4.10.5)

14.1 We do not see this as relevant in a tax context. There are a number of professional bodies who would likely meet criteria such as to provide a route to practice. Arrangements for those not affiliated to a professional body should be understood to be transitional.

RESPONSES TO 19 CONSEQUENTIAL QUESTIONS

- 1** *Do you agree that it should be a matter for a regulator to decide whether, and on what basis, an individual could be granted, and maintain, authorisation or accreditation for legal services over a period of time? In particular, do you agree that those who have a professional title, and those who do not, should be subject to the same regulatory requirements, both initially and over time in respect of the same legal services; and that there should be no automatic or perpetual ‘passporting’ for any providers, whether title-holders or not? (Paragraph 5.2)*
- 1.1 Not really. Regulation should build on what exists, not treat it as nought. The way to avoid ‘passporting’ being automatic, or perpetual, or indeed self-serving, is to make recognition contingent on the professional body in question conforming to criteria both as to the standards proclaimed and as to the effectiveness of the mechanisms for enforcing them.
- 2** *Do you have a view on whether (paragraph 5.2.3):*
- (a) a practitioner should be required to demonstrate continuing competence and experience of a sufficient level to reflect the risks associated with the service in question or with the types of client served;*
- (b) there should be any automatic or perpetual ‘passporting’ for title-holders and other regulated providers; and*
- (c) those who hold a professional title should be, in regulatory terms, any more privileged or disadvantaged than those who do not?*
- 2.1 (a) There should be Continuing Professional Development requirements for all tax agents and advisers. These should be enforceable, as they are already through professional bodies’ disciplinary schemes.
- (b) There should not be automatic or perpetual passporting: the ‘passport’ should be at risk if CPD or indeed other requirements are not met.
- (c) Privileges should not accrue to professional title holders per se but only as reflecting requirements that have been thereby met, including as to what might be called ‘initial professional development’ (taking entry exams etc).
- 3** *In relation to the future regulation of professional titles, do you have any preference for, or views about, Option 1 (regulator responsibility), Option 1A (regulator responsibility with legally separate title regulators), Option 2 (professional body responsibility), or Option 3 (co-regulation)? (Paragraph 5.3)*
- 3.1 The current position in tax whereby each professional body promotes and upholds its own title works satisfactorily. An overall regulator might need to be given the power to challenge the use and promotion of a title that was misleading or conflicted with the aims of regulation.
- 4** *Do you have a view on whether: the adoption and use of all professional titles should be protected (paragraph 5.3); or the current protections should continue alongside a public register and the generic use of an expression such as ‘registered legal services provider’? (Paragraph 4.8.3)*

- 4.1 If, as we believe should be the case, ultimately providers of tax services would be required to be members of professional bodies qualifying under defined criteria, there should be no further need of additional protections for the titles promoted.
- 4.2 If, however, that condition is not met, then we have serious concerns that regulation of the unqualified would give a spurious sense of respectability to their services. In that context, stronger protection of professional titles might be helpful to mitigate this but would not be the best answer to it.
- 4.3 Ultimately, regulation should be about promoting higher standards for the benefit of public and consumer, not protecting certain providers. The case for requiring professional body membership in tax is that:
- it is hard to see how a minimal level of protection for the public and consumers can be achieved without it;
 - it minimises the cost and disruption of such an outcome by building on what is in place; and
 - the range and number of professional bodies long established in the tax space protects against any monopolistic consequences.
- 4.4 In passing, we think the title referred to in the final question should be 'Regulated provider of certain legal services'.

5 *Where providers who would not ordinarily be regarded as being within the legal sector are giving advice on matters of law that fall within the definition of legal services, in principle should the same regulatory requirements apply? Further, should certain minimum ATE requirements of the legal service regulatory framework (such as access to the Legal Ombudsman) apply in any event to all providers in order to simplify the consumers' route to making complaints and initial claims for redress? (Paragraph 5.4.3)*

5.1 See responses to Questions on Propositions numbers 2 and 3 above.

6 *Given the public policy objectives for legal professional privilege, and parity for clients, should privilege be extended to those providers who are registered within the legal services framework? (Paragraph 5.4.4)*

6.1 Yes

7 *Should immigration advice and services fall within the definition of legal services, with all immigration practitioners coming at least within ATE requirements for legal services? (Paragraph 5.5.4)*

7.1 We express no view on this.

8 *Should LawTech fall within a future definition of 'legal services', and a 'provider' of LawTech legal services capable of being within the regulatory framework? (Paragraph 5.6)*

8.1 It does seem to us that tax technology packages which embody advice (as almost invariably they will) should be subject to what is in principle the same regulatory regime as other providers. This will likely involve

identification of what is the advisory content, its explicit recognition, and protections around who needs to be involved in creating and reviewing it, how that is to be done, and with what accountability and redress.

9 *Should a law centre or other similar organisation be a registered entity for regulatory purposes, and the body responsible for compliance with DTE and ATE requirements? If higher-risk activities are carried out for which BTE or DTE obligations exist for individuals, should the relevant individuals also be registered? If there are no such obligations, is it sufficient that individuals be otherwise covered by the entity registration? (Paragraph 5.7.2)*

9.1 In principle 'yes' to the first question, and this has implications for tax charities who give advice to those who cannot afford to pay for it. The question does highlight the requirement for a regulatory regime to be as cost effective as possible, building on what is already being achieved on a voluntary basis, rather than side-lining it. However we would have thought that entity-level regulation would be sufficient for such providers.

10 *Should future regulation allow the pro bono activities of a law firm or legal department to be registered as a distinct unit (treating it for regulatory and registration purposes as a separate 'entity')? (Paragraph 5.7.3)*

10.1 In the context of tax services, we express no view except that we do not think this should be required (as distinct from allowed).

11 *Should an in-house legal department be capable, for regulatory purposes, of being registered as a distinct entity or unit, so that the department's delivery of legal services could be subject to the same regulatory obligations as any other registered provider? Should individuals within such a registered in-house unit also be registered personally if they carry on activities for which BTE authorisation would otherwise be required? (Paragraph 5.8)*

11.1 No to both questions. The ethical obligations of individual members of professional bodies would typically apply. However, in this situation it is for employers to decide whether to employ professionals or not. To decide otherwise would involve a huge increase in the scope of regulation and associated costs for which there is no clear need.

12 *If an in-house department was not registered, should it be allowed to carry on legal services for which BTE authorisation or other regulatory conditions would otherwise be required (except where an individual is appropriately registered and authorised)? (Paragraph 5.8)*

12.1 Yes. See 11 above.

13 *Do you have a view on whether future decisions about the legal services subject to before-the-event authorisation need to be decided by Parliament and set out in statute, or can greater flexibility be left to a regulator? Would the same be the case for during-the-event regulation? (Paragraph 5.9)*

- 13.1 A specific consultative process should be established for tax services. This is too important an issue to be left to the general legal regulator. A statutory regime risks ossifying a current structure of the market.
- 14** Do you consider that (paragraph 6.3):
- (a) a longer-term alternative approach would sufficiently address the identified shortcomings of the current framework; and***
 - (b) the potential benefits would be worthwhile?***
- 14.1 No. in the context of tax services, our preference would be to move over time to a position where all tax practitioners serving clients were members of professional bodies which in turn met defined public interest tests.
- 15** ***Would you support (paragraph 6.4):***
- (a) the short-term repeal of section 63(2) and (3) of the Legal Services Act 2007 to allow the Legal Services Board to become an approved regulator; and***
 - (b) the short-term replacement of section 128 of the Act to allow the Legal Ombudsman to gain jurisdiction in respect of complaints made against any provider of a legal activity, including those who do not offer reserved activities?***
- 15.1 (a) We express no view on this.
(b) See response to Questions on Propositions number 2 above
- 16** ***Do you have a preliminary view on whether there should be an expanded role for the Legal Ombudsman? (Paragraph 7.2.1)***
- 16.1 See response to Questions on Propositions number 2 above. That said, the triage role envisaged could potentially include pointing people to existing disciplinary regimes which are open to receive complaints from clients and third parties (such as the Taxation Disciplinary Board referred to in section 4.5 of this response).
- 17** ***Do you have a preliminary view on whether a requirement for consistency, coherence and coordination across regulation within the legal services sector would or should necessarily lead to a single, or at least a continuing oversight, regulator? (Paragraph 7.2.2)?***
- 17.1 We think there is value in an oversight regulator but at least in tax, that regulator could oversee professional bodies in their regulatory role, which would therefore be wider than what paragraph 7.2.2 envisages.
- 18** ***Do you have a preliminary view on whether a future legal services regulator should be directly accountable to Parliament? (Paragraph 7.2.3)***

18.1 Yes, it should be, with an oversight Parliamentary Committee and provision for annual evidence-taking and review of its report.

19 Do you have any views about the future of 'permitted purposes' funding and collection? (Paragraph 7.2.4)

19.1 No

20 Acknowledgement of submission

20.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation and Association of Taxation Technicians is included in the List of Respondents when any outcome of the consultation is published.

21 The Chartered Institute of Taxation

21.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. 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. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 19,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

22 The Association of Taxation Technicians

22.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia

The Chartered Institute of Taxation

The Association of Taxation Technicians

17 January 2020