



30 Monck Street
London
SW1P 2AP

T: 020 7340 0551
E: info@att.org.uk
W: www.att.org.uk

RAISING STANDARDS IN THE TAX ADVICE MARKET: PROFESSIONAL INDEMNITY INSURANCE AND DEFINING TAX ADVICE

Response by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to respond to the HMRC consultation document ('the Consultation') issued on 23 March 2021¹.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 ATT has taken part in the preparation of a joint response to the Consultation by the bodies which have responsibility for the Professional Conduct in Relation to Taxation code (PCRT). This response by ATT reflects the principles of that joint response and develops some areas in greater detail.
- 1.4 We have worked with the Chartered Institute of Taxation (CIOT) on many aspects of the Consultation. We endorse the detailed observations made in the CIOT's response. In some areas of this ATT response, in order to avoid repetition we simply cross-refer to the CIOT's response.

2 Key points in this response

With 30 questions in the Consultation, we have not prepared a summary of our answers. Instead, we highlight in this section our key messages.

- 2.1 We see the introduction of a requirement for anyone providing tax advice to have Professional Indemnity Insurance (PII) as a necessary step towards the policy objective of improving trust in the tax advice market.
- 2.2 We recognise that the introduction of mandatory PII could provide considerable impetus towards the introduction of wider elements of the raising standards agenda.

¹ [Raising standards in the tax advice market: professional indemnity insurance and defining tax advice](#)

- 2.3 To be effective, we think that the proposals for mandatory PII need to be accompanied by other measures:
- Continuation of wider aspects of HMRC's and the professional bodies' quality agenda including promoting tax educational qualifications, continuing professional development, complaints and disciplinary schemes, and so on;
 - Ensuring consumers are more aware of the value that each of these components, alongside PII, can bring; and
 - Ensuring HMRC has the necessary additional resources to enforce mandatory PII.
- 2.4 We think that access to HMRC and HMRC systems by all tax advisers should be conditional upon their adherence (as a minimum) to HMRC's Standard for agents and that the HMRC standard should be more closely aligned with the PCRT requirements.
- 2.5 We think that significant research is needed to understand the likely impact of mandatory PII for unaffiliated tax advisers on policy premium levels more generally.
- 2.6 We believe that an efficient and cost-effective process for handling client complaints requires the involvement of recognised professional bodies.
- 2.7 We think that there would need to be a sustained and well-targeted educational programme in advance of the introduction of the requirement for PII in order for it to have any appreciable positive impact on the tax advice market.

3 Response to the Consultation Questions

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

It certainly has a key part to play. It could contribute to the satisfaction of those policy aims and is a necessary element of fulfilling those aims but it cannot of itself fully satisfy the policy aims. There is a risk that focusing on the important but limited contribution which mandatory PII could make to the raising of standards could delay rather than accelerate achievement of the wider objective.

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

The government should publish a roadmap of the wider steps which it proposes to take towards fulfilling the policy aims identified in Q1.

Q3: Are there any alternative options you would recommend?

Our response of 6 August 2020² to the call for evidence on raising standards in the tax advice market³ identified Option E (Maximising the regulatory/supervisory role of current professional bodies) as the option which had

² https://www.att.org.uk/sites/default/files/file_uploads/200806-ATT-Response-to-Call-for-evidence-on-Raising-standards-in-the-tax-advice-market.pdf

³ <https://www.gov.uk/government/consultations/call-for-evidence-raising-standards-in-the-tax-advice-market>

the greatest potential to produce common higher standards in the tax advice market for the benefit of both consumers and the Exchequer and also to produce a much more level playing field as between providers of tax services. We remain of that opinion.

In the short term, we think that the expectations of agents as expressed in HMRC's Standard for agents should be more closely aligned with the PCRT requirements and that interaction with HMRC and HMRC systems should be made conditional on adherence by all tax advisers to those standards.

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

Any significant change in the volume and/or characteristics of those seeking to obtain PII cover has the potential to impact that market and result in higher levels of premium and/or increased difficulty in obtaining cover for those advisers who already have PII. This potential impact needs significant research in order to avoid disruption and possible adverse impact on the tax advice market.

Q5. What are your experiences of obtaining professional indemnity insurance or of the market for professional indemnity insurance?

Q6. If you are a tax adviser who practices without insurance, why is this?

Q7. What factors do you take into account when pricing professional indemnity insurance?

Q8. What are your views on the government's proposals for making information on promoters public? How would having more information about promoters of tax avoidance help you in making decisions about pricing or offering insurance?

Q9: In your opinion, does the insurance market have the appetite and capacity to manage the new requirement?

Q10. What checks do you carry out when you engage a tax adviser? Do you check whether they are insured?

Q11. 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?

Questions 5 to 11 do not relate to professional bodies.

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

Whilst it is appropriate to consider whether there are lessons to be learnt from similar industries, the logical starting point is to consider the complaint handling systems already operated by the professional bodies within the tax advice market. These might provide a model for extending redress although it is difficult to see how any such system could operate outside of the professional bodies unless there was a central mandatory registration and subscription process for unaffiliated agents. We see Option E (referred to in Q3 above) as a more cost-effective and efficient way to introduce a market-wide complaint handling facility than creating such a new registration process.

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

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

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

- cover

- run-off cover

- excess

Q16. *What levels should these be?*

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

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

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

Q20. *What impact do you think setting minimum mandatory levels of cover would have on:*

- the market including availability of insurance

- affordability

Regulations for ATT members in respect of PII are identical to those for members of CIOT. Our responses to Q13 to Q20 are accordingly identical to those set out in the CIOT response⁴. For the same reason, it is appropriate to note that the update regarding CIOT PII requirements (Appendix A in the CIOT response) applies equally to ATT. For brevity, we have not included a duplicate of CIOT's Appendix A in this ATT response.

Q21. *We intend to model the definition of who the requirement will apply to on one of the definitions currently extant in legislation. What a) benefits and b) issues are there with using the Dishonest Tax Agent definition or the Money Laundering regulations definition? Do you have a preference or alternative and why?*

Q22. *What activities do you think should be excluded from the requirement for compulsory professional indemnity insurance and why?*

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

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

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

We have worked with CIOT in considering how tax advice should be defined within the context of mandatory PII. Our responses to Q21 to Q25 are accordingly identical to those set out in the CIOT response⁴.

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

Yes. We agree with the three elements but consider it essential to add a fourth element – Education. Public awareness of the importance of both PII and HMRC's Standard for agents needs to be significantly increased in advance of the introduction of an obligation to hold PII. Without a sustained and well-targeted educational programme, the requirement for PII could make have relatively limited positive impact on the tax advice market and even less beneficial impact on standards.

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

We endorse the detailed observations in the CIOT response.

Overall, we note that the administrative structure required in respect of each of the three elements (Transparency, Checking and Consequences) could be substantial. It would appear to require considerably

⁴ <https://www.tax.org.uk/ref774>

greater interaction between HMRC and advisers who are not affiliated to any recognised professional body than the more far-reaching proposal outlined in Option E (as referred to in Q3 above).

Option E (by placing the bulk of the administrative burden on the professional bodies) appears to have the potential to deliver greater benefit for both consumers and the Exchequer with less demand on HMRC's limited resources. That would allow more of those resources to be focused on those operating within (or on the fringes of) the tax advice market who have a manifest disregard for consumer protection, adherence to any professional standards and the public purse.

On a related point, we note that Option E could be adapted to assist the transition of currently unaffiliated advisers into membership of a recognised professional body. That again could transfer administrative burden from HMRC to those professional bodies who were able and willing to create such an accommodation.

On the consequences of operating without insurance, we think that the concept referred to in section 77 of the Consultation does merit further exploration. Although making tax advisers who did not hold PII cover jointly and severally liable for any tax and/or penalty which was unpaid as a result of their incorrect advice would be of greater benefit to the Exchequer than to the recipient of that advice, it could significantly increase the risk of operating without regard to consumer protection and professional standards. That would align with the policy aims of improving trust in the tax advice market, by targeting poor behaviour and allowing taxpayers greater redress when things go wrong.

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

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

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

We endorse the detailed observations on Q28 to Q30 in the CIOT response.

4 Contact details

- 4.1 We would be pleased to join in any discussion relating to this Consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Will Silsby on 07970 655813 or wsilsby@att.org.uk

The Association of Taxation Technicians

5 Note

5.1 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 Association has more than 9,000 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.