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# RAISING STANDARDS IN THE TAX ADVICE MARKET: CALL FOR EVIDENCE

Response by the 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 *Call for evidence on Raising standards in the tax advice market* ('the Consultation') published on 19 March 2020<sup>1</sup>.

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.

Brief details of the Association are included in the final section of this response.

1.3 We have had the benefit of seeing the response to this Consultation prepared by the Chartered Institute of Taxation (CIOT) which replies in detail to the questions raised in the Consultation. We fully endorse the content of that response.

Rather than covering the same ground in this response, we focus instead on certain aspects raised by the Consultation including, in particular, the identification of a route towards a version of what is summarised in the Consultation as Option E (Maximising the regulatory/supervisory role of current professional bodies).

1.4 Our response is set out as follows:

- Section 2 Wider Observations
- Section 3 Particular aspects of the Consultation

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

- Section 4 Six Options
- Section 5 Option E Challenges
- Section 6 Possible transitional steps towards Option E
- Section 7 Contact details
- Section 8 Details of this Association
- Appendix: Transitional steps towards Option E.

## 2 Wider Observations

2.1 The Consultation is described as a call for evidence. As others will have commented, the body that is best placed to identify relevant evidence on existing standards in the tax advice market is likely to be HMRC.

We, like other professional bodies, have detailed evidence of the very limited number of cases when a complaint is received about the professional standards of one of our members. In the nature of things, however, those situations are unlikely to provide a reliable barometer of generally prevailing standards. Certainly, the fact that there is such a very limited number of cases coming to the attention of professional bodies should not be taken as grounds for casually concluding that there was insufficient evidence to justify committing time to consideration of whether standards in the tax advice market needed to be raised and, if so, how that might be achieved.

2.2 To the extent that evidence is provided in the Consultation itself, we note that the focus is very much on avoidance schemes and what would generally be regarded as very unprofessional ('bad') behaviour. If the purpose of the Consultation was to identify the prevalence of such egregiously low standards and explore possible measures to counter such behaviour, we would not see either the suggested Option E (Maximising the regulatory/supervisory role of current professional bodies) or Option F (External regulation) as relevant. Both would require a fundamental change in the existing regulatory frameworks which would impact everyone involved in the tax advice market and such an untargeted approach could easily fail to impact the very minority of people responsible for the bad behaviour who are and might remain outside effective regulation.

However, our understanding is that the Consultation's intended reach is much wider and that whilst the conclusions and recommendations of the [Loan Charge Review](#) were the catalyst for the Government's commitment, wider concerns about both Exchequer and consumer protection point to the need to consider how standards in the general tax advice market could be improved. We see a fundamental distinction between confronting 'bad' behaviour (as just discussed) and working to reduce and hopefully eliminate 'poor' standards of behaviour. The latter can, as the Consultation title does, be expressed more positively as working to raise standards of professional behaviour.

As one of the professional bodies committed to the principles and standards enshrined in Professional Conduct in Relation to Taxation<sup>2</sup> (PCRT), we strongly support steps to raising

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<sup>2</sup> <https://www.att.org.uk/members/professional-standards-ethics/professional-conduct-relation-taxation>  
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standards. We do, however, think that the case for change needs to be demonstrated compellingly at the next stage of the consultation process in order to ensure the necessary support and commitment from all relevant stakeholders.

- 2.3 Related to the previous point, we think that it is important to recognise the major changes that have occurred in the tax landscape since the twentieth century. The financial crisis of 2008, marked changes in public and political opinion and anti-avoidance legislation mean that we are in a very different environment now than twenty years ago when aggressive tax avoidance schemes were still somehow seen as legitimised by the 1935 judgement in the Duke of Westminster's case<sup>3</sup>.

Founding the case for change now on the historical bad practice and poor standards of a minority of advisers risks landing on inappropriate solutions. This underlines the importance of demonstrating the case for change by reference to what is currently happening and what developments may reasonably be expected (including technological advancements, possible changes in the tax base and/or the calibration between direct and indirect taxes following completion of departure from the European Union and increasing devolution of taxation within the United Kingdom).

- 2.4 We are very pleased to note the indication in Section 94 of the Consultation that:

“In line with this best practice, the government will establish a data bank/source to which all stakeholders can contribute evidence, as an agreed source from which discussion can proceed, and which will inform decisions.”

The complexity and diversity of the tax advice market make the sharing of evidence essential. Only through understanding the particular issues and positions of the various stakeholders can we hope to identify possible solutions to the range of matters arising from the Consultation.

Can we check please that all stakeholders will be able to access the data bank/source as well as contribute evidence? Such transparency will be critical to the level of confidence in the data.

- 2.5 The publication of the Consultation on 19 March meant that this occurred before there was widespread appreciation of how radically the pandemic would impact everything. There will almost certainly be medium term and some longer-term consequences for interactions between tax agents and advisers with their clients and HMRC.

That has prompted some to question whether now is the right time to be considering whether significant change is required to the tax advice landscape. Others have taken the contrary view that the recovery programme required to redress the impact of the pandemic on the Exchequer requires maximum confidence in the integrity of the tax system both in relation to revenue protection and consumer protection.

Whilst we recognise that there would need to be a significant transition period for any major changes (meaning that their full impact would be delayed), we find the integrity of the tax system factor more convincing. We also note that discussion of agent standards and regulation has

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<sup>3</sup> <https://www.bailii.org/uk/cases/UKHL/1935/4.html> “Every man is entitled, if he can, to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow tax-payers may be of his ingenuity, he cannot be compelled to pay an increased tax.”

recurred throughout the last ten years. This will never be an issue with an easy quick-fix solution but that is not a good reason for repeatedly refiling it in the *too difficult* tray.

### 3 Questions in the call for evidence

- 3.1 As noted in 1.3 above, we fully endorse the CIOT's detailed comments in response to the Consultation questions.

### 4 Six Options

- 4.1 In this section, we comment very briefly on the six options identified in the Consultation. Section references are those of the Consultation.

- 4.2 **Option A:**  
***Better use of HMRC's or government's current powers*** [Section 74]

A substantial amount of legislation has been introduced in recent years with the specific purpose of tackling tax avoidance. Optimising use of that has a significant part to play in dealing with the promotion and marketing of schemes.

The power available to HMRC which has most obvious relevance in tackling poor as distinct from bad behaviour is the facility provided by s.20, CRCA 2005 to refer concern about standards of professional behaviour to a member's professional body. Although there has been a slight increase in the use of this facility by HMRC, it remains substantially under-used. We think that it would be helpful for HMRC to explore with the profession the perceived barriers to making more disclosures. The facility does not of course have any application to unaffiliated agents.

- 4.3 **Option B:**  
***Improve rights of recourse for consumers*** [Sections 75 to 78]

We can see that improved rights of recourse would be a likely consequence of either Option E or Option F but we cannot see how a free-standing complaints/arbitration service which was intended predominantly for use by clients of unaffiliated agents could be either funded or operated cost-effectively.

The alternative suggestion of mandatory PII cover would require administrative involvement by or on behalf of HMRC and might still leave the client in the position of having to sue their agent. By contrast, the complaints facility offered by professional bodies provides a route to resolving issues which involves no cost for the client. The costs, which can be significant, are borne by the relevant member and/or their professional body which in turn has to pass that cost on to their membership at large.

#### 4.4 **Option C:**

##### ***Improving transparency - helping consumers to make better choices*** [Sections 79 and 80]

The Consultation tentatively refers to the use in other markets of web-based rating services such as *Tripadvisor* and *Trustpilot*. We are extremely doubtful whether such a facility could assist consumers to make better choices in respect of tax services. The requirements and expectations of hotel guests are relatively simple to categorise and measure and large numbers of consumers are prepared to provide feedback enabling prospective guests to form overall impressions.

By contrast, the requirements and expectations of clients of professional firms are significantly more diverse and the number of clients who would want to provide feedback would probably be quite limited so prospective clients would gain only very limited appreciation of whether a firm or individual adviser was likely to be right for them. Feedback on *Trustpilot* in February 2019 concerning a non-UK based arm of a major global firm of accountants that “The pizza was cold at arrival” does not greatly inspire confidence.

The Consultation then refers to government endorsed schemes such as *TrustMark*. Our limited understanding of *TrustMark* is that it operates as a ‘not for profit’ social enterprise<sup>4</sup> in enhancing levels of consumer protection in a range of industry sectors all primarily related to residential property<sup>5</sup> although covering a diverse range of trades. The structure of *TrustMark* operating under a Master Licence from the Department for Business, Energy & Industrial Strategy (BEIS) with the various Trade Associations then having responsibility in their capacity as Scheme Providers for the registration and supervision of their registered businesses (including importantly in the context of consumer protection<sup>6</sup>) has some similarities with the model envisaged in Option E. We return to this in that context.

We think that it would be useful to consider the merits of a public register of all tax agents. If inclusion on the register was mandatory, it would for example enable a consumer to check very easily whether the identity of an adviser was known to HMRC. Our instinct is that it could be much more useful as an aspect of Options E or F. Outside of those scenarios, it is difficult to see how it could encompass the currently unaffiliated agents or give much consumer protection. We would be very wary of the inclusion of consumer feedback – partly because of the inherent subjectivity and partly because of the administrative burden of monitoring/editing content. Within the context of the tax profession, we think that this might best be compiled and managed by the professional bodies from their databases of members in practice. We return to this in the context of Option E.

#### 4.5 **Option D:**

##### ***Penalties for tax advisers*** [Sections 81 to 83]

We do not understand the indication in section 81 (concerning responsibility always remaining with the taxpayer) that “as they are not held to account for such errors or avoidance, some advisers may feel they are less answerable for their work. Consequently they may take less care or feel more empowered to sell avoidance.”

Where penalties are incurred by a taxpayer, their adviser may well be *held to account* through being reported to their professional body or through being sued. Where the adviser has

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<sup>4</sup> <https://www.trustmark.org.uk/aboutus/what-is-trustmark>

<sup>5</sup> <https://www.trustmark.org.uk/aboutus/trades-covered>

<sup>6</sup> <https://www.trustmark.org.uk/consumers/if-things-go-wrong>

professional indemnity insurance, there may be cover exclusions in relation to penalties and there will always be the prospect of an increased premium.

We think that adding the need for HMRC to consider whether culpability lay (more) with taxpayer or adviser would complicate the whole penalty process. It could also mean that some *taxpayers* might take less care in questioning their advisers about a particular course of action on the basis that they could deflect primary responsibility to their adviser.

4.6 **Option E:**  
***Maximising the regulatory/supervisory role of current professional bodies*** [Sections 84 to 86]

Option E envisages the introduction of a legal requirement for anyone wanting to provide tax advice on a commercial basis to belong to a recognised professional body. Section 85 indicates that the government *could* set out the criteria by which a professional body would be recognise.

At this stage of the consultation process, this appears to us to be the option which merits greatest attention. It appears to have 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.

Compared to Option F, it builds on what already exists and has the potential to be less costly to set up and administer.

Notwithstanding our instinctive initial preference for Option E, we recognise that it presents several challenges. We comment on these in section 5 below before then outlining possible transitional steps towards Option E in section 6 and the Appendix to this response.

4.7 **Option F:**  
***External regulation***

We have noted in section 4.6 above that we would expect Option F to be more costly to set up (as none of the infrastructure is in place) and administer (because it would require interaction with a wide variety of persons).

In addition, we cannot see that it would deliver any direct consumer protection. There is no indication in the Consultation that consumer avenues of redress would be improved. By enabling direct registration of tax advisers with the relevant government regulator, that would significantly reduce the existing role of professional bodies. In the process, it would risk leaving consumers with the mistaken belief that the registered (but unaffiliated) adviser was subject to at least the same degree of supervision (for the benefit of consumers) as currently applies for professional body members.

Making registration compulsory for all advisers would mean that those who were already members of a professional body would simultaneously have an obligation to incur a new expense but less incentive to retain their professional body membership. It is impossible to see that undermining the role of professional bodies in this manner would serve the cause of raising standards in the tax advice market.

## 5 Option E Challenges

### 5.1 *The prospect of a bureaucratic nightmare*

Option E as described in sections 84 to 86 of the Consultation recognises the good work that many professional bodies do to maintain standards but at the same time it envisages the criteria for recognition as a recognised professional body (RPB) being set by the government. The Consultation is silent as to how assessment against those criteria would be conducted, who would be responsible for it and how ongoing compliance with those criteria would be measured. None of those aspects would be straightforward, the imposition of externally determined qualifying criteria could create tension between government and prospective RPBs (and between professional bodies) and the existential threat to prospective RPBs of failing to qualify would require some form of appeals process which could ultimately involve the courts. The result could be a bureaucratic nightmare.

In relation to the setting of criteria, there would be resistance as a matter of principle to HMRC being the arm of government which set the criteria for qualification as an RPB as that would be seen as creating a conflict of interest. We note that section 85 says 'could' rather than 'would'.

The challenge here is to identify a variant of Option E which builds on what already exists and thereby avoids as far as possible the introduction of untried processes, additional levels of regulatory authority and the creation of a conflict of interest for HMRC.

### 5.2 *The criteria for qualification as an RPB*

The criteria for qualification as an RPB suggested (without limitation) in section 86 of the Consultation include some which would be readily recognised as essential and practical from the outset (for example the requirements for all of an RPB's members who are in practice to have Professional Indemnity Insurance (PII)<sup>7</sup> and for all its members to undergo continuing professional development).

Others (such as the requirement for the professional body to be an anti-money laundering (AML) supervisor) would deny qualification as an RPB to several existing professional bodies whose members are currently supervised for AML purposes by HMRC.

The Consultation deliberately lists the possible criteria on an inclusive basis. It is, however, surprising that mandatory adherence by all of a professional body's members to standards of conduct in relation to taxation is not mentioned. There is also no explicit reference to the dispute resolution aspect of consumer protection.

The challenge here may be to identify which of the criteria are essential from the outset in order for a body to qualify as an RPB and which could be phased in within an acceptable timescale.

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<sup>7</sup> Even before the current pandemic, our members were reporting difficulty or in some circumstances impossibility in *renewing* professional indemnity insurance. Insurers advise us that the tax profession has been underpaying for insurance for many years. A surge of *new* applicants seeking cover would be expected to exacerbate the problems in that market. In the remainder of this response, we assume that the PII market will stabilise but it will be essential to keep this factor under consideration. If all RPB members in practice had to have PII, there would be some levelling of overheads.

### 5.3 *Speed of process towards Option E*

The Consultation repeatedly refers to the complexity and variety of the tax advice market but is silent on the timescale which would be needed for establishment of Option E. Rapid movement involving radical change to so much of the market could be very destabilising and adversely impact professional standards.

The challenge here is to identify a timescale which is sufficiently short to sustain commitment but sufficiently long to ensure that people have time to make necessary adjustments and that there is time to address any issues that emerge in the transition period. We envisage that it would take a minimum of five years and probably closer to ten years to achieve the all-RPB member agent scenario envisaged in Option E. That seems like a long time but given that periodic discussions of this topic have already stretched over a decade without significant results, actual achievement of the objective within a similar timeframe would look like success.

### 5.4 *Slippery slope towards Option F*

There is a concern that Option E could pave the way to Option F and that it would be naïve not to appreciate the risk for professional bodies and their members of investing time, energy and expense in travelling to a destination of choice only to find that it was simply an overnight stop on the way to a different destination.

We also note the converse concern that failure to engage positively with the opportunities presented by the Consultation and particularly Option E would in the event of another problem in relation to professional standards (such as that which involved the promotion of loan schemes) mean that the default response from government would be some form of Option F with no opportunity for an Option E solution.

The challenge here is to devise a route which, so far as possible, provides an enduring solution.

### 5.5 *Proportionality and affordability*

It is fundamental to this whole Consultation to recognise the balance between costs and benefit. Any additional costs will largely be borne by the consumer so it is essential that those costs deliver value for money to the consumer. The current level of demand on tax charities, other third sector bodies and pro bono assistance demonstrates that access to reliable professional tax services is beyond the reach of many HMRC customers.

In the context of the Consultation, this means that the costs of change must be in proportion to the benefits which they deliver and that particular care must be taken to avoid any contraction in the availability of affordable advice to people on lower incomes. This could be of particular significance in relation to advisers who are currently unaffiliated to any professional body.

The question of proportionality impacts every aspect of what changes might be introduced. For example, if there was to be a public register of tax advisers, how much detail would need to be included in order for a consumer to make a more informed choice?

- Might it be sufficient for the consumer simply to have confidence that they would be dealing with an adviser who was a member of an RPB?
- If experience in particular aspects of taxation was required, should they expect such a level of detail in the register to know that they had found the right adviser for them or would it



be perfectly acceptable that the list pointed them in the direction of advisers who *might* be able to help?

- Would the adviser have been required to provide evidence to support their assertion of any particular level of knowledge or skill?

Related to this is the question whether different categories of tax services require different levels of authorisation. In the context of legal services, Stephen Mayson's report on *Reforming Legal Services*<sup>8</sup> places significant emphasis on the categorisation of risk which leads into consideration of whether authorisation is required before the event (BTE), during the event (DTE) or after the event (ATE)<sup>9</sup>. The report drew support for such a classification from a study by the Competition & Markets Authority<sup>10</sup> which had noted that:

“an optimal regulatory framework should not try to regulate all legal activities uniformly, but should have a targeted approach, where different activities are regulated differently according to the risk(s) they pose ....”<sup>11</sup>

In the context of tax services, would such a categorisation be helpful (or practical) or would it create a level of complexity without delivering any appreciable benefit to consumers?

The challenge here is to achieve proportionality.

## 5.6 *Inclusion but not one size fits all*

A recurring theme in discussions about agent regulation over recent years has been how to bring currently unaffiliated agents into common standards with members of professional bodies.

A parallel but less considered topic has been the diversity in the regulatory processes of the existing professional bodies. That diversity is seen at its most obvious between the seven bodies which have responsibility for the content of PCRT<sup>12</sup> (the PCRT bodies) and those which do not. This is exemplified by the fact that HMRC have to date discussed issues about agent standards separately with bodies in the [Agent Support Group](#) (ASG bodies) and the PCRT bodies. However, the distinctions both between and within the two groupings is much more nuanced than might appear. There are for example ASG bodies who have incorporated PCRT into their processes.

Within both groupings, there are bodies whose focus is on distinct and relatively narrow aspects of taxation and whose members would never venture outside of their expertise into advising on other areas of tax. The criteria for RPB qualification might need some flexibility to accommodate such bodies.

If at all possible, we think that there should be common standards and processes that apply to all tax agents. That should give both consumers and HMRC confidence. However, for the reasons just set out, agents are not all starting from a common position. Neither do they all engage in the same areas of work nor have the same level of qualifications nor have the same variety of clients. In addition, they will not all have the same expectation of how long they will remain in practice. These

<sup>8</sup> [Reforming Legal Services – Beyond the Echo Chamber](#) UCL, June 2020

<sup>9</sup> Ibid, paragraph 4.5.1 at pages 94 and 95

<sup>10</sup> [Legal Services Market Study](#) CMA, December 2016

<sup>11</sup> Ibid, paragraph 6.22 at page 201

<sup>12</sup> See section 2.2 above

differences are all part of what the Consultation refers to as the complexity of the market and they need to be recognised in the design of any Option E type model.

The challenge here is to identify a model which is inclusive but which avoids the presumption of a one size fits all approach.

### 5.7 *Other ways to enhance consumer protection*

The view has been expressed that there are other ways to enhance consumer protection. Reference is made in that connection to the merits of a public register. In sections 4.4 and 5.5 above, we comment briefly on the potential benefits of such a register. We definitely think that it would have a part to play in assisting the choice of a tax adviser and importantly in avoiding placing reliance on the advice of anyone whose name did not appear. However, without common standards and processes across the professional bodies, it could be misleading by implying a level of consumer protection which did not exist.

We accordingly see a public register as most likely to deliver benefits to the public where it was an outcome of an Option E variant rather than an alternative to that option. Unless and until the currently unaffiliated agents are brought into the common agent framework, we cannot see a public register making any radical difference in relation to consumer protection.

We have outlined in section 4.3 above why we do not see either arm of Option B making a significant contribution to increasing consumer protection.

The challenge here is to ensure that the design of an Option E variant keeps consumer protection as a key objective.

### 5.8 *Brand undermining and reputational damage*

In the course of discussions between HMRC and the PCRT bodies in 2018/19, we considered how currently unaffiliated agents might be brought into the general agent structure through some form of (probably temporary) association with an existing professional body. We identified that there would be understandable sensitivities amongst qualified members of such bodies if the status of those benefitting from such association was perceived to have equivalence with that of those who had been obliged to invest many hours of study in order to qualify. There was recognition that nomenclature, rights and obligations would require careful consideration.

There was also some concern expressed that, regardless of the status accorded to such new arrivals, it could undermine a professional body's brand to the detriment of its members.

We would also understand if some bodies took the view that a degree of risk would attach to any association with individuals who had not previously been accountable to a professional body for their professional conduct.

The challenge here is to identify a way to expand routes into either some secondary form of association or full membership with a professional body without any unacceptable level of risk.

### 5.9 ***Retention of distinction between regulated and unregulated professional bodies***

We refer in section 5.6 above to the diversity found both between and within the ASG body and PCRT body groupings. The inclusion of all the bodies within a common framework would require all to qualify as RPBs.

If a body could not meet the RPB criteria within the relevant timeframe, that would have the dramatic consequence that its members would not be authorised to continue in practice. They would need to arrange membership or some other form of association with a body which had achieved RPB status. This could be very destabilising for the market.

During the discussions between HMRC and the PCRT bodies in 2018/19, there were indications that the PCRT bodies would provide support to other bodies who aspired to meeting relevant criteria.

The challenge here is to identify how to minimise the number of bodies which would be unable to meet the RPB criteria and maximise the support available to those aspiring to qualification.

### 5.10 ***Specific situations***

We recognise that there will inevitably be particular situations which would require particular consideration within the context of any Option E variant. We have already noted in section 5.2 above that members of some professional bodies are supervised by HMRC for AML purposes. It would be somewhat odd if such supervision meant that the body could not fulfil the RPB criteria.

There will also be situations where an individual or a firm was subject to more than one regulatory regime including possibly regimes within different professional disciplines - for example taxation and surveying or even what is defined as a reserved activity in law.

Special consideration will also be required in relation to in-house tax departments and RPB members who work within them. The regulation of in-house law departments and individuals who work within them is considered in some detail in the report by Stephen Mayson (see footnote 8 to section 5.5 above). There might be some useful parallels there.

All such situations will require proper consideration. They are, however, outside the scope of this response.

## **6 Possible transitional steps towards Option E**

6.1 The nine-page Appendix to this response sets out in tabular form a possible route towards Option E which attempts to address as many of the issues identified in section 5 above as possible. It is not intended as a blueprint but as a sketched vision to assist further debate.

6.2 We have tried to make the table self-explanatory but recognise that we may not have been wholly successful. Rather than extend this response with explanations that might not be needed, we would be pleased to provide any necessary explanations. Relevant contact details are given in section 7 below.

## 7 Contact details

- 7.1 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](mailto:wsilsby@att.org.uk)

## 8 Note

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 over 8,000 members and Fellows together with over 5,700 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.

**The Association of Taxation Technicians**

**6 August 2020**

*Attached Appendix: Transitional steps towards Option E*

**APPENDIX TO RESPONSE: TRANSITIONAL STEPS TOWARDS OPTION E**

<i>Transitional Step</i>	<i>Background</i>	<i>Significance</i>
<b>ONE</b>		
<p>HMRC announce that recognition as a tax agent will only be available after a specified (and reasonably distant) date to agents who are either:</p> <ul style="list-style-type: none"> <li>members of or associated with a Recognised Professional Body (RPB) or</li> <li>registered as Interim Agents (see 2 below)</li> </ul>	<p>a. HMRC had previously anticipated a linkage between 'good' agents and access to enhanced online service for those agents.</p> <p>b. The timing for the introduction of any enhanced online services is currently very uncertain.</p> <p>c. That requires the link to be to recognition as an agent rather than simply to the enhanced service access.</p>	<p>(i) Option E anticipates "a legal requirement for anyone who want to provide tax advice on a commercial basis to belong to a recognised professional body".</p> <p>(ii) There would need to be a transition process in advance of that obligation.</p> <p>(iii) Recognition as an agent provides the incentive to RPB membership (or Interim Agent registration) without the early need for an enforceable legal requirement for RPB membership and should assist that transition process.</p>

<i>Transitional Step</i>	<i>Background</i>	<i>Significance</i>
<b>TWO</b>		
<p>HMRC define the criteria for registration with HMRC as an Interim Agent which would include having PII and (as an absolute minimum) self-certification of compliance with HMRC's <a href="#">Standard for Agents</a>.</p>	<p>a. In the course of discussions with HMRC in 2018/19, consideration was given to some form of time-limited sub-contracting of regulatory responsibilities in relation to <b>all</b> non-PB members from HMRC to (some or all of) the PBs.</p> <p>b. In this proposal, a distinction is made between:</p> <ul style="list-style-type: none"> <li>• those agents who are not currently PB members but who are likely to remain in practice once RPB membership becomes mandatory (for whom early engagement with a PB seems appropriate) and</li> <li>• those agents who anticipate retiring/withdrawing from practice by the time that RPB membership becomes mandatory (for whom engagement with a PB for a relatively short period might impose a disproportionate burden on both the relevant PB and the agent).</li> </ul> <p>c. Option B in HMRC's <i>Call for evidence</i> notes "Another way of ensuring consumers have access to redress would be to require all tax advisers to have professional indemnity insurance before they could operate". That suggests that HMRC might be able to impose conditions without the need for specific legal authority.</p> <p>d. The status of HMRC's <i>Standard for Agents</i> is unclear. It is currently expressed as a unilateral expectation by HMRC rather than a contractual commitment.</p>	<p>(i) The Interim Agent status is intended to apply only to those agents who did not anticipate continuing in practice once mandatory RPB membership was introduced.</p> <p>(ii) Mandatory PII would be a step in the right direction in terms of consumer protection – but see footnote 7 in section 5.2 of this response.</p> <p>(ii) It would also play a part in levelling the playing field in terms of operating costs as between agents.</p> <p>(iii) Requiring compliance with the <i>Standard</i> would give HMRC some element of sanction against evidenced poor standards.</p>

<i>Transitional Step</i>	<i>Background</i>	<i>Significance</i>
<b>THREE</b>		
<p>It would be clear from the start that the Interim Agent route to recognition as an agent would only be available for a defined time-period (effectively to allow near-retirement agents to continue in practice).</p> <p>Once membership of (in Option E terms) a Recognised Professional Body (RPB) was mandatory, that would be essential for recognition of anyone by HMRC as a (paid) agent for any purpose.</p>		<p>i. The duration of the Interim Agent status would not be expected to continue beyond the introduction of mandatory RPB membership.</p> <p>ii. The time-limiting of the Interim Agent status would reduce its attractiveness as an alternative to early engagement by an unaffiliated agent with a PB.</p> <p>iii. The <i>Interim</i> badging of the time-limited status could reduce the risk of the status being given unwarranted standing.</p>

<i>Transitional Step</i>	<i>Background</i>	<i>Significance</i>
<b>FOUR</b>		
<p>The identity of the body with responsibility for setting the criteria for recognition as an RPB would be established (with appropriate consultation) and it would then proceed to identify the full criteria.</p>	<p>a. Section 85 of the Consultation indicates that the government 'could' set the criteria for qualification as an RPB. It is unclear what alternatives might be considered.</p> <p>b. One alternative would be to assign responsibility for setting the criteria to a new body with representatives drawn from both the ASG and PCRT groups (and possibly a jointly agreed neutral Chair). Only if they failed to agree acceptable criteria would responsibility move to government.</p> <p>c. Section 80 of the Consultation refers to the government endorsed scheme <i>TrustMark</i> which operates under licence from BEIS. If there was to be some government involvement in the setting of criteria, a simplified version of the <i>TrustMark</i> model might be worth considering.</p>	<p>i. If the joint body proved itself able to define the full criteria, that could open the possibility of that body augmented with some independent members including some with particular experience in consumer protection (rather than a statutory body) assuming oversight of the RPBs. This body could also be the central point for consumer complaints although (following the <i>TrustMark</i> model) it would delegate responsibility for resolution of complaints to the relevant member's RPB.</p> <p>ii. A variation of point i above would be for that joint body to be licensed by (?) BEIS along the lines of the <i>TrustMark</i> model.</p>



<i>Transitional Step</i>	<i>Background</i>	<i>Significance</i>
<b>FIVE</b>		
<p>The criteria (as determined under Step 4 above) for RPB status would be pre-publicised and staged to be incrementally more demanding over time until the point when RPB membership became mandatory at which point all the criteria would need to be satisfied.</p> <p>The RPB criteria would initially align with the minimal Interim Agent criteria:</p> <ul style="list-style-type: none"> <li>● PII cover</li> <li>● Compliance with HMRC's <i>Standard for Agents</i>.</li> </ul>	<p>a. In the course of discussions with HMRC in 2018/19, it was envisaged by the PCRT body representatives that clear guidance and support would be made available to help other bodies achieve (what is now identified as) RPB status.</p>	<p>i The incremental staging of the criteria would enable all current relevant professional bodies to be part of the solution from an early stage.</p> <p>ii This would also provide an opportunity for the various professional bodies to adapt or introduce relevant processes.</p> <p>iii The initial alignment of criteria should mean that all existing bodies could meet the RPB criteria and that the minimum initial demands made on currently unaffiliated agents seeking membership or association with an RPB would not have to be any greater than the Interim Agent criteria.</p>

<i>Transitional Step</i>	<i>Background</i>	<i>Significance</i>
<b>SIX</b>	.	
<p>It would be a matter for individual RPBs to decide whether they wished to maintain existing entry requirements for membership or whether they wished to offer any alternative route or status – such as Affiliate - (so long as it was consistent with the RPB criteria).</p>	<p>a. It was recognised in the course of discussions with HMRC in 2018/19 that there was a range of views across the PCRT bodies as to how currently unaffiliated agents might be brought within a regulatory framework.</p> <p>b. Some RPBs would be less obvious destinations for currently unaffiliated agents than others. Some are more likely than others to be able and willing to accommodate them.</p>	<p>i. The objective of bringing all agents into adherence to common high standards would not depend on the status or nomenclature but on the ability of each RPB to promote and ensure compliance.</p> <p>ii. Leaving it to each RPB to decide its own policy in relation to engagement with currently unaffiliated agents recognises the differences between the professional bodies.</p> <p>iii Early publication of the full criteria (see Step 5 above) would enable the RPBs to appreciate the challenges that they would face in achieving full compliance. That would also help them to assess their capacity to assume responsibility for currently unaffiliated members.</p> <p>iv Each RPB would have a vested interest in ensuring membership compliance with the incrementally increasing RPB criteria in order to protect its own ongoing RPB status.</p>

<i>Transitional Step</i>	<i>Background</i>	<i>Significance</i>
<b>SEVEN</b>		
After the initial <i>running-in</i> period, the incrementally more demanding RPB criteria would ensure that no professional body could retain its RPB status unless it met the full criteria (as determined under Step 4 above).		<p>i. The advance identification of the staged introduction of the criteria for RPB status would provide all the relevant bodies with an opportunity to determine whether they had the critical mass of members/structures/ systems/etc to meet the full criteria by the time that RPB membership was mandatory.</p> <p>ii. If a body concluded that it was unlikely to have the resources to meet specific RPB criteria, it could seek strategic alliances to enable them to do so – for example by opting into the disciplinary procedures and resources of another RPB.</p>

<i>Transitional Step</i>	<i>Background</i>	<i>Significance</i>
<b>EIGHT</b>		
<p>Once it was clear that a professional body would meet the full criteria for RPB status, details of their members (with those members' permission) would be used to compile the public register of agents (and other membership) details.</p>		<p>i. The advance identification of the staged introduction of the criteria for RPB status would provide all the relevant bodies with an opportunity to determine whether they had the critical mass of members/structures/systems/etc to meet the full criteria by the time that RPB membership was mandatory.</p> <p>ii. If a body concluded that it was unlikely to have the resources to meet specific RPB criteria, it could seek strategic alliances to enable them to do so – for example by opting into the disciplinary procedures and resources of another RPB.</p>

<i>Transitional Step</i>	<i>Background</i>	<i>Significance</i>
<b>NINE</b>		
<p>The resulting landscape from the above would be:</p> <ul style="list-style-type: none"> <li>• A body (whether statutory or otherwise) with oversight regulation of the RPBs</li> <li>• Common high criteria for the RPBs</li> <li>• Mandatory membership of an RPB for all agents interacting with HMRC</li> <li>• A public register of all agents (and possibly non-agent members as well) subject to relevant permissions</li> <li>• A central body to receive and monitor complaints about RPB members from consumers (or anyone else including HMRC).</li> </ul>	<p>a. Transitional steps 1 to 8 above would not of themselves impact promoters/enablers who were neither RPB members nor agents.</p>	<p>i. In order to bring promoters and enablers who were neither RPB members nor agents into regulation, there would need to be a prohibition against the provision of any tax service on a commercial basis by anyone other than a member of an RPB. That would require legislation but the absence of their names from the public register would in any case serve to put consumers on notice that dealing with them was subject to significant risk.</p>

The Association of Taxation Technicians

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