Raising standards in the tax advice market: responses to HMRC’s call for evidence

General Features

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HMRC’s call for evidence on raising standards in the tax advice market closed on 28 August. CIOT, LITRG and ATT each responded to the consultation.

Background

The call for evidence sprang from the Morse review of the loan charge which had concluded, among many other things, that the government must ‘improve the market in tax advice and tackle the people who continue to promote the use of loan schemes’ and ‘establish a more effective system of oversight, which may include formal regulation, for tax advisers’. The Treasury response, published on the same day as the Morse review, indicated that ‘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.’

HMRC’s call for evidence includes both a presumption that standards need raising and a call for evidence on the case for intervention. To the extent that HMRC provide evidence in support of intervention, it is mainly through examples of what most tax advisers would regard as wholly unprofessional behaviour. Whilst that strengthens the case for targeted action against the few, it does not convincingly demonstrate the case for widespread changes which would impact the many.

Our responses

Both the CIOT and the ATT responses note that HMRC is already likely to be the body that is best placed to identify relevant evidence on existing standards in the tax

advice market. Both responses stress that more targeted counteraction is required against the minority. CIOT emphasises the need for specific solutions to deal with recalcitrant promoters; and ATT warns that founding the case for profession-wide change on the historical bad practice and poor standards of a minority of advisers risked landing on inappropriate solutions. Both responses then proceed to review what measures might be further explored if the eventual conclusion from the call for evidence was that there was a demonstrated need to raise standards in the general tax advice market (as distinct from measures for those described by Morse as unscrupulous tax advisers).

The consultation considers a wide range of topics, including: the definition of tax advice and services; the value added by good tax advisers; the impact of poor practice; consumer protection; the impact of government interventions in the market; domestic and international examples of regulation. and approaches to raising standards. It poses 31 specific questions and identifies six possible approaches (not necessarily mutually exclusive) to raising standards.

Both LITRG and ATT narrowed their focus to particular aspects of the consultation and endorsed CIOT’s more wide-ranging response. The CIOT response expressed support for the LITRG and ATT responses.

CIOT response

The CIOT response opens with the observation that the imbalance of information and experience between taxpayers and their agents is a classic justification for regulation of any market. It notes that this places more weight on the need for high standards and good behaviour from agents – but also puts more pressure on them in their role of intermediating between the taxpayer and HMRC.

The CIOT response repeatedly emphasises the importance of building on what the professional bodies have collaboratively built, pointing to the adoption of principles governing behaviour to protect both the consumer and the public revenue, and the focus on training, messaging, continuing professional development and ultimately disciplining to enforce high standards. It observes that whilst the profession should always be open to ideas for further improvement, the greater focus should be on ensuring more consistency of these standards across the whole market and not just those who are currently members of professional bodies.

In relation to the first four of the six options identified in the consultation, the CIOT response suggests that a more granular engagement between HMRC and the professional bodies is likely to be more beneficial than the use of specific coercive powers. It also suggests that improving consumers' rights of redress and helping consumers make better choices are conceptually attractive but unlikely to deliver the benefits expected or address the problems identified in the consultation. It dismisses the option of penalties for tax advisers as offering no benefits and points out that this would risk taking the focus off the real culprits who might not present themselves as advisers at all.

In relation to each of the two more radical options – the introduction of a legal requirement for anyone who wanted to provide tax advice on a commercial basis to belong to a recognised professional body (Option E) or to register with a government regulator before they could operate in the market (Option F) – the CIOT response highlights a common question. Would the resulting benefits – in reducing the evidenced problems – be worth the costs, bearing in mind that the costs of regulation generally fall ultimately on consumers?

The CIOT notes that the key differentiator between these two more substantive options is that Option E builds on what has already been achieved by the professional bodies working together with each other and HMRC to raise standards; whereas Option F would effectively ignore that and in some respects might serve to undermine it. The response concludes that Option F risks being costlier and less effective, and that it raises the constitutional issue of whether it would ever be appropriate for the state (which requires its citizens to pay tax) to also regulate those whom taxpayers engage to help them with their tax obligations.

LITRG response

The LITRG response focuses on the impact of regulation of the tax advice market on unrepresented taxpayers. As the cost of accessing high-quality tax advice for those on lower incomes may already be prohibitive, it stresses the importance of proper consideration being given to this group and says that the quality agenda must be supplemented by a structured initiative to expand and enhance the provision of non-profit tax advice.

In addition, the LITRG response considers the issues of accessibility and funding for not-for-profit organisations. It urges the government to do more to make it easier for

unrepresented taxpayers to find high-quality advice; for example, through a centralised tool on GOV.UK. In order for grant-in-aid funding to be properly targeted, LITRG also stresses the importance of ensuring that organisations which receive funding to provide tax advice actually have proper tax expertise.

The LITRG response uses high volume repayment agents as a case study to demonstrate that more needs to be done about the factors which drive taxpayers towards ‘bad’ tax advice.

For repayment claims, it notes these as including the complexity of the claims process, the reluctance some taxpayers have to engage directly with HMRC, and the fact that an individual does not understand what is claimable or even that they need to make a claim in the first place. It says that HMRC should also do more around excessive fees charged by these agents, and make it easier for taxpayers to view, amend or remove deeds of assignment.

ATT response

The ATT response reviews the potential of the six options and concludes (like CIOT) that Option E merits greatest attention if intervention is required. It comments on some of the challenges (well expressed in discussions during the extended consultation period) which would need to be overcome. It then seeks to identify a possible transition route from the current disjointed structure of the paid tax advice market to the position envisaged in HMRC’s Option E of a legal requirement for anyone who wanted to provide tax advice on a commercial basis to belong to a recognised professional body that meets defined high standards.

The ATT response includes in tabular form what it describes as a sketched vision, rather than a blueprint of a possible route towards an Option E outcome which attempts to address the identified challenges. This envisages a phased path to common professional standards across all recognised professional bodies in conjunction with routes that would enable currently unaffiliated tax agents and advisers to seek membership (or some alternative form of affiliation) with a professional body. Over an appropriate period – at least five years and possibly longer – the criteria for qualification as a recognised professional body would increase concurrently with the professional obligations of the members of those bodies.

At the professional body level, the ATT response suggests that the starting point could be a requirement for all members to have professional indemnity insurance and to subscribe to defined standards of conduct. It also proposes that membership would be a prerequisite for their acceptance by HMRC as an agent. Additional consumer protection measures such as disciplinary and complaints procedures would then be phased into the criteria for recognised professional bodies. It would be clear from the outset what the full criteria would be, so the incremental staging would enable all existing professional bodies to be part of the solution from an early stage. It would provide them the opportunity to adapt or introduce relevant processes and assess their capacity (or willingness) to assume responsibility for currently unaffiliated agents. It would also enable them to consider any necessary strategic alliances and the scope for sharing relevant resources.

The CIOT response is available here: www.tax.org.uk/ref661. The LITRG response is available here: https://litrg.org.uk/ref386. The ATT response is available here: www.att.org.uk/ref357. In addition to their separate responses, CIOT and ATT are signatories to a joint response prepared by the PCRT bodies.