Mandatory professional indemnity insurance for tax advisers: CIOT, ATT and LITRG responses

General Features

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CIOT, ATT and LITRG have each responded to the HMRC consultation on the possible introduction of a requirement for all providers of tax advice to have professional indemnity insurance. The consultation was issued in March as part of the government's package of actions announced in November 2020, following the wider call in 2020 for evidence on raising standards in the tax advice market.

The CIOT and ATT collaborated in the preparation of their responses, with the CIOT majoring on the questions relating to the introduction of mandatory professional indemnity insurance (PII) and ATT providing significant input on the questions relating to the associated issue of how tax advice should be defined in the context of a requirement for PII. The CIOT's response notes its support for both the ATT and LITRG responses.

The CIOT response expresses support for the introduction of a requirement for all providers of tax advice to hold PII. The CIOT sees it as essential to then build on this first step by bringing all tax advisers within the scope of other professional body requirements such as continuing professional development, monitoring and enforcing standards, education and disciplining.

In order to provide appropriate consumer protection, the CIOT response advocates the PII requirements being similar to those already required of professional body members. The commercial pressure on firms to obtain such cover at an economic rate and maintain their business should then drive up standards. Firms unable to obtain cover would need to cease trading and HMRC enforcement action would be essential.

The consultation document itself favoured modelling the definition of tax advice on one of the two pre-existing statutory definitions of tax advice – either that used by FA 2012 in the context of dishonest tax agents or that used in the Money Laundering Regulations. By contrast, the CIOT response favours a widely drawn and principles-based bespoke definition which could be built on over time. All tax advice should be within the definition unless specifically excluded. In that way, the CIOT sees the definition as extending to the activities of tax avoidance boutiques, umbrella companies operating disguised remuneration schemes, and advice embedded in software and/or wider advice.

ATT's response notes the collaboration with the CIOT and endorses the detailed observations in the CIOT response. It then emphasises the essential role of a sustained and well-targeted education programme to ensure that the public have a proper understanding of the value not only of PII but also of the other components of consumer protection which are required of professional body members who provide tax advice. ATT also highlights the importance of HMRC having the necessary additional resources to enforce mandatory PII.

The ATT response refers back to the 2020 call for evidence and reasserts its earlier conclusion that maximising the regulatory/supervisory role of current professional bodies has 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.

On the subject of HMRC's Standard for agents, the ATT's response recommends that HMRC's expectations of all agents should be more closely aligned with the Professional Conduct in Relation to Taxation (PCRT) requirements (see www.att.org.uk/pcrt2016) and that interaction by any agent with HMRC and HMRC systems should be conditional upon adherence to those standards.

LITRG's response endorses the CIOT response and focuses on points relevant to low-income unrepresented taxpayers in relation to mandatory PII for all tax advisers. It notes that low-income taxpayers often cannot (or believe that they cannot) afford to pay for advice and do not always know where to look for tax advice. LITRG think that HMRC can do more to help people find tax advice from qualified tax advisers and believe that research into consumer perspectives of finding and using tax advisers would allow for better decisions on implementing mandatory PII.

The LITRG response notes the need to raise public awareness of how to pursue complaints when things go wrong and refers to the specific issues associated with high-volume repayments agents and certain payment intermediaries.

In relation to the definition of tax advice, the LITRG response considers that tax advice offered to the general public on a pro bono basis should be within the definition. It also calls on HMRC to specifically consider how disguised remuneration arrangements could be brought within the definition of tax advice in order to help achieve the overall objectives of the measure.

LITRG emphasise that for the introduction of mandatory PII to achieve any of its objectives, there must be sufficient checks and swift enforcement action from HMRC.

CIOT’s response is at: www.tax.org.uk/ref774

ATT’s response is at: www.att.org.uk/ref371

LITRG’s response is at: www.litrg.org.uk/ref2498