Raising standards in the tax advice market

General Features



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On 6 March 2024 HMRC issued a consultation on ‘Raising standards in the tax advice market: strengthening the regulatory framework and improving registration’. The proposals could have a significant impact on tax advisers and professional bodies. This article sets out the main themes of the responses submitted by the CIOT, ATT and LITRG.

The latest in a series of consultations on raising standards in the tax advice market was published in March 2024 (tinyurl.com/hmrcraisingstandards). After gathering feedback (including a survey completed by more than 600 members) the CIOT, ATT and LITRG all submitted a response.

The consultation set out three possible approaches to strengthening the framework within which tax advisers operate in order to improve standards:

- Approach 1: mandatory membership of a recognised professional body;

- Approach 2: joint HMRC-industry enforcement; and
- Approach 3: regulation by a separate statutory government body.

It also proposed mandatory registration of tax advisers interacting directly with HMRC subject to some exclusions.

The full responses submitted by the CIOT, ATT and LITRG are available on the respective websites: CIOT (www.tax.org.uk/ref1308), ATT (www.att.org.uk/ref455) and LITRG www.litrg.org.uk/10922), but we summarise the main points from each below.

CIOT response

The CIOT is supportive of mandatory registration of tax advisers as a useful and sensible step towards ensuring basic standards. We consider that firm level registration would be the simplest to administer, although details need working through as to how the registered member would ensure that regulatory standards were met throughout the firm. Individual professional body members would also need to continue to meet the requirements of their own body. There are a number of outstanding practical points to be worked through in relation to registration.

Following our survey results, we indicated that, if a decision is taken to regulate the tax advice market, there is a strong feeling that this should apply universally to those giving tax advice in a professional capacity, limiting exclusions to friends and family assisting on a pro bono basis.

CIOT was broadly supportive of Approach 1, which would enable us to build on the good work already done by professional bodies towards setting and embedding high standards, and is likely to be the quickest and cheapest model to implement. This was the model which members favoured in their response to our survey. However, we have also been clear to HMRC that the issue cannot be looked at in isolation of the HM Treasury consultation on future anti-money laundering regulation – which looks at whether the professional bodies should continue to be supervisors for anti-money laundering purposes.

The CIOT will not dilute our exam or entry requirements to give unaffiliated tax practitioners an easier route into membership, as we do not see this as supporting high professional standards.

Failures in the tax advice market identified in the consultation are wide ranging and no one regulatory approach is likely to solve all of them. To evaluate the options fully, clearer articulation is needed of what the regulatory models seek to achieve and how they would or would not achieve this. Further detail is also needed to understand HMRC's expectations in relation to regulatory activity and the oversight of the regulators. Regardless, HMRC will continue to have a role to play. They are unique in holding data which can identify areas of poor standards, which they will need to share with professional bodies for them to target intervention most effectively.

A three to five year target implementation date will pass quickly, given the amount of further work needed before introducing regulation. However, quicker action is needed from HMRC to tackle some of the current issues in the market in the meantime, rather than waiting for the introduction of the model.

ATT response

The ATT agrees that a good first step towards a strengthened regulatory framework would be for all those tax practitioners operating in a professional capacity to undertake mandatory registration to interact with HMRC. Registration would allow HMRC to ensure that an individual practitioner or firm meets the standards required and to stop tax practitioners who do not meet these standards from gaining access to HMRC systems and taxpayer information.

We also welcome the proposed introduction of 'a single agent registration service' to facilitate this process and recommend that HMRC prioritise its creation and design. Once designed, HMRC should provide clarity on the requirements necessary for registration, support tax practitioners and agents to meet those standards and provide well communicated and signposted guidance. Access to the service should be quick, easy and efficient.

In principle, the ATT supports the mandatory membership of a recognised professional body, but considers that many elements of that approach would need further consideration and consultation before it could be fully adopted and implemented. For example, what is the criteria for recognised professional body status? How would the unaffiliated be transitioned? And what oversight would there be of recognised professional bodies, including penalties and sanctions?

We have also been clear to HMRC that the issue cannot be looked at in isolation of the HM Treasury consultation on future anti-money laundering regulation.

We consider that regulation at firm level is the most appropriate and workable model, whilst recognising that there will always be a place for professional standards requirements to be placed on all individual recognised professional body members working within firms.

LITRG response

LITRG's response focused on the proposals in the context of the problems with tax refund agents (high volume repayment agents) – most of whom are currently unaffiliated. HMRC have recently made important progress on tackling issues relating to these. They now have a firmer grip of the multiple problems in this space and are getting better controls around agent processes. The recent R40 initiative shows that HMRC are aware of the need to get clear evidence of customer authority every time.

Given that this serious, but now somewhat contained, issue seems to have been a key driver for this consultation, we start our response by urging the government to make sure that they have fully identified the nature and scale of the other issues they are trying to address.

On registration, we say we support a requirement for agents to register. Given the issues of phoenixing and the fact that the same names repeatedly come up as problematic refund agents, we have encouraged the incorporation of certain checks as part of registration, including 'fit and proper' checks. LITRG are also in support of a public register to help enforce standards for agents that do not interact with HMRC. We have highlighted the risk of unscrupulous agents attempting to use HMRC registration as evidence of official endorsement of their services.

On the question of regulation, we support CIOT's view that Approach 1 (mandatory professional body membership) is the most desirable of the three options. However, we highlight that there may be consequences in terms of 'good' unaffiliated agents exiting the market and costs that may be passed onto consumers. Although these concerns should not prevent any changes from being made, they do need to be understood and considered as plans develop so any mitigations can be designed.

Taking everything we know and understand about certain tax refund agents into account, it seems unlikely to us that mandatory recognised professional body membership alone (or indeed any of the proposed approaches) will close down all bad practices. Some agents will continue to push boundaries and make life hard for the professional bodies who are tasked with supervising and managing them. Others will probably ignore the rules or try to side-step them by evolving their practices to fall outside of regulation. Who will police the agents attempting to operate outside the boundaries? We think that HMRC are best placed to identify and sanction those outside of a professional body who have not dealt with regulatory requirements and require criminal sanctions.

Finally, we highlight the need for HMRC to supplement any approach with a structured initiative to expand and enhance the provision of not-for-profit tax advice and consider how HMRC can monitor and improve other sources of advice and support relied on by unrepresented taxpayers. We also note that any change is likely to take some time. In the interim, HMRC must continue to look for ways to raise standards and act quickly to protect consumers within the current framework – for example, by legislating to close down abuses around electronic signatures.

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