



HM Revenue
& Customs

Raising standards in the tax advice market: professional indemnity insurance and defining tax advice

Summary of responses and next steps

30 November 2021

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Foreword

The majority of tax advisers are competent, adhere to high professional standards, and are an important source of support for taxpayers. However, both Lord Morse's independent review of the loan charge and the government's call for evidence on raising standards in the tax advice market have shown that there is a minority of incompetent, unprofessional and malicious advisers whose activities harm their clients, reduce public revenue, and undermine the functioning of the tax advice market.

In March 2021, the government published a consultation on whether to make professional indemnity insurance (PII) compulsory for tax advisers, and a definition of tax advice. The rationale for introducing a requirement for tax advisers to hold PII was that it would help to create better market incentives for poor performing advisers to improve standards. It would also protect consumers by giving them greater access to recourse against the providers of bad tax advice.

However, responses to the consultation, summarised in this document, have indicated that compulsory PII on its own would not be an effective mechanism to raise standards across the market nor would it have a meaningful impact on consumer protection and the ability for consumers to secure redress. In the context of unfavourable conditions across the wider PII market, introducing a large number of new, unregulated and potentially risky advisers into the insurance pool could adversely impact the cost and availability of insurance for all advisers. Responses suggest further consideration of the wider regulatory framework is required in order to be able to deliver a step change in standards in the tax advice market.

Any intervention in the tax advice market needs to be proportionate and reasonable, as well as satisfy three criteria, which together would drive up standards. These are: **clarity** on the required standards, so that everyone understands what is expected of them; **transparency**, so taxpayers know what to look for when engaging an adviser; and **enforcement**, so there are effective sanctions to deal with breaches of standards.

The government will therefore not be proceeding with the introduction of a requirement for tax advisers to hold PII at this time, but will continue to explore options to improve the wider regulatory framework that supports standards in tax advice in consultation with stakeholders and in a way that fulfils the three criteria of clarity, transparency and enforcement. The government will publish a consultation on this in 2022.

The government remains committed to raising standards in the tax advice market, providing taxpayers with reliable assurance that the advice they receive is competent, professional, and trustworthy and helping taxpayers to make informed decisions when seeking tax advice. The government's goal is simple: to support taxpayers, raise standards of advice, and curb tax avoidance and its promotion throughout the market. This document summarises the responses the government has received and sets out the next steps the government intends to take to achieve this goal.

The Rt Hon Lucy Frazer QC MP
Financial Secretary to the Treasury

1. Background to the consultation

The government recognises the important role that tax advisers play in helping taxpayers navigate the tax system, comply with their obligations, and receive their entitlements by providing support and advice to their clients. The majority of tax advisers support their clients to do the right thing. However, the tax advice market does not always function as well as it should, with some advisers acting incompetently or unprofessionally, which can harm taxpayers and businesses and reduce public revenue. As a result, some advisers are not operating according to the standards expected of them by their professional bodies, or by the HMRC Standard for Agents, leaving some clients vulnerable to poor advice.

Following the recommendation of the [Independent Loan Charge Review](#) that the government should improve the market in tax advice and consider establishing ‘a more effective system of oversight, which may include formal regulation, for tax advisers’¹, the government published a call for evidence on ‘Raising Standards in the Tax Advice Market’ in March 2020. This asked interested parties to comment on a range of potential approaches to making improvements, including improving HMRC’s powers to deal with agent misconduct, improving taxpayers’ access to redress, requiring all agents to belong to a professional body, and full government licensing or regulation.

In November 2020, the government published the outcomes of that call for evidence in the ‘Summary of Responses and Next Steps’ and announced a package of measures to raise standards in the tax advice market. There was no general consensus in responses to the call for evidence about a preferred option, although many respondents felt that introducing mandatory professional indemnity insurance (PII) for tax advisers might achieve some of the stated aims. The government therefore announced its intention to consult on whether to introduce a requirement for those providing tax advice to hold PII, and to:

- raise awareness of the HMRC Standard for Agents and review HMRC’s powers to enforce the Standard
- work collaboratively with professional bodies to understand the role they play in supervising and supporting their members and raising standards in the profession
- review options to tackle the high costs to consumers of claiming tax refunds

The consultation ‘[Raising Standards in the Tax Advice Market: Professional Indemnity Insurance and Defining Tax Advice](#)’ was published in March 2021. The government wanted to explore whether compulsory PII would be an effective mechanism for achieving the three policy aims of:

- improving trust in the tax advice market
- targeting poor behaviour by tax advisers
- allowing taxpayers greater redress when things go wrong.

¹ ‘Independent Loan Charge Review: Report on the Policy and its Implementation’, 2019.

The government considered that compulsory PII could achieve these aims because:

- it would allow market forces to drive up standards including potentially removing from the market those advisers who were unable, as a result of riskier practices, to get insurance
- it would enable clients of all tax advisers to have a method of redress should things go wrong and therefore improve taxpayer protection
- initial costs to those already subject to some form of oversight (such as professional body members, and members of other regulated professions, such as financial advisers) were likely to be minimal

The consultation asked questions about:

- the market for PII, how PII is priced, and how it works to improve redress to customers
- what PII cover might be needed, including who should be insured, minimum levels of cover, excesses, exclusions and run-off cover
- how the PII requirement might be enforced, examined under three headings of checking, enforcement and transparency.
- how the PII requirement might be implemented

The consultation also discussed a definition of tax advice, to determine to whom any new requirement should apply.

2. Summary of responses

The government is grateful for the detailed consideration and comments provided in response to the consultation, particularly from those who attended meetings with HMRC.

The consultation ran from 23 March 2021 to 15 June 2021, and during this time the consultation:

- held 26 external roundtables
- presented at 10 external HMRC forums, including HMRC's virtual stakeholder conference
- received 161 written responses from stakeholders, as detailed in Annex A

HMRC also commissioned an external research report entitled 'Understanding the Characteristics of Unaffiliated Tax Agents', which provided insight into the demographics, client bases, attitudes towards professional standards, and views on PII of the unaffiliated population. This research has been published alongside this document.

Views on likely impact of compulsory PII

In respect of whether compulsory PII would satisfy the three policy aims of improving trust in the tax advice market, targeting poor behaviour, and allowing taxpayers greater redress when things go wrong, most respondents agreed that compulsory PII would increase the likelihood of taxpayers securing redress where things had gone wrong. However, they did not think this would increase trust in the tax advice market, and very few respondents saw a link between introducing mandatory PII and raising standards.

Responses suggested that the overall impact of introducing mandatory PII on consumer protection would be weak. Although it would increase the likelihood that there would be funds to pay redress to taxpayers when things go wrong and may raise the chances of securing redress, stakeholders commented that PII as an insurance product is intended to protect the adviser who purchases it, and not the adviser's client. Claimants must prove liability, a legal process which can be time-consuming, expensive and uncertain. The research report 'Understanding the Characteristics of Unaffiliated Tax Agents' also showed that nearly half of the unaffiliated agents surveyed (42%) already hold PII, meaning the impact of making this compulsory could be limited. This research also found that few PII claims are made: only 2% of the advisers surveyed had ever made a claim against their business's PII policy.

The insurance industry stated that as available cover is decreasing and premiums are rising, further regulation would be needed to increase the appetite of insurance firms before introducing a large amount of unaffiliated smaller firms into the market. They noted that doing this could make the market even more difficult, due to the difficulty in differentiating between good and poor advisers.

Many respondents did recognise that PII has an important role to play as part of providing a professional service where there is potential financial risk attached, and some respondents agreed it would be a quick way to introduce minimum standards for tax advisers (in addition to anti-money laundering (AML) supervision). PII can provide

protection from losses for advisers and their clients if something goes wrong, or if mistakes are made. During the consultation period, HMRC held a series of customer immersion sessions, and although the sessions are not classed as formal research, participants confirmed they would prefer to work with an adviser who has PII.

However, overall, introducing mandatory PII was thought by respondents to be more effective as a last step in a regulated market rather than a first step towards regulating a market.

In addition, responses and wider evidence suggested that mandatory PII is unlikely to work as a mechanism for removing the riskiest tax advisers from the market. This is due to the way that risk is priced and visibility of risky behaviour to insurers.

Stakeholders participating in round tables commented that larger insurers ask detailed questions when an adviser is seeking insurance, including whether the adviser is now, or has previously been, involved in tax avoidance. They also suggested that many insurers rely on professional body membership as a way of assessing quality, because of the frameworks of assurance professional bodies put in place: they implement disciplinary procedures, and often require qualifications or continuous professional development. By contrast, they felt insurers have relatively little information about unaffiliated advisers, and consequently find it hard to assess their quality or price risk appropriately. Some stakeholders also told us that other insurers only ask limited questions about the business, such as number of clients and turnover, and price risk on that basis alone. As a result, although it might be more difficult for the riskiest advisers to obtain insurance, PII alone is unlikely to drive poor advisers out of the market.

Some respondents commented that the introduction of mandatory PII would add an increased number of potentially risky advisers into the insurance pool, and therefore have the potential impact of increasing premiums for all tax advisers.

Defining tax advice

The consultation noted that while there was no standard definition of ‘tax advice’ or ‘tax adviser’, two definitions relating to specific functions may be helpful in establishing definition. These are provided below.

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) regs 2017 (as amended by the Money Laundering and Transfer of Funds (Amendment) Regulations 2019

Auditors and others

11. In these Regulations—

(d) “tax adviser” means a firm or sole practitioner who by way of business provides material aid, or assistance or advice, in connection with the tax affairs of other persons, whether provided directly or through a third party, when providing such services.

Dishonest tax agent penalty legislation (schedule 38 of Finance Act 2012)

Tax agent

2

(1) A “tax agent” is an individual who, in the course of business, assists other persons (“clients”) with their tax affairs.

(2) Individuals can be tax agents even if they (or the organisations for which they work) are appointed—(a) indirectly, or (b) at the request of someone other than the client.

(3) Assistance with a client's tax affairs includes— (a) advising a client in relation to tax, and (b) acting or purporting to act as agent on behalf of a client in relation to tax.

(4) Assistance with a client's tax affairs also includes assistance with any document that is likely to be relied on by HMRC to determine a client's tax position.

(5) Assistance given for non-tax purposes counts as assistance with a client's tax affairs if it is given in the knowledge that it will be, or is likely to be, used by a client in connection with the client's tax affairs.

Around half of the respondents commented that they preferred the Money Laundering Regulations definition as it refers to ‘firms’ as well as individuals and is more concise. Less than a fifth of respondents preferred the Dishonest Tax Agent definition as it is more widely drawn. Many respondents suggested ‘must haves’ in the definition, including:

- the term ‘by way of business’
- promoters of tax avoidance schemes
- firms, individuals and controlling parties
- concise and obvious activities that fall within scope

Exclusions

Most respondents agreed that exclusions would be necessary. Suggestions varied, including accountants and bookkeepers carrying out compliance activities, the supply of generic tax information, and tax advice “not given by way of business”.

3. Next steps

The government has listened to the feedback from stakeholders about the plans to introduce mandatory PII and has taken into account a range of evidence. The government has therefore decided **not to introduce a mandatory requirement for tax advisers to hold PII at this time**.

Evidence from the consultation showed that PII on its own would not be an effective mechanism to raise standards across the market or improve consumer redress. As outlined in chapter 2, this is because:

- i. **the consumer protection impact of introducing mandatory PII would be weak.** Although it could increase the likelihood that taxpayers would access redress when things go wrong, the process of making a claim can be difficult, and claims against a PII policy are relatively rare. The research report 'Understanding the Characteristics of Unaffiliated Tax Agents' also showed that nearly half of unaffiliated agents surveyed already held PII, meaning the impact of making this compulsory would be limited.
- ii. **mandatory PII is unlikely to work as a mechanism for removing the riskiest tax advisers from the market.** Stakeholders told us that larger insurers ask questions when an adviser is seeking insurance, but often do not have sufficient information to make an accurate assessment of their quality or price risk appropriately, relying on professional body membership as a way of assessing quality. It is likely that PII alone would not drive poor advisers out of the market and thereby raise standards, and so would not achieve the policy of aims of targeting poor behaviour and improving trust.
- iii. **potential impact on all advisers.** Introducing a large number of new and potentially risky advisers into the insurance pool could increase premiums for all advisers. This, coupled with the current difficult market conditions, could mean that even good advisers might find it difficult to obtain insurance and potentially have to leave the market.

Going further

Responses to this consultation and the previous call for evidence demonstrated a consensus that action is needed to raise standards in the tax advice market. Although respondents differed on the form that action should take, most agreed that there is a case for intervention in the market for tax advice where currently there are no minimum requirements to satisfy in order to set up as a tax adviser, no oversight for those who do not belong to professional bodies, and research on unaffiliated agents shows that over 80% do not hold professional qualifications.

Most respondents who stated that action was needed expressed concerns about the lack of regulation and oversight of unaffiliated tax advisers in particular. These respondents suggested options which had a more direct link to raising standards and improving transparency. Suggested measures included external regulation, increasing the regulatory role of professional bodies, and making more information about advisers available to clients.

They reflected measures suggested in the March 2020 'Call for evidence: raising standards in the tax advice market' consultation and moved further into statutory regulation than PII alone. These suggestions from respondents, along with research into the approach to regulation in other comparable industries, have informed the government's decision to consider the case for moving further towards statutory regulation, in line with our commitment to Lord Morse's recommendation that government establishes a more of effective system of oversight for tax advisers.

The government considers that any future method of raising standards must satisfy three criteria:

a) Clarity on the standards required

The minimum standard must be set out clearly, with understood routes to be able to achieve it. For example, requirements that are related to the individual, such as fit and proper tests, codes of conduct, and conditions about the way the individual or firm goes about their business. This could include, for example, standards about transparency of pricing. The standard should not be optional.

b) Ensure transparency

Transparency is necessary so that taxpayers are able to make informed choices about choosing an adviser, and they understand the standards that apply to advisers.

c) Effective enforcement

The standard needs to be enforced, with effective monitoring and clear consequences where standards are breached.

The government is therefore intending to consult on further options that meet the criteria set out above.

The March 2021 consultation also asked for opinions about a definition of tax advice. This would be necessary for any intervention in the market, as it would set out to whom any new requirement would apply.

The new consultation, which the government expects to publish next year, will therefore also **test a potential legislative definition of tax advice.**

Other action underway to raise standards

HMRC continues to act to raise standards and to target specific behaviours in the tax advice market. Some examples of this work are listed below:

- a) The government has recently introduced a number of powers to enable HMRC to take action more quickly to tackle promoters of tax avoidance schemes. Following the consultation on 'Clamping down on promoters of tax avoidance', the government also included a new provision in Finance Bill 2021 - 2022 to support taxpayers to steer clear of avoidance schemes or get out of avoidance quickly by sharing more information on promoters and their schemes.
- b) HMRC has worked with the ASA to issue a joint [HMRC/ASA Enforcement Notice](#) for misleading internet advertising of disguised remuneration avoidance. This allows the ASA to apply sanctions to promoters who continue to use misleading advertising including removing the advertisement from Internet searches.
- c) A wide-ranging consultation was published in March 2021 as part of a fundamental review of the current research and development (R&D) tax relief schemes. The

scope of this review also encompassed the role of tax agents and intermediaries operating within the sector, with the shared aim of striving to raise the standard of advice provided to taxpayers.

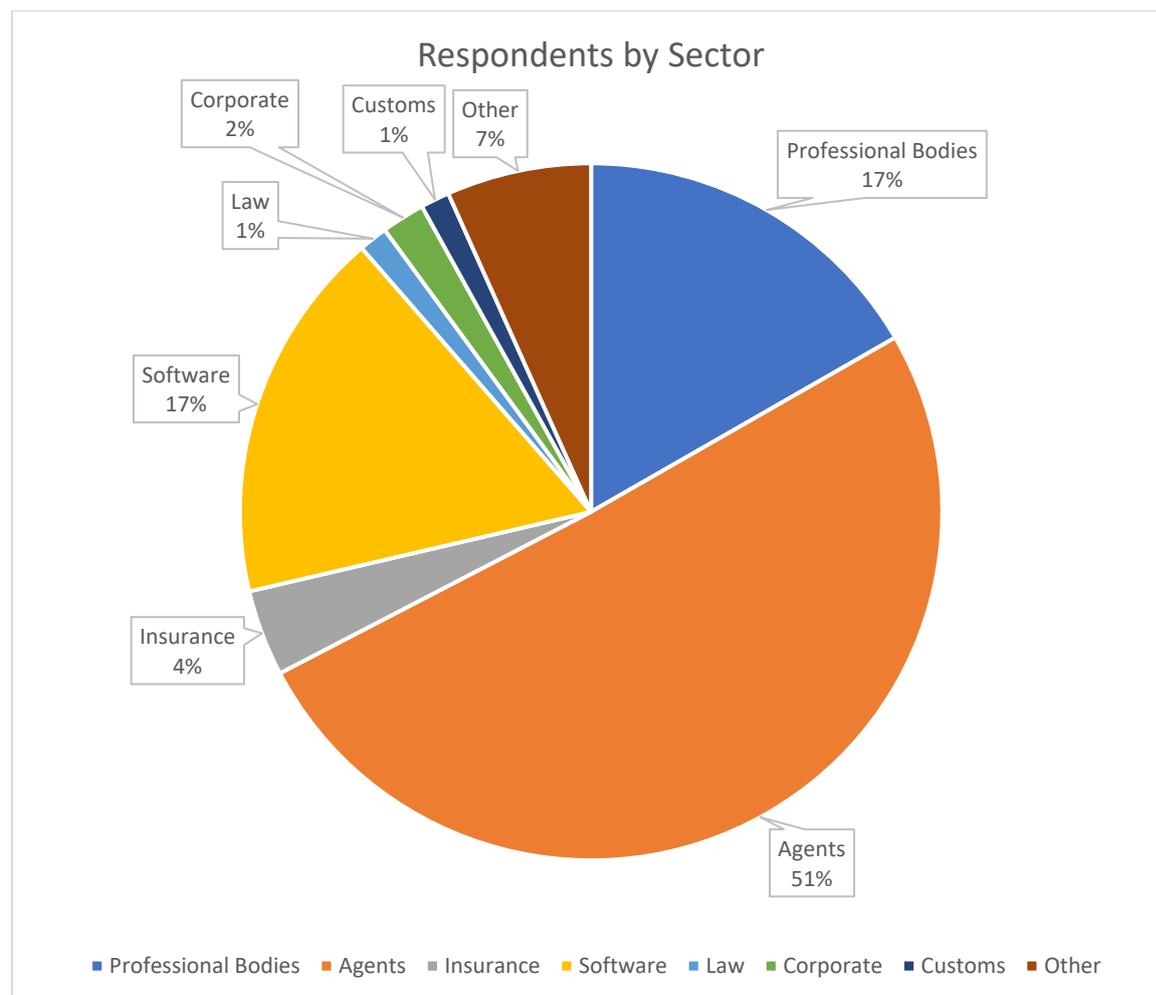
In 2022, HMRC will update and publicise the HMRC Standard for Agents, and publish the conclusions of an internal review of HMRC's existing powers to uphold agent standards.

To address concerns raised by customers and stakeholders in relation to repayment of tax refunds, the government also intends to consult next year on ways to tackle the high costs to taxpayers of claiming tax refunds.

4. Further detail on the consultation responses received

During the consultation period (23 March to 15 June 2021), the government held 26 external roundtables, presented at 10 external HMRC forums, including HMRC’s virtual stakeholder conference, and received 161 written responses from stakeholders – as detailed in Annex A. Figure 1 sets out details of respondents by sector. Further detail on the views of respondents is included below.

Figure 1: respondents by sector (excluding internal HMRC responses)



Professional indemnity insurance and raising standards

There was no consensus on whether compulsory PII would satisfy all three of the policy aims of improving trust in the tax advice market, targeting poor behaviour, and allowing taxpayers greater redress when things go wrong. Most respondents agreed that compulsory PII would increase the likelihood of taxpayers securing redress where things had gone wrong. Most respondents did not think this would increase trust in the tax advice market. Very few respondents saw a link between introducing mandatory PII and raising standards.

Professional bodies expressed mixed views. Around a third were supportive on consumer protection grounds, another third expressed support contingent on stronger

regulatory measures being introduced (mainly compulsory professional body membership), and the final third did not support the measure on the grounds that they did not believe it would raise standards or address the root cause of the problem.

Views from tax agents were mixed. Most agents did not support the proposal on the grounds that it imposed a cost that was perceived as having little benefit. Those who supported the measure thought it would protect both advisers and their clients from losses but did not think this would improve the quality of advice or service provided. The main factor determining support appeared to be the size of the tax advice business; larger agents with PII were typically supportive, smaller firms without PII were typically not.

The insurance industry was not supportive of the proposal, although they agreed that PII would improve the ability of consumers to secure redress. There were a variety of reasons for this. Insurance trade bodies did not think the insurance market was, or should be, a mechanism to raise standards. All noted the current 'hard market' conditions, in which premiums are rising and available cover is decreasing for reasons mostly unrelated to the quality of tax advice provided. All expressed doubt that insurers would have the appetite to provide cover for what are mainly smaller firms unaffiliated to professional bodies as the premium income was likely to be minimal, but the potential risk could be high.

Insurers noted that unaffiliated advisers are perceived as risky to insure. As insurance is priced based on pooled risk across all tax advisers, the introduction of currently uninsured unaffiliated advisers would increase the overall risk profile of tax advice PII, which may result in the cost of cover rising for those who already hold PII. Additionally, most respondents stated that an increase in the number of firms and individuals requiring PII would cause insurance premiums to rise across the industry. For example, many professional bodies suggested that insurers may try to reduce their exposure to risk in the market by raising premiums for those who already hold PII, particularly as insurers may find it difficult to differentiate between good and poor advisers.

Respondents agreed that if insurers placed unaffiliated advisers into the same risk pool as affiliated advisers, this would lead to price rises for professional body members. Several respondents commented that it would likely lead to costs being passed on to the taxpayer.

Several respondents also noted that it may be difficult for the smallest firms, or for unaffiliated advisers, to get suitable cover, risking driving them from the market.

Many respondents expressed concerns the policy aims could be undermined without strong enforcement, as they thought that the section of the market which is not acting lawfully may ignore the requirement.

Further steps and alternative options

Almost all respondents who provided their views on further steps expressed support for further regulatory measures, irrespective of their support for compulsory PII.

Most professional bodies who expressed a view advocated for all tax advisers to belong to a professional body. This was usually cited as a ready-made regulatory regime with a direct link to raised standards via qualifications, continued professional development, and complaints procedures.

Almost all tax advisers who provided a response on further steps expressed concerns about the lack of regulation or qualification requirements for unaffiliated advisers. They suggested a wide range of approaches to tackle this. Around half proposed compulsory professional body membership. A smaller number recommended a public facing register or licensing regime, or the protection of professional title such as 'accountant'. A small minority advocated for HMRC to make better use of the HMRC Standard for Agents and its existing powers.

The insurance industry felt that further regulation would improve market appetite to provide cover. Two trade bodies suggested compulsory professional body membership as an option, given that this was seen to serve as a marker of quality, and was also a group with which insurers were familiar (as almost all these advisers already hold PII). One trade body suggested a licensing regime with a public facing register underpinned by criteria such as qualifications and continuing professional development.

Experiences of obtaining PII

Respondents had very mixed experiences of obtaining PII.

Around a third of advisers found obtaining insurance easy and inexpensive. Another third found the process easy but had experienced notable increases in premium prices. The final third faced substantial premium increases, with some unable to obtain cover at all. New firms in particular faced challenges finding cover. The differentiating factor appeared to be the complexity of the area of tax the firm primarily dealt with. The more complex, the more difficult the experience.

Most professional bodies stated their members could obtain cover but noted this was becoming more challenging.

The main reason provided by tax advisers for practising without insurance was cost. This was typically from firms with modest turnovers who had wanted to purchase PII, but found that the quotes were unaffordable, often exceeding their anticipated profits. Some had been unable to obtain cover at all, as they were smaller firms dealing with complex areas, despite having considerable experience.

Two respondents stated they did not require PII as they did not provide tax advice in the course of business. One stated they did not need PII as they would not make any mistakes.

Responses from the insurance industry

According to insurance industry respondents, the factors considered when pricing PII vary from insurer to insurer, as each has underwriting strategies and risk appetite in line with the size of the insurer, available capital, and its existing foothold in the PII market.

Insurers stated that factors used to price PII include the turnover of the business, number of customers, or number of advisers; the qualifications, experience and professional body memberships of its leaders and staff; and its risk and quality management procedures.

Insurers also assessed the types of work carried out and the proportional split of business across these areas. Some insurers asked about the size of the largest client and try to quantify the firm's largest risks. The claims or notifications history of the firm would also be considered. In rare cases, hourly rate charged may be considered as a

factor; an excessively high pay rate may indicate that an adviser is offering more risky advice than is standard. Details of ongoing investigations and complaints will also be considered.

Almost all respondents who shared views about proposals for making information on promoters of tax avoidance public were in favour of these. Most thought that because avoidance is high-risk for taxpayers, it would be in taxpayers' interests for HMRC to publish the names of promoters and facilitators on GOV.UK.

A small number of respondents stated that the threshold for making information public should include safeguards to ensure it is only done in exceptional cases, so that advisers would not be stigmatised for providing lawful advice to clients on the range of options available to them.

Few respondents felt that insurers would have the appetite or capacity to manage a new PII requirement, especially given ongoing issues with the hardening insurance market. All respondents from the insurance sector commented that some insurers have withdrawn from the PII market, particularly for accountancy PII, and that reduced market capacity has led to price rises, in some cases substantially.

Most respondents from the insurance sector noted that tax advice is considered volatile to insure, and little is known about the firms who do not currently hold PII, leading to nervousness about the prospect of insuring them. In addition, because there are not regulatory or assurance frameworks in place for advisers who do not belong to a professional body, respondents suggested that insurers would find it difficult to assess risk and quality, or they would have to develop their own mechanisms, leading to higher costs.

Insurers also expressed concerns about why some unaffiliated advisers had chosen to operate without PII to date. As PII is sold on a 'claims made' basis, insurers would have to provide cover for errors which have occurred before the policy came into force, and they stated they were reluctant to take on the liability for claims relating to activity undertaken at a time when there was no insurance or regulatory oversight of the firms.

Experiences of using tax advisers

There were a limited number of responses to the question on what checks people who used tax advisers carried out. Few respondents suggested that they would check if a tax adviser had PII before doing business with them, and the advisers who responded to this question stated almost unanimously that they had never been asked about PII.

Many did, however, mention that they would carry out checks for professional body membership, relevant professional qualifications, specialisms, reputation, and experience before selecting a tax adviser. Additionally, many respondents suggested that recommendation was a key factor in their choice of tax adviser and that this would give them confidence in the capability of the adviser.

There were similarly a very limited number of responses detailing experience of making claims or complaints against a tax adviser for bad advice. Respondents raised concerns about difficulties in tracking down advisers in order to make claims against them. Additionally, respondents discussed big firms/insurers 'playing hardball' and fighting claims for compensation very aggressively. Concerns were raised about the difficulties

in tracking down advisers at a later date after a complaint in order to satisfy HMRC's enquiries because of offshore operations and phoenix companies.

One respondent raised the concern that taxpayers with limited knowledge may struggle to make successful claims against large tax advice firms. This would be because of the significant difference in level of knowledge. As a result, they suggested that an individual taxpayer would typically have to appoint a solicitor to support the claim, making it more expensive.

Lessons from similar industries

A large majority of the respondents suggested that there were lessons to be learnt from similar industries. Several respondents discussed the system in place within the financial services industry as an example to be looked upon favourably. The clear timeframes and specific structure of the procedure, with complaints being addressed by the firm and then neutral parties (if necessary) was presented as a useful tool for appropriate redress. Additionally, the similar system used by the Pensions Ombudsman was discussed as another example of an effective regulatory body.

Some respondents raised concerns about overlapping regulation creating uncertainty and requiring firms and individuals to spend an unnecessary amount of money on compliance. Some respondents also discussed the methods of redress used by professional bodies within the tax advice market.

Details about PII cover

Respondents noted that setting appropriate mandatory levels of cover was important, with almost all tax advisers agreeing that the government should set minimum levels of cover and excess. Respondents said that this would ensure a consistent baseline level of protection for consumers, levelling the playing field between advisers in professional bodies and unaffiliated advisers, and preventing unscrupulous advisers obtaining inadequate levels of cover.

Respondents considered that a lower minimum level of cover would reduce costs. One respondent suggested that if set too low, professional bodies might reduce their requirements to match the mandatory level, and another suggested that advisers may lower the level of cover they hold.

Nearly all respondents favoured aligning minimum levels of cover with the accountancy professional bodies, using a tier of minimum levels of cover based on the adviser's turnover. This would ensure customers are appropriately protected, advisers are not paying for unnecessarily high levels of cover, and that it would not undermine the regulatory policies and procedures of the professional bodies.

A few respondents suggested introducing a modest *de minimis*, below which PII would not be required. One respondent suggested higher minimum levels for promoters of tax avoidance schemes.

Nearly all who stated a figure for a minimum level of cover suggested £100,000 for each and every claim, with a few choosing £50,000. The preferred length for run-off cover was 6 years. Some thought that high excesses presented a risk because if the adviser cannot afford the excess, it may jeopardise the customer's potential PII payment.

Insurers raised concerns about a requirement for run-off cover stating that it is generally regarded as unattractive by insurers, particularly for firms with no significant history of holding PII, but it may serve to provide protection after a firm closes down.

Around half of respondents endorsed a blanket approach with PII compulsory for all paid tax activities, leaving no place for unscrupulous advisers to escape the requirement. Most respondents thought excluding some types of advice could confuse clients, as it may become unclear what is and is not covered by PII and some felt that the provision of factual information should not require PII. Respondents mentioned some specific areas of advice that should be included, such as promoters of tax avoidance schemes, Research and Development (R&D) relief claims, and company formation agents. Unaffiliated advisers were also mentioned as a special case, with a small number of respondents calling for unaffiliated advisers to have a higher level of cover, as they are not required to meet development, professional conduct and regulatory requirements set by professional bodies.

Almost all respondents favoured the government specifying what advice must be covered by the policy but expressed mixed views on how this should be done in practice, with a minority stating that a specific list of what must be covered would be useful to consumers and advisers. A few respondents were concerned that this might be open to abuse or misinterpretation and preferred a more general definition. Most respondents thought that everything which could be categorised as 'tax services' should be within scope, although a minority stated that guidance should be excluded.

In considering other possible requirements, most of those who replied to this question said that the government should not require any other insurance products. Three respondents noted that cyber insurance was becoming increasingly important, and two mentioned that PII should also apply to 'non-advice' tax activities.

The consensus amongst respondents was that professional indemnity insurance should be held at firm level, or by an individual if they are operating as a sole trader, particularly as insurance policies currently on the market are written for the firm. It was suggested by one respondent that requiring all advisers to hold their own PII might present barriers to recruitment of staff, as firms would be reluctant to take on additional costs. Another suggested that it would be difficult for junior staff and apprentices to gain experience if a firm was reluctant to take out cover for them, presenting a significant barrier for new entrants to the profession. One respondent suggested employed advisers working on a freelance basis may need to get cover for that work separate from their usual firm's policy.

Defining tax advice

About half of respondents thought it would be a good idea to consider the financial services distinction between 'advice' and 'guidance' for tax advice, some only if there was additional guidance so taxpayers could understand the difference. Several respondents saw this as a logical distinction, and felt that generic, often free, guidance was distinct from specific, paid for, advice providing a recommendation. Some respondents made the point that many lower-income taxpayers may not be able to afford tailored tax advice, and in this case 'guidance' may fill this gap.

However, around 50 per cent of respondents who answered this question did not think this distinction was helpful. Several raised concerns that most taxpayers would not be aware of the distinctions between 'advice' and 'guidance'. A few respondents suggested that as taxpayers are likely to treat 'advice' and 'guidance' interchangeably, then they should be regulated in the same way. Also, some respondents queried where the line between the two should be drawn, with suggestions that the lack of clarity of what was included would further increase confusion. One response suggested that the crucial question around 'guidance' is whether there is liability for it in law: if no liability exists for the provision of guidance, then those offering guidance only should not require PII, because there would be no legal responsibility for the guidance given. The response stated that the question of liability in law for 'guidance' would have to be answered in order for the distinction between advice and guidance to be useful. Several respondents referenced the possibility of unscrupulous advisers using this distinction to avert blame by claiming to be providing 'guidance'.

A large majority of respondents suggested that there should be an inclusion of a provision around UK taxation in the definition of 'tax adviser', and noted a number of benefits to this:

- preventing overseas advisers from gaining an unfair advantage over UK advisers
- preventing a minority of tax advisers from moving overseas to avoid mandatory PII
- improving clarity in the market as to whom the rules apply

Respondents emphasised the importance of recognising equivalent rules for tax advisers based abroad but operating in the UK, as well as using information sharing with foreign regulators and professional bodies.

Respondents also noted some practical difficulties:

- how to enforce any measures on overseas advisers. Some respondents suggested that if a register was put in place for tax advisers, then at least consumers could be aware of if the overseas tax adviser they were using had PII of the standard required within the UK market
- the difficulty in ensuring offshore advisers were aware of the rules
- issues with the global nature of taxation and how to judge if someone is giving advice purely on UK taxation

Exclusions

Most respondents agreed that advisory activity, recommending avoidance schemes, and referrals to promoters should be included in the definition, but suggested exclusions captured various activities and professional groups, as follows:

- accountants and bookkeepers carrying out compliance activities, record keeping, and payroll work
- incidental advice and tax information given in the course of other business by members of other regulated professions, for example a conveyancer reminding house purchasers to pay Stamp Duty Land Tax or complete a Capital Gains Tax return within 30 days. Other professions included financial advisers, bankers, insurers and pensions advisers and providers

- advice given to discharge a legal or regulatory obligation, including employers providing information to their employees; tax information provided regarding investment and financial products; and nudging customers toward using their Individual Savings Account allowance, as required of bankers by the Financial Conduct Authority
- tax advice “not given by way of business”, including advice provided by charities, pro bono advice, and advice from membership organisations to their members
- several respondents suggested that customs agents should be excluded as their role is to explain the process of importing to customers rather than advising on tax, and that responsibility for the different areas of their work is already set out in customs legislation
- employees of companies/company groups providing advice exclusively within that company
- data transfer and data input software were recommended for exclusion by respondents, but most agreed that software providing advice or prompts which could materially change an individual’s tax position should be included
- respondents also said software support services should be excluded if they focus exclusively on the software

Enforcement

Most respondents agreed with the three elements of enforcement (transparency, checking, and sanctions). Several respondents suggested education as a fourth element, to ensure taxpayers are aware of the need to check whether an adviser has PII.

Transparency

Suggested mechanisms for transparency included a register of advisers’ PII, and certificates displayed on advisers’ websites. One respondent emphasised that taxpayers should have independently verified sources of information about their advisers. Respondents noted that GDPR compliance and non-digital access should also be considered. Measures should also be introduced to allow the disclosure of self-insurance arrangements, where an individual, firm, or company holds sufficient assets to cover any liabilities.

A few respondents felt insurers may be reluctant to share details of insurance policies with the public, but one pointed out that as clients cannot pursue a case with the insurer directly and must go via the adviser, this information would not be of use. Others highlighted the Provision of Services Regulations 2009: service providers who are required to hold liability insurance must disclose details of this to customers, stating that if compulsory PII was introduced, this could be covered by this legislation.

Checking

Several respondents suggested working with insurers to automate checking or allowing tax advisers to provide proof when renewing their anti-money laundering supervision with HMRC. Flexibility in checking to accommodate those regulated by other regulators was recommended. Several respondents, including professional bodies, recommended carrying out checks via the professional bodies.

Nearly all respondents agreed that advisers who hold PII as required by their professional or regulatory body should automatically satisfy the new requirement.

Views on how this should be checked were mixed. Around three quarters thought it would be sufficient to trust the professional bodies' assurance processes, with some stating there would be a need for data sharing between HMRC and professional bodies. Around a quarter of respondents thought all advisers should send their PII details directly to HMRC as this need not be particularly onerous.

Sanctions

Most respondents supported proportionate sanctions. One noted that professional body sanctions such as expulsion have limited effect as expelled members can continue practising. It was suggested by one respondent that HMRC policing the requirement may increase negative feeling towards the department.

In response to the enforcement options described within the consultation document, most respondents had an unfavourable view about requiring advisers to be joint and severally liable if they were found to not be holding PII. It was felt that this might cause taxpayers to be more careless about the accuracy of the information on which their tax returns are compiled; and as advisers rely on taxpayers for information included in the return, holding the adviser to account may be disproportionate. The necessity of an appeal process if this was introduced was strongly emphasised. Most respondents supported removing an adviser's access to HMRC's online services if they were not compliant.

A small number of respondents suggested adding mandatory PII to the HMRC Standard for Agents. Respondents also suggested that the most difficult group to check would be those who do not interact with HMRC and suggested that some special measures may need to be put into place. Additionally, concerns were raised that resources would be wasted by checking professional body members, who already have requirements for PII within their membership.

Digital information sharing

Respondents had mixed opinions about the government's ambition for HMRC to share information about the adviser with the client digitally. Many respondents raised concerns that it would not be accessible to digitally excluded taxpayers, and some noted that there may be GDPR implications or issues with commercial sensitivity in sharing the data. Given the size of the market, and the potential for dishonest advisers to provide inaccurate information, several respondents suggested that maintaining the database accurately would be difficult. Additionally, a few respondents raised concerns about a perceived conflict of interest were HMRC to manage the database. Several respondents also suggested that unless there is widespread consumer awareness that the information is available, its usefulness would be severely limited. Without having a definition of a 'tax adviser', respondents suggested that deciding which groups to include on the database would be difficult.

Implementation

There was no consensus about what the effects of introducing the PII requirement for everyone at the same time might be, although a small majority favoured a gradual rollout over a short period of time. This was largely as a result of concerns over the

potential lack of capacity within the PII market: respondents suggested that this shortage could be exaggerated by a simultaneous implementation. Many respondents suggested talking to insurers within the market to clarify any issues around lack of capacity within the market.

Multiple respondents said that simultaneous implementation would result in raised premiums for those who already hold PII. A few responses said there would be particular issues for customs intermediaries if the PII requirement were extended to them, as the added pressure from simultaneous implementation could cause substantial issues as a result of the current difficulties due to COVID-19.

One accountancy firm suggested that a gradual implementation may undermine the aim of levelling the playing field by implementing PII, because it would not apply to all advisers at the same time. Another respondent suggested that simultaneous implementation would help with fairness and transparency. Some respondents suggested that a delay could cause confusion for taxpayers, especially those who do not fully understand the current rules and could give the impression that the policy was not being prioritised by HMRC.

Respondents suggested some ways in which gradual implementation could be carried out:

- a twelve-month grace period before any enforcement action takes place to give providers and advisers time to prepare
- implementation based on:
 - the size of the firm or
 - the number of clients the firm had
 - the types of tax being paid

Annex A: List of stakeholders consulted

(Note: this does not include internal responses)

Access 2 Funding Specialists Limited

Acorah Software products Limited (taxcalc)

Adminsoft Limited

Aelia

AJ Bell

All-Party Parliamentary Group on Anti-Corruption and Responsible Tax

Amana Consulting GmbH

American Tax UK Limited (trading as British American Tax)

Anglia Tax Services

Armadillo Support Limited

Asquith & Co. Accountants Limited

Association of Accounting Technicians

Association of Chartered Certified Accountants

Association of Consulting Actuaries

Association of International Accountants

Association of Pension Lawyers

Association of Taxation Technicians

Athene Systems Limited (trading as Liberty Accounts)

Aviva PLC

B20 Wessex Limited

Barnbrook Software Limited

Barwells

Bishop Fleming

British Insurance Brokers' Association

British International Freight Association

British Universities Finance Directors Group

Business Application Software Developers Association

Buzzacott LLP

Capita PLC

CAS Business Services
Certified Public Accountants Association
Chartered Accountants Ireland
Chartered Institute of Management Accountants
Chartered Institute of Payroll Professionals
Chartered Institute of Taxation
Cirrostratus Exedra Limited
CL Finance Associates LLP
Clarity Professional International Citizen Advice LLP
Country Land and Business Association Limited
Covertax Limited
Crowe UK LLP
Deltek
Ela8 Limited
Everton Tax
Federation of Small Businesses
Foriety Limited
ForrestBrown
GovGrant
Grace Gariff Associates
Grant Thornton UK LLP
Hinton Abbot Accountants
Hobson Tax Consulting Limited
ICPA
Infoodle Limited
Information Commissioner's Office
Innovation LLP
Institute of Certified Bookkeepers
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants of Scotland
Institute of Financial Accountants
International Underwriting Association of London
Intuit Quickbooks

Irish Taxation Software Services Limited
JAC2 Consultancy Limited
JB Services
JVCA
KPMG
Legal & General Group
Lines and Company Limited
Lloyd's Market Association
Logistics UK
London Society of Chartered Accountants
Low Incomes Tax Reform Group
Lowman Manufacturing Co Limited
Luton Data Services
M & P Accountancy Services Limited trading as Morris & Partners
Manx Insurance Association
Markel Tax
Minerva Consultants Limited
MT Financial Management
Oldfield Advisory LLP
Online50
Oxwich Accountancy Limited
PCRT Group of Professional Bodies
PDE Accounting
Pension Protection Fund
Personal Finance Society
PricewaterhouseCoopers LLP
Protea Group International Limited
Quilter PLC
RB Taxation Services
Reddy Siddiqui LLP
Rialtas Business Solutions Limited
Royal Association for Deaf People
Sage Group PLC

SAP UK Limited
Sapphire Business Services (Banbury) Limited
Sarson Limited
SGL Services
Smart Advice Limited
Smarter Accounting
Society of Trust and Estate Practitioners
St James's Place PLC
Synergy Accounts
Systematic Marketing Limited
Taxation Practical Services Limited
TaxLocal Accountants TH Hervey
The Law Society
The Law Society of Scotland
The Society of Pension Professionals
The Society of Professional Accountants
The Solutions Factory Limited
Transfer Pricing Solutions Limited
UK Finance
UK USA Tax
UT Tax Limited (trading as untied)
VAT Matters Limited
Way2Paye
Willis Towers Watson
Xero UK
Xmetric Limited

Responses² were also received from 32 individuals

² One respondent's name has been redacted in accordance with their request.

Annex B: List of consultation questions

Question 1: 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?

Question 2: If the government introduces the requirement for professional indemnity insurance, what further steps would you recommend?

Question 3: Are there any alternative options you would recommend?

Question 4: Apart from the costs and potential effects outlined above, are there any other costs you foresee for advisers?

Question 5: What are your experiences of obtaining professional indemnity insurance or of the market for professional indemnity insurance?

Question 6: If you are a tax adviser who practises without insurance, why is this?

Question 7: What factors do you take into account when pricing professional indemnity insurance?

Question 8: 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?

Question 9: In your opinion, does the insurance market have the appetite and capacity to manage the new requirement?

Question 10: What checks do you carry out when you engage a tax adviser? Do you check whether they are insured?

Question 11: 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?

Question 12: Do you think there are any lessons on how complaints are handled in similar industries that we can learn to help improve redress?

Question 13: What is the minimum level of cover you recommend, and why?

Question 14: What activities should it be mandatory to cover, and why?

Question 15: Should the government set mandatory minimum or maximum levels of: a) cover b) run-off cover c) excess

Question 16: What levels should these be?

Question 17: Should the government specify what advice must be covered by the policy? What advice do you think should be covered?

Question 18: Are there any other insurance requirements the government should require?

Question 19: Who should be required to hold the insurance? Should it be the firm, the principal, everyone who is acting as a tax adviser?

Question 20: What impact do you think setting minimum mandatory levels of cover would have on:

- the market including availability of insurance
- affordability

Question 21: 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?

Question 22: What activities do you think should be excluded from the requirement for compulsory professional indemnity insurance and why?

Question 23: Would there be any benefit in having different minimum requirements for different activities?

Question 24: What benefits or issues would there be in considering the financial services regulatory distinction between advice and guidance for tax advice?

Question 25: What benefits or difficulties do you foresee with the inclusion of a provision around UK taxation in the definition?

Question 26: Do you agree with the 3 elements of enforcement?

Question 27: What are your views on the enforcement options described above?

Question 28: 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?

Question 29: The government's ambition is for HMRC to share information about the adviser with the client digitally. What are your views of this?

Question 30: What effects do you foresee of introducing the requirement for everyone at the same time?