Raising standards in the tax advice market

Summary of responses and next steps

November 2020

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Foreword

Sir Amyas Morse's independent review into the Loan Charge in 2019 highlighted the need for the government to look at ways to improve the tax advice market and take further steps to tackle the promoters of loan schemes.

In response, in March the government published a call for evidence into raising standards in the tax advice market. In doing so, the government's aim was and remains to help taxpayers to make informed decisions when seeking tax advice, providing them with reliable reassurance that the advice they receive is competent, professional and trustworthy.

As I outlined in my foreword to that call for evidence, many tax advisers are technically competent and adhere to high professional standards. However, responses from across the sector have confirmed that the market for tax advice is not working as well as it should be. Some advisers are incompetent, and some actively bend or break the rules.

We know that this is a complex market, and any potential solutions will need careful consideration. The government will, therefore, consult in particular on a new measure: making professional indemnity insurance compulsory for tax advisers, as a way of providing recourse, protecting consumers, and raising standards in the tax advice market.

The consultation will also seek views on defining tax advice, as the government recognises the importance of applying the standards expected to the right activities. Our goal is simple: to support taxpayers, and to curb tax avoidance and the promotion of tax avoidance.

The Rt Hon Jesse Norman

Financial Secretary to the Treasury

Background to the call for evidence

The majority of tax advisers are technically competent and adhere to high professional standards. They are an important source of advice and support to taxpayers. However, the market for tax advice does not always work as well as it should. Some tax advisers are incompetent, and others do not work to the high standards expected of them, either by their professional bodies, or if they are not a member of a professional body, by HMRC's standard for agents[1].

In the case of the loan charge, many of the taxpayers involved claimed that they had acted on advice from their tax advisers, and now find themselves with no effective remedy against that bad advice. Sir Amyas Morse recommended in his review of the loan charge in 2019 that:

"The Government must improve the market in tax advice and tackle the people who continue to promote the use of loan schemes, including by clarifying how taxpayers can challenge promoters and advisers that may be mis-selling loan schemes."

In response, at the March Budget 2020, the government announced it would launch a call for evidence into raising standards in the tax advice market. This call for evidence was published on 19 March 2020 with an original closing date for comments of 28 May 2020. Due to the impact of COVID-19, the closing date for responses to the call for evidence into raising standards in the tax advice market was extended to 28 August 2020 to ensure respondents had sufficient time to submit their views.

To ensure potential problems and solutions were fully understood, the call for evidence explored the following:

- defining tax advice and tax 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
- approaches to raising standards.

On 21 July 2020, the government also published a consultation on the future approaches to tackling promoters of tax avoidance and a call for evidence on tackling disguised remuneration tax avoidance schemes. These closed on 15 and 30 September 2020 respectively and responses are being analysed.

The call for evidence described the government's view of the tax advice market. It outlined the government's intentions to both better understand the issue and explore options for raising standards in order to improve taxpayers' trust in the advice they receive.

The call for evidence set out the following outcomes that the government was seeking from any market intervention:

[1] For ease of reading, this is referred to throughout as the Standard.

- market transparency, so that taxpayers have the information they need to choose an adviser that meets their need, and are able to steer clear of unsuitable providers
- that taxpayers who want to engage a tax adviser are able to access reliable advice from an appropriately competent professional who maintains high ethical standards
- that market access is preserved so that taxpayers can continue to get reliable advice should they wish to
- to enhance tax compliance.

The document set out evidence of the problems that the government had observed, noting that most tax advisers are technically competent and adhere to high professional standards. The call for evidence sought to explore the case for intervention. Taxpayers need to be able to trust the advice they receive, and they should have somewhere to turn to in the event that something goes wrong. Where an adviser is a professional body member, the consumer can complain to the professional body, but where an adviser is not, the client generally can only resort to the courts to seek redress unless the adviser has professional indemnity insurance.

The document also described potential approaches to intervening in the market. These are set out in Figure 1 below.

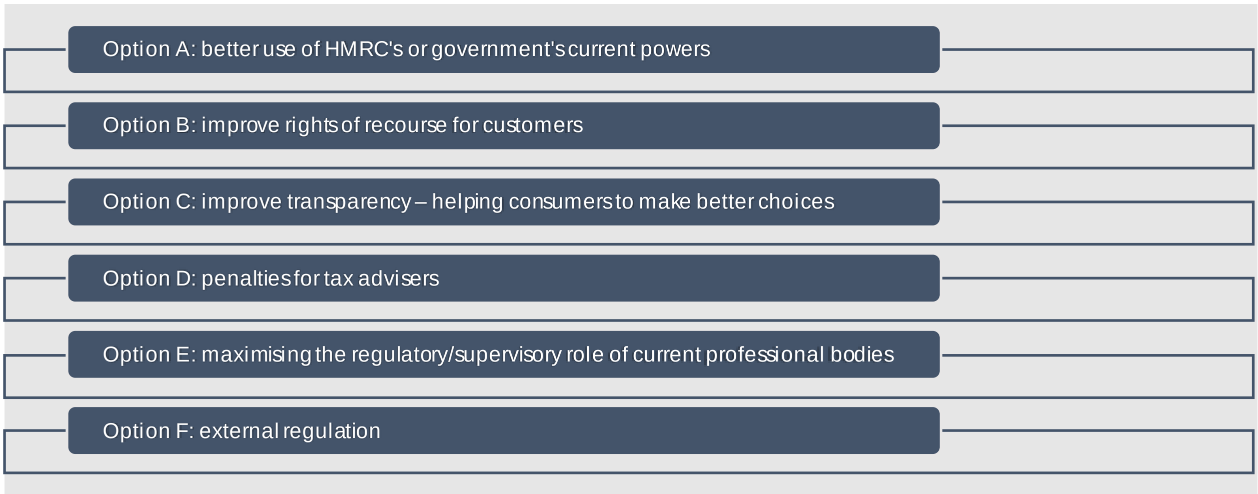

Figure *1: Potential approaches to raising standards in the tax advice market*

Summary of responses

The government received 83 written responses, including 34 from individuals, 24 from professional bodies, and 18 from accountancy firms. Responses were also received from voluntary sector organisations and academic institutions. Additionally, HMRC held 22 virtual roundtables with interested parties, attended 13 standing HMRC stakeholder forums, and held discussions with other government departments and relevant bodies. A fuller list of respondents is available at Annex A.

There were some questions where respondents' views were overwhelmingly similar and others where views were more mixed. Where it was possible to clearly identify these themes, we have drawn them out in this summary.

Overall, respondents emphasised that interventions should be proportionate, risk based, and only made when necessary. Respondents argued that interventions needed to be based on evidence, and properly targeted at the problem areas, otherwise they could have the opposite result to that intended.

There was general agreement between respondents that the line between tax advice and tax services is not easily drawn. As such, respondents believed the scope of any proposed intervention in the tax advice and tax services market, or legislation in relation to tax advice, would have to be considered very carefully. The role of tax software was felt to need particular consideration.

HMRC's the *standard for agents* had broad support as a baseline standard for tax advisers, but respondents noted that the Professional Conduct in Relation to Taxation (PCRT) was more comprehensive. Awareness of HMRC's Standard was generally felt to be low across all categories of respondents, and it was suggested that HMRC needed to increase awareness.

There was a general consensus regarding what constitutes good practice, centred around competence, behaviours, and certification. Having up to date knowledge, and following ethical principles, was seen as particularly important. Professional body members also emphasised the importance of being affiliated to a professional body. Respondents were largely of the view that most problems lie with the circa 30%[2] of unaffiliated tax advisers and that, as such, a one-size-fits-all solution may not be appropriate.

A major theme to arise from the call for evidence was the need for greater consumer, or taxpayer, protection, whilst, at the same time, maintaining the principle that the individual is responsible for their own tax affairs. Most respondents agreed that taxpayers generally assume, incorrectly, that the market is regulated. In this respect, professional body-affiliated advisers commented that professional body membership already provides a degree of taxpayer protection to their clients. Many respondents suggested that making it compulsory for all tax advisers to hold professional indemnity insurance would provide a baseline level of taxpayer protection.

When considering next steps there was general support for some market intervention provided it is proportionate and carefully targeted. There was no consensus around the need for a new external regulator, although if a regulatory body was created, there was

[2] HMRC Individuals, Small Business and Agents Customer Survey, Kantar 2018.

general agreement that it should be independent of HMRC. Some respondents argued that it would be beneficial to make it mandatory for tax advisers to acquire relevant qualifications and professional body membership. Before any further regulatory powers are introduced, however, respondents commented that HMRC should use its existing powers more effectively rather than seek new ones.

Next steps

The government wants to ensure that tax advice is competent, professional and trustworthy. The call for evidence into raising standards in the tax advice market has opened a conversation about how to tackle the problem, highlighted in the independent review of the loan charge, that the tax advice market is not working as well as it should be. Taxpayers are in many cases receiving advice that subsequently leaves them open to substantial tax bills and while responsibility for their tax affairs remains with the individual taxpayer, the government recognises that it can be hard for a taxpayer, faced with a complex and fragmented tax advice market, to know what advice to trust.

Respondents to the call for evidence broadly supported HMRC's *the standard for agents* as a baseline standard. The Standard, which sets out HMRC's expectations of all individuals and businesses involved in professionally representing or advising taxpayers, covers standards of integrity, professional competence and due care, professional behaviour and standards for tax planning. The Standard specifically states that agents must not create, encourage or promote tax planning arrangements or structures that set out to achieve results that are contrary to the clear intention of Parliament, or which are highly artificial or contrived and seek to exploit shortcomings in the legislation.

The responses to the call for evidence also supported the government's view that, while most tax advisers are competent and adhere to high professional standards, some are technically incompetent, some are unprofessional, and some actively seek to exploit the tax system.

Many respondents highlighted particular areas that caused concerns for clients, including the activities of promoters of tax avoidance schemes, and of advisers who do not have qualifications or belong to a professional body. The government is separately announcing details of plans to take further steps to deal with promoters of tax avoidance schemes.

Most tax advisers offer an important service to their clients, providing reliable tax advice to help them navigate the tax system and ensure they pay the right amount of tax at the right time.

However, the harm that can be caused by poor advisers can be significant, as demonstrated by claims from many taxpayers that poor advice left them liable to the loan charge. The government believes, therefore, that action is needed.

After carefully considering the responses received to the call for evidence, the government plans to take the following steps to improve standards and trust in the tax advice market.

1. Raise awareness of the Standard and review HMRC powers to enforce the Standard

HMRC already has powers to take action against agents who do not currently meet the Standard. This includes providing educational support where errors are identified, removal or suspension of access to online services for the adviser and use of powers such as Dishonest Tax Agent penalties and Public Interest Disclosures. Respondents to the call for evidence believed that there was more HMRC could do to improve awareness of the Standard, particularly among unaffiliated advisers and advisers who do not transact directly with HMRC. Respondents also argued that HMRC could better manage adviser behaviour by using the powers it has more effectively. Therefore, HMRC will:

- take action to raise awareness of HMRC's *the standard for agents* with target audiences; and
- conduct and publish the results of an internal review of the powers currently available to HMRC that help enforce that Standard.

Respondents to the call for evidence confirmed that use of HMRC's powers on its own will not be enough to address the issue of poor tax advice. Therefore, the government believes the market requires intervention to enhance taxpayer protection and improve standards.

2. Consult on requirement for professional indemnity insurance

As a first step, the government will consult on introducing a requirement for all tax advisers to hold professional indemnity insurance. Based on responses to the call for evidence and roundtable discussions, HMRC believes that there are many potential benefits to this:

- 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 unaffiliated 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, are likely to be minimal

HMRC recognises that requiring all tax advisers to hold professional indemnity insurance could increase costs which may in turn be passed on to taxpayers. It also recognises that defining the tax advice market within the scope of this measure is important.

The government will therefore publish a consultation about introducing the requirement for professional indemnity insurance. The consultation will carefully consider:

- a definition of tax advice and the activities that should be in scope
- impacts and burdens on tax advisers, taxpayers and the market
- options for enforcement
- the operability of the policy.

3. Work collaboratively with Professional Bodies

Alongside this, the government will continue to work in partnership with adviser professional bodies to understand the role they play in supervising and supporting their members and raising standards in the profession.

4. Tackle high costs to consumers of claiming tax refunds

The government is also concerned about the cost to taxpayers of advisers who are claiming tax refunds on their behalf. We will review options to tackle this cost.

The government believes that the above proposals will significantly move the market towards the desired outcomes as outlined in the call for evidence:

- market transparency, so that taxpayers have the information they need to choose an adviser that meets their need, and are able to steer clear of unsuitable providers
- that taxpayers who want to engage a tax adviser are able to access reliable advice from an appropriately competent professional who maintains high ethical standards
- that market access is preserved so that taxpayers can continue to get reliable advice should they wish to
- enhanced tax compliance.

Responses to the consultation and the government's review of the impacts of steps taken will help to determine whether further action or greater regulation will be needed.

Further detail on responses received

The call for evidence on raising standards in the tax advice market invited respondents to comment on the current operation of the tax advice market and consider a number of questions in relation to oversight, regulation, and protecting taxpayers who obtain advice. The majority of respondents felt that this consultation represented an important opportunity to debate the issues in the market, and the implications for all those affected. Responses are summarised below by theme. A full list of questions is available at Annex B.

The government received 83 written responses. This was in addition to comments received in roundtables and other stakeholder events. A full breakdown of the written responses received is as follows:

- 34 from individuals
- 24 from professional bodies
- 18 from accountancy firms
- 2 from charities
- 1 from an insurance group
- 4 from others.

A list of respondents, excluding individuals, is available at Annex A.

HMRC also held 22 virtual roundtables with interested parties and attended 13 standing HMRC stakeholder forums. Discussions were held with other government departments and relevant bodies, including the Department for Business, Energy and Industrial Strategy (BEIS), the Financial Reporting Council (FRC), and the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) which is part of the Financial Conduct Authority (FCA).

The call for evidence did not require respondents to divulge their professional body membership status, therefore, besides the responses received directly from professional bodies, we are unaware how many other respondents have affiliations with such bodies. However, channels such as the Agent Update and emails to HMRC's anti-money laundering (AML) supervised agents (around 13,000 agents who do not belong to a professional body) were utilised to encourage responses from unaffiliated agents. The call for evidence was also promoted using social media and through an article in Taxation magazine.

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

Defining tax advice and tax services

The call for evidence included options around further defining advisers who operate within the tax market. It covers both advisers who provide tax advice and those that provide tax services. There is currently no standard statutory definition of either term; although there are some legal definitions of those who provide advice on tax, these generally apply to specific functions or legislation. Two examples include:

Finance Act 2012 Schedule 38, part 1, 2 (1) to (5)6 related to dishonest tax agent penalties and defines a tax agent as an individual who, in the course of business, assists other persons with their tax affairs.

Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 as amended by the **Money Laundering and Terrorist Financing (Amendment) Regulations 2019** state that: 'a 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'.

Over half of respondents did not provide a response to the question around the distinction between tax advice and tax services. Of those that did, the majority thought that drawing a distinction was either not important, not useful, or impossible. This view was slightly more prevalent among professional bodies than individuals. Several respondents highlighted that it is difficult to draw a line in practice as the same adviser can offer advice on the merits of a transaction and provide services to implement that advice. A few respondents suggested that making a distinction would not help taxpayers and could enable dishonest advisers to instead define themselves as providers of a service or guidance in order to avoid regulation.

Of those that thought a clear distinction could be drawn, nearly all saw a difference between tax compliance, such as preparation and completion of tax returns, and tax advice, such as applying knowledge and judgement to the circumstances of the client and making recommendations about a course of action.

A few respondents suggested that tax compliance should include software. One respondent recommended the adoption of the FCA distinction between guidance and advice, where guidance provides information but does not draw conclusions, but advice includes making recommendations as to the action the client should take.

Respondents were also asked how they thought standards differed between different types of tax advice, if at all. About half of respondents did not answer this question. Of those that did, the majority said that they had no evidence of differing standards and that standards should be the same no matter what kind of 'advice' the tax professional was providing. A few respondents highlighted areas where they felt that high standards were not always maintained, although there was no consensus about which these were. These included:

- qualified accountants and large firms who market avoidance using Research and Development (R&D) relief, capital allowances, disguised remuneration and the payment of dividends as salary
- generalists attempting to give advice on specialist areas
- advisers who only submit returns

- advisers who only provide tax advice
- standards around VAT advice, due to its complexity.

Respondents, mainly from professional bodies and large firms, also said that the PCRT, or their professional body or firm's code of ethics, set high standards which all staff had to follow regardless of the type of tax advice being offered. A few individuals believed that price was a driver of quality and that 'you get what you pay for'. One commented that potential clients were frequently 'fixated on price' at the expense of quality and this was 'a false economy'.

HMRC: *the standard for agents*

Respondents were asked whether HMRC's standard for agents was comprehensive enough to provide a baseline standard for all tax advisers. There was broad agreement from respondents that the Standard provided a sufficient baseline, with one respondent commenting that if it were any stricter it would inhibit the flexibility of the market.

Those that responded had differing levels of awareness of the Standard and many individuals, firms, and professional bodies, said that awareness was low, particularly among unaffiliated advisers and advisers who do not interact directly with HMRC, such as promoters of avoidance schemes. It was suggested across all categories of respondents that HMRC needed to increase awareness of the Standard.

Respondents were generally more familiar with the PCRT and felt that it provided a good baseline code of conduct, supported by individual professional body codes of ethics and conduct. Most firms and professional bodies commented that the Standard was not as comprehensive as the PCRT, with some specific omissions. Frequently cited areas where the PCRT was identified as being more comprehensive were on objectivity, confidentiality, and the requirement for client-specific advice, with respondents noting that these areas were key to improving taxpayer, or consumer, protection.

Several firms and professional bodies said that the Standard does not have any associated guidance to enable advisers to understand what is meant by each provision. It was also argued that there is lack of effective enforcement when the Standard is breached. One individual said that HMRC should be reminding advisers of the need to follow the Standard and confirming adherence annually, whilst two professional bodies mentioned that the Standard should also apply to HMRC staff, and a very small proportion of firms said that pro bono advisers should be included.

Good and bad practice

The call for evidence contained a number of questions to explore good and bad practice, including the general characteristics of good and bad advisers, and the impact of advisers who do not meet the Standard.

Indicators of good and bad advisers broadly fell into the categories of: competence, behaviour, and certification.

Indicators of a good adviser were believed to include the following:

Competence:

- accountancy qualification(s)
- Up to date knowledge of relevant tax area

- Relevant experience.

Behaviour:

- retains professional case studies
- complies with the PCRT, including ethical practice
- does not take shortcuts
- acts transparently (including transparency around who is involved in their business, and where they are based)
- seeks to educate clients
- undertakes due diligence on their clients (highlighting 'risky' clients)
- reflects and recognises their own expertise and whether they are appropriately placed to offer advice.

Certification:

- has professional indemnity insurance
- member of a professional body
- registered for anti-money laundering supervision (AMLS).

Indicators of a bad adviser were believed to include the following:

Competence:

- lacks relevant technical knowledge, proficiency and/or qualification(s).

Behaviours:

- willing to put taxpayers into high risk or inappropriate arrangements and refuses to take responsibility when things go wrong
- takes a cavalier approach to the tax system rules
- succumbs to all client requests, including the implementation of improper tax positions
- uses misleading sales or advertising material, including deceptive claims of HMRC approval
- uses pressurised marketing techniques
- focuses on short-term tax savings using avoidance schemes
- lacks transparency on fee structure or how they will be paid e.g. commissions.

Certification:

- has insufficient professional indemnity insurance, or none at all.

A small number of respondents, mainly those operating in specific and technical areas of taxation, noted that there are occasions where not all good indicators can be satisfied. For example, R&D tax requires expertise in technology, which is not specifically covered by the Standard for Agents, and some R&D specialist agencies, despite offering good advice, are not able to become a member of a professional body due to the specific entry requirements for membership. As most require a comprehensive knowledge of taxation in general, as a prerequisite, respondents believed specialist advisers are not well served by professional bodies, with property tax also referenced.

Most respondents stated that the government could do more to promote the work of good advisers. It was suggested that this may include explaining what taxpayers should look out for when they use a tax adviser and making it clear that not all advisers hold relevant qualifications. Nearly a third of respondents suggested that HMRC should publish a searchable list of approved or accredited tax advisers and their respective qualifications on GOV.UK. Others suggested a restriction on the work that can be carried out by untrained and unqualified advisers. A mixed response was seen to suggestions of a 'kitemark' system to recognise suitably qualified advisers. Whilst around two thirds were supportive of the idea as an easily recognisable symbol of proficiency, the remainder suggested it could create more problems than it solved, allowing failing advisers to focus all efforts on gaining the kitemark and using it as their 'badge of ability'.

The added value of good advisers was believed to be in the correct amount of tax being paid at the correct time, ensuring that the integrity of the taxpayer is not compromised and that HMRC's enforcement costs would be minimised. One professional body highlighted the integral part played in the prevention of money laundering and terrorist finance, through adviser's due diligence, compliance, education and reporting to the proper authorities. Taxpayers benefit through reassurance that their tax affairs are in order, and that all relevant reliefs and exemptions afforded by statute have been considered.

Respondents who were members of professional bodies were broadly of the view that most problems lay with unaffiliated advisers. It was felt that these advisers may not be professionally qualified, their training may not always be up to date, and they may attempt to act beyond their level of competence. There were suggestions that unaffiliated advisers should be restricted to less complex areas of the tax advice market. Several respondents also commented that some advisers allow their clients to control them, insisting that a particular line be taken, even if it creates an improper tax position. Respondents also highlighted a variety of areas for concern, with poor practice, avoidance schemes, and emerging challenges all noted. For example, the targeting of vulnerable clients was mentioned by professional bodies and the charitable sector as a specific area of concern. Examples were quoted of advisers targeting care homes and using aggressive marketing techniques.

Several respondents commented that the market for tax advice tends to shift to where the demand or opportunities for exploitation are. There was a perception that this could be seen in specific areas of tax such as the R&D tax relief which, upon its introduction, respondents believed fostered the growth of many specialist agencies - some without the necessary tax competency to offer advice. Companies offering advice on whether to supply an individual's service via an umbrella company (employed model) or via a personal service company (off-payroll model) was another example highlighted by respondents. Subsequently, it was felt that the 'problem' was a moving target.

Respondents also believed that these problems were exacerbated by a client's decision about which tax adviser to recruit often being financially driven, rather than driven by the quality of advice. Questions were also raised by some respondents about the increasing use of software and its implications. It was believed that more must be done to understand the long-term impacts of tax advice software, and the role it will play alongside traditional advice.

Whilst respondents were asked for evidence about the impacts of unqualified advisers, or advisers that do not meet standards, little evidence was provided. However, respondents who themselves held professional qualifications generally concurred that there were a multitude of impacts that result from the actions of unqualified or substandard advisers. It was expressed that these impacts cut across all sectors of tax advice and profiles of advisers. Impacts were believed to span across a range of users, from clients and HMRC, to good advisers and wider society.

The majority of impacts outlined related to clients. As clients have ultimate responsibility for their own tax affairs, entrusting an adviser to act on their behalf who does not adhere to the correct standard can have severe consequences. These perceived impacts included financial outcomes, such as penalties and retrospective tax collection, and the time taken to unpick bad advice which can often require the recruitment of another adviser to resolve issues. Respondents believed there could be serious long-term effects of this including the impact on a client's mental health and financial security.

Wider impacts were also referenced, such as lost tax revenue impacting the general taxpayer and wider society. However, it was also highlighted that many of these errors and indicators of poor behaviour may not be picked up immediately, and HMRC was not viewed as effective at communicating these issues to the client.

Government interventions

Respondents were asked how effective HMRC’s interventions were and whether there were other interventions that the government should be using to tackle poor practice. Most respondents commented that HMRC interventions have proved to be effective, particularly in terms of challenging avoidance. Several respondents felt that the quality of the underlying legislation could be improved and simplified. Where legislation lacks the necessary clarity, it was advocated that this creates space for interpretation and potential avoidance. It was acknowledged that this is the subject of ongoing academic and professional debate.

Views were raised around whether there was more that HMRC could do to manage adviser performance through its transactional services. It was argued that there was a clear need to invest in IT and digital capabilities to support developments in the tax market. One respondent suggested that, as a minimum, firms should have one professional body member in order to transact with HMRC, believing this would support more effective sanctions and enforcement.

Respondents were asked whether there were other enforcement or regulatory agencies they thought should have a regulatory role, and what the advantages, disadvantages, benefits, or risks, were of any of these organisations taking on such a role. Few respondents specifically addressed this question. Of those that did, the most raised suggestion was that the FCA should broaden its scope. Other suggestions included that HMRC’s AML powers should be extended, or that the Chartered Institute of Taxation (CIOT) should play a part.

Most respondents, however, were of the view that HMRC should not take a wider role because of perceived potential conflicts of interest. A number of respondents highlighted that professional body members are already effectively regulated by their professional bodies and suggested that the role of these should be strengthened and formalised. In this respect they referred to the Tax Disciplinary Board (TDB) as a positive example which could be further developed in this area. These views generally correlated with the recommendation that professional body oversight was the right outcome. Professional bodies themselves suggested that HMRC could report breaches of the PCRT to them more regularly and keep them advised about areas of concern. One further suggestion was that the new Legal Services Regulatory Authority may have a role to play.

Consumer protection

Consumer protection was one of the main areas explored in the call for evidence, and the government was clear that any market intervention should result in taxpayers who want to engage a tax adviser being able to access reliable advice from an appropriately competent adviser or service provider who maintains high ethical standards.

When asked who should take the primary role in improving taxpayer protection, there was a general consensus that government should ensure action in this area. However, it was argued that the government should not be fulfilling the role directly itself due to concerns around perceived impartiality, and a need for sector independence. Whilst professional bodies agreed that government have a leadership role in advocating for consumer protection, they emphasised the need for a holistic, joined-up approach to any future interventions. Many respondents who were, themselves, members of professional bodies, took the view that professional bodies should regulate affiliated advisers, whereas the government should regulate unaffiliated advisers. A small minority of respondents thought a third-party regulator, such as an ombudsman, should play a role. Other proposals highlighted by respondents included developing a collaborative approach to include government, training providers, and professional bodies, as well as the potential for a new, independent body. However, some caution was referenced in respect to having too many organisations involved in consumer protection which could result in confusion for both advisers and clients.

Responses also noted existing consumer protection measures that professional bodies offer clients, citing professional indemnity insurance as a method of providing protection. Some stated that professional indemnity insurance could give taxpayers confidence in advice, give a strong incentive for tax advisers to meet standards, and remove disreputable advisers from the industry. Caution was cited around the cost associated with implementing additional protections, and the likelihood of this being passed onto the client.

The call for evidence sought to explore what measures professional bodies put in place for taxpayers who needed extra support. The main respondents to this question were professional bodies and larger firms. Those who replied highlighted that professional bodies encourage their members to carry out pro bono work and also referenced several charities supported by one of the professional bodies, which provide tax advice to the vulnerable. A small minority of respondents interpreted this question as asking for details of how the professional bodies support their members. In this respect they referred to the regular professional updates and availability of training.

When exploring consumer protection, the government wanted to gain a fuller understanding of how increasing protection might affect individuals taking responsibility for their own tax affairs, and any potential behavioural changes. The majority of respondents who addressed this question were firmly of the view that an individual should remain responsible for their own tax affairs. Several respondents suggested that increasing protection may lead to over-confidence or moral hazard. More respondents, however, thought that it would have no effect at all. Some respondents, particularly those who are members of professional bodies, and the professional bodies themselves, emphasised that professional bodies already provide a degree of protection to their members' clients. This was often highlighted within the context of advocating against a blanket or 'one-size-fits-all approach' for any future interventions. The overwhelming majority of respondents, however, were of the view that increasing consumer protection would be a positive step.

As part of this, respondents commented that consumer protection can be implemented prior to dispute, and taxpayers can be protected by having the information to make informed decisions when recruiting their adviser. There was general agreement amongst respondents that most taxpayers choosing a tax adviser will probably assume they are members of a professional body that provides some protection, for example, that they have appropriate professional indemnity insurance.

Concerns were raised by some respondents regarding the lack of due diligence taken by taxpayers when selecting an adviser, unaware of the significant problems a disreputable or incompetent adviser could cause. These respondents stated that, due to this, some clients were given 'damage limitation' advice.

A number of respondents expressed concern that increasing consumer protection may have a negative impact on clients in the form of additional costs, restricting viable and affordable tax advice, driving advice 'underground' and even offshore, outside the jurisdiction of HMRC and the UK courts.

Approaches to raising standards

The call for evidence outlined a number of potential approaches which could be considered, these are labelled Options A-F below:

Figure *1: Potential approaches to raising standards in the tax advice market*

- Option A: better use of HMRC's or government's current powers
- Option B: improve rights of recourse for customers
- Option C: improve transparency – helping consumers to make better choices
- Option D: penalties for tax advisers
- Option E: maximising the regulatory/supervisory role of current professional bodies
- Option F: external regulation

These approaches were not considered to be mutually exclusive and could each be considered in conjunction with any other. The call for evidence did not endorse any particular approach but welcomed views on the impacts and benefits of each, as well as information on any other approaches not listed.

These questions saw lower response rates than some of the more strategic questions. For example, when respondents were asked what evidence they had of problems that clients had experienced due to a lack of redress, no specific evidence was provided. A number of respondents did, however, mention their insight into problems experienced by clients they had inherited from previous advisers who did not hold professional indemnity insurance.

When considering what solutions respondents would propose, a sizeable majority suggested the appropriate solution was to make professional indemnity insurance compulsory for tax advisers. Suggested benefits of the solution included:

- immediately improve consumer protection
- give taxpayers confidence to rely on advice obtained
- place a strong incentive for tax advisers to meet, or raise, standards
- unreliable advisers promoting avoidance schemes would be unlikely to obtain cover.

Six respondents also referred to a need for a regulator, whilst one respondent felt that many problems were due to mistakes made by HMRC, particularly in relation to self-assessment, incorrect tax codes, benefits, and pensions.

When considering use of HMRC's powers and their potential role in raising standards, the most common recommendation, across all categories of respondents, was that HMRC should make more use of existing powers. In particular, it was argued that HMRC could more regularly report poor advisers to their professional bodies. A specific proposal was put forward by some respondents that HMRC could consider publishing a block list of habitual offenders. There was a general consensus that HMRC could use existing powers more effectively. This was particularly highlighted within the context of questioning how current powers were being used to deal with promoters who were viewed as a problem area by respondents. Professional bodies have offered to work with HMRC to improve targeting of existing powers.

Several respondents suggested that HMRC could do more in terms of 'naming and shaming' unreliable tax advisers and a small minority suggested that HMRC should directly contact the clients of unreliable advisers. From the consumer protection angle, the majority of respondents suggested HMRC should seek to increase taxpayer education by improving published guidance and considering a wider awareness and communications campaign. A mixed response was seen to suggestions of a 'kitemark' system to recognise suitably qualified advisers. Whilst around two thirds were supportive of the idea, the remainder suggested it could create more problems than it solved, allowing failing advisers to focus all efforts on gaining the kitemark and using it as their 'badge of ability'. However, a list of government approved tax advisers, including their qualifications, was also perceived as being beneficial. There was, however, less support for a TripAdvisor-type website due to the potential for malicious posting.

There was no consensus on whether there were any circumstances where a penalty should be levied on the adviser instead of, or in addition to, the client. Respondents generally felt that if penalties were to be levied on advisers, this should only be in the most extreme cases and should not dilute the principle that the taxpayer is responsible for their own tax affairs. Some responses suggested that any penalty could be linked to the aspects of the advice which were found to be substandard or incorrect.

When considering Option E, maximising the regulatory/supervisory role of current professional bodies, the professional bodies themselves expressed their appetite to work with government on whether they could take on a greater regulatory role in a similar way to anti-money laundering supervision. Questions were raised about how to ensure the effective working relationship between government and professional bodies reaches all the way to the front-line high-street accountants.

Respondents were asked their views on Options A-F in terms of benefits or impacts. In particular, they were asked about costs for taxpayers or advisers, impacts on specific groups, and whether parts of the sector would face any specific challenges. Some respondents understandably felt it was difficult to comment on benefits and risks without more detailed options. However, benefits raised included the potential to drive bad behaviours out of the market, the introduction of a 'fit and proper' test resulting in the prevention of some people from acting inappropriately as advisers, an increase in taxpayer confidence, and additional consumer protections.

When considering who would be most impacted, two key elements emerged: currently unaffiliated advisers as they would face the most administrative burden and potential 'challenges of adaptation', as well as advisers who specialise in one area of tax. Respondents felt the latter may find it difficult to join a broader professional body due to the entry requirements and may face additional challenges. Some respondents, from smaller firms, argued that it was often the specialist advisers who would face implementation challenges from new interventions, and there was some wider agreement that smaller businesses generally could be more negatively impacted.

It was highlighted that any intervention would need to consider the impact on advisers who may already be regulated elsewhere (for example, solicitors) to avoid any risks associated with dual regulation. Respondents also believed that introducing external regulation could risk additional obligations on current professional body members, who were viewed as already being subject to a level of external quasi-regulation. This should be balanced when considering the respondents noting, however, that there would be little impact to 'good advisers.'

There was an overwhelming view from respondents that any additional oversight or regulation would increase costs which will be passed on to clients. Concerns were raised that, depending on the design, these costs could price taxpayers out of the market, which could lead to compliance issues without professionals being engaged and could also price advisers out of business. Respondents argued that this could add a further risk of advisers operating 'in the shadows' or taxpayers seeking advice from offshore businesses. In addition to increased costs, respondents highlighted concerns that intervention would add administrative burden within the system and may not address the 'problem' of unscrupulous promoters.

There was no general consensus supporting the benefits of a new independent regulator for tax advisers option. But respondents did argue that there was a need for increased taxpayer awareness around what is a 'good adviser' and enabling people to understand the perceived differences between advisers who are, or are not, members of professional bodies. This was argued to be particularly important in terms of the route to recourse through professional indemnity insurance.

Respondents were also asked to highlight any alternative options they viewed as having potential benefits, that were not contained in Options A-F. Innovative suggestions included the potential for advisers to get access to HMRC-approved courses which could grant certificates on completion, a stronger focus on more robust prosecution of those who have created extreme avoidance schemes, and some proposals mentioned above including the establishment of a register of tax advisers, a comprehensive simplification of tax law and associated guidance, and a focus on HMRC continuing to work with existing professional bodies and advisers in a proactive and collaborative way to explore raising standards.

Across all the questions in this section, it was regularly suggested by respondents that any future change should be incremental and introduced with a transition period.

Data and lessons learnt

The call for evidence asked respondents to share any data which may help develop assumptions on the market share, volumes, or impact, or on the value added by different sectors of the market. The majority of respondents were not able to provide any data in response to this request. Although some professional bodies did provide details of the numbers of members they have and how many are in practice, we would need similar details for other professional bodies and advisers before we could draw meaningful conclusions.

Respondents, particularly professional bodies, stated that HMRC needed to improve its data capability in order to understand the potential consequences of any interventions, adding that without this 'decisions may be flawed or lead to unexpected behavioural changes'. One respondent provided suggestions of sources of further data, such as academic evidence, and recommended carrying out a specially designed project to test outcomes. A few respondents recognised that changing behaviour is not an easy task, particularly where the client may have become 'fixated on the high returns promised by the bad adviser'. However, little data could be provided to further enable understanding of taxpayer and adviser behaviour and their likely responses to any intervention.

Additionally, exploring lessons learnt from comparators was a key theme throughout the call for evidence, and respondents were asked whether there was anything government could learn from other examples of market intervention, including those led by industry. A number of respondents emphasised that interventions should be proportionate, risk based, and only made when necessary. Respondents felt that interventions needed to be evidence-based, and properly targeted at problem areas, otherwise they could have the opposite result to that intended. Respondents believed that HMRC should avoid generating additional burdens and costs for the ordinarily compliant wherever possible.

In terms of other industries, the FCA, the Pensions Regulator, and the Civil Aviation Authority, were highlighted as effective regulatory bodies. The PCRT was also cited as a good example of external intervention, and the AML rules were cited as a good example of government intervention.

When asked about examples of effective law, or enforcement, from other jurisdictions, a number of respondents referred to the Australian system under which tax advisers have to be approved and are closely regulated. Similar mention was also made of Germany. Several respondents referred to the United States where the Internal Revenue Service (IRS) provides guidance on how to select a suitable adviser, and how to complain about advisers who do not meet required standards. One respondent also mentioned New Zealand which, in certain circumstances, will provide product rulings on schemes designed to save tax. Another referred to South Korea where naming and shaming offenders is viewed as an effective tool.

Some respondents urged caution against looking too much to other fiscal authorities because of underlying differences in the overall systems.

Future and next steps

Respondents were asked a series of questions around the future and next steps. Most respondents were of the view that tax software will play an increasing important role going forward, but when asked to comment on any other activities which should be considered in the future, around half of respondents did not address this question. Of those that did respond, a variety of activities were suggested, including:

- HMRC establishing an adviser register which is accessible to the public and lists both advisers and their qualifications
- simplifying the tax system so clients have a better understanding of tax and what they are asking of their adviser
- accrediting tax advisers working in the recruitment supply chain
- creating dedicated helplines for advisers to contact HMRC
- educating the public to understand how tax works and the role of advisers
- protecting the title of ‘tax adviser’ or ‘accountant’

When considering future actions, respondents were asked about what market failures they felt needed to be addressed. Only a minority of respondents answered this question, but a key theme that emerged was a perceived lack of taxpayer education and power and information asymmetry. Respondents suggested that there was a lack of knowledge among consumers about what a good adviser looks like and how advisers can meet their needs.

Additionally, concerns were raised around a current lack of barriers to entry in the market. This ease of access means there is no minimum threshold to adhere to, particularly amongst unaffiliated advisers who are able to practice without professional indemnity insurance and are not subject to professional body oversight, including adherence to PCRT or another similar code of conduct.

Other suggestions for market failures that should be addressed were the complexity of the tax system, and a perceived potential conflict of interest caused by advisers getting commission from fees charged by specialist tax relief firms.

Annex A: List of stakeholders consulted

The government is grateful to the 34 individuals and the following organisations who responded to this consultation:

ABGi UK

AECOM

All Party Parliamentary Group on Anti-Corruption and Responsible Tax

Association of Accounting Technicians

Association of British Insurers

Association of Chartered Certified Accountants

Association of Consulting Actuaries

Association of Pension Lawyers

Association of Professional Staffing Companies

Association of Taxation Technicians

AVIVA

Buzzacott

Caesium International

Certified Public Accounts Association

Chartered Accountants Ireland

Chartered Institute of Taxation

Cooperative Conferences

Crowe UK LLP

Deloitte

Forrest Brown Ltd

Grant Thornton UK

ICPA

Institute of Certified Bookkeepers

Institute of Chartered Accountants in England and Wales

Institute of Chartered Accountants of Scotland

Institute of Financial Accountants

KPMG

Lines & Company Ltd

London Society of Chartered Accountants, Taxation Committee

Low Incomes Tax Reform Group

MMP Tax

Moore Kingston Smith LLP

Price Waterhouse Coopers

Professional Conduct in Relation to Taxation

RSM UK Tax and Accounting Limited

Saffery Champness LLP

Sapphire Business Services

Society of Trust and Estate Practitioners

Smith & Williamson

Tax Aid and Tax Help for Older People

Tax Disciplinary Board

Taxation Practical Services Ltd

The Association of International Accountants

The Law Society

The Law Society of Scotland

The Society of Pension Professionals

UK200 Group

VAT Practitioner's Group

Annex B: List of call for evidence questions

Question about the HMRC: standard for agents

1. Is the *HMRC: standard for agents* comprehensive enough to provide a baseline standard for all tax advisers?

Questions about the tax advice and services market

2. What clear distinction can be drawn between tax advice and tax services?

3. From your professional point of view, how do standards differ between different types of tax advice? Could you provide examples?

4. Please share any data which would help develop assumptions on the market share, volumes or impact or on the value added by different sectors of the market?

Questions about good advisers

5. What more could the government do to promote the work of good advisers?

6. Where else do good agents add value - for customers, HMRC and the wider economy? How could this be extended further?

7. What are the general characteristics of good and bad advisers?

Questions on the impact of poor advisers

8. Are there any parts of the tax advice market where there are particular problems? Please share any evidence you have.

9. Do you have any evidence about the impacts of unqualified agents or agents that don't meet standards?

10. How could HMRC and the professional agent community work together to identify poor practice at an early stage?

Questions on interventions

11. How effective are HMRC's recent interventions? Are there other interventions that the government should be using to tackle poor practice?

12. Is there more that HMRC could do to manage agent performance through its transactional services (such as IT systems)?

Questions about consumer protection

13. How might increasing consumer protection affect individuals taking responsibility for their own tax affairs, and what behavioural changes might you anticipate?

14. Who should take the primary role in improving consumer protection, government, the profession, or another third party?

15. What do professional bodies currently do in respect of customers who need extra support?

Questions on other market interventions

16. Is there anything useful the government can learn from other examples of market intervention, including those led by industry?

17. Are there other enforcement or regulatory agencies that you think should have a role in this area, and what are the advantages, disadvantages, benefits or risks of any of these organisations taking on a regulatory role?

Question on international models

18. Do you know of examples of effective law, or enforcement, from other countries or jurisdictions?

Question about the future

19. What future changes do you consider will most impact the standards expected of the tax advice profession?

Questions on Option A

20. What other examples are there of existing powers (HMRC or other government powers) that could be used to tackle poor tax adviser behaviour?

21. What is your view of the effectiveness of HMRC's current powers?

Question on Option B

22. What evidence do you have of problems clients have experienced due to lack of redress and what solutions would you propose?

Question on Option C

23. How could consumers be helped to make better choices?

Question on Option D

24. Are there any circumstances where a penalty should be levied on the adviser instead of, or in addition to, the client?

Question on Option E

25. What scope is there for the professional bodies to take on a greater regulatory role in a similar way to anti-money laundering (AML) supervision? (where some professional bodies supervise their members and the professional body in turn is supervised by the Office for Professional body AML Supervision (or OPBAS) within the Financial Conduct Authority)

Questions on Option F

26. What would the impacts be of introducing external regulation, particularly on clients and on those agents already meeting high standards?

27. Are there any existing bodies that might be well-placed to act as regulator? What potential conflicts of interest could you see?

General questions about the options

28. The government is particularly interested in views on the following questions:

(28a) the benefits of the options set out above

(28b) whether there are sectors or types of tax advisers which would face particular challenges, and what those challenges would be

(28c) views on the impacts of each option, for example:

- costs for customers, advisers or other costs

- impacts on any particular groups, effects on competition and the paid tax advice market

- how any impacts could be mitigated behavioural effects – what might advisers or customers do in response?

(28d) alternative options which meet the objectives outlined above.

Question on next steps

29. Can you suggest or support any other activities which should be considered?

30. What market failures need to be addressed?

31. What evidence is there that will enable understanding of customer and agent behaviour and likely responses to any intervention?