HM Revenue & Customs

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

Consultation

Publication date: 23 March 2021

Closing date for comments: 15 June 2021

Summary

Subject of this consultation

This document discusses the government's proposal to introduce a requirement for all those who provide tax advice to hold professional indemnity insurance, and a definition of tax advice.

Scope of this consultation

This consultation seeks views on:

- proposals to introduce a requirement for tax advisers to hold professional indemnity insurance, including minimum levels of cover and how the policy could be enforced and implemented
- a definition of tax advice

Who should read this

Anyone who provides or may receive tax advice or offers services to third parties to assist compliance with HMRC requirements and the insurance industry. For example, accountants, tax advisers, legal professionals, payroll professionals, bookkeepers, insolvency practitioners, financial advisers, customs intermediaries, charities and other voluntary organisations that help people with their tax affairs, software providers, employment agencies, umbrella companies and other intermediaries who arrange for the provision of workers to those who pay for their services, people who engage workers off-payroll, promoters, enablers and facilitators of tax avoidance schemes, insurance companies and brokers, professional and regulatory bodies, and clients, or potential clients, of all those listed above.

Duration

12 weeks starting on 23 March 2021 and ending 15 June 2021.

Lead official

Julie De Brito, Agent Policy Team, Customer Insight and Design Directorate, HMRC.

How to respond or enquire about this consultation

Raising standards in the tax advice market: PII and defining tax advice, Julie De Brito, Agent Policy Team, HMRC, 14 Westfield Avenue, Stratford, London, E20 1HZ email responses to taxadviceconsultation@hmrc.gov.uk

Given the circumstances of the COVID-19 pandemic we strongly suggest you respond by email.

Additional ways to be involved

HMRC will be holding a limited number of meetings with interested parties. Please email taxadviceconsultation@hmrc.gov.uk if you would like to be involved.

After the consultation

HMRC will publish a summary of responses as soon as possible after the consultation period.

Getting to this stage

HMRC held informal discussions with interested stakeholders during 2018 and 2019 about ways to raise standards in the market for tax advice. In March 2020, the government published the call for evidence *raising standards in the tax advice market*, which closed on 28 August 2020. The summary of responses and next steps was published on 12 November 2020.

Previous engagement

HMRC met with stakeholders as part of the call for evidence, holding 22 roundtables, attending 13 HMRC external stakeholder forums and receiving 85 written responses.

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Foreword

At Spring Budget 2020, following the recommendation made by Sir Amyas Morse's independent review into the loan charge, the Government published a call for evidence to look at ways to raise standards in the tax advice market.

The Government recognises that the majority of tax advisers are competent, adhere to high professional standards and are an important source of support for taxpayers. However, both the loan charge review 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.

The market for tax advice is complex, and potential solutions to this problem will require careful consideration. As announced in the summary of responses and next steps published in November 2020, the Government now seeks views on making professional indemnity insurance (PII) compulsory for all tax advisers. The requirement to hold PII could be a valuable first step towards improving standards in the market. PII can help to create better market incentives for poor performing advisers to improve standards. It can also protect consumers by giving them greater access to recourse against the providers of bad tax advice.

However, this policy is itself part of a package announced in the summary of responses. The Government is also taking action to raise awareness of HMRC's Standard for agents, carrying out and publishing an internal review into HMRC's powers available to enforce the Standard, and working in partnership with professional bodies to understand the role they play in raising standards and review options to tackle the high costs to taxpayers of claiming tax refunds.

The Government recognises the importance of applying the standards expected to the right activities. This is why, to establish the appropriate scope of any insurance requirement, this document also seeks views on the relevant definition of tax advice.

As well as raising standards generally across the tax advice market the Government realises that continued action is needed against the most malicious actors. Therefore, alongside this document, it is also publishing a consultation on new measures to tackle promoters of tax avoidance.

The Government's goal is simple: to support taxpayers, raise standards of advice, and curb tax avoidance and its promotion throughout the market. This consultation sets out the detail of the proposed insurance requirement, and seeks your views on the application of these changes, to ensure that they are both effective and proportionate.

Rt Hon Jesse Norman
Financial Secretary to the Treasury

1. Executive summary

1. In the summary of responses and next steps published on 12 November 2020, the government set out the steps it intends to take in order to raise standards in the tax advice market, to improve trust in the market by reducing poor adviser behaviour and enabling taxpayers to have redress when things go wrong.

2. Those next steps were:

    - to consult on a requirement for all tax advisers to hold professional indemnity insurance, and a definition of tax advice
    - take action to raise awareness of HMRC's the standard for agents with target audiences
    - conduct and publish the results of an internal review of the powers currently available to HMRC that help enforce that Standard
    - 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
    - review options to tackle the costs to taxpayers of advisers who are claiming tax refunds on their behalf

3. We expect to publish outcomes or updates on this work later in 2021.

4. This consultation details the government's proposal to consider the introduction of a requirement for anyone providing tax advice to hold professional indemnity insurance. It asks for views on whether this will meet the policy aims of improving trust, reducing poor adviser behaviour and providing redress. It also asks for views on further steps or alternative courses of action.

- Chapter 2 introduces the background to the proposal and the work completed to date. It also lists the benefits and risks of the policy
- Chapter 3 describes the market for professional indemnity insurance, including examples of some of the requirements currently set by professional and regulatory bodies for their members. It discusses how professional indemnity insurance is priced, and how it works to improve redress for taxpayers
- Chapter 4 sets out the detail of what cover may be needed, including who should be insured, minimum levels of cover, excesses, exclusions and run-off cover
- Chapter 5 covers the government's proposed definition of tax advice. The government intends to use a definition that is widely drawn, in order to ensure that the right activities are included. The chapter discusses areas which may need to be exempted or excluded
- Chapter 6 provides details of how the government intends to enforce this requirement. The proposals are in 3 parts:
    - transparency, so that taxpayers can easily check whether their adviser is appropriately covered
    - checking, so the government can check that advisers are covered
    - enforcement, sanctions for non-compliance

How to get involved

5. The government intends to use this consultation to understand the effects of introducing a requirement for all tax advisers to hold professional indemnity insurance in order to operate in the market, along with a definition of tax advice.

6. HMRC will be contacting a range of stakeholders who are likely to be affected by this requirement and welcomes views from tax advisers, their clients, professional bodies, trade associations, the insurance industry, and anyone else who may be affected.

7. If you would like to be involved or contribute written views, please contact HMRC at taxadviceconsultation@hmrc.gov.uk.

8. HMRC welcomes comments by 15 June 2021.

2. Introduction

Background

9. The government has long recognised the important role that tax advisers play in helping taxpayers navigate the tax system. This is demonstrated in HMRC's Charter, which confirms HMRC's commitment to respect customers who wish to have someone else deal with the department on their behalf. HMRC's Agent Strategy, published in 2014, also highlights the department's recognition of the importance of the relationship between HMRC and advisers, particularly in stating its intention to tackle the 'small minority of agents with poor performance more effectively'[1].

10. Good tax advisers provide their clients with assistance with a range of tax-related activities including filing returns, providing tax advice, complying with obligations and requirements set by HMRC and interacting with HMRC on their behalf. Good advisers provide valuable support as part of the government's vision of a tax system that is straightforward and hard to get wrong, as well as contributing towards improving trust in the tax system, as set out in HMRC's tax administration strategy.

11. There are varying standards across the tax advice market. However, all tax advisers acting on a professional basis are expected to adhere to the HMRC standard for agents which sets out HMRC's expectations around standards of integrity, professional competence and due care, professional behaviour and principles when advising on tax planning.[2] The Standard applies to all tax agents who transact with HMRC and any professional who advises or acts on behalf of others in relation to their tax affairs.

12. Other relevant standards include the Professional Conduct in Relation to Taxation (PCRT) and the standards and regulations that apply to law professionals. For those tax advisers who are members of a regulated profession, such as solicitors, their regulation authority will monitor adherence to standards and apply sanctions as appropriate. Similarly, tax and accountancy professional bodies monitor and discipline their members. However, some agents helping clients comply with HMRC obligations may have no formal regulatory standards at all.

13. But there are a minority of tax advisers who do not live up to the high standards of behaviour and competence expected of the profession. Some of these advisers fail to meet acceptable standards due to capability, perhaps because they have failed to keep up with technical tax developments or because they are acting beyond their area of expertise, whilst others may deliberately set out to attack the system.

14. This directly affects the adviser's clients. Taxpayers can find they are subject to financial losses if advisers fail to carry out correct calculations or submit returns on time, for example, or if they are sold schemes involving tax avoidance. Sometimes, taxpayers

[1] This document and other HMRC publications refer to those intermediaries who act on behalf of others to help them meet their tax obligations as advisers or agents. The terms are interchangeable for the purposes of this consultation.
[2] *HMRC: the standard for agents* is referred to throughout as the Standard for ease of reading.

have no means of recovering money lost due to the bad action or advice from their adviser unless they can afford to take legal action. This may also have the effect of reducing the trust that the adviser's clients have in the tax system. As well as affecting their clients, it may also affect those offering a good quality service as less competent advisers may offer poorer services but at a cheaper price.

15. The impact of poor advice was also identified as an issue by Sir Amyas Morse in his review of the Loan Charge. The government is taking action to address this issue. New measures to tackle promoters are included in Finance Bill 2021, following the consultation published in July 2020. A further consultation, Clamping down on promoters of tax avoidance, has been published on 23 March 2021. This consultation includes a number of measures to disrupt the promoter's business model, which include a proposal for a new power for HMRC to publish details of promoters and schemes where they suspect arrangements are tax avoidance.

16. As a result of the recommendation that the government improve the market in tax advice, it published a call for evidence on raising standards in the tax advice market. This call for evidence, which was published in March 2020 and closed in August 2020, asked for views on:

- the scope of the market for tax advice and tax services
- the characteristics of good and bad practice
- current government interventions
- international models
- possible approaches to raising standards

17. The outcomes sought from the call for evidence were:

- market transparency
- that taxpayers who want to engage a tax adviser can access reliable advice from an appropriately competent professional who maintains high ethical standards
- to preserve market access
- to enhance tax compliance

18. The government received 85 written responses to the call for evidence, which were summarised in the summary of responses and next steps published on 12 November 2020. This document announced the government's package of actions in order to achieve these outcomes, including the intention to publish this consultation on introducing a requirement for all tax advisers to hold professional indemnity insurance and a definition of tax advice.

The case for introducing the requirement for professional indemnity insurance

19. The responses to the call for evidence identified that there was a problem with the tax advice market. There was consensus among respondents that there was a need for greater taxpayer protection whilst maintaining the principle of the individual's responsibility for their own affairs. Many respondents noted that there is an issue which

can lessen trust in the market where the adviser possesses more or better information than the client, which can, in some cases, lead to exploitation.

20. During the call for evidence, the government asked for views on potential approaches to improving standards, reproduced in figure 1 below. Most respondents felt that there should be some form of market intervention, although views about the form this should take were mixed and there was no consensus about whether an external regulator was needed.

21. Some respondents said that advisers should be required to acquire professional qualifications and join a professional body, and others said that HMRC should use its powers more effectively. Many respondents suggested that making it compulsory for all tax advisers to hold professional indemnity insurance would provide a baseline level of taxpayer protection. Respondents also said that unaffiliated agents (around 30% of the tax advice market) [3], who are potentially less likely to hold professional indemnity insurance, are one of the main problems in the market. Further engagement with industry suggests that around half of unaffiliated agents may have professional indemnity insurance.

22. Responses also highlighted the potential impact on advisers of greater regulation, and the risk of regulatory overlap with other regulatory regimes (for instance, financial and legal services).

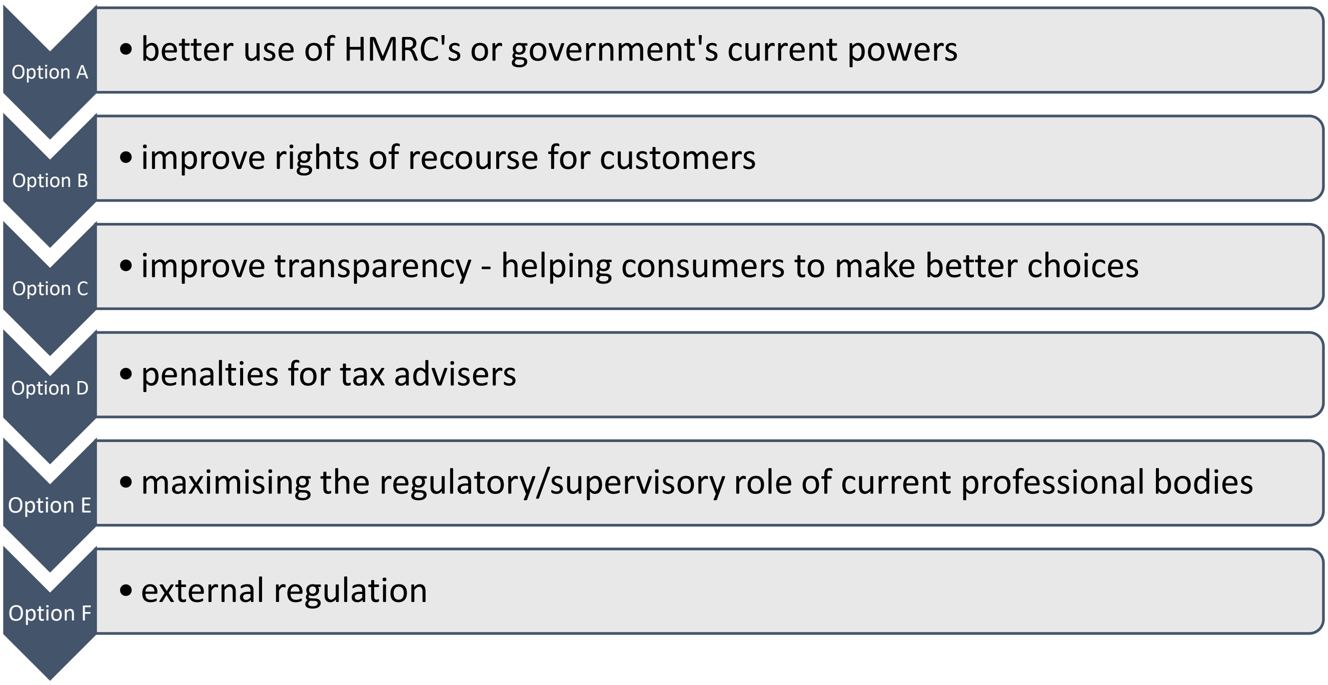
23. Mindful of the need to strike the right balance between introducing new burdens on business and providing protection to those using tax advisers, the government therefore believes that introducing the professional indemnity insurance requirement will be a first step towards raising standards.

24. It will introduce a common requirement for all tax advisers that will help taxpayers to have trust that there is a method of recourse should things go wrong, enhancing customer protection. This is in addition to the common minimum standards set by the HMRC Standard, which applies to all individuals and businesses involved in professionally representing or advising taxpayers. As noted in the summary of responses, the government will also seek to work with professional bodies to understand better the role that they play in raising standards.

25. Following the call for evidence on raising standards in the tax advice market the government received representations from stakeholders who felt that the government should go further, faster in order to regulate the market, such as introducing licensing. The government believes that the case for going further has not yet been proven. As set out in the summary of responses and next steps, the government will evaluate the outcome of this consultation and the effect of the package of next steps set out in that document on the market, in order to determine whether further action or greater regulation will be needed.

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

Figure 1: the options considered in the call for evidence



26. However, the government would welcome views on what further steps it could take to raise standards, or what alternative action it could take.

27. As set out in the [summary of responses and next steps](), the government believes there are many potential benefits to making holding professional indemnity insurance mandatory for tax advisers. These benefits are:

- the new requirement should not affect tax advisers who are already subject to regulatory oversight or who are a member of a professional body. These individuals are generally already required by their professional or regulatory body to hold appropriate levels of professional indemnity insurance. These include solicitors and independent financial advisers, and members of accountancy and tax professional bodies. This is explored in more detail in chapter 3
- there will be benefits for the tax advisers themselves. Businesses who hold professional indemnity insurance are protected if a client makes a claim, as they may be able to make a claim on their insurance to cover any financial compensation they pay to that client
- taxpayers can be reassured that their adviser has a method of redress should things go wrong, as the possession of appropriate cover should give clients confidence in the firm and its work. The operation of professional indemnity insurance is covered in more detail in chapter 3
- market forces may help to drive up standards. Riskier advisers are potentially more expensive or impossible to insure, and premiums may be lower for advisers who are members of professional bodies and/or who have a relevant professional qualification. Premiums may also be lower for those advisers who have robust client engagement

and risk assessment processes which help keep standards high. This may mean that riskier advisers may need to make improvements to obtain lower premiums or may leave the market
- To ensure this intervention is set at an appropriate level our intention is to define the scope of who it will apply to widely. This is explained in more detail in chapter 5

28. The government also recognises that there are potential costs and risks:

- costs
  - some advisers may pass on costs to their clients, meaning increased costs for taxpayers
  - rising costs may see some advisers choose to leave the market and operate in a 'shadow' tax advice market by continuing their activities without any supervision or oversight
  - costs would rise for those advisers who do not currently hold professional indemnity insurance. There may also be a rise in premiums across the market if insurers choose to insure riskier advisers, affecting all advisers
  - insurers may find it difficult to distinguish between good and bad advice
- risks
  - as with some market interventions this could lead to some advisers choosing to move offshore, where they may be able to operate outside the jurisdiction of the new requirement
  - it may be harder for some sectors and certain types of advisers, such as boutique agencies which, as they offer niche areas of tax advice, may find it harder to get insurance

29. The government has had initial discussions with representatives of the insurance industry. This has provided some reassurance on some of these matters, although these conversations continue. We also believe that the design of the requirement should mitigate these costs and risks.

Questions

Q1**:** In your opinion, do you agree that introducing a requirement for anyone providing tax advice to have professional indemnity insurance satisfies the policy aims of improving trust in the tax advice market, by targeting poor behaviour and allowing taxpayers greater redress when things go wrong?

Q2: If the government introduces the requirement for professional indemnity insurance, what further steps would you recommend?

Q3: Are there any alternative options you would recommend?

Q4: Apart from the costs and potential effects outlined above, are there any other costs you foresee for advisers?

3. The market for professional indemnity insurance

30. Professional indemnity insurance is business insurance taken out by firms or individuals providing a professional service. It is designed to provide cover for compensation claims if a client makes a claim against the firm or individual for making a mistake where there is a financial loss.

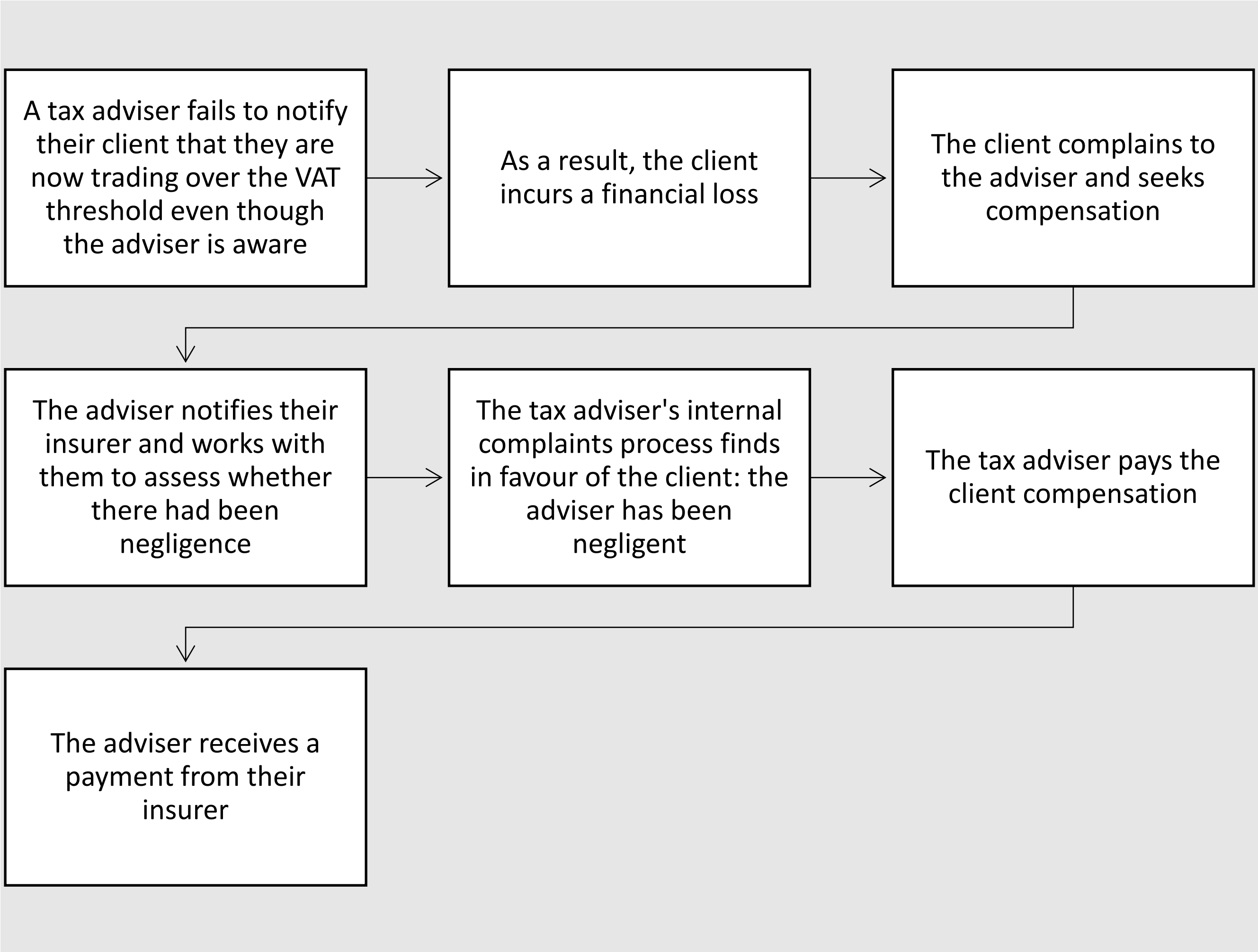
31. It is usually recommended by insurers that any business that offers advice or any kind of professional service obtains professional indemnity insurance. The professional indemnity insurance market is made up of a small number of providers, and insurance is mainly arranged through brokers. Some professional bodies maintain a list of approved providers for their members, and may provide a short-term backup option for members (an assigned risk pool) who are unable to obtain insurance in the general market.

How professional indemnity insurance works

32. The figures below show two scenarios where a client has made a complaint and requested financial compensation, to illustrate how professional indemnity insurance works to protect the client.

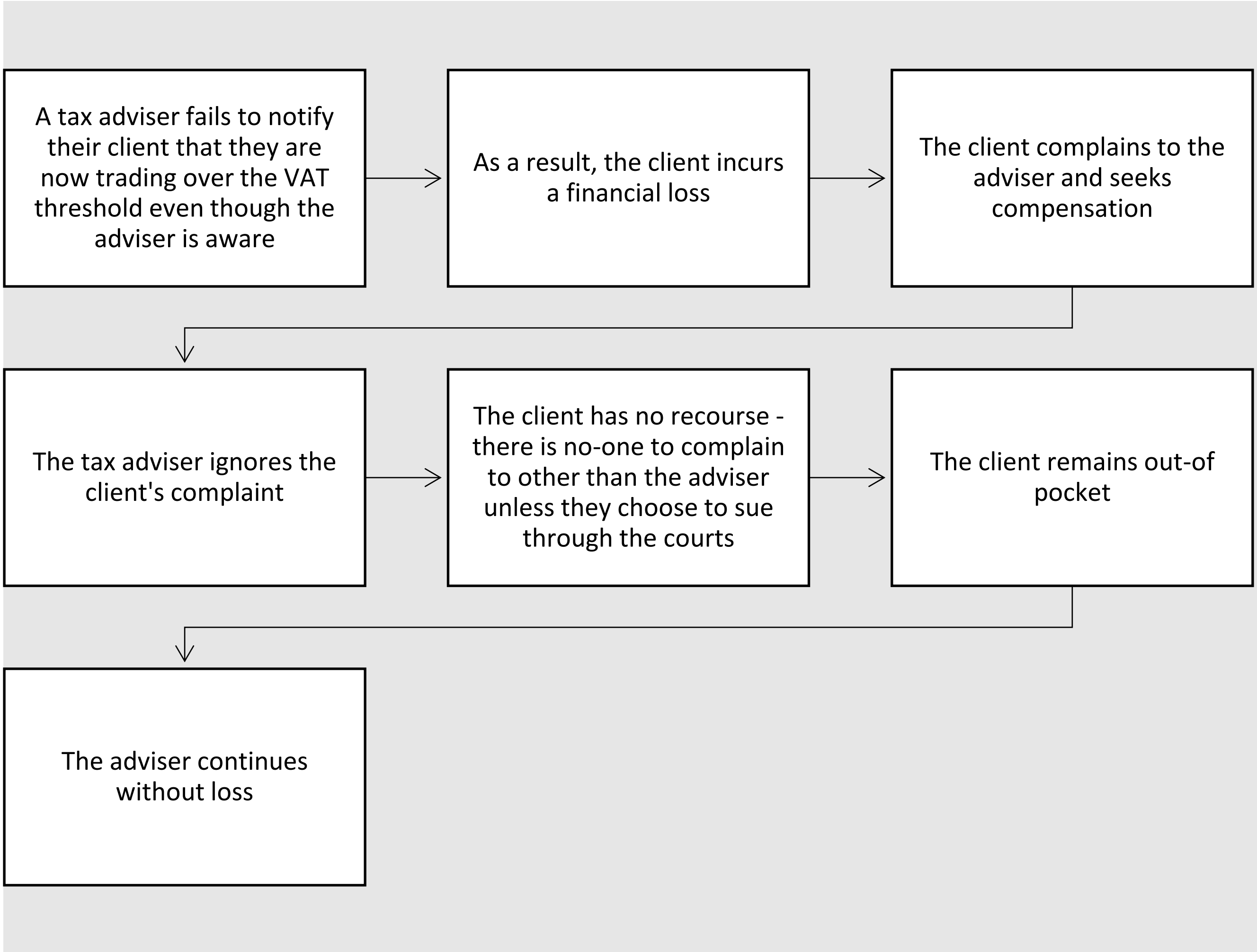
33. Figure 2 shows how a straightforward claim for negligence might work, where the tax adviser who holds professional indemnity insurance has made a clear error resulting in a financial loss to the client.

Figure 2: example of how a claim for redress involving professional indemnity insurance held by a non-professional body adviser might work



34. By contrast, Figure 3 shows the process where the adviser does not have professional indemnity insurance, where the adviser may resist paying any compensation to clients where the adviser has been negligent, as this will leave them out of pocket.

Figure 3: example of how a claim for redress involving an adviser without professional indemnity insurance might work



35. These examples show there may be a small risk that the introduction of a requirement for professional indemnity insurance alone may not sufficiently protect consumers, as they are still reliant on the adviser having a sufficiently robust complaints process. If the adviser chooses to ignore the client's complaint, or decides that there is no case to answer, the only recourse that the client has is to go to court. As part of the introduction of any new requirement the government will need to consider an appropriate complaints process.

Pricing professional indemnity insurance

36. As with any insurance, the premium paid will depend on how the insurer assesses the risk. Some factors are directly related to the type of work carried out, for example:

- advising on schemes to avoid tax, providing advice on claiming reliefs and allowances, general accountancy advice, bookkeeping services, filing returns

- the role of the individual e.g. accountant, bookkeeper
- processes and procedures in place to mitigate risk
- whether they have claimed before

37. Prices are also related to the characteristics of the individual's business or the firm, for example:

- number of partners or directors
- fee income
- turnover
- qualifications
- standards adhered to

38. Other factors taken into account include the amount of excess chosen, and any extra cover that the individual or firm chooses to obtain. The cover provided may also have limits imposed, exclusions, or extra excesses for certain activities.

39. The government is aware from early discussions with the insurance industry that some insurers regard providing tax advice as an inherently risky area to insure, due to the complexity of tax law. The government will, therefore, consider how best to support the provision of appropriate information to support the assessment of risk.

40. In the case of promoters, as mentioned in paragraph 15, the government is consulting on proposals (in the consultation Clamping down on promoters of tax avoidance) to give HMRC greater powers to make information about suspected promoters public. **The government would welcome views from the insurance industry about whether this information (or similar information about adviser compliance) would be useful in assisting insurers in deciding whether to offer an adviser insurance or to set a premium.**

41. However, the government estimates that most of the 70% of advisers who belong to a professional body already hold professional indemnity insurance, so, as we have been told in our early discussions with the industry, there is already a precedent in understanding and pricing risk in the accountancy part of the market.

Questions for tax advisers
Q5. What are your experiences of obtaining professional indemnity insurance or of the market for professional indemnity insurance?

Q6. If you are a tax adviser who practices without insurance, why is this?

Questions for the insurance industry
Q7. What factors do you take into account when pricing professional indemnity insurance?

Q8. 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?

Q9: In your opinion, does the insurance market have the appetite and capacity to manage the new requirement?

Questions for people who use tax advisers
Q10. What checks do you carry out when you engage a tax adviser? Do you check whether they are insured?

Q11. 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?

Questions for everyone
Q12. Do you think there are any lessons on how complaints are handled in similar industries that we can learn to help improve redress?

4. Mandatory professional indemnity insurance for tax advisers

42. Professional indemnity insurance is mandatory for many individuals and firms in regulated professions such as solicitors and financial advisers. It is not currently mandatory for tax advisers to hold professional indemnity insurance, however, most of the tax, accountancy and law professional bodies require their members to hold it as a condition of membership. Where professional indemnity insurance is either a regulatory requirement or a condition of membership, the regulatory or professional body sets out in its rules or handbook the minimum cover and type of cover that regulated entities must hold.

43. The government estimates that there are around 72,000 tax advisers that interact directly with HMRC, and around 70% of them are professional body members.[4] This leaves around 21,000 of this group of advisers who are unaffiliated and consequently less likely to hold professional indemnity insurance.

44. In addition to this group, there may be individuals or firms involved in activities that involve tax advice such as customs agents or employment intermediaries who may not have this insurance. The government has commissioned external research to understand the characteristics of unaffiliated agents, to be published later this year, and separately into customs intermediaries. The first wave of the customs intermediaries research has been published, and further reports will be published later this year.[5]

45. The table in Annexe B sets out some examples of these compulsory requirements.

46. Tax advisers who are either already subject to regulatory oversight such as lawyers, or who are members of professional bodies who make the possession of professional indemnity insurance compulsory as part of membership, are subject to set minimum requirements for that insurance. As a first step, the government believes that, in order to raise standards, similar requirements need to be applied across the market.

47. The government is aware, however, of the need to balance consumer protection with affordability and the need to avoid pricing good tax advisers out of the market. The government is considering, therefore, whether it should set out minimum levels of cover, excesses and other mandatory aspects of insurance that anyone providing tax advice should hold.

48. The minimum level should not be set so high that it adds burdens to advisers who are already required to hold professional indemnity insurance or to professional or regulatory bodies that may have to change their rules, regulations, and assurance processes. There may be a risk that some professional bodies with a minimum requirement above any minimum levels the government sets may reduce their requirement to meet the government level.

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[4] Unpublished HMRC research
[5] https://www.gov.uk/government/publications/research-into-the-customs-intermediaries-sector-wave-1-report

49. The advantage to setting out certain minimum mandatory levels of cover is to ensure taxpayers are adequately protected. If advisers are able to underinsure then taxpayers may not receive the improvements in the level of protection the government is seeking to achieve.

50. To improve taxpayer protection, the criteria that could be set out as mandatory could include:

- **Who must be insured?**

Most professional bodies require each member in practice to hold professional indemnity insurance, and some provide it as part of their membership offer. Options for the mandatory requirement could include a similar requirement for each practising tax adviser to hold separate insurance, or for insurance to be held by the principal in the firm.

- **Minimum level of cover**

Accountancy professional bodies tend to require specified minimum levels of cover, usually depending on fee income with a recommended minimum. For example, the Institute of Financial Accountants (IFA) requires members to hold professional indemnity cover of 2.5 times gross annual income or £100,000 if gross fee income is under £400,000, or if fee income is over £400,000, cover must be £1 million. ICPA provides members with minimum cover of £300,000.

- **Amount of excess**

Some professional bodies recommend the amount of excess set, such as the Chartered Institute of taxation (CIOT) or the Institute of Chartered Accountants in England and Wales (ICAEW) which recommends no more than £30,000 per principal.

The government thinks it is important the level of excess is set at the right amount: not so high that it becomes unaffordable, but nor so low that taxpayer protection is compromised. However, this must be balanced against the potential for lower excesses to drive up the price of premiums for advisers which may in turn be passed on to taxpayers.

- **Exclusions**

For the potential new requirement to benefit taxpayers, tax advisers should not be able to take advantage of policies that exclude specific tax-related activities. For example, they should not be able to take up a policy that excludes tax planning as an insurable activity. In the event that the firm or individual undertakes ‘risky’ and therefore more expensive activities, it should expect to cover these in the premium of the insurance it purchases, or if it is unable to obtain insurance for those activities, it may have to stop doing them.

Some professional and regulatory bodies specify what exclusions are permitted. The Solicitors Regulation Authority (SRA), for example, sets out a list of the only permitted exclusions which include liability of any insured for causing or contributing to death or bodily injury (but psychological distress arising from breach of duty must be covered) and liability for damage to the insured firm’s practice unless arising from breach of duty in performing legal work.

- **Run-off cover**

Run-off cover is cover for claims made against a professional firm or adviser after they have stopped doing business. Professional bodies usually ask their members to hold run-off cover when they cease to practice with terms, where specified, varying between 2 and 6 years. Given that HMRC can potentially seek tax liabilities for the past 6 tax years, the government proposes that optimum level of run-off cover should be 6 years for tax advisers.

Questions

Q13. What is the minimum level of cover you recommend, and why?

Q14. What activities should it be mandatory to cover, and why?

Q15. Should the government set mandatory minimum or maximum levels of:

- cover
- run-off cover
- excess

Q16. What levels should these be?

Q17. Should the government specify what advice must be covered by the policy? What advice do you think should be covered?

Q18. Are there any other insurance requirements the government should require?

Q19. Who should be required to hold the insurance? Should it be the firm, the principal, everyone who is acting as a tax adviser?

Q20. What impact do you think setting minimum mandatory levels of cover would have on:

- the market including availability of insurance
- affordability

5. Defining tax advice

51. An important element of the design of this new requirement is the definition of tax advice.

52. As stated in the next steps document the government considers that the definition of tax advice should be drawn widely to encompass the wide and diverse range of activities and functions that can include tax advice. This is because it would be easy to get around the requirement if it was drawn too narrowly, and bringing in a wide range of activities provides maximum protection for taxpayers. Examples of activities and professionals who may be providing tax advice are given in Annexe C, including promoters of tax avoidance.

53. As noted in the call for evidence on raising standards, the tax advice market is diverse. It includes a number of different professions and activities. Some of the advisers that may be included in a wide definition may not consider themselves as tax advisers such as promoters of tax avoidance schemes: however, as at least a part of their function they do provide advice that alters the tax position of those they are advising.

54. There is currently no standard definition of ‘tax advice’ or ‘tax adviser’ in legislation. There are 2 definitions that relate to specific functions that may be helpful: Dishonest Tax Agent penalty legislation in schedule 38 of Finance Act 2012 and the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (as amended by the Money Laundering and Transfer of Funds (Amendment) Regulations 2019 (referred to here as the Money Laundering Regulations). The text of both definitions is in Annexe A.

Exemptions

55. Using the model definitions provided by Dishonest Tax Agent penalty legislation or the Money Laundering Regulations, most of the activities listed in Annexe C would be regarded as tax advice for the purposes of making professional indemnity insurance mandatory. A family member or friend helping with a tax return would not be included. This is because it is not being carried out by way of business. Similarly, employees of a tax department in a large manufacturing company, for example, would not be included as they would not be providing that advice by way of business, as they are employees of the company.

56. The government supports the use of software in the administration of tax, both through the use of HMRC’s digital systems and through commercial software. **The government would, therefore, welcome views on whether tax software should be included in the definition of tax advice and/or the requirement to hold professional indemnity insurance.**

57. There is a question about whether some activities should be exempt. This includes advisers acting on a pro bono basis and charities providing tax advice which may be exempt under the terms of both definitions as they are not providing advice by way of business. Similarly, tax advice is sometimes provided as a part of another activity, sometimes as an intrinsic part of that activity and sometimes as an incidental part or as a

statutory duty, such as an employer submitting PAYE information using an RTI return (Real Time Information) or as part of advice on pension investments.

58. The government would like to hear views from stakeholders about whether any activities should be excluded from the definition, and the reasons why.

59. The government is particularly interested to hear from advisers and clients of advisers where advice is provided as part of another activity, such as employment agencies, financial advisers, pension providers, customs agents, software providers and VAT representatives.

Guidance and advice

60. The government is also considering whether the financial services distinction between guidance and advice is helpful in the context of tax advice. This is set out in the diagram below. For financial services, advice can only be offered by regulated firms, but guidance can be offered by any organisation.

Figure 4: explanation of the difference in advice and guidance for financial services

Advice	Guidance
a service which recommends a specific course of action based on consumers' individual circumstances and goals	provides information and/or options to narrow down consumers' choices, without making an explicit recommendation

61. The government welcomes views on this and other alternative ways of defining tax advice.

Offshore advisers

62. The government wants to ensure that all advisers who operate in the UK or who provide advice on UK tax are required to hold professional indemnity insurance. This will help protect any taxpayer who seeks professional advice on UK taxation. The proposed definition will therefore need to include provision to include all tax work undertaken in the UK or related to UK taxation.

Questions

Q21. 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?

Q22. What activities do you think should be excluded from the requirement for compulsory professional indemnity insurance and why?

Q23. Would there be any benefit in having different minimum requirements for different activities?

Q24. What benefits or issues would there be in considering the financial services regulatory distinction between advice and guidance for tax advice?

Q25. What benefits or difficulties do you foresee with the inclusion of a provision around UK taxation in the definition?

6. Enforcement

63. The government proposes an enforcement regime with 3 elements: transparency, checking advisers have insurance, and sanctions for non-compliance. These 3 elements together would form a comprehensive enforcement approach that reinforces the government's policy intent of improving trust in the tax advice market by targeting behaviour and improving redress.

Transparency

64. For the new requirement to work to raise standards, it will be necessary for taxpayers to be able to check that their adviser has the correct insurance. The government's ambition is that taxpayers will be fully informed about their advisers, with information readily available about that adviser. This could include details of professional indemnity insurance. In addition, it could include whether the adviser is a professional body member and what action that adviser is able to take on their behalf for example, file-only, VAT, and so on.

65. This would give the taxpayer information to help them understand the quality of their adviser and the protections they have should things go wrong. In this way, the government wants to support taxpayers to make good choices when seeking tax advice. HMRC could potentially share this information with taxpayers digitally.

The government welcomes views on this ambition and any potential issues you can see

66. As well as this, there are additional ways in which information could be provided to taxpayers. For example:

- advisers could be required to display their certificate of insurance at their premises, on their website and pass a copy to clients with the letter of engagement
- insurers could enable taxpayers to check the adviser had a valid policy number via an online portal
- adding the requirement to hold professional indemnity insurance to the HMRC Standard for Agents
- publishing information about advisers who HMRC discovers are not complying with the insurance requirement

Checking that advisers have insurance

67. There will need to be a mechanism to check that tax advisers have the required insurance in place. The checks will need to be carried out across the agent population.

68. One option is to automatically consider the requirement for insurance satisfied if the adviser can prove they are a member of a recognised professional or regulatory body that already requires insurance.

69. There are several options in place for tax advisers who already interact with HMRC.

70. For example, HMRC could make checks when agents request access to online services, request an agent code, or request to be authorised to act on behalf of a client. The advantage of doing this is that it would not add significant administrative burdens for advisers as it adapts current processes.

71. Agents who register for anti-money laundering (AML) supervision could be required to supply a copy of their insurance certificate when applying to HMRC for supervision under the Money Laundering Regulations (MLRs) and when updating or confirming their details when paying their annual fees. Checking those agents that HMRC supervises for AML has the benefit of mirroring the annual assurance process that many of the professional bodies undertake for their members.

72. In addition, HMRC could decline to interact with any tax adviser, in any form, unless they demonstrated that they had the correct cover. HMRC dealing with an adviser would, therefore, be conditional on that adviser proving they had the required cover.

73. Any enforcement regime would also need to extend to those who never interact with HMRC's systems, which may include promoters and software providers, and other agents who do not consider themselves to be offering tax advice. Options to check these advisers could include one or more of the following:

- asking or requiring insurers to provide returns of advisers with professional indemnity insurance
- including checking for professional indemnity insurance as part of a compliance enquiry where the taxpayer has an agent
- add checking for professional indemnity insurance as part of compliance work against suspected promoters
- introducing strong sanctions to deter non-compliance in tandem with directed compliance work from HMRC to check advisers have professional indemnity insurance. General enquiry work could include a mandatory check on the adviser's insurance status

The government is interested to explore other ways to carry out checks that do not impose disproportionate burdens on advisers, taxpayers and the insurance industry, and welcomes views on these proposals.

74. There is a risk that non-compliant agents will attempt to circumvent the new requirement by seeking to move advice offshore. This could be mitigated by requiring anyone who carries out tax advice in this country, regardless of where they are based, to be subject to mandatory professional indemnity insurance, and/or to ensure that any offshore adviser is required to have an onshore presence which has the required insurance. There is precedent for this from a customs perspective, with the concept of 'establishment' where legislation requires the person submitting a declaration to be established in the UK, for example.

Consequences of operating without insurance

75. There will also need to be appropriate sanctions in place to ensure the new requirement is not avoided and to act as a deterrent. These sanctions could include a new offence of providing tax advice without holding professional indemnity insurance. In addition, there may need to be sanctions for not holding adequate cover, or for taking out cover but letting it lapse by deliberately not paying premiums.

76. HMRC could also suspend the adviser's access to online services and/or refuse to deal with them until they had the required insurance in place.

77. A further option would be to make tax advisers jointly and severally liable with the taxpayer where an error has been made leading to an additional tax payment if they failed to maintain appropriate professional indemnity insurance cover, or introducing appropriate civil penalties.

78. Any new powers or sanctions will be subject to appropriate consultation and safeguards to ensure they are used appropriately and proportionately.

Questions

Q26. Do you agree with the 3 elements of enforcement?

Q27. What are your views on the enforcement options described above?

Q28. 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?

Q29. The government's ambition is for HMRC to share information about the adviser with the client digitally. What are your views of this?

7. Implementation

79. Introducing mandatory professional indemnity insurance for tax advisers would be a change for many advisers. As stated in chapter 2, we estimate that around 30%, some 21,000 tax advisers, plus around 8,400 customs intermediaries and others, are not professional body members and this group are least likely to hold professional indemnity insurance. This is a large number of advisers who may all be seeking insurance at the same time. There may an associated effect on the ability of insurers to manage demand and consequently on prices, and therefore for advisers to obtain cover. The government also would like to mitigate the impact on groups such as customs intermediaries, who are subject to additional demands currently due to changes at the borders.

80. Consequently, it may be prudent to consider gradual implementation of the new requirement. There are options for accomplishing this:

- by turnover, so that advisers with the largest turnover are the first to be required to hold compulsory insurance
- by client base, for example, so that advisers with clients trading over the VAT threshold are first to be mandated to hold insurance
- by number of clients, number of employees or principals
- by tax or duty
- at the time the adviser renews an authorisation or obtains a new recognition of representation for a client

81. There may also be disadvantages to this. A gradual implementation or transitional period based on criteria as set out above introduces complexity into the market. There is also a risk that using these criteria would initially exclude the advisers that this intervention is targeted to address.

82. The government would therefore welcome views on the benefits and risks of such an approach.

Questions

Q30. What effects do you foresee of introducing the requirement for everyone at the same time?

8. Assessment of impacts

Summary of impacts

Any Exchequer impact will be estimated following consultation, final scope and design of the policy, and will be subject to scrutiny by the Office for Budget Responsibility

Year	2019 -20	2020 -21	2021 -22	2022 -23	2023 - 2024
Exchequer impact (£m)	+/-	+/-	+/-	+/-	+/-

Impacts	Comment
Economic impact	The economic impacts will be identified following consultation and final design of the policy.
Impact on individuals, households and families	This proposal is expected to have a positive impact on individuals who utilise and receive tax advice from agents. This measure ensures that these individuals will have greater reassurance that they have a method of redress should things go wrong. Transactional customer experience is expected to remain broadly the same as this measure does not alter how individuals interact with HMRC. If agents are not able to afford the required insurance or are not able to obtain the insurance and are forced to leave the market, this could have an impact on family formation, stability or breakdown.
Equalities impacts	This measure should have a positive impact for customers who need extra help from agents, across the groups sharing protected characteristics.
Impact on businesses and Civil Society Organisations	This proposal is expected to impact up to an estimated 21,000 agents (or 30% of the estimated existing agent population) who may not currently hold professional indemnity insurance plus around 8,400 customs intermediaries. They would have to obtain this insurance following this proposal. One-off costs for these agents will include familiarisation with the change. There will be significant continuing costs in obtaining an appropriate level of professional indemnity insurance. Depending on the final policy delivery there could be further continuing costs including providing evidence to HMRC (or an independent third party) that they have insurance or to register to prove they are covered.

	Invariably, costs of professional indemnity insurance premiums will differ from agent to agent and are influenced by factors including the size of the agent's practice and the complexity of the service provided by the agent. There is a risk that some advisers will not be able to afford the required insurance or may not be able to obtain insurance, and may leave the market. There is also a risk that, as a limited pool of insurers will face increased demand and a potentially riskier pool to insure, prices may rise for agents seeking insurance for the first time as well as for agents who already hold insurance when they seek to renew. HMRC expects these proposals to also have an impact on those businesses (including small and micro businesses) that engage with their tax obligations through an agent. These businesses may receive greater reassurance that they will have a method of redress should things go wrong with the tax adviser's possession of appropriate cover. There is a risk that the cost of insurance may be passed on in the cost of fees to the client. Impacts on business will be fully examined as part of this consultation. There is expected to be no impact on civil society organisations.
Impact on HMRC or other public sector delivery organisations	There are no costs to HMRC or other public bodies at this stage. Once policy decisions are taken after the proposed consultation any operational aspects will be fully assessed and costed. Future delivery funding requirements will be advised depending on the outcome of the consultation, as will any impacts on other government departments.
Other impacts	Other impacts have been considered and none have been identified at this stage. Impacts will be tested as part of the proposed consultation.

9. Summary of consultation questions

Q1**:** 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?

Q2: If the government introduces the requirement for professional indemnity insurance, what further steps would you recommend?

Q3: Are there any alternative options you would recommend?

Q4: Apart from the costs and potential effects outlined above, are there any other costs you foresee for advisers?

Q5. What are your experiences of obtaining professional indemnity insurance or of the market for professional indemnity insurance?

Q6. If you are a tax adviser who practices without insurance, why is this?

Q7. What factors do you take into account when pricing professional indemnity insurance?

Q8. 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?

Q9: In your opinion, does the insurance market have the appetite and capacity to manage the new requirement?

Q10. What checks do you carry out when you engage a tax adviser? Do you check whether they are insured?

Q11. 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?

Q12. Do you think there are any lessons on how complaints are handled in similar industries that we can learn to help improve redress?

Q13. What is the minimum level of cover you recommend, and why?

Q14. What activities should it be mandatory to cover, and why?

Q15. Should the government set mandatory minimum or maximum levels of:

- cover
- run-off cover
- excess

Q16. What levels should these be?

Q17. Should the government specify what advice must be covered by the policy? What advice do you think should be covered?

Q18. Are there any other insurance requirements the government should require?

Q19. Who should be required to hold the insurance? Should it be the firm, the principal, everyone who is acting as a tax adviser?

Q20. What impact do you think setting minimum mandatory levels of cover would have on:

- the market including availability of insurance
- affordability

Q21. 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?

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Q30. What effects do you foresee of introducing the requirement for everyone at the same time?

10. The consultation process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

Stage 1 Setting out objectives and identifying options.

Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.

Stage 3 Drafting legislation to effect the proposed change.

Stage 4 Implementing and monitoring the change.

Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter nine.

Responses should be sent by 15 June 2021, by email to taxadviceconsultation@hmrc.gov.uk or by post to: Julie De Brito, Agent Policy Team, HMRC, 14 Westfield Avenue, Stratford, E20 1HZ **Given the circumstances of the COVID-19 pandemic we strongly suggest you respond by email.**

Telephone enquiries 03000 585115 (from a text phone prefix this number with 18001)

Please do not send consultation responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from HMRC's GOV.UK pages. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

HMRC is committed to protecting the privacy and security of your personal information. This privacy notice describes how we collect and use personal information about you in accordance with data protection law, including the UK General Data Protection Regulation (UK GDPR) and the Data Protection Act (DPA) 2018.

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, UK General Data Protection Regulation (UK GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the UK General Data Protection Regulation.

Your data

We will process the following personal data:

Name

Email address

Postal address

Phone number

Job title

Purpose

The purpose(s) for which we are processing your personal data is: *raising standards in the tax advice market: professional indemnity insurance and a definition of tax advice.*

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will be shared by us with HM Treasury.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.

- You have the right to request that any inaccuracies in your personal data are rectified without delay.

- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.

- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.

- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire

SK9 5AF

0303 123 1113

casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue and Customs. The contact details for the data controller are:

HMRC

100 Parliament Street

Westminster

London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer

HM Revenue and Customs

14 Westfield Avenue

Stratford, London E20 1HZ

advice.dpa@hmrc.gov.uk

Consultation principles

This call for evidence is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: Consultation Principles Guidance

If you have any comments or complaints about the consultation process, please contact the Consultation Coordinator using the following link:

Submit a comment or complaint about HMRC consultations

Please do not send responses to the consultation to this link.

Annex A: Relevant (current) Government Legislation

Relevant (current) legislation

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.

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.

Annexe B: Examples of professional and regulatory body professional insurance requirements

Regulatory or professional body	Who must be insured?	Cover required	Excess	Run-off cover
Association of Accounting Technicians (AAT)	All members in practice	A minimum of at least £50,000 with there being various claims limits based on varying levels of the firms annual total income with maximum level of cover required of £1 million	Amount not specified but firms must ensure they are able to meet the costs of an excess.	Cover must be maintained for a period of no less than 6 years from cessation.
Association of Chartered Certified Accountants (ACCA)	All members in practice	A minimum of at least £50,000 with there being various claims limits based on varying levels of the firms annual total income	Amount not specified but firms must ensure they are able to meet the costs of an excess.	Cover must be maintained for a period of no less than 6 years from cessation.
Chartered Institute of Taxation (CIOT)	All CIOT members	Annual minimum limit of £1 million for each and every claim if firms gross fee income is over £400,000. Where firms gross income is below this then the greater of 2.5 times gross fee income or £100,000	Up to £20,000 per principal	Cover must be maintained for a period of no less than 6 years from ceasing public practise.
ICPA	All members have access to PII cover for free as part of their membership	£300,000 cover included	£500	Information unavailable from public sources, but website states cover is ICAEW/ICAS compliant
Institute of Chartered Accountants in	All ICAEW members	At least £1.5 million for any one claim and in total when firms gross	£30,000 per principal in the aggregate as part	Cover must be maintained for 2 years after ceasing to hold a

England and Wales (ICAEW)		fee income is over £600,000. If gross income fee is below this then the minimum cover will be the greater of 2.5 times gross fee income or £100,000	of the sum insured	practising certificate, plus a recommendation to maintain cover for a further 4 years.
Institute of Certified Bookkeepers (ICB)	All members in practice	At least £50,000, and a minimum of 2.5 times annual turnover on an any one claim basis	Information unavailable from public sources	Information unavailable from public sources
Institute of Financial Accountants (IFA)	All members in practice	Annual minimum limit of £1 million for each and every claim if firms gross fee income is over £400,000. Where firms gross income fee is below this then the minimum cover will be the greater of 2.5 times gross fee income or £100,000	Amount not specified but firms must ensure they are able to meet the costs of an excess.	Cover must be maintained for a period of no less than 6 years from cessation.
Solicitors Regulation Authority (SRA)	The cover must include the firm, each company owned by the firm and the principals, each principal, each employee.[6]	At least £300,000 for any one claim, or if conveyancing at least £1 million	Excess can be set by the insurer and the insured firm	Run-off cover must be included with a minimum cover of £1.5 million, unless providing conveyancing, where it must be £3 million, and must last for 6 years

[6] Principal – for definition see the glossary in Annexe D.

Annexe C: Examples of activities and professionals who may be providing tax advice (not an exhaustive list):

- an employment intermediary advising a worker to work through an umbrella company
- an accountant preparing and submitting a corporation tax or self assessment return on behalf of a client
- a customs agent advising a client on excise duties and VAT to enable them to make decisions about how to conduct their business
- a customs agent (completing and) submitting an import declaration using information provided to them by a client
- a financial adviser, who in the course of providing investment advice to a client, advises on the most tax efficient ways to invest
- tax software: especially software that carries out categorisation or calculations
- a barrister providing an opinion on a potential avoidance scheme
- a solicitor providing advice on the most efficient way of managing Stamp Duty Land Tax as part of conveyancing work
- an agent who makes claims for repayment of expenses on behalf of clients
- an employer advising an employee about taxable benefits for the year
- a payroll bureau managing an outsourced company payroll
- a bookkeeper maintaining records of money coming in and out of a company and preparing end of year returns
- an accountant giving advice on gift aid to a charity on a pro bono basis
- an advice worker at a charity helping a client with an inheritance tax return
- a family member helping their parents with a tax return
- an insolvency practitioner advising a client on tax liabilities as part of a formal insolvency procedure
- a financial adviser providing advice on long-term estate planning including setting up a trust
- A VAT representative acting on behalf of a person who outside of the UK who is selling goods via the internet into the UK
- A family office advising on wealth and investment management for a high net worth family, including the tax implications of any recommended actions
- A promoter of a tax avoidance scheme

Annexe D: Glossary

Employment agency

The term employment agency refers to an employment intermediary which typically sources work for an individual via a third party. The individual may be engaged in a contract with the third party or with the employment agency.

Employment intermediaries

The term employment intermediaries includes employment agencies or umbrella companies. An employment intermediary is any person who makes arrangements for an individual to work for a third party or pay for work done for a third party. An employment intermediary may also be an enabler, where they have facilitated a tax avoidance scheme, but the majority of these businesses perform legitimate functions.

Enabler

An enabler of a mass-marketed tax avoidance scheme is broadly defined as anyone who plays a part in designing, marketing, managing or financing the scheme. They are often a link in the chain between the promoter and taxpayer.

Excess

An amount of money the insured has to pay to the insurer in the event of a claim. This is agreed when the insurance is taken out.

Principal

This is usually the person or persons controlling a business, for example, a sole trader, partners in a partnership and directors in a limited company.

Promoter

A promoter of a mass-marketed tax avoidance scheme is someone who designs or markets the tax avoidance scheme or is responsible for its organisation. Promoters may use a network of enablers to sell their schemes.

RTI

RTI refers to Real Time Information. Under RTI, information about tax and other deductions under the PAYE system is transmitted to HMRC by the employer every time an employee is paid.

Run-off cover

This is insurance for claims made against a firm after it has stopped doing business. It means that clients can still be compensated even though the firm has closed, and the former principals of the firm will not be personally liable in the event of a claim.

Umbrella company

An umbrella company, while also an employment intermediary, does not source work and typically will enter into a contract with an employment agency who will source work from end clients. The umbrella company will have a contract of service, i.e. an employment contract, with the contractor.