



## RAISING STANDARDS IN THE TAX ADVICE MARKET - CALL FOR EVIDENCE

Issued 10 July 2020

ICAEW welcomes the opportunity to respond to the **Raising standards in the tax advice market: call for evidence** published by HMRC on 19 March 2020.

This response of 10 July 2020 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

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## INTRODUCTION

1. Set out below is ICAEW's response to the **Call for Evidence** published by HMRC on 19 March 2020.
2. Set out in the paragraphs below are our General Comments on the Call for Evidence. Our responses to the specific questions posed in the consultation document are set out in Annex 1. We have set out in Annex 2 a summary of how ICAEW upholds standards in tax and this is discussed further in paragraphs 10 to 15 below.

## GENERAL COMMENTS

### Previous consultation exercises

3. There have been a number of consultation exercises undertaken in this area in the past to which ICAEW has responded. In 2013, by way of example, we submitted a comprehensive representation (**TAXREP 32/13: Reliance on ICAEW firms undertaking tax work**) as to why HMRC should place greater reliance on the work of Chartered Accountants undertaking tax work. This submission built on several consultations by HMRC on tax agent strategy in 2009, 2010 and 2011 to which we responded as TAXREPs **48/09**, **11/10** and **52/11** respectively.

### Scope of this call for evidence

4. The Call for Evidence published on 19 March 2020 asks for evidence and suggestions about how to raise and maintain high standards of competence and behaviour in the tax advice market in order to protect consumers and improve compliance. It is aimed at anyone who provides or receives tax advice. The potential list of providers of tax services and advisers is wide and includes the following:
  - accountants (ICAEW note - accountant is not a protected title and the term does not differentiate between professional accountants and others);
  - tax agents (ICAEW note – similar considerations apply to the comment above on accountants);
  - legal professionals;
  - payroll professionals;
  - bookkeepers;
  - insolvency practitioners;
  - financial advisers;
  - charities and other voluntary organisations that help people with their tax affairs;
  - software providers;
  - employment agencies;
  - umbrella companies and other intermediaries which arrange for the provision of workers to those who pay for their services, and end engagers of labour; and
  - family and friends.

## The diversity of the tax services market

5. The above is an attempt at a comprehensive list of those who may provide tax advice and services and it emphasises the wide diversity of the tax market. This is only to be expected given the broadly based scope of the tax system that covers the complete spectrum of economic activity. The result is that the tax advice market does not exist as a single homogenous entity.
6. Being a very diverse market where standards and areas of concern vary, it follows, and the Call for Evidence recognises, that there is unlikely to be a 'one size fits all' solution to raising standards in the tax advice market. In reality the market consists of a number of segments, some of which overlap although others are largely self-contained.
7. To consider raising standards we need to consider these individual segments, the problems within them and what can be done to raise standards. The genesis for the Call for Evidence was particular concerns about one segment of the tax services market that does need to be addressed, namely the activities of unscrupulous promoters. However, it also needs to be recognised that, taken as whole, the tax services market works reasonably well and tax agents have a positive effect on improving compliance.

## Areas of concern with the tax system

8. The Call for Evidence is a response to the concerns highlighted in Sir Amyas Morse's report on the contractor loan charge published on 20 December 2019. However, the Call for Evidence is rather wider in scope than the focus of the Morse report. From an ICAEW perspective there are, broadly, three segments of the tax services market that should be considered:
  - A The standards and behaviours demonstrated by ICAEW (and fellow PCRT body) members (the "affiliated")
  - B The behaviours of the promoters of schemes identified as in the Morse report..
  - C The standards and behaviours demonstrated by tax agents and advisers who are not members of an affiliated body (the "unaffiliated").
9. Each of these require separate consideration and potential actions, which we have set out in the paragraphs below. We should recognise that the market will also include tax agents and advisers who are members of a professional body that is not a signatory to the Professional Conduct in Relation taxation (PCRT) code, and that there are also some bodies that have adopted it unilaterally.

### **A The standards and behaviours demonstrated by ICAEW (and fellow PCRT) members**

10. Set out below are comments in relation to ICAEW members. In addition to ICAEW's own detailed ethical codes and rules, it subscribes to the PCRT, a pan-professional code of conduct to which seven bodies subscribe. The codes and standards of the other six bodies that also subscribe to the PCRT will be somewhat different to those of the ICAEW as set out in Annex 2. However, we believe that the PCRT sets out a clear pan-industry standard in tax that supports high ethical and standards and that the PCRT bodies as a group should be clearly distinguished from those who do not subscribe to it.

## **Role of ICAEW members in tax services**

11. The majority of work of Chartered Accountants will be in acting as tax agents and advisers to clients in the areas of business and personal tax. ICAEW's response to the consultation will therefore focus on these segments of the tax market, with the main taxes being income tax and NICs, corporation tax and VAT.
12. Within these segments of the tax advice market, we have been told by HMRC in the past that about 70% of tax agents by number are affiliated to a professional body, although we do not have statistics as to which professional body they belong. The 70% segment will range in terms of size of firm from the 'Big 6' firms through to sole practitioners. Looked at in terms of value, the relative size of the unaffiliated market is likely to be much smaller than the 30% headline figure, although we do not know by how much.

## **Upholding ICAEW's standards**

13. ICAEW has a Royal Charter obligation and public interest responsibility to promote high ethical and technical standards among members, thereby promoting public confidence in ICAEW Chartered Accountants and allowing members to use and be known by that designation. In order to practice ICAEW members have to satisfy high professional standards to become a member and then maintain those standards in their daily work. Annex 2 summarises how ICAEW's regulatory rules and oversight of members and firms help to uphold high standards.
14. We recognise that some problems will arise from time to time with the quality of work performed by ICAEW members. While such cases should be rare, ICAEW has a public interest in maintaining high standards at all times and ensuring that the public and HMRC have confidence in our members' work. Where problems are identified in the work of our members, we are committed to working with stakeholders, including HMRC, to resolve them. We are happy to work with HMRC to identify how any problems can be addressed within the existing frameworks of the ICAEW Code of Ethics and regulations.
15. ICAEW members should always operate within our professional rules and codes of conduct which includes the PCRT. Where the behaviour of an ICAEW member falls below expected standards, including for example ethical matters and technical competence, then a referral can be made to the ICAEW's regulatory team for investigation and possible institution of disciplinary proceedings.
16. In cases of misconduct, HMRC may make a disclosure to a relevant professional body under the so-called 'section 20 CRCA 2005 gateway', which allows a public interest disclosure in cases of misconduct. In practice, there are relatively few referrals made under this section, which is what we would expect given that most members should be abiding by our ethical code. However, HMRC does have a regular dialogue with ICAEW's regulatory team to discuss areas of concern which we believe is helpful to both HMRC and ICAEW - more use could be made of this dialogue to help raise standards.

## **B The behaviours of the promoters of schemes identified in the Morse report**

17. The concerns that were highlighted in the Morse report relate to a very small segment of the overall market in tax services but which nevertheless inflicts serious damage on tax revenues and the integrity and reputation of the UK tax system.

18. Specifically, the Morse report highlights a number of identifying features in this sector of the market which are not found elsewhere, including:
- suspect sales tactics – including the misuse of DOTAS numbers as if they signify HMRC-approved schemes – so that people are misled into using the schemes;
  - schemes supported by opinions from QCs saying that they are effective;
  - advisers minimising the importance of HMRC opening enquiries by suggesting that this is normal;
  - promoters, salespersons, and others who continued to push the schemes covered by the report after December 2010, typically without making the changed legal position clear; and
  - promoters who took considerable fees whilst convincing others to use schemes that they would have known were very unlikely to work.
19. The Review concluded that it was deeply regrettable that the state of the market in tax advice is such that a large number of people were seemingly misled, and many continued to use schemes after 2010 even though the legal position (i.e. the scheme's ineffectiveness) had been made clear. We agree, and have flagged for some years our concern that this sector of the market is a serious threat which undermines the UK tax services market. However, although HMRC has taken action to try and address these concerns, the promoters behind this activity appear to be continuing, although we believe that most of their activity now takes place 'under the radar'. For example, as at March 2020, HMRC's Spotlight No 54 highlighted that some promoters are continuing to provide such schemes, the latest example being the targeting NHS staff returning to help fight the coronavirus, and this has been confirmed by reports from some members.
20. It would appear that the focus of concern remains around the abuse of employee remuneration arrangements where the major part of the remuneration is received in some way which is meant to avoid income tax and NICs. Given the various changes that have been made to put the tax treatment of such payments beyond doubt, most of these schemes appear at best highly abusive and at worst are likely to be fraudulent, given that the arrangements often appear to assert that they are something other than what they really are.
21. In addition to the above features, members report that the promoters of such schemes operate from outside the UK and are usually structured in such a way that they are not subject to oversight by any regulatory or professional body. These promoters usually specifically include disclaimers in their written material and seek to take no responsibility or duty of care to give any advice.
22. It is difficult to identify a satisfactory way of tackling these activities other than choking off demand for them. In our view, those who are operating in this segment of the market are doing so completely outside of any of the rules and standards of behaviour that society has a right to expect. Most providers of tax services, affiliated or otherwise, find this utterly unacceptable. These operators are not part of the tax advice market and would almost certainly fall foul of the professional rules and behaviours of a body such as ICAEW or one of the other professional bodies that subscribe to the PCRT, were they members of such bodies.
23. On 24 April 2020 HMRC published a research report [Understanding the evolving role of tax advisers and agents in the avoidance marketplace](#) which provides some useful

information on the current state of the market for tax avoidance and which identified that the market is driven by a core of promoters.

24. The HMRC report also highlights that the promoters are supported by another, potentially larger, segment of the market that needs to be addressed, namely 'active facilitators', whose features are described as:
  - working in small 'boutiques' focused on avoidance schemes;
  - seen to have broad knowledge of the market but specialise in specific products; and
  - attracted by financial rewards but also the intellectual challenge of staying ahead of HMRC.
25. Such boutiques will also include disclaimers about providing tax advice.
26. The features set out above are also not ones that we would expect from a tax adviser affiliated to a professional body. However, we recognise that some affiliated firms have, and may still be, effectively acting as intermediaries in the promotion of avoidance arrangements, usually rewarded on the basis of a commission. As such, they may be acting as active facilitators.
27. Taken together these two groups, namely promoters and active facilitators, represent a small part of the overall tax advice market but they represent a major risk in terms of lost tax and unacceptable behaviours. Both groups need to be addressed.
28. HMRC and the professional bodies have a shared interest in driving this type of unacceptable behaviour out of the tax advice market. Given that most of those involved in this sort of activity are not members of a PCRT body and operate below the radar, we do not have evidence highlighting the actual and emerging threats posed by this sector of the market.
29. Although we believe that neither of these activities should be being undertaken by an affiliated adviser, we are happy to work with HMRC to try and eliminate any such occasions if they arise. HMRC will have far better access to data and intelligence about the scale and nature of the problems and we would like to work with HMRC to identify ways of sharing it so we can play our part in supporting HMRC to find solutions. In order to address the problems in this sector, consideration should be given to both the supply and the demand side.

### **The supply side - tackling promoters and facilitators**

30. On 23 March 2020, HMRC published a policy paper *Tackling promoters of mass-marketed tax avoidance schemes*, which sets out further measures to address the role of promoters involved in abusive tax avoidance. The UK has already taken extensive powers to tackle promoters of such arrangements, and we believe that these work effectively in discouraging most potential promoters from engaging in this type of activity. However, although it appears that many promoters have now exited the market, there are clearly a number who are still active. As we understand that most of them are now operating offshore and not subject to any oversight, this will make it much harder to tackle them.
31. It appears that the small group of promoters highlighted in the Morse report do not appear to be deterred by any of the measures the UK has introduced and they routinely ignore or sidestep the rules, for example by closing down and restarting operations in a new trading vehicle. Again, their activities highlight the fact that they are not providing tax services but just seeking to exploit taxpayers for their own financial



gain. Clearly, they do not consider that the UK tax rules that are designed to address such behaviours are a sufficient deterrent. Their activity and approach suggest that unless they believe that there is a high chance they will be caught and punished, they will continue to engage in this type of activity. They are not providing tax advice or services but just exploiting taxpayers and they require a much tougher deterrent. Given the features that have been highlighted earlier, we suggest that the following areas of concern need to be addressed.

32. **Intelligence sharing.** There should be a review of how the sharing of data and intelligence on this sector can be improved between HMRC and the professional bodies. The review should include whether the existing statutory provisions are sufficient, how confidentiality will be maintained and what actions will be taken where data is shared.
33. **Misuse of umbrella schemes.** We believe that most bona fide operators of umbrella companies operate the tax rules correctly and provide a valuable service to taxpayers and also to HMRC by improving tax compliance. However, it appears that some umbrella companies are not doing so and, again, such behaviours are completely outside those expected of reputable and responsible service providers. Data and concerns about behaviours need to be shared and the professional bodies need to work with HMRC on identifying permanent solutions.
34. **Health warnings.** HMRC highlights known activity through its spotlight series but we would like to explore with HMRC what more we can do as a professional body to highlight the dangers of this activity to our members and, more widely, the general public and potential consumers. One difficulty is that the spotlight items tend to be generic rather than specific and scheme promoters/facilitators can simply say the spotlight is aimed at something else and not them. ICAEW can publicise the spotlights but, if practitioners have not seen HMRC's spotlight, they are likely to miss the ICAEW reference. Even then, the real problem is getting the message through to the potential users of such schemes, especially where their agent simply provides a tax return service.
35. **Naming promoters and facilitators.** Many of the promoters and facilitators appear to be operating below the radar and agents are unlikely to be aware of who they are. Given the activities involved are clearly abusive and high-risk for taxpayers, we believe there is a public interest case that HMRC should have the power to publish the names of such promoters and facilitators. However, whether it would be effective would need further consideration: experience in the contractor loan scheme area suggests that the name of the scheme and the entity is usually a front for particular individuals and they are often changed to try and cover their tracks.
36. **Misusing barristers' opinions.** Obtaining legal advice on the law is clearly an essential right and barristers' opinions on the law and its application are an important element of good tax compliance. However, it does appear, that in the circumstances highlighted above, such opinions may be being misused (for example, by quoting from it selectively) as a marketing tool by promoters or facilitators to pressurise the ordinarily compliant tax agents into allowing their clients to participate in such schemes. HMRC should discuss with the Bar Standards Board what practical steps can be taken to prevent such misuse. We are concerned about whether Legal Professional Privilege (LPP) is used to frustrate full disclosure about clearly abusive tax schemes and arrangements when there is an overriding public interest that proper disclosure should be made. However, LPP is an important legal right and we do not want to see it watered down or breached more generally, so it would have to be specifically targeted and with suitable safeguards in place, eg, review by a Tribunal. In addition, any

solutions developed should also seek to remove inconsistencies which impact the consumer, such as LPP being dependent on who has given the advice rather than the nature of the advice.

37. **Removing the threat of professional negligence.** A sales tactic used by promoters has been to tell tax agents that they could be professionally negligent if they do not advise their clients to enter into such schemes. Such a tactic is likely to be counter-productive given you can only be held to be professionally negligent if you fall short of the standard of care of the reasonably competent professional. We will undertake a review of our guidance in this area in order to emphasise to members that putting clients into such schemes is far more likely to be regarded as negligent.
38. **Taking action against those who are members of a professional body.** The activities highlighted should not be being undertaken by a member of a PCRT body and would be a prima facie case of potential misconduct. In these types of cases we would encourage reports to be made to the professional bodies for appropriate follow up and review, either by those who might have been put into such schemes or by HMRC.
39. **Tackling offshore promoters.** This is a more difficult problem to tackle and in the international arena HMRC should work more closely with HM Treasury and the Foreign Office to put pressure on foreign jurisdictions that allow such activity to stop it. The UK's dependent territories should not provide a haven from which unscrupulous promoters and facilitators can continue their activities. We would be happy to publicise to members the hazards of dealing with such jurisdictions when involved in what are marketed as tax saving measures, and what further we could do to help put pressure on jurisdictions to stop this type of activity from taking place. The UK should also work with internet providers and other jurisdictions about how offshore related activity can be monitored and addressed. We believe that there are precedents and models that could be used, for example in the area of monitoring offshore gaming and gambling.
40. **Tackling non-compliance with the anti-money laundering (AML) rules.** We believe that many of the activities highlighted above will also have failed to comply with anti-money laundering rules. As an AML supervisor of last resort, HMRC should by now have a growing evidence base and experience about the AML behaviours in this sector. HMRC should work with OPBAS and other AML supervisors to identify what more can be done to improve AML compliance and standards.

#### **The demand side – choking off the appetite for such schemes**

41. The fact that this segment of the market exists suggests that there is a continued demand for such schemes. It seems clear that the appetite for taxpayers to enter into such schemes continues, as highlighted by the recent Spotlight 54. The Morse Report also suggests that demand in the market has moved from the high net worth market to larger numbers of less well paid workers. Steps need to be taken to address the demand side, which need to include improved education and support.
42. **The public sector needs to play its part.** Greater efforts need to be made to prevent demand arising through the public sector. Spotlight 54 highlights a problem with returning NHS workers which should be stopped at source rather than down the line by HMRC. The Government should intervene to outlaw the use of such arrangements and ensure that the public sector helps put a stop to this sort of behaviour.
43. **Improved taxpayer education.** HMRC could do more to publicise areas of concern about schemes and to discourage taxpayers from entering into such schemes, highlighting the risks of such schemes and what action HMRC is likely to take against



taxpayers. HMRC could also do more to encourage taxpayers to use a reputable tax adviser and explain how reputable advisers can be distinguished from those who are not.

44. **Improved agent education and support.** HMRC could work more closely with the PCRT bodies to ensure that tax agents have much better, and timelier, information about the types of aggressive schemes on the market, and who is promoting them.

**C The standards and behaviours exhibited by tax agents and advisers who are not members of a professional body (the unaffiliated)**

45. This is a more difficult area to raise standards as it is not under the oversight of a professional body. However, we would expect that HMRC ought to have some data about this segment of the market given that many unaffiliated agents will need to be registered with HMRC for AML purposes. As mentioned above, HMRC has indicated previously that about 30% of agents are not affiliated to a professional body, but we suspect that in terms of value the percentage is far smaller than this. HMRC has also indicated previously that, based on some emerging data about agent performance, the 30% segment appeared to give rise to about 70% of the problems that are seen by HMRC. If this statistic is supported by robust evidence, the proportion of problems caused by agents by reference to the tax take in that segment of the market will be much higher. Put another way, if the relative size of the unaffiliated market is much smaller than the headline figure, then the problems in that sector will be proportionately much higher.
46. However, the headline figures aside, we understand that HMRC had some data which shows that compliance improves if the taxpayer has an agent. In principle, therefore, the role played by unaffiliated agents should be a useful one. More generally, the majority of unaffiliated agents will be trying to do a good job, both in respect of serving their clients' needs effectively and also supporting tax compliance. Before any decisions are taken about the unaffiliated market, HMRC needs to develop a better understanding of the risks presented by this sector of the tax agent market. Otherwise, there is a danger that driving unaffiliated agents out of the market could result in their clients doing their own tax, with the result that tax compliance might fall and the tax gap increase.
47. HMRC needs to improve its risk analysis of the tax agent market and, in particular, undertake better monitoring of agent performance in the unaffiliated segment. HMRC should invest in improving its data management of the tax agent market which should include the ability to link agents with taxpayers. As an example, we understand that HMRC can see the agent for each client, but not a list of clients by agent. This type of data would be critical to understanding the scope of any problems and help communication where agents are identified as not adhering to the standards. Better data will provide greater confidence about the level of risk in this sector. If the data shows that the risks are too high, then they will need to be managed, which may involve the need for further interventions.

**Specific areas of concern about potential abuse of the tax system**

48. We have highlighted above three specific segments of the tax advice market, but there are some activities in the area of tax advice and related services which appear to be much higher risk and which could be found in all three segments of the tax market highlighted above. Employment remuneration schemes are not the only areas where the tax system has been subject to abusive activity. In the past, we have seen abusive tax schemes including the exploitation of film tax reliefs and trading losses to name but

two. HMRC has taken action consistently to address these schemes as they have been identified.

49. Particular areas highlighted where abuse may still be occurring include the following: capital allowances; R & D claims, high volume repayment agents offering to obtain a tax refund and stamp duty land tax. These are all areas where traditional tax agents (both affiliated and unaffiliated) will be providing advice but, in addition, there are many boutique operators in these areas. The fact that there are boutiques operating in these sectors is partly a reflection of the specialist skills (and software and systems etc) required and not necessarily indicative of a wider problem: indeed there are many reputable and highly regarded specialists in all these fields. Nevertheless, on 14 February 2020 the NAO highlighted concerns about the tax risks in the R & D sector in its report *The management of tax expenditures*. In addition, some ICAEW members have also expressed some concerns about the activities of some supposed R & D reclaim specialists who, it would seem, could also be included in the category of unscrupulous promoters who we have highlighted earlier. A typical comment we received was that “R & D claims are the next scandal waiting to happen”. Again, it would appear that the unscrupulous promoters of these services do not belong to a PCRT body. A further problem that needs to be considered is that boutique firms who prepare R&D reports may not be the advisers that actually file the returns with HMRC. This is a position that might often apply where specialist advice is obtained. Consideration needs to be given as to how appropriate action can be taken against such an adviser who does not meet the expected standards.
50. The PCRT bodies have recently finalised guidance aimed at trying to support improved standards in the R & D sector but, as noted above, it appears that much of the problematic activity is undertaken by a minority of unaffiliated advisers and they are unlikely to read it. However, we need to also ensure that the work of reputable advisers in this area is recognised and supported and not tarred by the brush of the minority who are flouting the rules.
51. HMRC should work closely with the PCRT bodies to ensure that areas of high risk are identified and counter measures deployed as quickly as possible. We would be happy to consider whether further guidance on high risk areas might be needed, but there is always a risk that it will not be read by the problem agents. Other possible approaches might be to mandate that certain activities identified as higher risk have to be undertaken by affiliated agents or by unaffiliated agents only if they agreed to meet certain conditions which could include, for example, compulsory professional indemnity insurance (PII) and agreement to submit to a regular external review of their practice. However, the first step is to obtain better data on the relative performance and risks of these sectors.

### **Addressing areas of concern and raising standards**

52. Our conclusion, therefore, is that the tax advice market needs to be segmented as above and the particular problem areas in those segments highlighted and addressed. Clearly, the behaviours of the promoters and facilitators highlighted in the Morse Report need to be addressed. As a professional body, we would like to work with HMRC to address them where they are within our area of oversight and, more generally, work with HMRC to help raise standards where this need is identified and to ensure that taxpayers know what they are buying.
53. Subject to tackling the abusive schemes and the unscrupulous promoters referred to above, we are not convinced on the evidence we have seen that the rest of the tax market is in need of fundamental overhaul, especially in the light of the upheaval and

damage to businesses and the tax system that has been caused by COVID-19. This suggests that we should adopt a more incremental approach based around Option E which builds on the strengths of the professional bodies' expertise in oversight and regulation and their long history of working with HMRC to help identify and address threats to the tax system.

### **Rethinking how we work together post COVID-19**

54. Post COVID-19, we believe that there is an opportunity to rethink how we as a tax profession work with HMRC to identify and resolve problems in the tax system. HMRC has worked closely and very successfully with the professional bodies to address the problems caused by the COVID-19 crisis in ways that would have been difficult to imagine even a few months ago. We think that there is an opportunity to embed this approach and use it more widely to address other areas of concern in the tax system. This may require more investment in virtual systems which allow for closer working and a commitment to addressing problems, for example the activities of the promoters mentioned earlier, much more quickly.

### **Develop proposals around Option E**

55. Accordingly, of the Options in the Call for Evidence, the most straightforward and cost effective approach would be to develop thinking based around Option E but including some of the suggestions and approaches mentioned in Options A to D. We suggest a targeted approach based on the tax profession working more closely with HMRC to identify and remove behaviours that threaten the tax system, for example helping HMRC where we can to tackle those who are abusing the UK tax system. This type of activity needs to be disrupted and the marketing needs to be closed down.
56. More generally, we believe that there is also scope for HMRC and the profession to work much more closely to address systemic areas of risk and poor behaviours and practices by our members. We have a shared interest in raising standards where they fall short and where specific areas of concern and risk have been identified. We would be happy to work with HMRC to develop a joint agenda based on raising standards (and in which HMRC need to play their part) among the PCRT professional bodies. These discussions should include the regulatory teams in the professional bodies and further consideration should be given to whether the existing 's 20 gateway' referred to above would benefit from a review.
57. It is also important that we explore with HMRC how the good work of members of professional bodies in improving compliance is given appropriate recognition. As part of this, we should also recognise that the best way to drive improvement is to help support our members in their work and not be seen as a threat – in short adopting a positive and constructive approach that helps them to provide a better service and which helps to differentiate the work of professionally qualified tax agents from those who are not. To do this, HMRC needs to improve its risk analysis and invest in better quality data management systems. If this could be achieved, the information should help HMRC target its scarce resources towards addressing the known areas of higher risk, and should help to raise standards in the unaffiliated market – see below.
58. As part of developing this approach, and as mentioned earlier, some of the earlier Options A to D in the Call for Evidence have elements that could be included, eg, better education of what taxpayers should expect and look for when they choose a tax agent.

59. This closer working could then be reviewed on a regular basis to see if it has been effective in addressing the problem areas and in raising standards.

### **Raising standards in the unaffiliated tax market**

60. HMRC needs to consider how standards can be raised in the unaffiliated market. It also needs to be recognised that if we work to improve standards in the affiliated sector then, unless standards are raised in the unaffiliated sector, this might drive potentially non-compliant activity either towards them or out of using an agent altogether. We are happy to help consider how standards can be raised in the unaffiliated market but, as noted earlier, the first step must be for HMRC to improve the data it has on the performance of this sector. Without good data, it is difficult to identify the problems to be addressed let alone possible solutions. We have set out in the paragraphs below possible options that might be considered.
61. **Compulsory professional indemnity insurance (PII).** Anybody providing tax services for reward must take out PII which must meet certain minimum standards which are on a par with those found in the rules of the professional bodies.
62. **Strengthening HMRC's Standard for Agents.** Introduce penalties for breaches, but with an exemption for members of a PCRT body. The exemption could be based on the existing statement on compliance with the PCRT found in the [guidance on penalties for enablers](#) which was published on 30 April 2018, but put on a statutory footing.
63. **A requirement to undertake practice reviews.** Unaffiliated firms could be required to submit to a regular external practice review which could help practices improve by identifying areas of weakness and suggest improvements. The review should be independent of HMRC but could build on, or replace, existing AML compliance checks. However, there is a danger that it could focus on (likely compliant) UK advisers rather than offshore advisers. Consideration would need to be given as to how offshore advisers can be brought onshore which would require a legislative solution.
64. **The need for affiliation in higher risk areas.** Consideration could be given to a requirement that certain high risk areas of the tax system, such as those highlighted earlier, can be undertaken only by a person or firm which is affiliated to an approved body, for example a PCRT signatory. This requirement could then be extended more widely if the data shows that services provided by the non-affiliated is of sufficiently higher risk that such an action was justified in the public interest.

## ICAEW RESPONSES TO THE QUESTIONS POSED IN THE CONSULTATION DOCUMENT

### 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?*

The **Standard** is based upon three of the standards that are set out in the **PCRT**, albeit without the accompanying supporting text and also the wider duties on members set out in our Code of Ethics that professional bodies such as ICAEW require. Given that ICAEW and other professional bodies' codes go far wider than the Standard for Agents, our conclusion is that this is not comprehensive enough to provide a baseline standard.

In addition to the question as to whether the Standard is sufficiently comprehensive to provide a baseline standard, the next question would logically be: is it effective in addressing poor behaviours by agents, in other words is it 'enforceable?' In our view, the Standard would be enforceable at the professional body level under the PCRT but it difficult to see that it is enforceable in the unaffiliated sector.

### Questions about the tax advice and services market

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

We are not convinced that a clear distinction between tax advice and tax services can be made and, even if it can, whether it should influence policy decisions. Chapter 3 of the Call for Evidence highlights that the tax services market is diverse and we agree with the conclusion in para 35 that there is unlikely to be a 'one-size-fits-all solution' and that any decisions do not impact on the majority of tax advisers who already provide high standards of service. If a clear distinction is drawn between them and different policy approaches taken to these segments, this could open up opportunities for arbitrage and encourage the sorts of poor behaviours that this consultation seeks to address.

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

ICAEW expects all members to follow our ethical rules and standards without distinction between the types of services provided. This approach is confirmed in the PCRT which applies to all members who practise in tax including:

- employees attending to the tax affairs of their employer or of a client;
- those dealing with the tax affairs of themselves or others such as family, friends, charities, etc, whether or not for payment;
- those working in HMRC or other public sector bodies or government departments; and
- members working overseas.

It is often possible to draw a distinction between tax compliance services, for example completing a tax return based upon historic information for a period now ended, and tax advice which is given about the tax effect of prospective actions which have not yet occurred or been completed. However, even then, it may not be entirely clear where one activity ends



and the other starts. Tax compliance services will usually be considered lower risk and less technically challenging than providing tax advice, but this may not always be the case.

The good practice advice for a member of a professional body is to ensure that in their engagement letters with clients, a member is clear about what services they are providing and to whom. In ICAEW's guidance on engagement letters, the approach adopted is to separate out specific services into separate schedules that accompany the engagement letters so, for example, personal tax services are stated to be recurring tax compliance work and exclude all other tax advisory services unless agreed and which if provided should be included in a separate schedule. This approach is both sensible risk management and also helps members to stay within their areas of competence – a key professional responsibility.

In addition, professional indemnity insurance (PII) considerations are likely to be relevant and are also impacting on the nature of tax services provided. PII is compulsory for all ICAEW members who have a practising certificate and engage in public practice. In recent years PII insurers have become increasingly concerned about the higher risks presented by tax advice and particularly if the service provider has any involvement in tax schemes. Where tax advice is provided in addition to tax compliance services, PII insurers are now likely to request detailed information about the nature of the services provided and, if those services involve potentially higher risks, then the insurer may charge substantially higher PII premiums or cover may be refused. This development is impacting upon the tax advice market and is discouraging high risk and/or aggressive tax planning.

**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?***

ICAEW has 12,000 registered member firms, many of which will be providing tax services.

**Questions about good advisers**

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

Given that good advisers improve tax compliance and help make the tax system work, we believe that more could be done to promote the work of good advisers, for example through a 'Kitemark' for recognised tax agents. It would appear that many taxpayers assume that all those who provide tax services are professionally qualified, when the reality is they may not be. The Government could do more to help ensure that:

- taxpayers are aware that the tax advice market is a diverse one;
- that not all agents are professionally qualified; and
- explain what taxpayers should look out for when they use a tax agent.

HMRC's website used to have a page on how to use an accountant (sic) but the page was removed some years ago. Although the page is now hosted on the CCAB website, there is little visibility of it in the market. ICAEW would be happy to work more closely with Government on promoting the work of professional advisers such as ICAEW members.

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

Good agents have a vital public interest role to play. They help improve tax compliance by ensuring that taxpayers are well advised on tax law, ensuring that they claim only those reliefs to which they are entitled and that they pay the right amount of tax at the right time. They therefore add value for taxpayers and reduce costs for HMRC both in terms of reducing the tax gap and taking the burden off them of the need to help all taxpayers. A good agent will also help clients to claim tax reliefs to which they are properly entitled and which Parliament has specifically granted, thereby supporting the wider economy.

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

Characteristics of a good adviser will include the following attributes.

- Member of a professional body such as ICAEW and works within a code of ethics as supplemented by the standards and principles in the PCRT.
- Works within his or her area of competence.
- Supports taxpayers to try and meet their obligations to file returns and pay taxes in a timely manner, ie, pay the right amount of tax at the right time, recognising that this is ultimately the taxpayers' responsibility so this may not always be possible.
- Supports the taxpayer in ensuring that they make correct and complete disclosure.
- Takes a responsible approach to tax planning based on sound ethical principles so that the taxpayer is able to access tax reliefs made available by Parliament, and that tax planning arrangements entered into are reasonable and which comply with the Standards for tax planning set out in the PCRT.
- Exercises sound judgement in accordance with professional standards and principles.

Characteristics of a bad adviser will include some or all of the following.

- Lack of technical knowledge and competence and not abiding by professional standards.
- Cavalier approach to the tax system rules.
- Happy to put a taxpayer into high risk or inappropriate arrangements.
- Is not transparent about any arrangements, risks and how the adviser might be paid, eg, commissions.
- Refuses to take any responsibility when things go wrong.
- Has no PII cover.
- Always does what the client wants.
- Readily agrees to the client adopting an unacceptable tax position.

### **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.***

There are a number of areas of the tax advice market where there have been problems, some of the most pressing clearly being in the employment/contractor loans area. Some areas of concern have been addressed in recent years, for example film schemes. Some of the other areas where there appear to be particular concerns include:

- Mass marketed tax avoidance schemes – while we understand that these are much reduced than in past years, it appears that some promoters are still persisting with them, usually apparently ‘boutique’ tax advisers (although whether they are bona fide tax advisers looks highly unlikely).
- R & D credit claims – there has been much member concern that this is the next tax scandal waiting to happen, although we are pleased to note that there are many reputable advisers in this area including many ICAEW members. We note that, in a report of 14 February 2020, the NAO expressed concern about this segment of the market. The PCRT bodies have published a ‘good practice’ guide on R & D claims, but we doubt that unscrupulous R & D advisers will take any notice of it. We are aware that HMRC is well aware of concerns in this area and that it is taking steps to address them.
- Similar concerns to those about R & D advisers are sometimes raised in respect of capital allowances claims for plant and machinery, but we have no specific recent evidence that this is an area of concern at the current time. Again, we need to recognise that there are many reputable specialist advisers in this area.
- The activities of some high volume tax repayment agents.
- Schemes to reduce or reclaim stamp duty land tax.

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

Unqualified agents who do not meet standards undermine tax compliance and increase the tax gap. More generally, they can undermine the integrity of the tax system and damage the reputation of good advisers, both in the eyes of taxpayers who want a good service and with HMRC who want them to pay the right amount of tax. Members do sometimes report to us that they have taken over clients who were badly advised by a previous adviser and that they then had to spend a considerable amount of time trying to sort out their client’s affairs. While this usually relates to work by unqualified advisers, it is not always the case.

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

HMRC and the professional bodies could work more closely together to identify poor practices. It will require regular communication and a level of trust between HMRC and the professional bodies. We would be concerned to ensure that this approach would raise standards in a way that members would find positive and helpful – namely an approach based on providing timely support where it is needed rather than a penalty based approach. It would also raise a question from members – what happens when poor practices are identified in the work undertaken by HMRC? If there is to be trust in such an approach it can’t all be one way.

We would encourage HMRC to work with us to improve communications and updates about areas of concern and possible ways in which they could be addressed. We would be happy

to reconsider whether the existing 's 20 gateway', which allows HMRC to make referrals about potential misconduct to a professional body, needs amendment.

A scheme, agreed between the Inland Revenue (IR) and ICAEW and other professional bodies, was announced in Spring Budget 2000. If a firm made persistent errors in their clients' tax returns and the problems could not be resolved by direct discussion between IR and the firm, then the IR could report the firm to a nominated professional body 'support member': this report would be on a confidential basis and provide an opportunity for the support member to approach the firm and see if they needed help. However, no reports were made to ICAEW's nominated support member. If there are such concerns currently, we would be happy to revisit such a scheme. The wider ICAEW Support Members Scheme continues to operate and further details about it can be found on [ICAEW's website](#). We would need to re-establish a separate tax scheme but it could be run on lines similar to the 2000 scheme.

Another option might be to establish joint training on areas which cause concern in practice and identifying ways that errors and mistakes etc, could be reduced. This could include detailed technical discussions about areas of the legislation which cause difficulty or where there is disagreement about its interpretation.

## 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?***

The feedback from members is that interventions involving follower and accelerated payments notices have been very successful in reducing the incidence of highly aggressive tax schemes. There now appears to be a relatively small group of such promoters but they appear difficult to address. We assume that HMRC is aware of who these promoters are but taking action against them appears to be difficult.

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

This is something we have raised in the past. It appears that, with the move away from the District structure to centralised offices and digitalisation, HMRC has lost the local knowledge that enabled the Department to identify problematic agents. As a matter of sensible risk management, HMRC should invest in IT that enables it to analyse data and intelligence on agent performance across their client base. Without such information, it is hard to make management decisions about where are the high risk areas where HMRC might prioritise interventions, thus enabling it to allocate its scarce resources to tackling the areas of highest risk.

It would be important to ensure that these systems provide suitable management information that enables better decision making and identification of those agents who present a higher risk. Any system would need to be designed carefully and should be used to support decision making rather than making the decisions itself. For example, some agents specialise in taking on enquiries and investigations, so the system design should not result in them being identified as poor agents when they are helping to improve compliance and bring taxpayers' affairs up to date. Over time, such a system may provide data that could, for example, enable HMRC to operate a more light touch approach on clients of agents with a good track record.

## 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?**

A taxpayer has to take ultimate responsibility for their tax affairs. Increasing consumer protection could have the effect of weakening that link but we have no evidence to indicate that it would and this is already the case in the affiliated sector where a taxpayer using a professionally qualified tax adviser has a strong element of consumer protection. Most taxpayers choosing a tax adviser will probably assume that they are members of a professional body and that they provide some protection, for example that they have appropriate PII cover. It is difficult to see that it would lead to major changes in behaviour as most taxpayers will probably assume that they have some protection as it is, but their main concern will be that they can have a high degree of assurance that they will not run into problems with HMRC.

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

The professional bodies provide a significant element of consumer protection in the market. However, they have no control over the approximately 30% of tax agents who are unaffiliated to a professional body. In overall value terms we would expect this segment of the market to be much lower than 30%. It would be helpful to have some better information on how the affiliated/unaffiliated segments of the various markets are divided, both by absolute numbers and by value. Ultimately, the primary role in improving consumer protection in the affiliated market should be the professional bodies. However, the professional bodies do not have control over the unaffiliated market, so the primary role for improving consumer protection in the unaffiliated segment of the market must be the responsibility of the government or a separate oversight body.

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

Many clients of our member firms will need extra support. Although they engage a paid agent (although some advisers might charge reduced fees), they would be classed as 'vulnerable' and would need extra support if they were to try to handle their own tax affairs. Examples of vulnerable clients include the digitally excluded, the elderly and the disabled. Agents are able to add considerable value to these vulnerable taxpayers, and HMRC would be faced with a significant extra burden if these taxpayers were not represented. More generally, ICAEW encourages its members to consider volunteering and many members help out taxpayers who need support, either as family and friends, through pro bono work and/or assisting charities and other not-for-profit bodies etc, which help citizens who might need assistance.

## 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?**



Market interventions should be on a proportionate risk-based approach based on evidence. Interventions should be properly targeted at the problem areas and not merely add further burdens and costs on the ordinarily compliant. We would encourage an approach based on risk assessment and encouraging the proper exercise of professional judgment rather than a tick box approach which may not give the right result.

**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?***

We do not believe that HMRC should have any role in regulating the tax profession. A regulator needs to be, and be seen to be, acting independently. Given that the collection and management of the tax system is vested in HMRC there would be a clear conflict of interest between these roles. Combining HMRC's role of managing the tax system with acting as regulator would bring unacceptable risks.

Providers of tax services need to comply with anti-money laundering regulations. As part of the tax agent strategy discussions between HMRC and the professional bodies, a few years ago HMRC collated a list of examples of poor behaviours by tax agents. However, most of the cases on the list appeared to involve breaches of money laundering rules by agents who were not affiliated. This suggested that there remain problems with compliance with AML rules in this segment of the market that might still need to be addressed.

Other parts of the tax profession are not under the oversight of the PCRT bodies, for example solicitors, are subject to oversight by the Solicitors Regulatory Authority.

**Question on international models**

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

There are various international examples of oversight, some of which are highlighted in the consultation document. From speaking to some professional bodies about their tax systems, they do not appear to be faced with the problems caused by unscrupulous promoters that we seem to see in the UK. More work is needed to understand why this is so as this may provide a key to addressing some of the problems – what is it about the UK tax system and supply and demand in the UK tax market that encourages such behaviours?

**Question about the future**

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

The growth of digital solutions, expert systems and artificial intelligence (AI). Much of the tax system, e.g. payroll, is already data led. This would suggest that, as well as improving current systems, more effort will need to centre on designing suitable standards for IT, cyber and security issues and embedding these into policy implementation at an early stage. It could also encourage the growth of intermediaries operating in ways that could damage the tax system unless subject to proper oversight.

**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?***

HMRC already has extensive powers to address poor behaviours but our perception is that it often appears to struggle to use them effectively. As noted already, there is a small group of unscrupulous promoters who are persistently abusing the tax system. They appear to behave as though they are above the law no matter what rules are introduced and we need to think collectively about how this segment of the market can be addressed. Possible approaches could involve a published blacklist of such promoters, serious breaches being subject to criminal rather than civil penalties, a direction to cease and desist, suspension from acting as a tax adviser and accessing HMRC's systems, etc.

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

HMRC has a wide ranging set of powers and we would expect that they should be reasonably effective in achieving their objectives. A general comment from members is that "HMRC has all the powers that they need, but they don't use them." It seems, however, that the powers are not effective enough to stop the activities of unscrupulous promoters highlighted earlier. We do not know whether this is because the powers are insufficient or that they are not being used.

**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?***

As a professional body, under our professional rules ICAEW members who practice in tax must have adequate PII cover in place and also submit to our regulatory and disciplinary rules which include a Practice Assurance scheme and the need to complete continuing professional development (CPD). These provide a strong system of redress. Advisers who are not affiliated may or may not carry PII. We would expect that many of them would carry PII but we do not know whether it is at the level appropriate to the risk profile of their firm. It may be worth undertaking a survey to establish the PII arrangements in the unaffiliated market.

More generally, compulsory PII could help drive behaviours and changes in the market for the better – for example higher premium levels have driven certain types of unacceptable tax behaviours out of the market, but whether this approach would work across the wider market is unclear. Who would police whether all advisers held appropriate PII and what would be the sanction against those who flout such a requirement? How would offshore advisers be brought within the scope of any PII rules?

Would introducing compulsory PII for all tax advisers raise standards generally? The answer is probably yes as unaffiliated advisers would be forced to tighten standards and procedures and exercise greater care in the advice they offered as otherwise their premiums could become prohibitive. Would such a measure address the problem promoters identified in the Morse report? Possibly not, given that their behaviours flout consistently those that are expected from professional tax advisers. However, compulsory PII would provide at least some potential for redress. How this would play out in the PII market and the premium levels is difficult to assess, and it might be worth HMRC gathering evidence from PII insurers about

its likely impact. The problem of how offshore advisers will be brought within such rules will also need to be addressed.

The suggestion of using an ombudsman approach is interesting but we do not think it would really add much in the way of consumer protection to those who use an affiliated adviser. How would the Ombudsman scheme be paid for? If any decisions they made related only to the unaffiliated market, then it would be wrong for any of the costs to be met by the affiliated sector of the market: that would mean the affiliated sector is paying twice for oversight. Any levy should apply only on the sector which is subject to the Ombudsman scheme.

### Question on Option C

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

Given some of the problem areas highlighted in the Call for Evidence, it would appear sensible and in the public interest to help consumers make better choices. This could include improved education and better materials, including articles in the national and trade press, to help taxpayers make informed choices.

Another possible approach is to look at a 'Kitemark' or some other distinguishing badge of quality. This could then be used to at least encourage taxpayers wishing to appoint an adviser to check whether they had the accreditation. Clearly, a number of conditions would need to be met to be given the approval and it would involve some expense, but it could be a relatively low cost way of establishing a readily understood benchmark of quality in the tax market.

We would be happy to discuss these options further with HMRC.

### 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?***

Penalties can already be levied on an adviser under the dishonest conduct rules, the enablers' rules and the promoters' regime. However, all of these penalty regimes are relatively new and to date we have no robust evidence of penalties being levied in any of them. It would be helpful to have more information on their use and effectiveness before any further consideration is given to whether further penalties on advisers might be needed, but we have seen no evidence to suggest that any further penalty regimes on professional advisers would be appropriate.

Further, given that the behaviours of certain advisers such as those highlighted in the Morse report appear to suggest that they are impervious to the threat of penalties, whether criminal or civil (and especially where such agents are offshore and therefore outside the jurisdiction of HMRC and the UK courts), there does not appear to be any compelling case for introducing more penalties on agents when the existing penalty regime hardly appears to have been used and in any event appears ineffective against the problem agents. However, we would be happy to work with HMRC to consider what measures would be effective in stopping their types of activity.

### 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).***

ICAEW is willing to work with Government to raise standards where it is needed and to support ICAEW members to uphold high standards within our professional and ethical framework. In addition to our role as an AML supervisory body, ICAEW undertakes a regulatory role in respect of certain areas of work of our registered firms, including audit, financial services, insolvency and probate. Outside these regulated areas our existing ethical rules and regulations, coupled with oversight of our registered firms in public practice through our Practice Assurance Scheme (see Annex 2 for further details), provide a reasonable level of assurance that ICAEW member firms work to high standards in the unregulated areas. The Practice Assurance Scheme adopts a firm wide approach with an emphasis on having good systems and procedures in place rather than undertaking an in-depth review of specific service lines such as tax advice and services. However, we believe most firms find the process helpful and it helps to encourage and support them in adopting high standards across their range of activities.

ICAEW does undertake a limited amount of monitoring on a contractual basis for some non-ICAEW member firms (firms which would be regarded for the purposes of this response as unaffiliated) for AML purposes and under the Practice Assurance Scheme. It is important to emphasise, however, that these are voluntary monitoring arrangements entered into by the firms: the firms themselves do not become ICAEW registered firms and their partners/principals do not become ICAEW members. We would be happy to explain this aspect of our monitoring work in more detail.

If the data shows that the unaffiliated pose a much higher risk to taxpayers and society, then the Government will need to take measures to address it. As noted above, ICAEW is willing to explain its own work on monitoring of unaffiliated firms and explore whether this might be a suitable model for raising standards that could be rolled out more generally across the unaffiliated market.

Another option would be to have a legal requirement that anyone offering tax services must be a member of, and agree to oversight by, a designated professional body. At one level this is an attractive option, but it would need to be tested against the problems we are seeking to solve and the impact on taxpayers. One option might be to adopt a risk based approach in relation to the precise activity undertaken. For example, a distinction might be drawn between providing prospective tax advice as compared to providing tax services in relation to past actions, eg, preparing a tax return in relation to a period that has already passed and where the facts can be established. However, although the latter category might often be considered lower risk, this may not always be the case. For example, the tax return preparer might be asked to reflect a position in a tax return which had no sustainable basis, a position that is contrary to the PCRT. Another option might be that advice in specific areas can only be given by an appropriately qualified and affiliated adviser. A typical problem area that has been highlighted above where such an approach might be needed is when preparing R & D tax claims.

Given that many unaffiliated agents are competent and seeking to do a good job for their clients, it might be unreasonable at this stage and against legitimate expectations to effectively ban them from providing tax services. As noted above, there could be possible options to expand monitoring and oversight of their activities within the existing self-regulatory framework of the professional bodies. This could be coupled with other strengthened requirements such as the need to hold compulsory PII. Another approach

could be a requirement that anybody giving tax advice has to belong to a recognised professional body. However, we do not think that there is sufficient and compelling evidence for such a step at the current time. If there were, then in the interest of an orderly move to such a position, we think that there would need to be a reasonable transitional period.

All of these options would need to be tested against the public interest. We are concerned to ensure that citizens are able to access tax advice or help when they need it. This option would increase costs in the unaffiliated sector and this would need to be balanced against the benefits to the Government and wider society of better compliance and also possible behavioural changes which could be unfavourable; for example taxpayers may decide that they cannot afford to seek advice when they should have done, or some tax advisers may start to operate below the radar.

## 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?***

The costs of external regulation would have to be recovered and the impact would be higher costs. Tax compliance and advice costs would inevitably rise and ultimately these costs would be passed on to taxpayers. The costs are likely to be proportionately more on the unaffiliated sector but are also likely to rise in the affiliated sector. Again, this could have undesirable consequences. The increased costs may result in more taxpayers doing their own tax returns, or some advisers operating in the shadows and not disclosed. Either way, and unlike other areas, there is a considerable danger that introducing statutory regulation will reduce tax compliance and increase the tax gap because it will encourage taxpayers to do it themselves when they really need help to get it right.

In short, there is no current evidence base that we are aware of for supporting Option F and there would need to be a rigorous cost v benefit analysis of this option. Would such a regime have stopped the types of behaviour that were the subject of the Morse report? Given all that has been said about the need to drive these players out of the tax services market, a better use of time and resources would be to devise a way of doing this as soon as possible rather than undertake what would be a lengthy and costly change in the tax system ostensibly to address a relatively contained, albeit serious, problem in the UK tax system. Addressing the aggressive scheme promoter area effectively and at an early stage, while working with the professional bodies to raise standards where needed and to improve taxpayer education about what they should look for and expect from an adviser, look to us a reasonable and achievable set of actions which could be started straight away. Progress could be reviewed after a suitable period, say three years, and could also be monitored by a joint HMRC/professional committee.

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

As mentioned above, the regulator should not be HMRC. We are not convinced that any existing bodies would be naturally well-placed to be the regulator.

## 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.***

Please see our responses above. We suggest that the professional bodies and HMRC should work more closely together to help drive unacceptable behaviours out of the market and more generally to raise standards where they are identified as in need of improvement and that progress is reviewed on a regular basis.

## **Question on next steps**

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

Simplifying the tax system would help to support the public interest that most citizens with relatively straightforward affairs should be able to understand how their tax is calculated. Government could also consider a wider public campaign about the role of tax in promoting a civilised society, especially in the light of the fiscal challenges arising out of COVID-19.

Other possible options that could be considered include the legal protection of title, for example the terms 'tax agent' and 'accountant'. As part of our continuing discussions with HMRC on its agent strategy, we have raised these as possible approaches but the ideas have not been taken forward for detailed consideration. We would be happy to reconsider them if the Government considers that they might be viable policy options to consider.

**30. *What market failures need to be addressed?***

See comments above.

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

This is a very important question. HMRC needs to build its digital tax systems so that they are able to provide this type of information, thus enabling policy and resourcing questions to be made based on evidence and extensive risk analysis across sectors and agents. As well as improving current IT, such data capture systems need to be considered at an early stage in policymaking and implementation. Without such information, decisions may be flawed or lead to unexpected behavioural changes which could reduce rather than improve tax compliance and standards in the tax services market.

## HOW ICAEW UPHOLDS STANDARDS IN TAX

### Summary of requirements

- 1 All ICAEW members must:
  - **pass** demanding exams that involve a significant tax element undertaken while under a workplace-based client-facing training contract for a minimum of three years;
  - **maintain** Continuing Professional Development (CPD); and
  - **abide** by the ICAEW's rules, regulations and bye-laws (which include, but are not limited to, the ICAEW's Ethical Code and the PCRT).
- 2 ICAEW members engaging in public practice must also:
  - **obtain** a Practising Certificate (PC), maintain adequate professional indemnity insurance (PII), comply with the anti-money laundering regulations and associated guidance and the client money rules; and
  - **register** their practice with ICAEW, submit an annual return and comply with ICAEW's Practice Assurance Scheme.
- 3 All ICAEW members must maintain high standards. Where members fall below the standards expected they may be subject to ICAEW's disciplinary scheme which may lead to sanctions which could include fines and exclusion.

### Maintaining CPD

- 4 All ICAEW members are required to maintain and develop their skills throughout their career through CPD.
- 5 CPD applies to all members who:
  - do any accountancy-related work (paid or unpaid);
  - do any other work for reward;
  - act as a trustee or corporate director or who perform any role which carries with it similar financial/legal responsibilities; and
  - plan to undertake any of the above activities in the future.
- 6 ICAEW helps members maintain their CPD through a full range of member support activities, including a series of regular publications and alerts, meetings, courses and events. ICAEW support for members in tax is centred on the Tax Faculty and its wide range of member support materials including access to help through a member support scheme. ICAEW randomly selects members CPD records for review on an annual basis, and compliance with CPD is also monitored as part of the Practice Assurance Scheme review process.

### Abide by ICAEW rules - the code of ethics and the PCRT

- 7 Ethical behaviour plays a vital role in ensuring public trust in financial reporting and business practices and upholding the reputation of the accountancy profession. Under

the ICAEW's Code of Ethics (the Code), the latest version of which was published on 1 January 2020, members are expected to demonstrate the highest standards of professional conduct and to take into consideration the public interest. The Code applies to members, employees of member firms and member firms, in their professional and business activities, remunerated or voluntary. The Code has been derived from the Code of Ethics published by the International Ethics Standards Board of Accountants (IESBA) and so provides an internationally agreed Ethical Code and associated framework.

- 8 The Code of Ethics is supplemented by the **Professional Conduct in relation to Taxation** rules (the PCRT), to which ICAEW also subscribes.
- The PCRT is prepared jointly by seven professional bodies and associations, including ICAEW, whose members work in tax. The seven professional bodies are listed in para 1.11 of the PCRT.
  - The PCRT has been in existence for over 20 years and is updated regularly –the latest version published was on 1 March 2019. It sets out the high ethical standards which form the core of the tripartite relationship between tax adviser, client and HMRC.
  - The PCRT includes five Standards for Tax Planning which build upon the five fundamental ethical principles set out in the Code of Ethics. The Standards are designed to enforce clear professional standards about what standards of behaviours are expected from members in the area of tax planning. These Standards go further than HMRC's **standard for agents**.
  - PCRT has been endorsed by HMRC as an acceptable basis for dealings between members and HMRC.
- 9 Although the PCRT is aimed primarily to members in a professional practice, the principles apply to **all** members whether or not they are in practice.

### Monitoring members in practice: Practice Assurance

- 10 Practice Assurance (PA) is a scheme of practice review designed to ensure ICAEW members have in place appropriate professional standards and processes and involves a system of annual returns, desk-top monitoring and risk based assessment. PA covers the quality processes of a firm, rather than the technical quality of its output. In addition, all firms are subject to periodic reviews by the ICAEW's Quality Assurance Department (QAD). It provides members in practice with a framework of quality assurance principles to help them assess and develop their practices. Further details of the scheme, including links to the regulations and guidance, can be found on the **Practice Assurance hub** on ICAEW's website.
- 11 There are four principles-based standards that support PA, namely:
- laws, regulations and professional standards;
  - client acceptance and disengagement;
  - competence; and
  - quality control.
- 12 The QAD conducts monitoring reviews of firms that fall within the scope of the PA Scheme. Depending on the size of the particular firm, PA may take the form of:

- an on-site visit;
  - a review by phone; and
  - a desktop review.
- 13 Most of the firms are selected on a routine basis over a cycle of four or eight years depending on their size. Some reviews, however, may result from an analysis of the firm's annual return or because other information has come to ICAEW's attention, for example complaints. The largest firms have an annual review.
- 14 All reviews are subject to rigorous internal quality control procedures and where there are concerns reviews are referred to the Practice Assurance Committee (PAC) for consideration. The PAC can refer the firms to the Professional Conduct Department (PCD) if appropriate, which will instigate an investigation with subsequent referral to the Investigation Committee. The PAC can also require the firm to submit further information, commission an external review or have a follow-up visit from QAD at the firm's expense.

### ICAEW disciplinary process

- 15 ICAEW expects its members to maintain the highest standards of practice and professional conduct. These expectations are backed up by a system of monitoring and enforcement. ICAEW members who are in doubt as to their ethical position may seek advice from the following sources:
- Ethics Advisory Services helpline;
  - Money Laundering helpline; and
  - Support Members Scheme.
- 16 ICAEW is committed to enforcing the Code (including the PCRT) through disciplining members who do not meet reasonable ethical and professional expectations of the public and other members. Failure to follow the Code may therefore result in a member becoming liable to disciplinary action.
- 17 ICAEW assesses all complaints to determine if they constitute a disciplinary matter. The ICAEW has **rules and regulations** covering the investigation of complaints, disciplinary action and appeals and a range of sanctions.
- 18 Complaints against members are dealt with in one of two ways. Full details of the procedures can be found at **Make a complaint** to ICAEW. For important cases in the public interest, the investigative and disciplinary body is the Conduct Committee of the Financial Reporting Council. Other cases will be referred to the ICAEW's investigation Committee which may then be referred for action under the Disciplinary Bye-laws.
- 19 Disciplinary orders and decisions made under ICAEW's bye-laws have to be published unless the member receives a caution. Published decisions are placed on ICAEW's website for 12 months but the full record will be available to the public on request indefinitely. ICAEW makes copies of these reports available to the accountancy press, so details of ICAEW's disciplinary orders and regulatory decisions are often reported on other websites.