



RAISING STANDARDS IN THE TAX ADVICE MARKET: STRENGTHENING THE REGULATORY FRAMEWORK AND IMPROVING REGISTRATION

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ICAEW welcomes the opportunity to comment on Raising standards in the tax advice market: strengthening the regulatory framework and improving registration, published by HMRC on 6 March 2024, a copy of which is available from this [link](#).

Change must be in the public interest

- It is paramount that any change made to the regulation of the provision of tax advice and services is made in the public interest.
- The chosen policy must raise technical and ethical standards among tax practitioners, protect consumers from incompetent or unscrupulous practitioners but without increasing costs to the extent that taxpayers are unable to afford professional advice.

Scope and objectives of the consultation

- For a regulatory regime to be effective, there must be a level playing field that applies to all individuals and firms providing tax advice and services. This includes those already subject to statutory regulation given the different degrees of supervision between professions.
- Additionally, changes to the regulatory framework should extend to all tax practitioners and not just those agents who interact with HMRC systems.

ICAEW's preferred approach for strengthening the regulatory framework

- While we believe there are issues with all of the approaches suggested, if HMRC decides to introduce tax regulation, ICAEW's preference would be Approach 1 but only if such a model is appropriately designed and scoped. We prefer Approach 1 in the knowledge that it is unlikely that many of the current unaffiliated tax practitioners would meet our entry requirements (which would not change).
- If monitoring requirements are increased or new oversight bodies are created, there is a danger of significant costs being pushed down to consumers and tax advice and services becoming unaffordable for the majority of taxpayers, undermining the key objectives.

Strengthening controls on access to HMRC's agent services

- ICAEW fully supports mandatory registration for all tax practitioners who interact with HMRC.

This response of 23 May 2024 has been prepared by the ICAEW Tax Faculty and Professional Standards Department.

Since our Royal Charter was granted in 1880, ICAEW has been responsible for maintaining the highest professional standards as well as delivering technical excellence in the public interest.

Appendix 1 contains more detail on ICAEW's Tax Faculty and ICAEW's regulatory and conduct roles.

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KEY POINTS

CHANGE MUST BE IN THE PUBLIC INTEREST

1. ICAEW supports the Government's intention to raise standards in the tax advice market. Tax practitioners play a key role in the proper functioning of the UK tax system, supporting and guiding taxpayers through a highly complex and rapidly changing regime. However, while there are concerns about incompetent tax practitioners as well as the unscrupulous advisers who seek to abuse the tax system for financial gain through creating/promoting highly aggressive tax avoidance schemes, it is important that any move to introduce tax regulation does not create more problems than it seeks to solve.
2. ICAEW believes a regulatory intervention should seek to raise standards in the unaffiliated population and to professionalise the market. However, it is paramount that any change made to the regulation of tax advice and services is made wholly in the public interest. This means that the chosen policy must be one that will raise technical and ethical standards among tax practitioners, and protect consumers from incompetent or unscrupulous practitioners, but does not increase costs in the tax advice market to the extent that taxpayers are unable to afford professional advice on their tax affairs.
3. Proportionality is key; no further burdens should be placed upon those tax practitioners who are already delivering high quality tax services to their clients. The consultation has, as one of its objectives, that proposals "*should be proportionate to the harms observed and the benefits expected to minimise extra costs and burdens for the taxpayer, tax practitioners and their clients, and professional bodies.*" Unfortunately, as we have explained in our response, there is a risk that none of the current proposals may meet that objective unless properly scoped/modelled.
4. While action is required to address the current uneven playing field – 30% of tax practitioners by number operate without being affiliated to any professional body without minimum requirements for qualifications, insurance and without the requirement to adhere to a code of ethics and be subject to a disciplinary scheme – any additional regulatory requirements introduced for well-intentioned but low performing practitioners should only be those that are necessary to raise their competence and introduce protection for consumers. It is important that additional regulatory requirements are designed in such a way that standards are raised in the most efficient and effective way so that the additional cost passed on to clients is the minimum that is necessary.
5. On the question of costs, the consultation document does not make clear what the 'ask' is of professional bodies in terms of monitoring of tax practitioners. In the absence of this clarity, we are concerned that the Government's expectations in relation to monitoring tax practitioners, together with the suggestion that another oversight body may have to be created (and financed), has the potential to increase costs significantly even for the majority of tax practitioners who are affiliated to professional bodies.
6. If the Government's intention is for the professional bodies to monitor the quality of tax advice and services being delivered rather than how tax practitioners' firms are operating, that will require significant investment by all of the recognised bodies to create tax monitoring teams (even if it is possible to assemble such teams). The costs of establishing these teams would inevitably have to be passed down by the bodies to practitioners regulated by them and by the practitioners to the consumer. Likewise, the ongoing costs of operation of any oversight body will be passed on to the consumer if professional bodies/tax practitioners are levied to pay for its operating costs. We believe the Government should consider again whether such measures are necessary and/or proportionate. Before creating another oversight regulator, the Government should first consider the layers of independent oversight

already in place within the professional bodies in relation to the monitoring of firms providing tax advice and services and work out how it can leverage what is already in place and working well.

7. Additional costs may make tax advice and services unaffordable for most taxpayers and will be disproportionate to the risks posed by those qualified tax practitioners who are affiliated to professional bodies. A badly designed model with the potential to increase the tax gap would not be in the public interest. The wrong approach could turn the taking of tax advice and services into the preserve of the wealthy and big corporations and away from being something available and affordable for ordinary people doing ordinary things.
8. To fix the current problems in the tax advice market, we believe, firstly, that action must be taken to raise the standards of those tax practitioners who are unaffiliated to a professional body. Where there are problems with the work done of professional body members, existing gateways should be used to report these issues to the practitioner's professional body so that appropriate action can be taken to address instances of poor conduct. Secondly, there is a need to drive out from the market those tax practitioners who deliberately abuse the tax system. This abuse includes both to the Exchequer and to those consumers who are misadvised and often left in serious financial distress as a result. Examples of the profound impact of inappropriate tax advice can be seen in those cases involving taxpayers who became subject to the loan charge as a result of failed disguised remuneration tax avoidance schemes devised by tax practitioners who are unlikely to interact with HMRC.
9. It is important also to recognise that different problems in the tax advice market need different solutions. While an overall regulatory model can help to raise standards across the market in general, it is unlikely to stop the deliberate and egregious behaviour that is seen in some pockets of the market. The [Morse Report](#), published in December 2019, highlighted one particular example, namely the disguised remuneration schemes, and kick-started the current discussion on the need for greater oversight of the tax profession to tackle egregious schemes that are often mis-sold to taxpayers. However, targeted interventions using strong powers and dissuasive penalties are needed for this population of bad actors. Unless these behaviours are addressed as part of these proposals, a vital outcome of the recommendations in the Morse Report will not be achieved.

SCOPE AND OBJECTIVES OF THE CONSULTATION

10. For a tax regulatory regime to be effective, there must be a level playing field that brings within it all individuals who provide tax services. We believe that the current proposals omit two important groups of tax practitioners from the new regime; unaffiliated advisers who do not interact directly with HMRC and tax practitioners within regulated professions.
11. ICAEW is concerned that, if Government limits the scope of interventions to raise standards to only those tax practitioners that interact with HMRC in a professional capacity rather than all tax practitioners in the tax advice market, the Government will not meet the objective of raising standards overall and removing unscrupulous tax practitioners from the market. All approaches would risk being circumvented by those wanting to continue to operate outside of a regulatory regime. An example would be getting a taxpayer to submit their own tax return with details of aggressive tax planning designed by the practitioner.
12. The market for tax services goes far beyond the sub-set of practitioners who interact with HMRC via its systems, and it is important not to disregard the impact of the actions of this wider population.
13. Furthermore, the proposal to exclude regulated professions such as legal services, insolvency, audit, licensed conveyancers, and independent financial advisers needs to be reconsidered. While ICAEW appreciates the desire to avoid increased regulatory burdens, to

exclude tax practitioners within those professions would create an even more uneven playing field than exists now. We find it surprising, for example, that it is proposed to exclude solicitors who specialise in providing tax advice and services given that there is already a considerable gap between the number of onsite inspections conducted by legal regulators and significantly higher number of onsite visits carried out by the accountancy professional bodies of firms providing tax advice and services through their Practice Assurance schemes. If the Government's intention is to require monitoring by the accountancy professional bodies of the quality of tax advice and services rather than the checks carried out on Practice Assurance reviews, this gap will become a chasm with there being no evidence to suggest that all problems with the provision of tax advice and services lie with tax practitioners who are members of the accountancy professional bodies. We believe that the introduction of minimum requirements for tax regulation by the accountancy professional bodies must be accompanied by ensuring that tax practitioners in regulated professions are subject to the same standards and the same level of monitoring and enforcement by their current regulators in order to create that level playing field.

14. Consideration must also be given to how the market and demand for tax services may shift in response to the combined impact of changes in the regulatory framework and fast-moving changes in technology, particularly the advent of generative AI. For example, if the costs of seeking tax advice and services increase, taxpayers may place greater reliance on software or demand greater support from HMRC. In the timeframe for developing any regulatory model, technology will develop at pace. Software is becoming increasingly sophisticated. Over time, artificial intelligence is likely to provide greater assistance in analysing and categorising data for inclusion in returns and drafting tax advice. Software developers must also be in scope to ensure that the problem that the Government is seeking to tackle does not emerge elsewhere.

ICAEW'S PREFERRED APPROACH FOR STRENGTHENING THE REGULATORY FRAMEWORK

15. While we have concerns with all of the approaches, if HMRC determines to introduce tax regulation using one of the suggested approaches, ICAEW would prefer the adoption of Approach 1 but only if such a model is appropriately designed and scoped for the reasons set out above. We do so in the knowledge that it is very unlikely that many of the current unaffiliated tax practitioners would meet our entry requirements which would not change and, therefore, without the conflict of self-interest.
16. ICAEW agrees that a joint HMRC-industry enforcement (Approach 2) would create a conflict of interest for HMRC. Such a model is, therefore, not a feasible option.
17. As for Approach 3, we believe that the costs of creating an independent regulator, and its ongoing operating costs, will far exceed the current costs incurred by the professional bodies in supervising their firms/members given the significant cost synergies gained from operating multi-regulatory models. Given the assumption that all costs of the new regulatory framework will be levied on the professional bodies/their regulated tax practitioners, and will ultimately be passed on to the consumer, this would only serve to exacerbate our concerns regarding the impact on the cost of tax advice and services. We also believe that recruiting the expertise and experience required for it to work effectively will be a significant challenge given challenging market conditions and relatively limited pools of relevant experience. The announcement that such a regulator will be created and will absorb the current roles of expert staff employed by the professional bodies to carry out tax investigations and enforcement activity will risk the potential loss of such expertise with staff being tempted by private sector roles which may appear more attractive than transitioning to a new regulator. This could seriously undermine the professional bodies' current work to investigate and take

enforcement action against tax practitioners over a potentially long intervening period between announcement and the start of operations of the new regulator which would not be in the public interest. For all these reasons, ICAEW does not support this option.

18. Taking forward Approach 3 would also be inconsistent with recent similar decisions taken by the Government on creating new independent regulators. In September 2023, the Minister for Insolvency at the Department of Business and Trade announced that, instead of the original intention to create a new regulator for insolvency, the Government had decided that insolvency regulation should be left with the relevant professional bodies. The Government concluded that there was a risk of not being able to transfer or recruit sufficient people with the right experience and expertise into a new regulator and this was crucial to its success and also that it was possible to achieve transformational change through working with the professional bodies who had built up the relevant experience and expertise.

STRENGTHENING CONTROLS ON ACCESS TO HMRC'S AGENT SERVICES

19. Strengthening the controls on access to HMRC's agent services is considered an important enabling first step towards ensuring tax practitioners meet existing basic standards before being able to interact with HMRC on behalf of their clients.
20. For this reason, ICAEW supports mandatory registration for all tax practitioners who interact with HMRC. However, changes to agent registration must reflect the needs of firms of all sizes.

OTHER POINTS

REFORMING ANTI-MONEY LAUNDERING AND COUNTER-TERRORISM FINANCING SUPERVISION

21. In 2023, **HM Treasury consulted on reforming the anti-money laundering and counter-terrorism financing (AML/CTF) supervisory system**. That consultation considered four possible models for a future AML/CTF supervisory system. The outcome of that consultation is awaited.
22. As both this current consultation and the AML consultation potentially impact the regulatory supervision of ICAEW members, there is a clear need for consistency and to avoid unintended and costly consequences. If the Government were to proceed with Approach 1 following this consultation and with either options 3 or 4 in the AML consultation, we could end up in a bizarre scenario where professional bodies may be required to carry out checks on firms which provide tax advice and services but will not be required to check those firms' ongoing AML compliance while onsite. Instead, inspectors from a different body would be turning up separately to perform AML checks at those same firms. In ICAEW's case, over 7,000 of the firms we supervise for AML compliance provide tax advice and services so there is a huge overlap. The splitting up of aspects of reviews currently carried out by the professional bodies would not make sense and would significantly increase the regulatory costs on firms which would be passed straight through to the consumer. It will also stop one reviewer being able to take a holistic view of the operation of a firm and its compliance across all requirements which would not be in the public interest.

TACKLING CONTINUING ADVICE FROM UNAFFILIATED PRACTITIONERS

23. If Approach 1 is adopted, the consultation does not explain who will ensure, following any transitional period, that unaffiliated tax practitioners do not continue to provide tax advice and services. Without there being some form of strong deterrent, there is a risk that such advice and services may continue to be given with tax practitioners just being driven "underground".

24. For that reason, we believe that it is incumbent on the Government to include protection of the title 'tax adviser', if not also 'tax accountant', within the legislation required to create the new regulatory framework so that only professionals who have gained a certain level of qualification and training in tax can provide tax advice and services for a fee to members of the public.
25. Our assumption is that, if Approach 1 is implemented, the legislation to create the new framework will make it illegal to provide tax advice and services without being a member of an approved professional body. This will mirror, for example, the position of someone undertaking certain reserved legal activities without being a registered solicitor or barrister. While enforcement in this scenario would fall to the police/CPS, the Government may also need to factor in the costs and complexities of the creation of a body monitoring the perimeter and referring matters to the authorities (unless this role can be taken on by HMRC?).

CONSUMER PROTECTION

26. ICAEW does not consider that a market-wide compensation scheme or an ombudsman is required. Indeed, it could result in outcomes contrary to the policy intention if taxpayers became less risk adverse knowing they would be compensated if things went wrong. If Approach 1 is adopted requiring mandatory membership of a professional body, such a scheme is unlikely to add much in the way of consumer protection if the Government ensures, as part of the qualifying criteria for professional bodies to regulate tax practitioners, that all bodies oblige all of their members providing services to the public to hold a minimum level of professional indemnity insurance (PII). Most firms who have ICAEW principals with practising certificates will have to hold a minimum cover of £2m from 1 September 2024.
27. There is also the question of how a compensation or ombudsman scheme would be administered and funded. Any question of the funding for this being passed to the approved professional bodies will result only in the costs of such a body being passed by the bodies to the practitioners and onwards to the consumer and will increase the risk of putting the cost of tax advice and services outside of the reach of ordinary people.

DATA AND DATA SHARING

28. The analysis of non-compliance in [Annex C](#) of the consultation is noted.
29. HMRC has the best picture of how the tax agent market is operating – it is the only party with access to all of the information. The proposals to strengthen controls over access to HMRC's agent services should further improve the available data.
30. There should be a review of how the sharing of data and intelligence on tax agents 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.
31. However, the context behind the data needs to be properly understood, otherwise incorrect conclusions could be drawn. For example, some agents specialise in taking on enquiries and investigations work, so the data should not result in them being identified as poor agents when they are helping to improve compliance and bring taxpayers' affairs up to date.
32. Also, settling an enquiry will often become a commercial decision for a taxpayer rather than whether or not the filing position was incorrect. While some may wish to pursue an enquiry all the way to a tribunal hearing and beyond, most taxpayers will adopt a more pragmatic position and weigh up the costs (including opportunity costs such as time) against the benefit of continuing to argue their point.

LOOKING TO THE FUTURE

33. In developing any model, consideration must be given to how the market and demand for tax services may shift in response to changes in the regulatory framework. For example, will taxpayers place greater reliance on software or demand greater support from HMRC?
34. The tax agent market is also evolving. For example, tax compliance and payroll are among the service lines that firms often consider outsourcing or offshoring. Any regulatory model needs to take account of this trend.
35. One of the key challenges expressed by ICAEW member firms is staffing. Therefore, if the aim is to raise standards in the market, it is vital that regulatory burdens do not make the tax profession unattractive to new entrants such that the supply of professional tax practitioners diminishes. Otherwise, there is a risk of creating unmet consumer demand where taxpayers struggle to maintain access to advice.

ANSWERS TO SPECIFIC QUESTIONS

Exploring the problem

Question 1: Do you agree the limitations in the partial framework across the tax advice market contribute to issues observed? Select all that apply:

- **no requirements of technical competence to practice**
- **no general deterrents for dishonest practitioners operating in the market**
- **disjointed monitoring of tax practitioners**
- **variations in the action taken against substandard and unscrupulous tax practitioners**
- **clients being unable to easily assess the competence of a tax practitioner**
- **other, please specify**

Please give reasons for your answer.

36. All of the above factors can contribute to poor practice or behaviour. The current issues caused when taxpayers use tax practitioners of low technical competence are the combined result of the lack of requirements of technical competence to practice, and a misunderstanding by taxpayers that some kind of minimum requirements apply. As taxpayers assume that anyone giving tax advice or delivering tax services must be qualified, they generally do not seek to assess the competence of a tax practitioner in the first instance.
37. We also believe that there are insufficient deterrents for dishonest practitioners operating in the market. However, in terms of tackling egregious practices, there is a lack of visibility about whether HMRC is currently using all the powers at its disposal.
38. For example, we are aware of only **one case** concerning the issue of a conduct notice for dishonest tax agent under Sch 38, Finance Act 2012. It is noted that para 28, Sch 38 provides HMRC with the power to publish details of tax agents where the financial penalty is more than £5,000, but no details of tax agents are currently published under this power.
39. Also, we are not aware that any cases have been taken under the failure to prevent the facilitation of tax evasion under Part 3 of the Criminal Finances Act 2017.
40. We would ask why these powers have not been used against some of those advisers operating in the R&D tax relief space, which has caused such a significant loss to the Exchequer and has led to the potentially damaging change of compliance approach by HMRC.

Objectives of a strengthened regulatory framework

Question 2: Are there other components of a regulatory framework that would support the delivery of these objectives?

41. In addition to the components that make up a regulatory framework, the overall framework should comply with the principles of good regulation. The five principles of good regulation are:
- **Transparent** – rules should be comprehensible, and the objectives should be stated.
 - **Accountable** – regulation should have criteria against which its effectiveness can be judged and those responsible can be held to account for its effectiveness.
 - **Proportionate** – regulation should be the appropriate response for the issue concerned. This involves having regard to the possible disadvantages of regulation and alternatives (eg, doing nothing or providing education).

- **Consistent** – regulation should be consistent not only in itself but also with other regulation, so that regulation collectively is ‘joined up’ and results in consistent outcomes.
- **Targeted** – regulation should focus on the problem it seeks to address with a goals-based approach and minimise side effects. Enforcement should be based on risk. Regulation should be subject to systematic review and modified or eliminated if appropriate.

We have commented below on what is being proposed against those principles.

42. **Transparent** – transparency is mentioned in the consultation as a criterion for driving up standards (so taxpayers know what to look for when engaging a tax practitioner). However, it is also important that there is transparency about all of the objectives, such as how tax practitioners will be monitored, what criteria will be used and what the enforcement routes and sanctions will be.
43. **Accountable** – it is not clear to us how HMRC intends to measure the effectiveness of any new regulatory framework it introduces particularly as the data is currently poor in relation to how practitioners are currently regulated.
44. **Proportionate** – the consultation does recognise the need for the response to be proportionate. Proportionality is key. ICAEW considers that no further burdens should be placed upon those tax practitioners who are already delivering high quality tax services to their clients. For example, in terms of being proportionate, the only focus of this consultation is the regulatory framework. There appears to be no consideration of alternative and/or complementary ways of raising standards, for example better education or mandatory qualifications. Education has the advantage of being capable of being delivered much quicker than changes to the regulatory framework.
45. ICAEW is also concerned about the proportionality of the additional costs that could be placed upon its members and members of other professional bodies as a result of enhanced regulation. This may lead to tax advice and services becoming unaffordable for most taxpayers and may be disproportionate to the risks posed by those qualified tax practitioners who are affiliated to professional bodies. The UK tax system is a highly complex and rapidly changing regime. Absent significant simplification, many individuals and businesses are forced to seek external advice and support.
46. HMRC has recently committed £5.5m of funding to help selected voluntary and community sector organisations to provide support with tax or claims such as tax credits or child benefit until 2027. These organisations still require significant funds to operate in addition to this settlement. Given the valuable role these organisations serve, the Government should be mindful to not shift burdens to these organisations.
47. **Consistent** – in terms of meeting the principle of being consistent, for a regulatory regime to be effective, there must be a level playing field that applies to all individuals and firms providing tax services. This includes those already subject to statutory regulation given the different degrees of supervision between professions (see responses to Questions 21–23). Additionally, changes to the regulatory framework should extend to all tax practitioners and not just those tax agents who interact with HMRC’s systems (see response to Question 19).
48. **Targeted** – ICAEW considers the regulatory response needs to primarily be targeted at the problem. While the consultation document highlights that there is non-compliance among taxpayers using agents who are members of professional bodies, the levels of non-compliance are generally higher among taxpayers represented by an unaffiliated tax practitioner. Therefore, in the interests of proportionality the regulatory response needs to be targeted primarily at unaffiliated tax practitioners. While the proportion of unaffiliated tax

practitioners by number may be 30-35%, the proportion in value terms will be much lower given that the largest firms will be recorded as a small number of affiliated agents. Therefore, the vast majority of the tax profession is subject to oversight by professional bodies.

Question 3: Is there anything else that the Government should consider?

Protection of title

49. For a regulatory framework to be effective, we believe that it would need to address protection of the titles 'tax accountant' and 'tax adviser' and introduce consistency with the protected titles of other professionals providing tax services. Further consultation may be required to establish an exhaustive list of titles.
50. A prime cause of the problems in the tax advice market is that the titles 'tax accountant' and 'tax adviser' are not protected, which means that anyone can call themselves a tax accountant or tax adviser. This can cause confusion and misunderstanding among consumers, most, if not all of whom, would expect someone providing tax advice and services for a fee to have a minimum level of qualification in tax.
51. Protection of title could be put in place as a first step (in legislation) in the short to medium term, while other aspects of a revised framework are implemented. Combined with a public awareness campaign, protection of title would enable consumers to choose a tax practitioner who has the technical qualifications and regulatory oversight that is already expected by consumers when dealing with people trading as a tax accountant or tax adviser. Those providing tax advice and services would be incentivised to join a professional body so that they benefit from the use of the title 'tax accountant' or 'tax adviser'. During a transitional period, those unaffiliated tax practitioners who want to join a professional body will have time to be in a position to satisfy the necessary entry requirements.
52. The consultation is silent on how the Government intends to monitor and tackle continued unaffiliation beyond any transitional period. Our assumption is that providing tax advice and services without being subject to regulatory oversight will be illegal – mirroring the position of someone undertaking certain reserved legal activities without being a registered solicitor or barrister. We would also assume that HMRC will be asked to patrol the perimeter to ensure that those continuing to provide advice for a fee outside of professional body membership are reported to the correct authorities for prosecution.

Consistency with other regulatory developments

53. We believe that it is also important that the Government looks across to developments in other regulatory regimes. In 2023, HM Treasury consulted on reforming the anti-money laundering and counter-terrorism financing (AML/CTF) supervisory system. That consultation considered four possible models for a future AML/CTF supervisory system. The outcome of that consultation is awaited. We believe that it is essential that there is a consistency of approach between the outcomes of that and the current consultation. Otherwise, there is a real danger of increasing regulatory costs on firms (and consequently on consumers) through having two bodies send in inspectors to check similar matters. This will be the case if ICAEW is required to carry out monitoring at its firms providing tax advice and services by using its Practice Assurance scheme which already includes AML compliance checks and HMT opts to create a Statutory Supervisor for AML and inspectors from that body go in to inspect AML compliance separately to the Practice Assurance visits. Not only would this increase regulatory costs, it will prevent one body's inspectors from taking an important holistic approach to evaluating the level of compliance of a firm with all regulatory requirements.

54. We believe that the Government should also consider all of the reasons why it was determined in September 2023 not to proceed with the plan to introduce a government regulator for insolvency. It is important that the Government recognises that the same risks which caused the change in direction in that area of regulation are as relevant to the proposed introduction of an independent regulator under Approach 3.

Rapid advances in technology

55. Consideration must be given as to how the market and demand for tax services may shift in response to fast-moving changes in technology, particularly the advent of generative AI. For example, if the costs of seeking tax advice and services increase, taxpayers may place greater reliance on software or demand greater support from HMRC.

Improved agent services

56. HMRC recognises that intermediaries such as tax practitioners are key partners in the tax administration system. ICAEW notes that at a time when HMRC's frontline services are under extreme pressure, good tax practitioners play a significant role in reducing the demand placed on HMRC's helplines.
57. However, for tax practitioners to be effective in this intermediation, they need a good service from HMRC. The current level of service from HMRC is critically hampering the ability of professional tax practitioners such as ICAEW members to deliver effective tax advice and services to taxpayers. Raising standards is a two-way street. If HMRC wants to encourage professional body membership, it also needs to significantly improve its services to agents.

Strengthening the controls on access to HMRC's agent services

Question 4: Do you think the Government should mandate registration for tax practitioners who wish to interact with HMRC?

- ***yes***
- ***no***
- ***maybe***
- ***don't know***

If no, please give reasons for your answer.

58. Yes.

Question 5: What are your views on the intention to apply the requirement to all tax practitioners who interact in any way with HMRC in a professional capacity?

59. ICAEW agrees with the Government that this an important first step towards ensuring tax practitioners meet existing basic standards before being able to interact with HMRC on behalf of their clients. However, it is vital that changes to agent registration and the design of the 'front door' for agents reflect the needs of firms of all sizes.
60. Care needs to be taken in the design of the model. There must be appropriate governance set up within HMRC including training and oversight, as well as an appeals process before any decision is made to exclude anyone from registration. Stopping a tax practitioner's registration can cause significant and potentially business critical damage to their business. Furthermore, the impact on the taxpayers that they act for must be considered. Clients must not be penalised for missing deadlines because the tax practitioner cannot act on their behalf.

Question 6: HMRC currently applies several checks at the point of registration including: whether the tax practitioner has outstanding debt and/or returns with HMRC, and the status of their AML supervision. Are there additional checks that the Government should consider for tax practitioners at the point of registration with HMRC?

61. We assume that HMRC already checks its own systems to see whether the agent seeking registration has been subject to sanctions (eg, stop notices, conduct notices or monitoring notices under the promoters of tax avoidance schemes rules; named tax avoidance scheme promoters, enablers and suppliers; deliberate tax defaulters; the dishonest tax agent rules, etc).
62. In addition, HMRC should also consider capturing details about professional body membership and should review the disciplinary databases of professional bodies.
63. If the agent is not a member of a professional body, then HMRC might also consider asking for information similar to that which professional bodies seek to obtain from their members. This could include making declarations concerning:
 - financial integrity and reliability;
 - convictions or civil liabilities;
 - reputation and character; and
 - related investigations and disciplinary procedures.
64. For unaffiliated agents, HMRC might also wish to check whether the agent holds PII.
65. If the tax practitioner is based overseas, then consideration should be given to any additional information that HMRC might want to capture and ensure that full use is made of relevant international administrative cooperation arrangements.
66. Leading into the response to Question 7 below, obtaining details about ownership or control will help data flow through the system to link agents and build a picture over time.

Question 7: Are there specific criteria or checks HMRC should apply if:

- ***an individual, who has previously registered a company with HMRC as a tax practitioner, attempts to register a new company?***
 - ***a tax practitioner operating as a sole trader becomes incorporated?***
67. Any checks need to strike a balance between enabling uninterrupted trading where firms merge or change ownership structure and ensuring that a 'bad agent' cannot wipe the slate clean by registering as a new company. The data captured about agents needs to facilitate easy cross checking including against other available registers such as Companies House.

Question 8: Which approach do you think would best meet the objectives set out in chapter 4?

- ***Approach 1: mandatory membership of a recognised professional body***
- ***Approach 2: joint HMRC-industry enforcement***
- ***Approach 3: regulation by a Government body***

Please give reasons for your answer.

68. For a tax regulatory regime to be effective, there must be a level playing field that brings within it all individuals who provide tax services. We believe that the current proposals omit two important groups of tax practitioners from the proposed regime; tax practitioners who do not interact with HMRC and those providing tax advice and services within the regulated professions.
69. ICAEW is concerned that, if Government limits the scope of interventions to raise standards to only those tax practitioners that interact with HMRC in a professional capacity (eg, tax

agents) rather than all tax practitioners in the tax advice market, the Government will not meet the objective of raising standards overall and removing unscrupulous tax practitioners from the market. All approaches would risk being circumvented by those wanting to continue to operate outside of a regulatory regime. An example would be getting a taxpayer to submit their own tax return with details of aggressive tax planning designed by the practitioner.

70. The market for tax services goes far beyond the sub-set of practitioners who interact with HMRC via its systems, and it is important not to disregard the impact of the actions of this wider population.
71. Furthermore, the proposal to exclude regulated professions such as legal services, insolvency, audit, licensed conveyancers, and independent financial advisers needs to be reconsidered. While ICAEW appreciates the desire to avoid increased regulatory burdens, to exclude tax practitioners within those professions would create an even more uneven playing field than exists currently. We find it surprising, for example, that it is proposed to exclude solicitors who specialise in providing tax advice and services given that there is already a considerable gap between the number of onsite inspections conducted by legal regulators and the accountancy professional bodies through their Practice Assurance schemes. If the Government's intention is to require monitoring by the accountancy professional bodies of the quality of tax advice and services rather than the checks carried out on Practice Assurance reviews, this gap will become a chasm with there being no evidence to suggest that all problems with the provision of competent tax advice and services lie with tax practitioners who are members of the accountancy professional bodies. This could harm disproportionately the attractiveness of the accountancy profession and not be in the public interest.
72. ICAEW supports the regulatory model of mandatory professional body membership (Approach 1) as the approach that best meets the objectives set out in chapter 4, but only if such a model is appropriately designed and scoped for the reasons set out above. We support this approach in the knowledge that it is very unlikely that many of the current unaffiliated tax practitioners would meet our entry requirements which would not change and, therefore, without any conflict of self-interest.

Question 9: What are your views of the merits and problems of the 3 potential approaches described in this chapter?

Approach 1

73. The merits of Approach 1 are that, if properly scoped and designed, it could professionalise the tax advice market without imposing significant additional costs. The new framework can be built upon the work already being carried out by professional bodies to monitor the activities of their members and firms where members must adhere to Codes of Ethics and are subject to disciplinary processes for breaching ethical codes, breaking regulations and also for poor work. Building on what already exists will limit the additional costs and help ensure that tax advice and tax services remain affordable for the majority of taxpayers.
74. However, the consultation document does not make clear what the 'ask' is of professional bodies in terms of the monitoring of tax practitioners. In the absence of any clarity on this important issue, we are concerned that the Government's expectations in relation to monitoring tax practitioners together with the suggestion that another oversight body may have to be created (and financed) has the potential to increase costs significantly even though the majority of tax practitioners are affiliated to professional bodies.
75. There are various references within the consultation to the Government wanting to raise the quality of work of tax practitioners and the need for monitoring. It is important that the

Government understands just how difficult and costly it would be for professional bodies to create teams of monitors with sufficient expertise to carry out file reviews of tax work all over the country in all tax specialisms. Even if it were possible to create such teams, we believe that ICAEW would need to hire at least 50+ additional reviewers (as well as central office infrastructure) to carry out regular checks on c.7,000 firms providing tax advice and services at an annual cost of operation of over £7m. All of these additional costs would need to be levied on the firms and would undoubtedly be passed on by the firms to taxpayers.

76. While the consultation document does acknowledge the need for a transitional period and a legacy scheme, it does not take account of the fact that the training requirements for some professional bodies will require an unaffiliated tax practitioner to cease trading. In addition to meeting the requirements of membership, ICAEW has a further two-year period before a practitioner can apply for a practising certificate. It will not be possible for ICAEW to reduce its entry requirements which apply to all members specialising in lots of different areas of work.
77. Please see also our comments in response to Question 18 concerning external oversight.

Approach 2

78. The consultation acknowledges that HMRC taking on a strong supervisory role of tax practitioner professional standards while administering the tax system could create a conflict of interest. ICAEW agrees with this concern. As set out above, ICAEW therefore considers that Approach 2 is not a feasible model.

Approach 3

79. ICAEW is concerned that the creation of an independent regulator will be the most costly of all of the approaches and is also the riskiest option to take.
80. We believe Approach 3 is the costliest option because an independent regulator will not benefit from the cost synergies which professional bodies like ICAEW have through the operation of a multi-regulatory model (we have central service teams assisting front-line experts to carry out audit, insolvency, probate, investment business and AML regulation).
81. If the Government's intention for monitoring is more akin to the checks which professional bodies like ICAEW already perform during their Practice Assurance visits – whether firms are operating generally in line with statutory and institute regulations – the creation of an independent regulator to carry out the same reviews would be entirely duplicative because ICAEW would carry on with the Practice Assurance reviews at most of its firms as most are involved in a wider range of work in addition to tax. Any monitoring by an independent regulator could, therefore, be entirely duplicative.
82. We believe that Approach 3 is the riskiest option because, to be effective, there will be a need for any new regulator to hire in a large number of professionals with a tax background who would ideally have regulatory experience and expertise. We believe that this would be a significant challenge given how long it can take us (and other bodies) to recruit just one or two tax specialists to fill investigation positions in a difficult marketplace. A new regulator may need to recruit hundreds of staff to carry out any form of licensing and monitoring functions (monitoring staff will also need to be recruited locally all over the country). Any existing tax specialists working within the professional bodies (largely in investigation and enforcement) are in our experience unlikely to want to transfer their roles into a new independent regulator and are much more likely if their roles disappear at the professional bodies to take on more lucrative roles in private firms. This would, in turn, create a significant retention risk for the professional bodies who all could find that their specialist tax professionals all depart for roles in private practice before the new regulator is created and ready for action. This creates a

significant interim risk for the regulation of tax professionals from the point the Government were to announce it intends to create a new independent regulator.

Question 10: Are there any other approaches to raising standards the Government should consider?

83. One option that should be considered is that HMRC could put the agent standard on a statutory footing and introduce a penalty regime for unaffiliated tax practitioners that do not comply with the agent standard. This could be introduced alongside the changes to agent registration.

Exploring how mandatory membership of a professional body could raise standards

Question 11: Do you think membership with a professional body raises and maintains standards of tax practitioners?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer

84. Yes. For example, 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 qualified 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 and through continuing professional development. These are set out below.
85. Other professional bodies have similar requirements of members (upon entry and ongoing) but the precise arrangements vary. In our view, all professional bodies who qualify as supervisors under Approach 1 should be held to the same standard on requirements (both on entry and ongoing) to avoid regulatory arbitrage and that these standards should be at the highest possible level.
86. In relation to ICAEW, all 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 Professional Conduct in Relation to Taxation (PCRT)).
87. ICAEW members engaging in public practice must also:
- **obtain** a practising certificate, maintain adequate 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.
88. All of the above activities are scrutinised by ICAEW's oversight regulators as part of its commitment to maintaining standards. So, for example, ICAEW is currently proposing to make changes to its exam structure. These changes have been reviewed and signed off by the Financial Reporting Council (FRC) as ICAEW's oversight regulator – the aim being to ensure that there is no diminution of quality and rigour.

89. All ICAEW members must maintain high standards. Where members fall below the standards expected for ethical conduct and technical competence, they may be subject to regulatory and/or disciplinary action which may lead to sanctions which could include fines and exclusion.
90. All ICAEW members working in tax must comply with the PCRT. Since the update to the PCRT in 2017, it has disciplinary application which means that ICAEW has the ability to discipline members for non-compliance with the Fundamental Principles and Standards within it.
91. The International Ethics Standards Board (IESBA) has recently published the final pronouncement on an updated code of ethics, which includes detailed commentary on ethical requirements in relation to tax planning. IESBA's code of ethics forms the foundation of ICAEW's own ethical code and, as a member of the International Federation of Accountants, which sponsors IESBA, ICAEW is duty bound to alter its ethical code to reflect these changes. The changes take effect for tax planning services beginning after 30 June 2025.
92. ICAEW's new PII regulations will come into effect on 1 September 2024 for renewals on or after that date. Generally, firms will be required to have a £2m minimum limit of indemnity for any single claim and in the aggregate (increased from £1.5m). For smaller firms, the minimum limit will be equal to two and a half times the gross fee income, with a minimum of £250,000 (an increase from £100,000). These and other changes help ICAEW maintain the viability of the assigned risks pool that provides emergency cover for a period of up to two years.
93. If Approach 1 were to be adopted, any unaffiliated tax practitioner wishing to apply for membership of ICAEW and obtain a practising certificate would be required to meet and comply with these standards.
94. We recognise that some issues will arise from time to time with the conduct or 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. There are existing gateways through which HMRC and others can refer concerns about poor work or conduct by ICAEW members to the ICAEW Professional Standards Department for action.
95. The issue for any professional body in raising standards in relation to tax is that it is not party to the amount of information that HMRC has available. The bar set for HMRC to make a disclosure to a relevant professional body under the so-called 'section 20 CRCA 2005 gateway' is, quite rightly, very high and is at the egregious end of the tax advice market.
96. Similarly, complaints made by a client are generally only escalated to a professional body if the client has been unable to resolve the issue directly with the professional body member.
97. If ICAEW is to help its members avoid making any of the common mistakes that HMRC is seeing, more use should be made of the regular dialogue between HMRC and ICAEW's regulatory team. Discussing areas of concern could help inform the support and guidance that the Tax Faculty and others in ICAEW can provide to members as part of ICAEW's continuing professional development programme.
98. We also recognise that some affiliated firms have been, and may still be, effectively acting as intermediaries in the promotion of avoidance arrangements, usually rewarded on the basis of a commission or success fee.

99. HMRC and the professional bodies have a shared interest in driving this type of unacceptable behaviour out of the tax advice market, to increase confidence in the tax system and close the tax gap. Given that most practitioners involved in this sort of activity operate below the radar and are not members of a body that is a signatory to PCRT, we do not have evidence highlighting the actual and emerging threats posed by this sector of the market.
100. Although we believe that neither promotion nor facilitation of highly artificial tax avoidance schemes should be being undertaken by an affiliated tax practitioner, we are happy to work with HMRC to try and eliminate any such occasions if they arise. HMRC has far better access to data and intelligence about the scale and nature of the problems. As we have said previously, we would like to work with HMRC to identify ways of sharing intelligence so we can play our part in supporting HMRC to find solutions. To address the problems in this sector, consideration must be given to both the supply and the demand side.

Question 12: What is your view of the capacity and capability of professional bodies to undertake greater supervision of tax practitioners?

101. The consultation document does not make clear what the 'ask' is of professional bodies in terms of monitoring of tax practitioners and what is meant by 'greater supervision'. ICAEW believes that its existing Practice Assurance monitoring scheme is effective for checking to see whether ICAEW member firms are complying with all statutory and institute regulations in the way they run their practices. ICAEW also believes that these checks would be of value in raising standards of any unaffiliated practitioners who entered ICAEW membership, obtained a practising certificate and registered an ICAEW member firm. To prevent professional body 'shopping', it will be important to ensure that the monitoring activities of other professional bodies are at an equivalent standard to the ICAEW Practice Assurance scheme so that there are consistent standards across the professional body population.
102. If, however, the Government's intention is for the monitoring to look at the quality of tax advice and services being given rather than how tax practitioners' firms are operating, that will require significant investment by all of the recognised bodies to create tax monitoring teams if it is even possible to create and maintain such specialist teams. The cost would be considerable and would need to be passed on to all firms subject to monitoring (including new member firms). Please see our estimates of additional costs in answer to Question 9. An independent regulator would likely face the same challenges.

Question 13: What more could the professional bodies do to uphold and raise standards for their members?

103. A scheme, agreed between the Inland Revenue (IR) and ICAEW and other professional bodies, was announced in Spring Budget 2000. Under this scheme, 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. This scheme was subsequently abandoned. If there are such concerns currently, we would be happy to revisit such a scheme and assess whether it might be reintroduced. 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.
104. Please see also see the response to Question 11.

Question 14: What additional costs may professional bodies face if strengthening their supervisory processes and/or taking on new members?

105. In the absence of clarity about the Government's expectations in relation to monitoring tax practitioners, ICAEW is concerned that there is potential for significant costs even for the majority of tax practitioners who are affiliated to professional bodies. If specialist monitoring teams are required, the costs of establishing teams would have to be passed on by the bodies to practitioners regulated by them and by the practitioners to the consumer. Please see our estimates of the cost of creating a specialist tax file review team to carry out regular visits to the c.7,000 ICAEW member firms who provide tax services.

Question 15: What is the best way to ensure current and new professional bodies maintain high standards?

106. ICAEW welcomes the suggestion that the Government would not expect professional bodies with sufficiently high standards and expectations of their members to increase these requirements. We believe that our answers to the previous questions have demonstrated that increasing the requirements above and beyond our existing requirements should not be necessary. In our view, all professional bodies who qualify as supervisors under Approach 1 should be held to the same standards (for entry and ongoing) and these standards should be set at the highest level.

107. ICAEW also welcomes the fact that the Government does not expect professional bodies to lower their standards and requirements to admit unaffiliated tax practitioners to become members. Lowering standards to admit unaffiliated tax practitioners is a red line for ICAEW. It is not in the public interest nor in the interest of existing members. Even if, in the unlikely event that ICAEW might consider lowering its standards to permit the unaffiliated to become members, ICAEW's existing oversight regulator (the FRC) would be unlikely to support this. This situation is likely to apply to all six accounting bodies subject to oversight by the FRC which are:

- Association of Chartered Certified Accountants (ACCA);
- Chartered Accountants Ireland (CAI);
- Chartered Institute of Management Accountants (CIMA);
- Chartered Institute of Public Finance and Accountancy (CIPFA);
- Institute of Chartered Accountants in England and Wales (ICAEW); and
- Institute of Chartered Accountants of Scotland (ICAS).

Under an agreement dating from 2003, the FRC has a non-statutory role for oversight of regulation by the above six chartered accountancy bodies of their members beyond those that are statutory auditors.

108. However, ICAEW notes that the proposed model for Approaches 1 and 2 would include a role for an independent body to determine which professional bodies would meet criteria included in legislation for being becoming 'recognised' as 'supervisors'. We believe that HM Treasury or another existing Government department could deal with applications to become an approved tax body as they would for a body wanting to become an AML supervisor.

109. We also note the suggestion that this body could also have a continuing role in overseeing whether the 'recognised professional bodies' continue to meet the required standards in terms of professional and ethical standards of their membership. We would be concerned at the inevitable additional costs of creating and maintaining such a body which would undoubtedly (as in other regulatory areas) be levied on the bodies and then passed down to practitioners and ultimately to the consumer. We would encourage the Government to carry out a full assessment of the layers of independent oversight which are already in place at

professional bodies like ICAEW and, if satisfied, set a minimum level of independent oversight for all bodies seeking to be approved to regulate under Approach 1. If issues arose with the performance of a particular body, then there could be a targeted intervention and/or discussion with the independent governance structures of the relevant professional body rather than an ongoing monitoring regime.

110. See also the response to Question 18.

Question 16: What role could the professional bodies play in supporting the clients of their members?

111. ICAEW acts in the public interest and it is part of our role to provide our members with access to first class technical advice and educational materials to assist our members and firms to operate in accordance with the highest technical and professional standards. We also carry out regular monitoring of our member firms through our Practice Assurance scheme to check that they are operating their practices in full compliance with all statutory and Institute regulations (and through our other regulatory inspections). We oblige all of our members to work in accordance with the ICAEW Code of Ethics and all members, member firms, affiliates and students are subject to the ICAEW Disciplinary Scheme. We believe that all of these benefits of membership, requirements and deterrents work together to put ICAEW members and firms in the best possible place to provide high quality advice.

112. Our enforcement activity is also key to helping clients to understand whether to instruct, or to continue to instruct, ICAEW members to provide them with advice. Members who are found liable of committing serious misconduct or falling significantly below the standards expected of them in their professional work may be excluded and will no longer be able to hold themselves out as members. Members who are disciplined for lesser complaints, including incompetence, will have their disciplinary records available for review on the disciplinary database which will allow clients to take an informed view on whether to instruct a particular member.

Question 17: Should the Government consider strengthening customer support options beyond the current complaints processes offered by professional bodies?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

113. No. If there is mandatory membership of a professional body (Approach 1), a market-wide compensation scheme or an ombudsman is unlikely to add much in the way of consumer protection. Indeed, it could result in outcomes contrary to the policy intention if taxpayers became less risk adverse knowing they would be compensated if things went wrong.

114. Such a proposal is also likely to create confusion if it provides a process for the obtaining of compensation other than through the courts which will already consider claims against professionals for professional negligence, possibly through the Small Claims Court. There does not appear to be any evidence within the consultation document which suggests that there are problems in taxpayers or members of the public being able to obtain compensation through this usual route for claims against professional advisers.

115. Where the Government may wish to consider strengthening the protection to the public, if it adopts Approach 1, is making it a requirement for all professional bodies seeking approval to regulate their tax practitioner members to have regulations in place which require all of their

tax practitioners or their firms to hold PII and to set a minimum cover level (again to avoid regulatory arbitrage). If all tax practitioners have to be members of a professional body and all professional bodies require their tax practitioners to hold a minimum level of PII cover, then this will provide a means for the public to recover compensation through the courts if they have a valid claim for negligence etc.

116. In any event, the creation of an ombudsman or a compensation claims process will be an expensive exercise and, following our earlier comments, if the costs of creating and maintaining such a body were to be levied on the professional bodies and passed through to practitioners, it is the consumers who will end up paying for it through higher costs of tax advice. This would just increase concerns regarding the access to professional tax advice.

Question 18: What role should HMRC/the Government play under Approach 1: mandatory membership of a recognised professional body?

117. We believe that it will be important for the Government to play a role in determining the criteria for the recognition/approval of professional bodies to regulate their tax practitioner members to ensure that there is a level playing field like HMT did for the approval of AML Supervisors. We do not believe that the Government should be creating an oversight regulator to do this or to continue to oversee the work of the professional bodies. We consider this to be unnecessary and would encourage the Government to carry out an analysis first of the extent of independent oversight within professional bodies like ICAEW and, having satisfied itself, for the Government to insist on minimum levels of independent oversight of regulatory work in all professional bodies seeking approval to regulate their members under Approach 1.
118. We also believe that the Government must either through the legislation introducing the new framework, or through discussions with the regulators of the other professions whose members provide tax advice, ensure that there is a level playing field across all professionals providing tax advice and services including all tax practitioners being held to the same standards, being subject to the same regularity of monitoring (and the same type of monitoring) and that sanctions/penalties are consistent.
119. We believe the Government/HMRC will also need to play a role in ‘policing the perimeter’ after the end of the transition period to ensure that the requirement for all tax practitioners to be members of professional bodies is not undermined by there being no deterrent for unaffiliated tax practitioners to continue to offer their services. Even if the legislation introduces protection of title and makes it illegal for anyone to deliver tax advice and services if they are not a member of a professional body, there is going to be a need for HMRC or some other body to identify any adviser/firm acting in breach to refer them to the appropriate law enforcement agencies.

How this approach could work: who should be regulated?

Application of the proposed model

Question 19: Do you agree that the requirement should only apply to those who interact with HMRC?

- **yes**
- **no**
- **maybe**
- **don’t know**

Please give reasons for your answer.

120. No. ICAEW believes that the requirement should apply across the whole market and without exclusion.
121. While HMRC can capture data about the tax practitioners that it interacts with, there are plenty of professionals that deliver tax advice and services without having to interact with HMRC.
122. Unless all practitioners are in scope, none of the approaches would tackle tax avoidance promoters that do not prepare tax returns.
123. All approaches would risk being circumvented by those wanting to continue to operate outside of a regulatory regime. For example, by getting a taxpayer to submit their own tax return with details of aggressive tax planning designed by the practitioner.

Question 20: Do you agree that the requirement should only apply to controlling or principals of firms?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

124. No. To limit the requirement to the controlling person or the principals carries the risk that the member of a professional body is no more than a 'name' for the firm. To enable professional bodies to monitor and take action against a firm, the firm itself must be registered with the professional body.
125. Furthermore, there is a potential for an umbrella structure of companies or firms that are controlled by a member of a professional body, but where that member does not supervise the work and none of the employees performing the day-to-day work on behalf on taxpayers are members of professional bodies.

Exclusions

Question 21: Are there any other regulated professions that should be excluded from this requirement?

126. No. ICAEW recognises the desire to avoid increasing burdens on professionals that are already regulated. However, as set out below, ICAEW does not consider that any regulated profession should be excluded from the requirements if they provide tax advice and services. ICAEW members are already extensively regulated for a number of different areas and under the oversight of a number of regulatory bodies including the FRC. Applying the principles in this consultation, it would be reasonable to exclude ICAEW from any regulatory regime which might be introduced. We are not suggesting this should happen, but it highlights the point that there must be a level playing field between all of the regulated professions.
127. Those providing tax advice and services should all be subject to the same requirements with the Government requiring the existing regulators of those other professions to carry out the same level of regulation (including holding tax practitioners to the same standards, same type of monitoring, same regularity of monitoring etc.)

Question 22: How can the Government ensure members of regulated professions have high standards in relation to their work providing tax advice or services?

128. See our answer to Question 21 above. Whatever minimum standards the Government considers necessary should apply market wide, regardless of whether a profession is regulated. It will be important that all tax practitioners, irrespective of their profession, are

held to the same standards and that all tax practitioners are subject to the same level and extent of monitoring and are also subject to the same enforcement action with the same level of sanctions for similar breaches.

Question 23: What are your views of the proposed exclusions?

Members of regulated professions

129. Excluding regulated professions from scope would amount to an uneven playing field that is contrary to the public interest. Many members report seeing examples of legal practitioners offering tax advice that would not be acceptable under PCRT.
130. Furthermore, the consultation document makes no mention of the concerns often expressed about the role of barristers' opinions which are often used in promoting or justifying tax avoidance schemes. Nor is there any mention of legal professional privilege being exploited in similar circumstances. Both areas need addressing.

Software developers

131. ICAEW considers that, in principle, software developers should be in scope. Software has already evolved beyond being a bookkeeping tool. There is now more scope to file returns straight from accounting software.
132. In practice, members report that clients believe their software does everything. However, the tax system is complex and taxpayers "don't know what they don't know".
133. Despite the stated objective of minimising extra costs and burdens for the taxpayer, tax practitioners and their clients, it is likely that under any of the proposed regulatory models, costs will increase and that more taxpayers will choose to rely on software for tax compliance rather than engage a tax practitioner.
134. Even if software developers stress that they are not providing tax advice and services, as software tools become increasingly sophisticated (and are likely to advance significantly before any of the proposals suggested in this consultation become law), the decision to exclude tax software developers must be reviewed.
135. If regulation causes a shift towards reliance on software, demand for software may drive new market entrants. As HMRC does not approve software (it simply recognises products that work with its online services), taxpayers may be at risk of choosing products that do not meet their needs or that could have data security or reliability issues.

Customs intermediaries

136. The work on developing a voluntary standard for customs intermediaries is noted. However, some members of professional bodies do advise on customs duty. If customs intermediaries are excluded, care needs to be taken to not create an uneven playing field for professional body members providing advice in this area and confusion for consumers accessing the services of customs intermediaries.

Umbrella companies

137. At Spring Budget 2024, it was announced that the Government would provide an update on the recent consultation on tackling non-compliance in the umbrella company market on Tax Administration and Maintenance Day. While the subsequent announcement on 18 April indicated that the Government continues to engage with the recruitment industry and other key stakeholders on the detail of a statutory due diligence regime for businesses that use umbrella companies, the Government's response to the 2023 consultation is still awaited. ICAEW agrees that tackling non-compliance in the umbrella company market needs a

specific response. However, it does appear that the Government has delayed taking decisive action to tackle this issue. Given that the umbrella company market is an obvious area to test some form of regulation before extending it more widely, the lack of action in this area is perhaps surprising.

Potentially in scope

Question 24: Do you think the following tax practitioners should be in scope of the requirement to become a member of a professional body member? Select all practitioner types you think should be in scope.

- **charities interacting with HMRC on behalf of taxpayers**
- **tax practitioners providing Pro-bono services**
- **promoters and enablers of tax avoidance**
- **overseas/offshore practitioners**
- **other (please specify)**

Please give reasons for your answer.

Overseas/offshore practitioners

138. ICAEW considers that overseas/offshore practitioners providing tax advice and services to UK taxpayers or overseas taxpayers with UK filing obligations should either be required to become a member of a professional body, if they are not already a member, or be subject to the same level of regulation as UK-based tax practitioners.

Promoters and enablers of tax avoidance

139. As noted in the consultation, mandatory professional body membership would either lead to expulsion of promoters of unacceptable tax avoidance from membership or mean that promoters would not meet the requirements of membership. The impact that this would have on the tax avoidance market depends on the scope of regulation. Unless any regulatory approach applies to the whole market (and not just those who interact with HMRC's systems), it is unlikely to tackle unacceptable tax avoidance. Furthermore, without there being some form of strong deterrent, there is a risk that such advice may continue to be given with tax avoidance promoters just being driven "underground".

Charities interacting with HMRC on behalf of taxpayers and tax practitioners providing pro-bono services

140. Charities interacting with HMRC on behalf of taxpayers play a vital role in assisting vulnerable and low-income taxpayers to navigate the tax system. ICAEW agrees that they should be out of scope. Similarly, those providing pro-bono services only (ie, are not also paid agents) should be out of scope. The Government should take some reassurance from the fact that PCRT applies to all members of those bodies that have signed up to PCRT, 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.

Definition in legislation of a provider of tax advice and services

Question 25: What could be the consequences of introducing a legal definition of a provider of tax advice and services?

141. To identify who any regulatory requirement applies to, it is necessary to define the nature of the work to be regulated and the skills of the person performing that work. It seems that the definition is similar (but not identical) to the definition of tax adviser in the Money Laundering Regulations. We believe that the Government should avoid issues created by an inconsistent definition, whereby a provider could be subject to AML supervision, but not tax regulation, or vice versa. If AML supervision is a prerequisite for registering as a tax agent with HMRC, should the definitions be the same?
142. It is noted that the definition could apply to dealings with UK tax authorities other than HMRC. Does that also extend to local authorities? If so, then that could bring in scope business rates, council tax, visitor levies, etc.
143. In order to strengthen the protections offered by such a change, there would need to be significant public awareness campaigns, akin to those undertaken when independent financial advice became regulated.

Question 26: What gaps or issues can you see arising because of this definition?

144. As it is proposed that the definition applies to advice or assistance given by way of a business, it is assumed that regulatory requirements will not apply to 'in-house' tax advice. That would be consistent with the fact that it would be the taxpayer or their employee interacting with HMRC. However, group service companies may be inadvertently caught by the definition (ie, where a service company provides tax support to the 'active' group members, among other services). This is akin to an 'in-house' team but could be considered to fall within 'advice or assistance given by way of a business'.

Implementation and next steps

Question 27: How could unaffiliated tax practitioners be transitioned into professional body membership?

145. Entry requirements vary for the accountancy professional bodies. As stated above, ICAEW would not be prepared to lower its entry requirements. As a result, we do not anticipate that many unaffiliated tax practitioners would seek to join ICAEW. This is because ICAEW membership requires more than passing exams on tax. The ACA qualification includes technical papers on areas such as audit and assurance, financial reporting, business strategy etc. Students must also complete a minimum of 450 days of practical work experience. They also need a training agreement with an ICAEW authorised training employer or principal who is responsible for off the student's training records at the end of that agreement.
146. Furthermore, an ICAEW member must have an ICAEW practising certificate if they want to engage in public practice in the UK. Along with other requirements, an ICAEW member is only eligible to hold an ICAEW practising certificate once they have been an ICAEW member for two years.
147. Any unaffiliated practitioners wishing to join ICAEW would need to undertake the full ACA entry route.

Question 28: Should a legacy scheme be adopted?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

148. Maybe. A legacy scheme does have the advantage of allowing unaffiliated practitioners to continue to operate while seeking professional body membership. Such a legacy scheme could be part of the roadmap where protection of the title 'tax accountant' and 'tax adviser' is the first step. Unaffiliated practitioners could continue to operate but not use these titles, and in time would either have to join a recognised professional body or exit the market.
149. During the period of the legacy scheme, there is the risk that the demands placed on the practitioner from continuing to run a practice at the same time as trying to obtain membership of a professional body could impact on the quality of the tax advice and services delivered.

Question 29: Do you agree a transition period of 3 years would give sufficient time for the market to adapt to the introduction of mandatory professional body membership?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

150. No. It depends on the entry requirements of the professional bodies.
151. Before any decisions are taken, HMRC could consider commissioning a further survey of the unaffiliated market and its make-up. The last survey [Understanding the characteristics of unaffiliated agents](#), was undertaken in November 2021, and showed that a large proportion were approaching retirement. Based on that knowledge, many in the unaffiliated sector may decide to sell their business and retire rather than join a professional body which could reduce significantly the number of those who would be seeking to transition.
152. There are two elements to a transition period that need to be considered. Firstly, the period for the details of any new regulatory model to be designed and implemented by the professional bodies – which is likely to take a number of years. Secondly, the period for any unaffiliated practitioners wishing to join a professional body to undertake the entry process for joining these bodies, which usually takes around three years if an individual wants to become a Chartered Accountant. Professional bodies may also have a further period before they will issue a practising certificate. So, we believe the cumulative time period for transition would be at least five years.

Question 30: What future developments would need to be accounted for in implementing mandatory professional body membership?

153. In the timeframe for developing any model, technology will develop at pace. Software is becoming increasingly sophisticated. Over time, artificial intelligence is likely to provide greater assistance in analysing and categorising data for inclusion in returns and drafting tax advice.
154. The tax agent market is also evolving. For example, tax compliance and payroll are among the service lines that firms often consider outsourcing or offshoring. Any regulatory model needs to take account of this trend.

155. One of the key challenges expressed by ICAEW member firms is staffing. Therefore, if the aim is to raise standards in the market, it is vital that regulatory burdens do not make the tax profession unattractive to new entrants such that the supply of professional tax practitioners diminishes. Otherwise, there is a risk of creating unmet consumer demand if taxpayers struggle to access advice due to a lack of qualified tax practitioners.

APPENDIX 1

ICAEW's Tax Faculty

Internationally recognised as a source of expertise, the ICAEW 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.

ICAEW's regulatory and conduct roles

Our role as an improvement regulator is to strengthen confidence and trust in those regulated by ICAEW. We do this by enabling, evaluating and enforcing the standards expected by the profession, oversight regulators and Government.

ICAEW's regulatory and conduct roles are separated from ICAEW's other activities through internal governance so that we can monitor, support or take steps to ensure change if standards are not met. These roles are carried out by the Professional Standards Department (PSD) and overseen by the ICAEW Regulatory Board (IRB) and oversight regulators including the Financial Reporting Council, Office for Professional Body Anti-Money Laundering Supervision, the Insolvency Service and the Legal Services Board.

Our role is to:

- **authorise** firms and individuals to undertake work regulated by law: audit, local audit, investment business, insolvency and probate;
- **support** professional standards in general accountancy practice through our Practice Assurance scheme;
- **provide** robust anti-money laundering supervision and monitoring;
- **monitor** registered firms and individuals to ensure they operate in accordance with laws, regulations and expected professional standards;
- **investigate** complaints and hold ICAEW Chartered Accountants and students, ICAEW supervised firms and regulated and affiliated individuals to account where they fall short of standards;
- **respond** and comment on proposed changes to the law and regulation; and
- **educate** through guidance and advice to help ICAEW's regulated community comply with laws, regulations and expected professional standards.

ICAEW is*:

- The largest recognised supervisory body (RSB) and recognised qualifying body (RQB) for statutory audit in the UK. There are 2,137 firms and 6,623 responsible individuals registered with us under the Companies Act 2006;
- The largest recognised supervisory body (RSB) for local audit in England. We have 10 firms and 101 key audit partners registered under the Local Audit and Accountability Act 2014;
- The largest insolvency regulator in the UK. We license over 800 insolvency practitioners (out of a total UK population of 1,542) as a recognised professional body (RPB) under the Insolvency Act 1986;
- A designated professional body (DPB) under the Financial Services and Markets Act 2000 (and previously a recognised professional body under the Financial Services Act 1986). We license 1,672 firms to undertake exempt regulated activities under this Act;

ICAEW REPRESENTATION 49/24 RAISING STANDARDS IN THE TAX ADVICE MARKET: STRENGTHENING THE REGULATORY FRAMEWORK AND IMPROVING REGISTRATION

- A supervisory body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2017, dealing with around 10,500 firms; and
- An approved regulator and licensing authority for probate under the Legal Services Act 2007. Over 350 firms are accredited by ICAEW to carry out this reserved legal activity.

and:

- 245 firms are accredited to perform ATOL returns work under the ICAEW Licensed Practice scheme for ATOL Reporting Accountant work. This was set up in 2016 after the Civil Aviation Authority (CAA) gave approval for ICAEW to license, register and monitor firms which perform ATOL returns work.

Our Practice Assurance scheme provides ICAEW members working in practice with a framework of principles-based quality assurance standards. We monitor around 11,500 firms to ensure they comply with the Practice Assurance standards.

*Data is correct as at 31 December 2023

[icaew.com/regulation](https://www.icaew.com/regulation)