

**Raising standards in the tax advice market -
Strengthening the regulatory framework and improving registration
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 We welcome the opportunity to respond to this consultation. As an initiative of the Chartered Institute of Taxation (CIOT), we endorse the comments made in the CIOT's response to this consultation. Our supplementary response focuses on additional points relevant to low-income unrepresented taxpayers.
- 1.2 We do not provide advice directly to individuals. Instead, LITRG provide free guidance about the UK tax system to the public via our websites, which are accessed by over 5 million people a year. Despite this, we are frequently contacted by members of the public who clearly need tax advice – some cannot afford it and others can afford it but don't know where to find it or seem to think it is not for them. Some already seem to have had contact with an adviser, but still ask for our help. In many cases, people have been caught out by an unscrupulous tax refund agent or have had their pay and taxes manipulated by an umbrella company, operating disguised remuneration.
- 1.3 We very much welcome the steps that have been taken recently by HMRC in respect of both of these issues. In respect of high volume repayment agents (HVRAs), HMRC now have a firmer grip of the multiple problems in this space and are getting better controls around agent processes. The recent R40 initiative¹ shows HMRC are aware of the need to get clear evidence of customer authority every time. In respect of umbrella companies paying workers through disguised remuneration, the recent consultation² contained strong options for tackling non-compliance which

¹ <https://www.litrg.org.uk/news/ppi-tax-refunds-new-evidence-requirement>

² <https://www.litrg.org.uk/press-release/tax-campaigners-welcome-disguised-remuneration-proposals>

could go a long way to addressing our longstanding and serious worries about disguised remuneration, which makes up a large part of the ‘tax avoidance’ problem¹.

- 1.4 Given these two serious, but now somewhat contained, issues are key influences for this consultation², is the government sure that they have fully identified and understood other issues in the tax advice market? Although the consultation contains a problem statement, we think further work is needed to get a deeper understanding of the problems that we are seeking to address. Without doing this, it is impossible to be sure that any approach will address the problems, the extent to which it will and any gaps that remain.
- 1.5 We support the requirement for registration and think that something like fit and proper checks should be incorporated as part of that. We observe that it should be accompanied by a clear strategy, including a public register, to work and we urge caution about unscrupulous agents attempting to use HMRC registration as evidence of official endorsement of their services.
- 1.6 The consultation document sets out three possible approaches to regulation of the tax advice market and seeks views as to which model is preferred. CIOT are broadly support of approach 1 - mandatory professional body membership - subject to the need for further detail as the policy progresses. This may cause good, unaffiliated agents to exit the market impacting consumers. In our previous responses³, LITRG also raised concerns⁴ about the increased costs of regulation falling on consumers of those regulated services. Whilst concerns such as these should not prevent any changes being made, it is important that they are fully understood and considered as plans develop so that relevant mitigations can be designed. It is important that HMRC do sufficient research to fully understand the potential wider impacts of any approach to regulation.
- 1.7 If approach 1 were to be implemented, we remain of the view⁵ that HMRC should supplement this by a structured initiative to expand and enhance the provision of not-for-profit tax advice – the lack of which, given the complexity of our tax system, is already a significant problem for many taxpayers. Again, we encourage HMRC to consider how they can monitor or improve other sources

¹ We explain more in our submission: <https://www.litrg.org.uk/submissions/call-evidence-umbrella-company-market>

² Much of this initiative was borne out of the Amyas Morse review into the loan charge, in which he made the following recommendation: ‘The Government must improve the market in tax advice and tackle the people who continue to promote the use of loan schemes, including by clarifying how taxpayers can challenge promoters and advisers that may be miss-selling loan schemes. There should be a new strategy published within 6 months, addressing how the Government will establish a more effective system of oversight, which may include formal regulation, for tax advisers.’

³ <https://www.litrg.org.uk/submissions/raising-standards-tax-advice-market>

⁴ <https://www.litrg.org.uk/submissions/raising-standards-tax-advice-market-call-evidence>

⁵ See our 2020 submission <https://www.litrg.org.uk/submissions/raising-standards-tax-advice-market-call-evidence>

of advice and support relied on by unrepresented taxpayers, outside of traditional accountants and tax advisers. This should include looking at which non-tax specialist charities and organisations HMRC fund to provide tax advice under the grant in aid programme.

- 1.8 Approach 1 is unlikely to address all of the issues identified in the problem statement. For example, what is to stop unscrupulous high volume repayment agents ignoring the rules or simply passing themselves off as having professional body membership through the misuse of badges/labels (as they do now by calling themselves ‘HMRC approved etc’)? While we appreciate the professional bodies will have responsibility for disciplinary action/sanctions for those who choose to become members, the key question remains as to who will enforce and police the agents attempting to operate outside that boundary? Without effective enforcement, the objectives outlined in the consultation would be undermined and if the consequences of continuing to give advice outside of the regulatory framework are not sufficiently serious, then there would be no deterrent. We think that HMRC are best placed to identify and sanction those outside of a professional body who have not dealt with regulatory requirements and require criminal sanctions.
- 1.9 It is also the case that this is the latest in a long line of consultations on raising standards. Progress is slow, although some pragmatic and sensible outcomes have come out of the previous consultations, and regulation is likely to be some way off. Thus, it is important in the interim, HMRC continue to look for ways to raise standards and act quickly to protect consumers within the current framework, for example by legislating to close down abuses around electronic signatures.

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those who are least able to pay for professional advice. We also produce free information, primarily via our website www.litrg.org.uk, to help make a difference to people’s understanding of the tax system.
- 2.2 LITRG works extensively with key stakeholders such as HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the tax system. LITRG also considers the welfare benefits system, and other related systems, to the extent that they interact with tax.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT’s primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Introduction

- 3.1 We are generally supportive of the three criteria for intervention set out in the consultation document – clarity on the required standards, transparency for taxpayers and enforcement where there are breaches. In particular, any intervention will only be effective if it is seen to be enforced. We have raised concerns previously, in several areas, where HMRC have not appeared to be

effective at enforcing the law or required standards or has been very slow to do so. This sends the wrong message to those bad actors who seek to exploit the system and in fact encourages them to continue their efforts to do so.

- 3.2 For example, although HMRC have recently taken important steps towards tackling unscrupulous repayment agents and umbrella companies who pay workers via disguised remuneration, action took too long, resulting in unnecessary impact on taxpayers, the public purse, to people's perceptions of HMRC and to trust in the system. Both of these issues have also been a driving force behind the question of raising standards in the tax advice market.
- 3.3 In respect of the HVRAs, HMRC now have a firmer grip of the multiple problems in this space and are getting better controls around agent processes. The recent clamp down on assignments¹ and the R40 initiative² shows HMRC are more aware of the need to get clear evidence of customer authority every time. In respect of the umbrella companies paying workers via disguised remuneration, the recent consultation³ contained strong options for tackling non-compliance which could go a long way to addressing our longstanding and serious worries about disguised remuneration, which we think make up a significant share of the 'tax avoidance' market.
- 3.4 Given these two serious, but now somewhat contained, issues are key influences for this consultation⁴, is the government sure that they have fully identified the nature and scale of other issues in the market? If market problems exist outside of a few discrete areas, then we think HMRC should share fuller data they have as to the nature and scale of the problems so that we can comment more coherently. We do not think the information in Appendix 3 allows us to do this.
- 3.5 As such, with regards to the problem statement set out in the consultation, we agree with our CIOT colleagues that further work is needed to get a deeper understanding of the problems that we are seeking to address. Without doing this, it is impossible to be sure that any approach will address the problems, the extent to which it will and any gaps that remain.

¹ <https://www.tax.org.uk/press-release-assignments-announcement-closes-window-of-opportunity>
<https://www.tax.org.uk/press-release-assignments-announcement-closes-window-of-opportunity>

² <https://www.litrg.org.uk/news/ppi-tax-refunds-new-evidence-requirement>
<https://www.litrg.org.uk/news/ppi-tax-refunds-new-evidence-requirement>

³ <https://www.litrg.org.uk/press-release/tax-campaigners-welcome-disguised-remuneration-proposals>
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⁴ Much of this initiative was borne out of the Amyas Morse review into the loan charge, in which he made the following recommendation: 'The Government must improve the market in tax advice and tackle the people who continue to promote the use of loan schemes, including by clarifying how taxpayers can challenge promoters and advisers that may be miss-selling loan schemes. There should be a new strategy published within 6 months, addressing how the Government will establish a more effective system of oversight, which may include formal regulation, for tax advisers.'

Costs

- 3.6 It is often thought that people on low incomes do not have complex tax affairs. This is incorrect. Whether it is because of self-employment, overseas connections, the inheritance or splitting of assets on death or divorce, or a debt issue that has several strands or has 'snowballed', lower income taxpayers need access to good quality, yet affordable, tax advice and assistance (even if they do not recognise themselves as being in need of it).
- 3.7 However, low-income taxpayers often cannot afford professional tax advice. Even if they can, they sometimes do not know how to find a reputable and professional adviser. And then, even if they know how to find such an adviser, there may be a perception that accountants or tax advisers only deal with business services or those who have more complicated tax affairs and are in need of tax planning services.
- 3.8 Any form of regulation is likely to have a cost attached. From the point of view of the section of the population who already struggle to afford to pay for tax advice, we do have some concerns that the cost of regulation is likely to fall on them. Under approach 1, professional bodies will likely need to invest in additional resources, personnel, technology etc. in order to fulfil what is required of them (which puts up the costs of membership). The characteristics and practices associated with previously unaffiliated agents might increase perceived risks, putting the cost of PII up for all advisers. The same goes for fees for AML supervision, given the increased workload that may come with previously HMRC supervised agents being admitted¹– the list goes on.
- 3.9 Without proper consideration and provision for those who already struggle to afford to pay, if regulation makes tax advice more expensive it will simply make it more exclusive. For example, we see this already in the regulated financial advice sector, where many of those we represent are unable to get proper advice on their pension pots, which are very valuable to them. Such exclusivity could potentially be very undesirable: the population who cannot afford to access will increase, more strain would be placed on the tax charities and the problems which result from 'bad' advice from unregulated sources could become more widespread. It could drive more people to deal with their own tax affairs which may impact on quality and therefore tax revenues and compliance.
- 3.10 HMRC's customer services are already buckling under existing demand pressure. We have highlighted our concerns that current digital services, including guidance, do not provide the full support taxpayers need to get their tax right². If costs of regulation are passed onto consumers, it may force more people into the unrepresented group – and therefore leaving them to get support from HMRC, further increasing the burden on HMRC.

¹ HMRC supervision is less stringent. Also, in several high profile tax refund agent cases there have been serious AML breaches, e.g. Tax Credits Ltd: See GOV.UK [press release](#)

²For example see our submission to the Public Accounts Committee <https://www.litrg.org.uk/submissions/public-accounts-committee-inquiry-hmrc-standard-report-2022-23>

- 3.11 Based on the research undertaken on the characteristics of unaffiliated agents¹, we think some will exit the market rather than join a professional body. Others may wish to join a professional body but may be precluded by the exams (assuming there will not be an alternative route to membership introduced) and the fact they will need to meet the costs of entry and compliance thereafter. They may also struggle to make their business practices fit with the professional bodies' 'traditional' ethical framework (for example, if they rely heavily on contingent fees). But these agents may be good agents, who have valid reasons for being unaffiliated thus far. In our experience, such agents tend to work for taxpayers who may be on low incomes and/or hard to reach (for example in the Construction Industry sector or migrant groups) this may further impact on levels of representation - but also compliance.
- 3.12 None of these issues are a reason not to move forward with any of the approaches, but they are issues that need to be carefully considered as plans develop so that steps are taken to mitigate the potential impacts where possible. Research is needed to ensure HMRC fully understand what the impact on those lower income taxpayers, who can currently just about afford to pay for advice, might be.
- 3.13 There also needs to be a full understanding of any potential consequences or other fallout as a result of any changes. One potential concern is that admitting previously non-affiliated agents, such as tax refund agents (particularly if a non-exam based route to entry is developed by some bodies), may dilute the value of the membership, actually leading to a reduction in qualified tax professionals in the market and thereby reducing competition, which can also harm consumers. If standards vary from one professional body to another, will this create confusion, loopholes or encourage 'gaming'? All of these things can also lead to negative outcomes for consumers and need to be weighed up in the cost/benefit analysis exercise and steps taken to mitigate any risks where possible.
- 3.14 As noted at the start of this document, this is a supplementary response to the main CIOT response and therefore we have only answered questions where we can provide additional information and insight over and above that in the CIOT response. It appears that umbrella companies will not be in scope of any new initiative, however we think there is merit in exploring further whether they should be included and what the benefits and risks of doing so would be. Our response is therefore primarily based on our experience of dealing with HVRA issues – most of these companies are not members of any professional body.

4 Specific questions

- 4.1 ***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***

¹https://assets.publishing.service.gov.uk/media/61a4c104d3bf7f0558fdc23b/Understanding_the_characteristics_of_unaffiliated_tax_agents.pdf

unscrupulous tax practitioners, clients being unable to easily assess the competence of a tax practitioner; other

- 4.1.1 We agree there are limitations in the partial framework across the tax advice market which have contributed to the issues observed.. However, it is also the case that HMRC could have prevented some issues arising and/or taking hold especially in relation to HVRAs, had they
- (a) probed the practices and processes used at a high level, when different models started to emerge and when changes were made (e.g. when online sign up processes were adopted)
 - (b) taken intelligence from taxpayers and stakeholders more seriously at an early stage and
 - (c) taken swifter action at an earlier stage, using the full extent of the powers available to them related to agent standards¹.
- 4.1.2 It seems to us that although the HMRC’s Standard for Agents does set out consequences of non-compliance², in reality unscrupulous HVRAs have been able to continue and grow because they did not face any of these consequences early enough. Although we welcome the various changes that have now been made, this action was too late to prevent significant harm to many taxpayers, the public purse, HMRC’s reputation and the tax system.
- 4.1.3 It is concerning that anyone can set up as, or call themselves, a tax adviser without any minimum requirements in relation to technical competence. It is also concerning that someone expelled from a professional body can continue to give tax advice without any restrictions. However, in relation to HVRAs, it is questionable whether taxpayers using them view them in the sense of a traditional agent from whom they are getting tax advice.
- 4.1.4 Some taxpayers are not aware that they have entered into an arrangement with a tax refund agent at all because, for instance, the agent uses the same colour branding as HMRC and they think they are dealing with HMRC or do not realise that the casual ‘enquiry’ process they are going through will result in a claim being made. Some know that they have entered into an arrangement but are not clear who they are dealing with due to very similar sounding company names, multiple different brands, networks of agents working together and the use of lead generating firms. However even beyond this, most of these companies use heavy social media marketing enticing people with promises of large refunds due from HMRC with very little effort required on the taxpayers’ part to claim that money. Underhand advertising tactics – for example suggesting they are ‘registered’ with HMRC, are used to encourage people to sign-up. This exposes people to bad practices including inflated claims from companies who seemingly have no tax knowledge or experience at all and are merely submitting refund claims without any regard for tax law. This is not about poor tax advice, as much as unscrupulous bad actors exploiting HMRC’s pay now check later approach.

¹ <https://www.gov.uk/government/publications/raising-standards-in-the-tax-advice-market-hmrCs-review-of-powers-to-uphold-its-standard-for-agents>

² <https://www.gov.uk/government/publications/hmrc-the-standard-for-agents/the-hmrc-standard-for-agents>

- 4.1.5 Connected to this is the fact that unrepresented taxpayers who are enticed by HVRA advertising most likely don't pay too much attention to agent standards because they lack an understanding of the ways in which things can go wrong. In our experience, they may assume that they have nothing to lose from a 'no win no fee' model - the taxpayer has no financial burden upfront and therefore are possibly less vigilant or more relaxed around what the agent might be doing on their behalf and because of their mistaken assumption that HMRC won't pay out a refund if it isn't due. This assumption is wrong, but it is a 'safeguard' to the taxpayer that plays a part in them signing up in the first place. HMRC have now started to issue specific consumer protection messages countering assumptions like this¹, however many taxpayers still face consequences from past claims, while the tax refund companies simply close down/phoenix.
- 4.1.6 One other point to make here about the current framework is that we have started to see examples of HVRA's changing their models. Whereas previously, they used the paper refund claim system, some now submit claims via self assessment returns and set up government gateway accounts in the taxpayer's name and then transfer access to the accounts over to the taxpayer at a later date. The taxpayer does not see what is submitted and there is no visibility to HMRC, except for perhaps a nomination with the refund company name. One of our concerns is that whatever steps HMRC take, including the approaches in this paper, there is a possibility that these unscrupulous companies will look for other ways to exploit taxpayers. Some of these may be attempts to get around whatever regulation rules are introduced. Others may be outside the tax system, for example by seeking to enforce unfair contract terms through threatening letters. Nonetheless, they damage people's trust in HMRC and the tax system. Any such opportunities need to be considered and mitigated as far as possible in any response.
- 4.1.7 Outside of the HVRA space, in our submissions to the earlier raising standards consultations², we highlighted that having a better tax advice market, consisting solely of good agents, is no use if taxpayers do not know how to access it effectively. This is not simply a question of cost, but also of perception and the practicalities of accessing advice. There is a problem with people finding their way to professional tax advice as demonstrated by the queries we receive. The existing guidance on finding tax advice³ remains woefully insufficient and, disappointingly, has not improved since our 2020 submission highlighting these issues, other than to add a link to HMRC's digital assistant. If you click on 'find an accountant accredited in the UK' it also remains the case that it does not take you to a list of all the professional bodies as one might expect. Rather it takes you to a page which merely contains the following words and a link to information about completing a form 64-8:

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<https://dontgetcaughtout.campaign.gov.uk/claiming-expenses/>

²<https://www.litrg.org.uk/sites/default/files/200825%20Raising%20standards%20in%20the%20tax%20advice%20market%20-%20LITRG%20response%20FINAL.pdf>

³ <https://www.gov.uk/self-assessment-tax-returns/get-help>

An accountant or tax adviser may be able to help you with your tax. You'll need to [authorise an accountant or tax adviser](#) to deal with HMRC for you.

4.1.8 It is disappointing that no attempts have been made in the last four years to improve this guidance and help people find their way to tax advisers who are members of professional bodies. While a new page of guidance on How to choose a tax agent has been developed¹ which contains some useful tips for taxpayers, this is somewhat marooned and also does not contain a list of professional bodies, even though it contains some discussion of their role.

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

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

4.2.1 We have noted above that the current HVRA situation could have, in part, been avoided had there been improved monitoring and effective enforcement, so it seems sensible to strengthen that component.

4.2.2 We also explored above in para 4.1.7 and 4.1.8 the need for better customer support in terms of finding good quality tax advice and agree this is in need of strengthening. In terms of complaint and redress, we support the CIOT submission in calling for mandatory PII to be a requirement (standalone to any future, deeper developments). This would need to be supported by guidance from HMRC on how people can seek redress.

4.2.3 In terms of what else the government could consider in supporting the objectives set out, supporting taxpayers to get things right and simplifying the system and tax administration processes where possible, would support a general raising of standards.

4.2.4 In supporting customers to get things right, HMRC could use their powers to correct a tax return more. In self assessment, the first port of call where HMRC think there is tax at stake is section 9ZB TMA 1970² – yet Section 9ZB isn't used often. If HMRC could programme their systems to flag up anomalous looking tax refund claims, for example, lower paid employees with EIS/SEIS claims and just remove the offending item under 9ZB, then that would be a huge step forward. If HMRC remove it incorrectly, then the taxpayer can just reject the correction – but it would act as an alert that a tax return has been submitted/provide a check and balance opportunity.

4.2.5 In our previous response on HVRA³, we highlighted that as part of dealing with HVRA problems, the factors which drive taxpayers to use them should be addressed. This includes the complexity of the claims process through GOV.UK, the reluctance of some taxpayers to engage directly with HMRC and

¹ <https://www.gov.uk/guidance/how-to-choose-a-tax-agent>

² <https://www.legislation.gov.uk/ukpga/1970/9/section/9ZB>

³ <https://www.litrg.org.uk/submissions/high-volume-repayment-agents>

the need for taxpayer awareness raising and education about what can be claimed. There may be bigger changes that can be made to ensure people can access any refunds they may be entitled to.

- 4.2.6 We think HMRC could also reduce the incidence of tax refunds in the first place – for example, exploring if tax refunds for washing uniform could somehow be automatically granted/given through PAYE. More generally, we think HMRC should ensure that legislation, policy and processes are aligned to reduce unnecessary ‘demand’ – we see examples where processes or guidance do not match the legislation, which causes confusion and the need for clarification (and therefore an opportunity for unscrupulous agents to exploit).

- 4.3 ***Question 4: Do you think the government should mandate the approach to registration for tax practitioners wishing to interact with HMRC?***

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?

Question 6: Are there additional checks that the government should consider for tax practitioners at the point of registration with HMRC?

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?

- 4.3.1 HMRC should definitely know who they are dealing with, just as tax advisers are obliged to do. HMRC also owes the public a duty of care to try to prevent problematic agents that have the potential to abuse consumers and the system, getting a foothold in the market. This situation currently is somewhat anomalous given that anyone can call themselves a tax agent and get access to the system. This includes someone who has previously been expelled from a professional body.
- 4.3.2 We can therefore see the benefits in introducing mandatory registration for all tax practitioners in terms of it giving HMRC visibility of the agent population. However, we share the CIOT concerns that doing so may allow more unscrupulous agents to use it to entice taxpayers as they are a ‘registered agent’ with HMRC. HMRC will need to monitor the market, agent tactics and have some clear standards linked to the mandatory registration, such as not using misleading advertising, that if breached would lead to suspension or removal of access.
- 4.3.3 We agree with the CIOT response that if mandatory registration is introduced it should include all tax advisers not simply those who interact with HMRC. Of course it is much easier for HMRC to enforce the registration requirement if it is limited to only those who interact with HMRC, as they can insist on registration numbers being quoted on all paperwork/forms/submissions etc and refuse to deal with if numbers are not provided. However, many tax agents do not interact with HMRC. So what would be the mechanism for compliance in this situation? It seems that a publicity campaign and an open register would be helpful for consumers to cross check advisers against. HMRC would need to set clear guidelines, monitor compliance and implement sanctions for non-compliance. This **would not** prevent all HVRA companies from acting behind the scenes however – for example transacting directly with the taxpayer and submitting a claim on their behalf (but in the taxpayer’s name) and relying on their contract to enforce the fees in order to try to avoid the registration requirements.

- 4.3.4 In terms of what checks could be undertaken at registration, we are particularly concerned about the phoenixing of companies, especially in relation to HVRA activity. The same names repeatedly come up as problematic agents. For instance, the controlling minds of Tax Credits Ltd had a track record of similar activity, yet were allowed into the system again and again¹. Whilst there may be commercial reasons why an individual wishes to register a further company, there could also be unscrupulous reasons for doing so. For new registrations, more detailed background checks as set out in the next paragraph would potentially alert HMRC of any issues. At the very least, they would insert a small barrier to entry. Agents might stop to think if the checks mean that HMRC might scrutinise the information before registering them. This could weed out potentially problematic agents before they enter the system.
- 4.3.5 Further checks on new registrations could include: criminality checks for all owners, internet searches of the director/company name, checking review websites like Trustpilot, website checks and checks of the terms and conditions of the firm. HMRC could require anyone registering to provide information about any previous companies they have been involved in and where such companies exist, require further information, including the reason for the new company and history of the previous companies. It is important to highlight that there are no fit and proper tests for accountancy providers under AML, as there is for money service businesses or trust or company service providers. As such, it is vital that HMRC consider introducing robust, substantive checks into their agent registration process to try to verify basic credentials. It is worth saying that due to the very serious nature of issues within the sector, ideally we would like to see broader ‘fit and proper’ style background checks, including financial standing, character and competency assessments, for HVRAAs.

4.4 **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.

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

¹ For instance, they used to run The tax repayment agency (which was on HMRC's tax defaulters list: in March 2022 <https://www.gov.uk/government/publications/publishing-details-of-deliberate-tax-defaulters-pddd/current-list-of-deliberate-tax-defaulters>). They have an history of using official sounding names which can mislead people into thinking they are HMRC or government services, e.g. The office of tax repayments: https://find-and-update.company-information.service.gov.uk/officers/rf7vL7Zq13aMz_TSlxBaduyQEcw/appointments) and The pension assessment agency: <https://find-and-update.company-information.service.gov.uk/company/09474549>.

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

- 4.4.1 There are advantages and disadvantages to all the approaches. As tax professionals, we hope that consumer harm could be reduced effectively by requiring all those providing tax services of any kind to be subject to the level of professional standards obligations applying to professional body members.
- 4.4.2 However, taking everything we know and understand about HVRA into account (see paras 4.1.4 – 4.1.6), mandatory professional body membership alone (or indeed any of the proposed approaches) is unlikely to sufficiently drive up standards for this particular group. Some of these less scrupulous agents may seek to exploit the time lag between the identification of a potential breach of standards and the understandable amount of time it could take for the professional body to investigate and take disciplinary action. In the interim, the agent, having made a significant profit, may simply choose to fold the company. Similarly, if taxpayers are still not practically supported in relation to choice and finding a tax adviser by government, a lack of transparency remains which leaves open the opportunity for taxpayers to be heavily targeted by HVRA or lead generators on social media. As we noted earlier in the response, it is possible some HVRA will look for ways to get around any new requirements or just continue despite them.
- 4.4.3 With regards to enforcement and sanctions for breaching standards, we are not talking about a homogenous people who want to improve their standards and who will respond positively to attempts to increase oversight and accountability. Some will comply, but view membership as a means to an end; continuing to push boundaries and making life hard for the professional bodies who are tasked with managing them, supervising their conduct and (via something like the Taxation Disciplinary Board, who are the independent disciplinary body of the CIOT and ATT) punishing poor behaviour. They currently have little fear of detection/ramifications and to avoid that happening under any new model, changes may be needed.
- 4.4.4 Others will probably ignore the rules or try to side-step them by evolving their practices to fall outside of regulation. HMRC, who uniquely hold the data and information, as well as the power to refuse to interact with those displaying egregious practices, will still have a key role to play in identifying poor practice ensuring action to raise standards is appropriately and efficiently targeted. As well as raising issues with the relevant professional body/regulatory, they will still need to use their powers to protect consumers by acting to shut down egregious practices quickly, in cases which may take time through formal regulatory disciplinary processes. .
- 4.4.5 There are no easy answers, but what is clear is that it will be at least three to five years before any wider regulatory framework comes into being. As such, we think HMRC need to keep focused on making sustained improvements to the landscape and actively trying to reduce risks within the current rules and framework – using all available levers to shut down abuses quickly.
- 4.4.6 In relation to HVRA in particular, we think there is an urgent need for HMRC to review its position on digital and electronic signatures as this is an area where HMRC are seemingly not clear themselves on constitutes a valid signature and is an issue that currently lacks mitigation (outside of

the R40 intervention).¹ HVRA's have been able to exploit the fact that HMRC cannot distinguish between a real signature and a digital signature on paper forms. They often harvest signatures and/or recycle signatures from previous documents from many years ago and use those signatures on current forms – the taxpayer never having sight of the form and in some cases no knowledge of the claim that has been submitted. Sometimes signatures are collected on blank forms, so the taxpayer does not see what has been filled in and submitted to HMRC.

- 4.4.7 One way to deal with this in relation to HVRA's is for HMRC to regularly review the HVRA's sign-up processes² from end to end to make sure that signatures are obtained in every case, and only after the form has been completed so the taxpayer has the opportunity to see, understand or approve the entries before submission to HMRC.
- 4.4.8 Another helpful step would be for HMRC to clarify their position on digital and electronic signatures and then promote it in the Standard for Agents. HMRC must also take swift action to properly investigate claims from taxpayers that they did not sign forms and then take swift enforcement action where it is the case that any new agent standards are breached. Severe penalties will act as a deterrent and a strong message that such behaviour will not be tolerated.

4.5 **General comments on approaches 1, 2 and 3 (Remaining questions)**

- 4.5.1 The CIOT response answers the questions about the specific approaches in detail. We do not intend to cover the questions in any detail in this supplementary response.
- 4.5.2 We strongly support the CIOT's response to question 19 and do not believe the requirement should only apply to those who interact with HMRC. All agents undertaking tax work should be included. This includes those who are regulated elsewhere, for example by the Solicitors Regulation Authority – seeing as we know of certain problematic tax refund agents that seem to be under their remit. We think particular thought needs to be given to software providers, especially as tools and apps develop.
- 4.5.3 In our 2020 submission on this topic, we also highlighted that unrepresented taxpayers may get tax advice from a number of sources such as friends and family, the 'man or woman in the pub', or advice from internet forums. Increasingly they may use AI tools such as Chat GPT. It can also include situations where neither party sees themselves as giving or receiving tax advice (e.g. employment agencies telling contractors to work through a particular intermediary). Though much of it may be well-intentioned, these advice routes vary in their reliability.
- 4.5.4 We are not suggesting these sources of advice need to be in scope, for example an individual who makes a mistake while assisting their family member cannot be expected to act in the same way as a paid agent.

¹ More detail, including about the risks to HMRC of not acting, can be found here: <https://www.litrg.org.uk/submissions/autumn-statement-representation-2023>

² There may be more than one process– e.g., TikTok, direct marketing, partnerships.

- 4.5.5 However, in our response to the consultation on the introduction of mandatory PII, we did say that there should not be an exemption for charities providing tax advice, nor for advisers acting on a pro bono basis where such services are being offered to the public (rather than just family or friends). Low-income, unrepresented taxpayers are likely to rely heavily on pro-bono advice – and they should be able to expect the same standards as those getting paid advice. This means that HMRC may need to review the organisations they fund to provide tax advice.
- 4.5.6 On the other hand, we are aware that some organisations assist taxpayers in accessing HMRC digital services, which is a much needed and helpful service, but we don't think assisting someone to access a digital service should fall under the tax advice definition unless it is accompanied by actual tax advice (such tax advice may be as simple as advising a taxpayer in which box to enter a certain figure on a return or form or whether or not income needs to be declared on a tax return). We therefore think further thought should be given to those who provide pro-bono tax advice as a service and whether they should also need to have professional body membership.
- 4.5.7 We have also noted previously¹ that HMRC themselves often give tax advice rather than guidance. For example, it is sometimes the case on X (formerly Twitter) and the HMRC community forum that HMRC advisers will ask additional questions to get further information from a taxpayer and then advise the taxpayer about the specific course of action they need to take². We recommend that HMRC consider the advice which they give to taxpayers themselves as part of this debate. Advice which is given by HMRC is particularly relevant for the lower paid. In our view any review of the tax advice market would be incomplete if HMRC are disregarded as an advice-giving body.
- 4.5.8 Furthermore, it is not clear why HMRC (and other government departments, such as the Department for Work and Pensions) should be exempt from any commitment to raising standards or regulation on the advice they give. The recent NAO report on HMRC customer service noted that HMRC's own audit of telephone and correspondence advice found 34% of advisers had not followed processes and we have noted that there is a distinct lack of concern about quality of interactions from HMRC and whether taxpayers actually get their tax right when evaluating digital services.
- 4.5.9 There remains a pressing need why HMRC should improve their own provision in terms of taxpayer information, guidance and advice as part of raising standards.

¹ <https://www.litrg.org.uk/reports/good-guidance-importance-effective-guidance-unrepresented-taxpayers>

² One example of this can be found in a X (Twitter) exchange where a taxpayer wanted to know the implications of receiving a large cash gift from a friend abroad and they were advised that as the money received was a gift it would have no tax consequences on her as an individual unless she was to earn money from it, such as interest. In another Twitter exchange, a taxpayer with power of attorney for an elderly relative asked if she needed to complete a tax return if her relative received interest from savings and she was told 'you will only need to file a return if your Aunt's interest is £10,000 or more in a tax year'. We think those are both examples of advice because they advise a specific course of action based on the individual's circumstances.

- 4.5.10 In summary, the definition of tax advice should be drafted as wide as possible. Although there may be some exemptions, we feel strongly it should include anyone regulated under the SRA and anyone offering tax advice services on a pro-bono basis to members of the public.
- 4.5.11 A concern remains if that if regulation has the effect to close down certain advice routes, it is possible that in that adviser's absence, some individuals may not turn to qualified professionals but may indeed turn to those unregulated sources or try to do things themselves – all of which come with inherent risks. HMRC must ensure they do sufficient research to understand what those risks might be and whether they can be mitigated.
- 4.5.12 We would like to end by reiterating a crucial point and that is how any system of regulation will be policed for those who choose not to become members of a professional body and who continue to offer tax advice. As we noted earlier, HMRC have been slow to respond to some of the issues created by HVRAs. The objectives outlined in the consultation would be undermined if there was not effective monitoring and enforcement to find such individuals. HMRC are best placed to identify and sanction those outside of a professional body who have not dealt with regulatory requirements and require criminal sanctions. If the consequences of continuing to give advice outside of the regulatory framework are not sufficiently serious, then there would be no deterrent. Although such people may find it difficult to interact directly with HMRC, we have already outlined a concern about potential changes in practices to use individuals own PTA accounts to submit claims.

LITRG
30 May 2024