

Consultation Response

*HMRC – Raising standards in the tax advice market: call
for evidence*

August 2020

AIA Response: HMRC – Raising standards in the tax advice market: call for evidence

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

This response sets out AIA’s response to the questions posed by the consultation and provides further clarity and guidance on how AIA works to uphold standards of tax advice issued by its members in practice.

AIA recommends that the government give careful consideration to including the legal protection professional titles, such as ‘tax agent’ and ‘accountant’, within its strategy for encouraging good tax agents.

Good agents help to improve tax compliance by providing quality advice on tax law and ensuring that clients can only claim their appropriate reliefs and as a consequence pay the correct tax. Good tax agents help to protect the public interest by reducing resourcing costs for HMRC and allowing an efficient and targeted taxation system.

There is a wider public interest argument in place for expansion of the role of professional bodies within the remit of improving ‘good agents’ and how they can add value.

The government should work to promote the effectiveness of good agents by recognising that additional safeguards and public interest concerns are met by consumers undertaking the services of a regulated individual to conduct their tax affairs, with proper recourse to advice if things go wrong and an independent complaints system.

All the options set out within the consultation require careful consideration against the public interest – ensuring a continuation of the availability of tax advice to members of the public whilst recognising the benefits of greater scrutiny over the competence of tax agents to bear down on bad behaviour and agents.

It must be recognised that any option that increases the burden and cost of regulation may result in tax agents leaving the regulated sector and acting with a lower level of scrutiny which would not result in a net benefit position.

AIA Response

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

The HMRC Standard is based upon three of the standards that are set out in the Professional Conduct in Respect of Taxation (PCRT), the industry-standard that AIA has adopted for its members.

However, there is no further supporting text or requirements which are placed upon members of professional bodies such as AIA's Constitution and Code of Ethics. Given that AIA and other professional bodies' codes go much more in depth than the Standard for Agents, it cannot be sufficiently argued that the current standard is comprehensive enough.

In addition, it is also difficult to see how the standard could be enforced in the unregulated sector which is unsupervised by professional body supervisors.

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

It is difficult to argue that a clear distinction can be made between tax advice and tax services. The Call for Evidence highlights that the tax services market is varied, and AIA agrees that although there is unlikely to be a solution that is appropriate for the whole sector, any decisions should not impact on the majority of tax advisers who already provide high standards of service and advice.

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

All AIA Members in Practice offering tax advice are obliged to follow AIA's Constitution, including regulations and Code of Ethics. However, the standards expected of AIA members do not differ relating to the work they undertake, and all members are bound by the Constitution, backed up by a robust disciplinary framework. AIA applies the PCRT to its members in practice, which includes:

- 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 a 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.

AIA recommends that members make plain in engagement letters with clients which services are being provided and in what context, however, it is not always possible to draw any clear distinction between tax compliance services and tax advice. Although tax compliance services are usually considered lower risk and less technically challenging compared to providing tax advice, this may not always be the case and specific circumstances may differ.

Additionally, there are strict regulations in existence surround Professional Indemnity Insurance (PII), a key public interest consideration. Appropriate PII is mandatory for AIA members engaging in public practice, with higher premiums often allocated to higher risk activity such as higher risk tax planning activities.

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

No comment.

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

The government should work to promote the effectiveness of good agents by recognising that additional safeguards and public interest concerns are met by consumers undertaking the services of a regulated individual to conduct their tax affairs, with proper recourse to advice if things go wrong and an independent complaints system.

There is a current misconception that all those offering tax advice are professionally qualified, but in reality, this may not be the case. AIA is happy to work with the government further on promoting the benefits of using a good tax agent and would suggest that a focus is given to explaining how consumers could recognise qualified tax agents, either through a recognisable 'kitemark; or improving wider perception and knowledge of the market..

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

Good agents help to improve tax compliance by providing quality advice on tax law and ensuring that clients can only claim their appropriate reliefs and as a consequence pay the correct tax. Good tax agents help to protect the public interest by reducing resourcing costs for HMRC and allowing an efficient and targeted taxation system.

There is a wider public interest argument in place for expansion of the role of professional bodies within the remit of improving 'good agents' and how they can add value.

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

AIA would consider that a good tax adviser could be said to exhibit characteristics including:

- Being a member of a professional body and regulated by a Code of Ethics and PCRT
- Working strictly within their areas of competence and not extending beyond their understanding
- Working to assist taxpayers to meet their statutory requirements and ensuring completion of accurate disclosures
- Undertaking ethical tax planning, i.e. assisting in legal tax reliefs, reasonable tax planning arrangements and working at all times within the scope and principles of PCRT
- Using professional scepticism and sound professional judgement and skills commensurate with their training and professional standards

On the other hand, AIA would consider that a good tax adviser would exhibit characteristics including:

- Lacking technical knowledge or competence
- refusing to abide by professional standards
- providing opaque advice to clients or insufficient detail on any extant risks
- holding insufficient or non-existent PII cover
- failing to adequately question the motives or background of clients requesting aggressive tax schemes

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

Aspects of the tax advice market are more problematic than others and in addition may carry additional risk. The following areas could be said to include areas of current or potential future concern:

- Mass marketed tax avoidance schemes
- Research & Development credit claims
- High volume tax repayment agents
- Schemes which act to reduce or reclaim stamp duty or land tax
- Tax reliefs for investors involved in crowdfunding

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

AIA has no specific evidence to present regarding the impacts of unqualified agents or agents not meeting standards, however we would take this opportunity to reinforce that those unqualified agents who do not meet the standards act to undermine overall tax compliance and therefore to increase the tax gap. In addition, these actions undermine the work and reputation of qualified and regulated tax agents.

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

Initially it should be recognised that HMRC and professional bodies could work more closely together to build on existing information sharing links and areas of joint work such as discussion forums and steering groups.

Professional body supervisors have a unique knowledge of members, including processes and systems within firms, clients, and overall compliance.

HMRC should work with professional bodies to identify key indicators of poor behaviour and agree areas of intervention, to include education, training and joint advertising.

AIA would be happy to be involved in further discussion surrounding improving communication and messaging between HMRC and regulated tax agents.

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

No comment.

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

HMRC should consider substantial investment in IT systems which utilise Big Data effectively to analyse performance across registered tax agents. Effective use of data will allow the correct decisions to be made on a risk-based approach relating to HMRC's prioritisations and enable a more efficient allocation of resources.

Accumulating a solid base of data, tying in the use of artificial intelligence, will allow the discovery of trends and patterns of good behaviour in tax agents and engender a more focussed regulatory approach.

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

Whilst professional accountants have a duty to provide advice and guidance for clients it remains the individual taxpayer's responsibility to ensure their tax affairs are legal and appropriate.

It is unclear how increasing consumer protection would cause individuals not to acknowledge their legal requirements.

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

Professional bodies such as AIA should have a role in improving customer protection for those individuals who are regulated, however tax agents who are not affiliated to any professional body should be the responsibility of the government or equivalent. There would be considerably less government cost in terms of time and resources to support non-affiliated agents if tax agents were required to register with a professional / regulatory body.

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

Professional bodies provide support to members on catering to the needs of clients and customers who require additional support, however we do not provide that support directly to clients. For customers who require additional support AIA encourages its members to reach out through their professional networks to provide pro bono work for worthwhile causes or volunteer their time and expertise.

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

Any market intervention should be considered as a last resort and should be properly targeted at specific areas of the market which require reform, rather than adding unnecessarily to the burdens of compliance and regulation faced by regulated firms and practices.

Any market intervention necessitated should be undertaken using a risk-based approach and with a system designed to assess the impact to regulated entities.

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

AIA is not of the opinion that it would be necessarily appropriate for HMRC to have a role in regulating professional tax advisers due to a conflict of interest between the role of collecting and managing the United Kingdom's tax framework and system and any regulatory work. Where regulators work well there is a clear demarcation of responsibility, independence and transparency.

Professional bodies currently undertake a vital regulatory and oversight role over their members, including enforcing the Money Laundering Regulations and PCRT.

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

As an international professional accountancy body AIA are happy to work with HMRC to identify areas in other jurisdictions where examples of best practice may be established.

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

Although data and digital integration are already hallmarks of an effective tax system AIA considers that in the coming years there will be increased uptake and availability of digital solutions and the use of artificial intelligence. AIA has commented on these changes in recent editions of *International Accountant magazine* and highlighted how AI and digital integration pose both challenges and opportunities for public accountants.

Although these changes are generally positive thought must be given to how the nature of cyber security and how threats may adapt so that in general a greater level of focus will need to be given within the standards on IT integration, cyber security and artificial intelligence.

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

No comment.

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

AIA would comment that HMRC has access to a wide-ranging selection of powers and suggest that HMRC's current powers are sufficient to enforce action against bad agents and fulfil HMRC's stated objectives. However, powers or regulatory action is only effective if utilised and promoted to ensure deterrence or protect the public interest.

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

Although there are merits to the ombudsman scheme posed, AIA does not consider that there are benefits to be achieved that could not be achieved by proposing the benefits of affiliated tax advisers and that professional bodies would have a greater understanding and influence over the actions of their members to operate in the public interest.

In order to highlight systems of redress within the regulated sector AIA would note that all Members in Practice:

- must have appropriate professional indemnity insurance
- are overseen by a robust Quality Assurance monitoring and supervision process
- are subject to an independent disciplinary framework, including publication of disciplinary outcomes and information sharing between supervisors
- are required to undertake appropriate CPD and undergo checks

Question 23: How could consumers be helped to make better choices?

AIA supports the creation of conditions where consumers have the ability to make an informed choice about hiring professional tax advice and would support measures to highlight the positive benefits of choosing regulated professionals to undertake that advice.

Consumers could be assisted to make better, more informed, choices by more visible and accessible government guidance, advertisement and press etc.

Additionally, the government should consider an additional level of recognition / regulation for agents whereby the consumer could be assured that their tax advice agent was operating in line with a professional body which upheld standards of competence and ethics.

AIA would suggest working closely with professional body supervisors to develop an industry approach to recognition.

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

No comment.

Question 25: What scope is there for the professional bodies to take on a greater regulatory role in a similar way to anti-money laundering (AML) supervision? (where some professional bodies supervise their members

and the professional body in turn is supervised by the Office for Professional body AML Supervision (or OPBAS) within the Financial Conduct Authority)

As a professional accountancy body AIA works to protect the public interest and raise standards in the sector where required. AIA works to ensure our members uphold high standards of competence and ethics and employs a robust monitoring and supervision framework to test compliance.

As a supervisory body under Schedule 1 of the Money Laundering Regulations 2017 AIA supervises our members to ensure compliance with the regulatory requirements and has considerable experience of monitoring compliance.

Any additional responsibility placed on professional bodies would have to recognise that individual who choose not to be regulated may be receiving a less onerous compliance process outside of the regulated sector and the pressure this would place on individuals to leave the regulated sector to take advantage of a lighter regulatory touch.

About AIA

The Association of International Accountants (AIA) was founded in the UK in 1928 as a professional accountancy body and promotes the concept of 'international accounting' to create a global network of accountants.

AIA is recognised by the UK government as a recognised qualifying body for statutory auditors under the Companies Act 2006, across the European Union under the mutual recognition of professional qualifications directive and as a prescribed body under the Companies (Auditing and Accounting) Act 2014 in the Republic of Ireland. AIA also has supervisory status for its members in the UK under the Money Laundering Regulations 2017. AIA is a Commonwealth Accredited Organisation.

AIA believes in creating a global accountancy profession and supports the International Federation of Accountants (IFAC) in their vision of a global accountancy profession recognised as a valued leader in the development of strong and sustainable organisations, financial markets and economies. AIA has adopted IFAC's Code of Ethics for professional accountants and also incorporates IFAC's International Education Standards (IES) into its qualifications and policies.

AIA has members working throughout the whole spectrum of the accountancy profession. Many of our members are at the top of the accountancy industry, from senior management to director level. Conversely, significant numbers of our members work in small and medium sized businesses (SMEs) and we strive to champion the importance of SMEs and their needs.

Further Information

The above replies represent our comments upon this consultation document. We hope that our comments will be helpful and seen as constructive. AIA will be pleased to learn of feedback, and to assist further in this discussion process if requested.

If you require any further information, please contact:

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