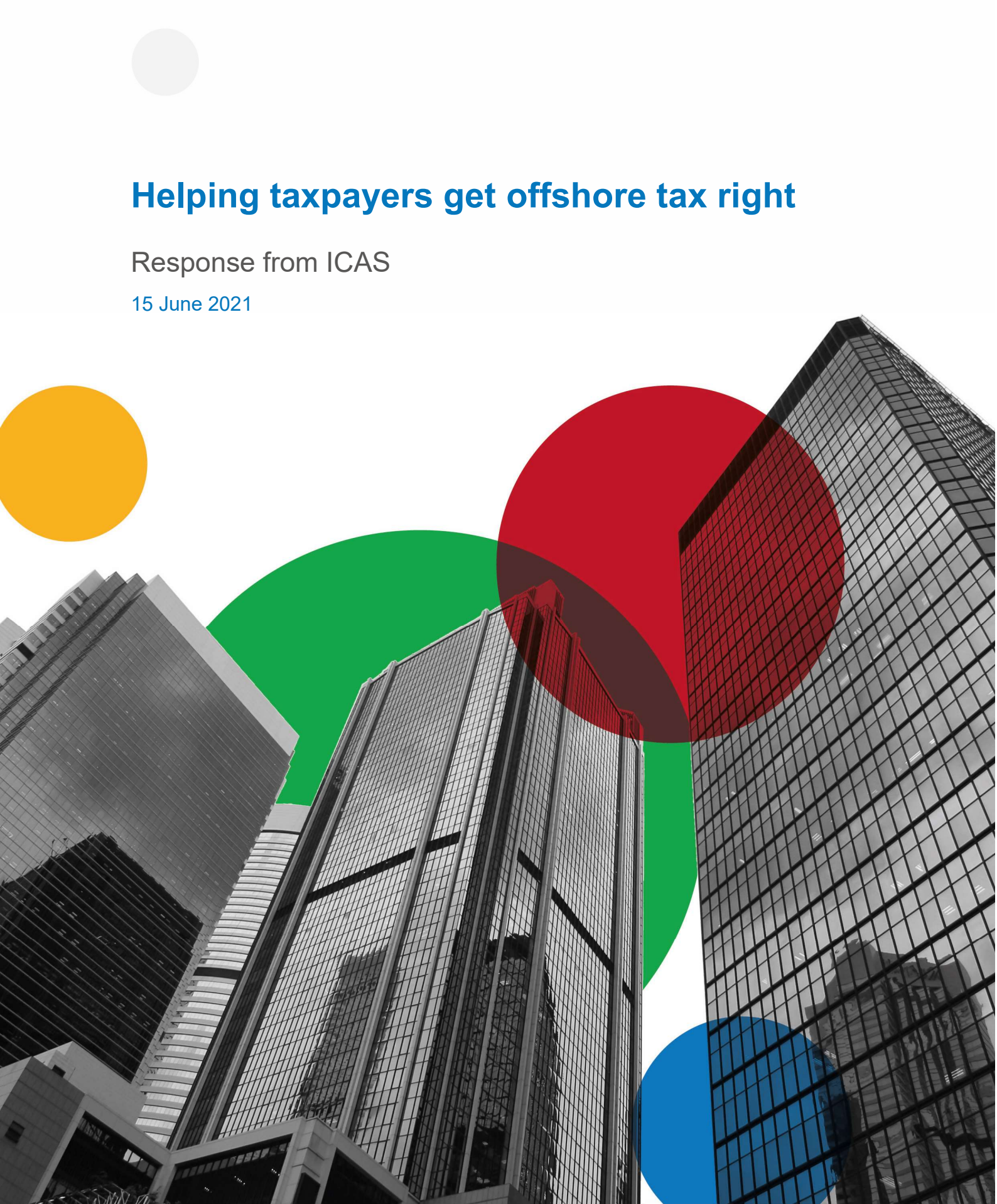




Helping taxpayers get offshore tax right

Response from ICAS

15 June 2021

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 22,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 10,000 of our members are based in Scotland and 10,000 in England.
2. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good.
3. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.

General comments

4. ICAS welcomes the opportunity to respond to the discussion document, Helping taxpayers get offshore tax right, issued by HMRC on 23 March 2021.
5. We were also pleased to have the opportunity to take part in the two HMRC workshops which discussed the transparency and data aspects of the paper.

Overarching questions

A. Do you agree that the factors set out in paragraph 1.9 cause offshore non-compliance?

6. We assume that the question is referring to the factors set out in paragraph 1.8, rather than 1.9. We agree that the factors mentioned in paragraph 1.8 do contribute to non-deliberate non-compliance.
7. Examples we have been given, where some of these factors have caused non-compliance, include:
 - Individuals inheriting offshore assets, or becoming beneficiaries of an offshore trust, who do not appreciate that there could be UK tax consequences.
 - Internationally mobile workers who do not have a background of taking advice on their tax affairs.
 - Returning expatriates who retain some offshore assets/investments but do not understand the UK tax consequences.
 - Taxpayers who take advice at the outset of an arrangement (for example, on taking up a new employment) and do not appreciate that either the tax rules have changed, or that their circumstances have changed, so that the advice is no longer correct/relevant.
 - Investors in offshore funds where information received from the funds is inadequate to allow them to understand or to meet UK tax reporting requirements.
 - Individuals coming to the UK to work, and dealt with under PAYE, not realising that they need to report overseas income (for example, bank interest).
 - Individuals who have become non-resident disposing of a UK residential property and assuming that it could be reported on their SA return, due to lack of awareness of the non-resident CGT regime.

B. Are there other factors that we should address to improve offshore compliance?

8. One factor contributing to non-compliance in general, not solely in relation to offshore tax, is the complexity of the UK tax system. Complex legislation makes it more difficult for taxpayers to comply and diverts resources (for HMRC, agents and taxpayers) into correcting errors, appeals

and disputes. There are some particularly complex rules relating to some areas of offshore tax, so inevitably this will push some taxpayers, particularly unrepresented ones, into inadvertent non-compliance.

9. There is obviously no quick solution to complexity. However, tax simplification should be a longer term objective which would help to address offshore non-compliance and non-compliance in general.

C. Do you consider the possible approaches suggested in this paper would be effective to help ensure offshore tax compliance?

10. It would be helpful for HMRC to develop processes and interventions aimed at helping taxpayers to get their returns right – rather than waiting to tackle problems further down the line. Some of the approaches suggested in the discussion paper could potentially assist in improving offshore tax compliance.

D. What further ideas do you have to help taxpayers get their offshore tax right?

11. As discussed in the first workshop and in the paper, much of the data HMRC receives (for example, through CRS) is reported for the calendar year, rather than the tax year. This causes various issues for HMRC and taxpayers.
12. The Office of Tax Simplification published a scoping document on 4 June, for a review of the potential for moving the tax year end date. The review will focus on the implications of moving the tax year end date from 5 April to 31 March. However, it will also outline the main additional broader issues, costs and benefits that would need to be considered if the end of the tax year were moved to 31 December.
13. We assume that the OTS will issue a call for evidence, which will provide the opportunity to consider the potential benefits and any downsides of changing the tax year to 31 December – including consideration of the likely impact on offshore tax compliance.

Specific questions

Using data & Helpful information for taxpayers

Q1. How do you think HMRC could best use offshore data to promote offshore compliance and help taxpayers get offshore tax right first time?

14. As noted in our responses to Questions A and B, much non-deliberate non-compliance arises because taxpayers do not understand the rules and do not realise that they need to report offshore income or gains to HMRC. They may also not realise that they need to tell an existing agent – or that they should obtain advice, if they do not have an agent.
15. 'Reminders' as outlined in paragraph 2.9 may not be the right way to frame the suggested prompts, as it suggests some prior knowledge. However, it would be useful for HMRC to flag to taxpayers, the requirement to notify chargeability - making specific reference to the need to consider overseas sources. It would also be helpful to include prompts in notices to file a tax – these would flag that according to information held by HMRC, taxpayers have assets or income overseas and that UK tax obligations may arise from these.
16. It is not clear whether HMRC envisages authorised agents being able to see prompts directed to their clients. We believe they should be able to see them – as they would then be able to initiate a discussion with the client. This is likely to make the prompts more effective than relying on taxpayers being prompted to discuss their offshore assets and income with their agent.
17. Some unrepresented taxpayers might decide to take advice, on receipt of a prompt, but some will be likely to need support from HMRC. Signposting to guidance in the prompts would be helpful, but HMRC helplines would also need to be able to deal with taxpayers raising offshore queries in response to the prompts.

18. The earlier the prompts can be included in the tax return process, the better, so that taxpayers have more time to seek advice or support. However, the online prompts within tax returns (third bullet of paragraph 2.9 of the paper) could also be helpful – particularly if they referred to specific countries and (as with the earlier prompts) made clear that there could be a need to report.
19. Additional consideration will need to be given to the approach for non-domiciled taxpayers using the remittance basis – who will only have to report overseas income and gains remitted to the UK. Prompts based on CRS data could therefore be misleading and unhelpful.
20. Agents would welcome HMRC sharing information it has received (for example, through CRS) about their clients' offshore income and assets. As noted in the paper, problems can arise because much of the data HMRC receives is reported for the calendar year, rather than the tax year. As discussed in the workshops there are also often inaccuracies in the data supplied to HMRC through CRS.
21. Transparency, on HMRC's part, through sharing data with agents (and taxpayers) would help to ensure correct entries in tax returns – and give agents/taxpayers the opportunity to provide explanations for apparent inconsistencies, or to point out inaccuracies in the third-party data. It would also reduce the number of nudge letters issued by HMRC where the returns were in fact correct.

Q2. How do you think HMRC could best use offshore data to stop errors from happening?

22. We assume that the data will generally be used to give digital prompts. HMRC should ensure that agents can see any prompts HMRC has directed to their clients – as noted in our response to Question 1, excluding agents from seeing prompts will not produce the best outcomes.
23. Agents cannot currently access clients' Personal Tax Accounts so if PTAs are used to deliver prompts (as suggested in paragraph 3.13 of the paper), there will need to be an additional mechanism for allowing agents to see them. In the longer term this problem should be resolved by giving authorised agents access to the relevant sections of the planned single digital tax accounts.
24. HMRC will also need to ensure that any prompts can be delivered through commercial tax return software used by agents, as well as through its own SA filing system.
25. Where taxpayers are digitally excluded and file paper tax returns, HMRC will need to consider how to make prompts available in a non-digital form – paragraph 3.9 of the paper mentions letters through the post.
26. Prompts could also be included in paper notices to file – and potentially the foreign pages section of the return could be included with paper returns (in a similar approach to the online pre-selection mentioned in paragraph 3.11, ie including an explanation that this is based on information held by HMRC).

Q3. Should additional safeguards apply to ensure taxpayers' rights are protected if HMRC use offshore data in new ways as set out in paragraph 2.9?

27. As discussed at the two workshops on transparency and data, problems are caused because there are inaccuracies in CRS data. If HMRC makes more use of the data it receives, safeguards for taxpayers and proper processes for addressing inaccuracies will need to be put in place.
28. Sharing data transparently with agents and taxpayers at the outset rather than using nudge letters (which do not provide details of the information of concern to HMRC), would help to identify problems with the data at an earlier stage. This would be beneficial.
29. We discuss other issues linked to inaccuracies in third-party data in our response to Question 10, in the context of possible pre-population of data in tax returns. There would need to be procedures and safeguards in place to ensure that taxpayers could correct third-party data.

Helpful information from taxpayers

Q4. Do you think making the changes to the data and information collected through the foreign pages, as set out in paragraph 2.14, would be helpful?

- 30. This might be helpful for taxpayers with relatively simple affairs and a small number of overseas banks accounts – although these are likely to be the cases where reconciliation with CRS data is less of an issue. Even in these cases, it would probably be less onerous for the taxpayer if HMRC simply shared the CRS (and other) data it had received with taxpayers and their agents.
- 31. For taxpayers with more complex affairs – particularly those using the remittance basis – this would be more problematic.
- 32. Feedback from members suggests that HMRC sometimes ignores additional information submitted with returns (or in the white space) – and requests information without checking what has already been supplied. Requirements to supply extra information should not be imposed unless HMRC has the capacity and the intention to utilise the additional material to reduce unnecessary interventions.

Q5. What other areas are there where it would assist tax agents if it were made mandatory for their clients to provide HMRC (and hence the agent) with details that are not currently required in a self-assessment return?

- 33. The benefits of providing extensive extra details about overseas assets are unclear – there is a risk that if completing the foreign pages becomes too onerous, it could be counter-productive. Taxpayers may also have concerns about providing too much detail in their tax returns.

Guidance and education

Q6. What terminology do you think would help a broader range of taxpayers associate themselves more accurately with their offshore tax obligations?

- 34. Paragraph 3.4 of the paper highlights possible taxpayer confusion arising from the use of different terminology in connection with international tax matters. We agree that some taxpayers may think that HMRC communications about 'offshore', 'foreign' and 'overseas' tax are targeted at wealthy taxpayers (and at tax avoidance or evasion). This is perhaps most likely to be the case with 'offshore' which is often used in media reports in conjunction with tax havens and tax avoidance or evasion.
- 35. As a result many taxpayers who are inadvertently failing to comply might be less likely to see a communication as relevant to them if it refers to 'offshore'. 'International' tax might be a more neutral term for HMRC to use.

Public communications

Q7. In which areas of offshore tax should HMRC focus communication efforts and why?

- 36. The suggestions in paragraph 3.7 of the paper would be a good starting point.
- 37. We have also set out some examples of inadvertently non-compliant taxpayers in our response to Question A. Areas linked to these taxpayer scenarios could also be suitable areas for HMRC communication efforts.
- 38. In some cases the timing of targeted communications should be considered – for returning expatriates or individuals arriving in the UK to work, communications around the time of arrival in the UK would be useful.

Q8. How should HMRC best carry out public communications to have the most impact in helping taxpayers get their offshore tax right?

39. The suggestions in paragraph 3.6 all look helpful. Targeted communications (second bullet) are likely to be the most effective. In addition the use of social media and articles in newspapers or more specialised publications (for example, linked to sectors where HMRC are identifying errors) could be considered.
40. Whilst it would be helpful to have a 'one stop shop' page for offshore guidance on GOV.UK, this would need to be signposted - taxpayers are unlikely to find it (or even realise that they need to find it) without being alerted to its existence. However, putting it in place would allow HMRC to include the signposting in a range of other communications, including notices to file.

Informing taxpayers based offshore of their UK tax obligations

Q9. How can HMRC raise awareness of changes in legislation when the target audience is based offshore?

41. This is clearly problematic, as illustrated by experience with non-resident CGT. Feedback from our members and the large number of Tribunal cases relating to NRCGT penalties, indicate that many normally compliant taxpayers did not realise that they had an obligation to report (particularly where there was no tax to pay) until they came to complete their normal SA tax return (which included information on NRCGT).
42. In the case of NRCGT, more targeted communications should have been provided, for example, direct communications to individuals who had become non-resident but had UK property income. It would also have made sense to include advance information in tax returns the year before implementation of the new regime.
43. Where HMRC knows that a change will affect a particular group of taxpayers or a business sector it should be looking to target communications – either directly to the individuals most likely to be affected (which should have been possible with NRCGT) or more broadly, for example, through publications, trade bodies, websites and social media likely to be accessed by those affected.

Digital prompts for taxpayers

Q10. What data would be useful to you when receiving a prompt and when in the process would you like to receive it?

44. See our responses to Questions 1 and 2. The earlier the prompts can be included in the tax return process the better – but including them at all stages would be helpful. Ensuring that agents can see prompts directed to their clients is also important.
45. Paragraph 3.13 of the paper also mentions the possibility of exploring pre-population of returns with offshore data. The Office of Tax Simplification is currently conducting a review of the use of third-party data by HMRC for pre-population and issued a call for evidence in January 2021.
46. Whilst the OTS is considering the scope for additional third parties to provide data to HMRC for pre-population, many of the issues raised in the call for evidence are also relevant to HMRC's use of CRS and other offshore data for pre-population.
47. ICAS submitted [evidence to the OTS](#) which raises some important issues to be addressed around pre-population. In the context of pre-population of offshore data, procedures and safeguards need to be in place to deal with incorrect data being supplied by third parties (through CRS or otherwise).
48. Firstly, it will need to be made clear to taxpayers that it remains their responsibility to ensure that pre-populated data in their tax return is correct – and that they should not assume that third parties and HMRC will necessarily get it right.

49. Secondly, where there are inaccuracies in prepopulated third-party information taxpayers (or their agents) should be able to correct these themselves. As set out in our evidence to the OTS, we do not believe that taxpayers should have to request that the third party should correct the data – it is the taxpayer's return, they retain a statutory obligation to ensure it is correct and complete and they should have an absolute right to override data they believe is incorrect.
50. Given that many of the institutions providing CRS (or other) data will not be in the UK it is particularly important for UK taxpayers to have the right to correct data. Our evidence to the OTS made some recommendations for measures to protect taxpayers, if (contrary to our preferred option) they were not given an absolute right to override incorrect data. There should be statutory provisions (and a well-publicised process) to ensure that:
- Third-party data providers are required either to correct the data, or provide a detailed response to the taxpayer (explaining why the information is considered to be correct), within a specified time of the correction being requested.
 - There is a right of appeal by the taxpayer against a refusal to correct data.
 - There is a mechanism allowing the taxpayer to postpone finalisation of their return for the tax year (and submission of their declaration that it is correct and complete) with HMRC, pending resolution of a dispute with the third-party data provider.
 - HMRC does not collect any tax arising from disputed data until the dispute is resolved.

However, it is unclear how this might work for third parties outside UK jurisdiction. Effective safeguards would need to be in place.

Working with agents and intermediaries

Q11. How could HMRC work with agents and intermediaries to improve offshore tax compliance?

51. See our response to Question 1. Transparency, on HMRC's part, through sharing data with agents (and taxpayers) would help to ensure correct entries in tax returns.
52. HMRC could also work with intermediaries such as financial institutions and investment managers to improve the information they provide to their customers. Feedback from members indicates that some taxpayers find it hard to determine which boxes on the tax return to use for different types of income – for example, distinguishing between interest from banks and interest from unit trusts. This makes data reconciliation more difficult. Intermediaries could assist in indicating how to report income received.
53. There are also problems with presentation and accessibility of information (particularly excess reportable income) – and issues arising from different tax treatments of returns on investments. For example, something treated as a capital return in one jurisdiction might be treated as income in the UK. Improved communications and provision of information from financial institutions and investment managers might help taxpayers to get their returns right.

Q12. What are your views about more direct sharing of information with agents?

54. See our response to Question 1. Agents would welcome HMRC sharing information it has received (for example, through CRS) about their clients' offshore income and assets.

Q13. How can HMRC ensure agents based outside of the UK meet the standards expected of those giving UK tax advice?

55. The discussion paper notes in paragraph 4.8 that due to jurisdictional limitations it can be particularly difficult for HMRC to hold agents based outside the UK to the same set of standards as UK-based agents. Question 13 refers to the standards "expected" of those giving UK tax advice and paragraph 4.8 mentions HMRC taking action against agents who do not meet these

standards. We assume that 'standards' in this context refers to HMRC's Standard for Agents (rather than the more extensive professional body standards).

56. The [ICAS response](#) to the 2020 call for evidence on raising standards in the tax advice market, noted our view that the HMRC Standard is not effectively enforced and that HMRC should be doing more to enforce it. In view of these difficulties in the context of UK-based agents, we agree that enforcement against agents outside the UK would be extremely difficult.
57. Following the 2020 call for evidence on raising standards in the tax advice market, one of the actions announced by the Government was: "HMRC raising awareness of HMRC's standard for agents and carrying out an internal review of the powers available to HMRC to enforce the standard."
58. It would make sense to consider any possible actions to deal with agents outside the UK, after this internal review has taken place and alongside ongoing work on raising standards of tax advice in the UK market.
59. The suggestion in the discussion paper (paragraph 4.9) that taxpayers should provide details of any advisers based outside the UK who have given advice before the return is submitted does not seem to be practical or useful.
60. There would be potential privacy issues, problems deciding what would constitute 'advice' in this context and possible practical difficulties providing details if the advice had been taken in the past.
61. Given the volumes of data HMRC already receives, it is difficult to see how it could effectively analyse this additional information – does it have the resources to do so? It is also very unclear how the data could provide the suggested benefits to HMRC – certainly without extensive follow up to look into the named advisers, which seems unlikely to be feasible.

Working with Financial Intermediaries

Q14. How could we further leverage public-private partnership initiatives and the role of financial institutions to promote offshore compliance?

62. We have no comments on this question.

Q15. Are there other non-financial areas where public-private partnerships could be developed to help promote offshore compliance?

63. We have no comments on this question.

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