

PCRT Group of Professional Bodies

HMRC

Raising standards across the tax advice market:
call for evidence

Evidence from the PCRT professional bodies

27 August 2020

Produced by:



Introduction

1. The following professional bodies are the author bodies of PCRT (Professional Conduct in Relation to Taxation):
 - Association of Accounting Technicians (AAT)
 - Association of Chartered Certified Accountants (ACCA)
 - Association of Taxation Technicians (ATT)
 - Chartered Institute of Taxation (CIOT)
 - Institute of Chartered Accountants in England and Wales (ICAEW)
 - Institute of Chartered Accountants of Scotland (ICAS)
 - The Society of Trust and Estate Practitioners (STEP)
2. Compliance with the PCRT Fundamental Principles and Standards for Tax Planning is mandatory for each of the body's members.
3. The PCRT professional bodies (PCRT PBs) have a public interest remit, that is a duty to act not solely for their members but for the wider good. They also set and maintain the standards of their members in the provision of tax services. The bodies are clear with their members that a failure to comply with PCRT is a serious matter and could put their membership of the professional body at risk. Ethical behaviour in the tax profession is critical. The work carried out by a member needs to be trusted by society at large as well as by clients and other stakeholders. What a member does reflects not just on themselves but on the profession as a whole.
4. The PCRT PBs have common professional conduct requirements; they agree that standards are a vital part of the tax service market.
5. We welcome '[Raising standards in the tax advice market: call for evidence](#)', published by HMRC on 19 March 2020. This is a joint submission from the PCRT PBs in response to that Call for Evidence. The PCRT body representatives were also pleased to have the opportunity to meet with HMRC to discuss this on 29 April 2020.
6. This joint submission discusses the broad principles around the need for standards and comments regarding the various options outlined in the Call. The bodies will in addition make their own responses to the Call for Evidence covering a wider range of matters highlighted by the Call.

General principles – raising standards of tax services or fighting egregious avoidance?

7. The title of the Call for Evidence and the breadth of the Options identified suggest that HMRC is concerned to promote the highest level of quality standards in the tax services market in the broadest sense. We welcome that and seek to address these issues in the bulk of what we say below. However much of the detailed points of concern cited in the document relate to egregious tax avoidance. Clearly there is some overlap between these issues, but increasingly they pose very different problems. The tax services market is, as the document acknowledges, broad and diverse, with a number of professional bodies and their members active and influential in many ways.
8. Egregious avoidance, as HMRC has also noted, is increasingly promoted by a limited number of recalcitrant and stubborn promoters. These are not typically professional body members and indeed are not actually giving advice at all in the normal sense, so much as introducing people, who may not always be well informed or well placed to challenge or resist, to arrangements and transactions including artificial elements intended to cheat the public revenue. There are real dangers in confusing these two matters: in particular, interventions targeted at the tax advisory community may simply fail to bite on the population of egregious promoters at all, whose 'advice' may be limited to making available a totally generic Counsel's Opinion. We do comment also on this matter, and agree that it needs to be addressed, but it is a separate and much more discrete issue.

General principles – the need for standards

9. In the following paragraphs we are focussed exclusively on the broad issue of raising standards. In order to support taxpayers and improve compliance, tax advisers need a good working relationship with HMRC. Trust and respect between tax agents and HMRC staff are vital, while respecting the different relationships between the three parties: taxpayer, agent and HMRC. We consider that 'tax agent' is a subset of 'tax adviser'; broadly, the distinction revolves around whether a tax return is being submitted on behalf of the taxpayer in which case it will be by the tax agent. A tax adviser may also offer tax planning services, which will often be based around certain events, such as the sale of a business or estate planning, or specialist areas such as EIS or R&D.
10. Agents who are being paid to act for taxpayers will have a legal duty of care to their client and the contractual terms governing the relationship with their clients will be set out in an engagement letter. Relationships between the three parties - HMRC, agent and taxpayer - may vary depending upon the precise circumstances. Some taxpayers use an agent only occasionally to deal with particular transactions, while others will want an agent to handle all their tax affairs and to deal with HMRC on their behalf.
11. Tax agents also have a relationship with, and responsibilities to, HMRC. Although their legal duty of care and contractual relationship is with their client, they should conduct themselves in a professional manner. For those agents who are members of relevant professional bodies (including all seven of the PCRT PBs), they must conduct their work in accordance with our applicable standards of conduct which includes (but is not limited to) the PCRT. We note too, that other bodies also require adherence to PCRT¹.
12. In the UK there is no restriction on who can provide tax services. Members of the PCRT PBs must meet certain standards (including having adequate professional indemnity insurance and undertaking continuous professional development); if they fall short a client (or any third party) can complain to the relevant body² and disciplinary action can be taken where appropriate. HMRC can also report members to their professional body, although it has only recently begun to make more use of this power.
13. It is very difficult to enforce standards when anyone is permitted to act as a tax agent. While HMRC expects all tax agents, including unqualified agents, to comply with HMRC's 'Standard for Agents', the scope of this does not fully replicate professional body standards. Further, even where an agent may breach the Standard for Agents, there is no obvious remedy or sanction that can be applied, which limits the practical use of this statement to help address poor standards. For example, in the worst cases HMRC should, rightly, seek to exclude agents from access to HMRC systems, but its powers to do so are not clear in respect of systems which are currently accessible on an unrestricted basis. This would also be a draconian power which it may be disproportionate to use in cases of poor, but not bad, performance or behaviour. These cases might be better addressed through targeted interventions and support to improve performance.
14. In principle, therefore, it should be easier to maintain high standards and thereby improve taxpayer compliance if all tax agents are appropriately qualified and belong to one of the professional bodies that meets certain agreed criteria.

Is there a need for further regulation?

15. Where poor behaviours and standards are observed in a relatively unregulated environment, further regulation is often proposed as the obvious solution. Indeed, many commentators express surprise when they are told that not all tax advisers are regulated. However, regulation only makes sense if it can be effective in producing improvements and if it can achieve this at proportionate cost.

¹ For example, IFA specifically require compliance with PCRT. See [here](#). The SRA [state](#) 'We therefore expect you to be familiar with the PCRT and adhere to its standards'.

² Or to the Taxation Disciplinary Board in the case of CIOT and ATT

16. To the extent that the 'evidence base' for regulation reflects tax avoidance schemes of the 'loan scheme' type, it may be better to focus efforts on the small minority activity of promoting such arrangements, rather than the vast majority of mainstream tax advice and services. It should be noted too, that in the HMRC document 'Tackling promoters of mass-marketed tax avoidance schemes' it says, 'Today's promoters are rarely members of professional bodies...'. The PCRT PBs do not believe that the promotion of mass-marketed avoidance schemes is a problem amongst their members but if there are such instances, they should be reported to us for investigation.
17. Indeed, as we commented earlier, focusing on the broad range of tax services provided by the vast majority of agents and advisers might well miss the real target insofar as promoters can avoid presenting themselves as tax advisers. This can also be seen, for example, with some R&D claim advisers. Increasingly the recalcitrant promoters of egregious avoidance are not presenting themselves as advisers in any normal sense at all (and most are not members of a PCRT PB), so there is a risk that intervention based around the provision of bona fide tax advice and tax agency services could miss the target altogether.
18. Even if regulation is targeted in a way that is appropriate for the problems it seeks to address, it does have downsides, including cost. Ultimately, we expect that this will largely fall on the consumer. However, in relation to the tax advice market, costs could be mitigated by building on the existing professional body regulatory regimes and, if thought necessary, addressing any gaps and identifying possible improvements. There is also a danger that tax compliance could be reduced if taxpayers decide to 'go it alone' and then make mistakes.
19. Where agents and advisers fall short of the required standards, we would encourage HMRC to make a report to professional bodies' disciplinary teams, and the professional bodies need to ensure that their disciplinary processes are robust enough to receive reports and process such cases. For less serious cases, we also ask HMRC to consider how it could work with the professional bodies on more supportive interventions, for example playing into the requirement for Continuing Professional Development that the professional bodies impose.

Options A – F

20. The options discussed in the Call for Evidence range from some measures to improve the current system, to maximising the self-regulatory role of the professional bodies, to a statutory regulatory regime – and are identified as Options A – F. Our comments on each of these options are detailed below.
21. We noted earlier that HMRC has distinct concerns about the current tax advice market, being:
 - promoters and their networks of enablers who continue to promote/sell aggressive tax avoidance schemes, and
 - more generally, with regard to standards across the tax advice market, if these were higher elements of the tax gap would be reduced.
 - In addition, HMRC seek to address the recommendations made by Sir Amyas Morse in his report on the Loan Charge.
22. We explained earlier why we believe that the first two substantive concerns should be addressed in different ways. We agree with the conclusion in paragraph 35 of the Call for Evidence, which says '...it is likely that there is no 'one-size-fits-all solution' and it will be crucial to assess any options to ensure that they do not adversely impact on the majority of tax advisers who already provide high standards of service.'
23. There is a distinction to be made between those offering incompetent, poor advice and those who offer bad advice ('bad' advice being the promotion of egregious schemes), and these may need to be addressed in different ways.
24. In our view, the 'unregulated' refers to those tax advisers offering advice that is unregulated. The individual will, or should be, regulated in relation to services which require AML supervision/regulation; however, they are not members of the PBs, nor are they subject to PB level oversight.

25. A number of professional bodies, our members, and HMRC have worked together closely in the last few months regarding all the coronavirus support schemes. The input of tax advisers has made an extremely valuable contribution to both the CJRS and SEISS schemes, and how they operate, by volunteering advice on the guidance and structure of the schemes as they were being developed. We believe that this form of working together could be usefully and beneficially extended to cover standards - to deliberate on and to enact agreed elements in the options outlined below. It may be that an answer lies in using a selection of different elements of the options.

Option A: Better use of HMRC's or Government's current powers

26. As regards egregious avoidance, HMRC has, for example, Enablers' Penalties (now the subject of a further consultation on possible enhancements). As regards the broader issue of quality, HMRC has in place memorandums of understanding through which it can report those agents who have unacceptable standards (which under s.20, CRCA Act 2005 must amount to misconduct) to their professional body, with a view to the professional body investigating and potentially disciplining the member. To date this reporting channel has not been used much (until very recent years, hardly at all); although we would hope that referrals would be relatively few given that the behaviours would amount to misconduct. However, there may be other obstacles to HMRC's reporting due to (i) issues of taxpayer confidentiality, (ii) concerns that any complaint about an agent's standards is sufficiently robust to prove that a referral should be made; (iii) lack of familiarity or incentivisation within HMRC or (iv) other factors or a mixture of factors. We would be pleased to discuss this with HMRC and why greater use is not made of the memorandums of understanding. (Of course, if professional advisers are identified as promoting egregious tax avoidance, these disciplinary routes are certainly available to deal with that, albeit that they cannot deal with advisers or other promoters outside professional bodies.)

27. In relation to more recently introduced powers, the new regimes have not had sufficient time to settle down for their effectiveness to be assessed objectively.

28. The current review of powers that is being conducted should be concluded in order to help inform an evaluation of their effectiveness and whether there is scope to make better use of the existing powers.

29. It is in everyone's interests to have high standards across the tax advice market – and the professional bodies would like to work with HMRC to achieve this. For example, mechanisms could be put in place for HMRC to report to the professional bodies:

- emerging schemes that cause concern and HMRC is, or will be, challenging, and, or
- emerging poor practice/trends and, or
- common errors that HMRC perceives in tax returns or other compliance activities.

30. At the same time, the professional bodies could put in place a process to cascade such messages to their members, for example, through CPD and member communications, and to Practice Review teams. In other words, the professional bodies could tell their members what is causing concern to HMRC, which HMRC is or will be challenging, and (assuming that the bodies broadly agree with HMRC's approach) that members should take note and act accordingly.

Option B: improve rights of recourse for consumers

31. This potentially relates both to the broad issue of quality and to the specific one of egregious avoidance. We are of the view that there are already adequate rights of recourse for those taxpayers who use a tax adviser who is a member of the PCRT PBs.

32. However, if rights of recourse are to be improved for consumers it is not clear how this will work without some means of enforcement in Option B. For example, how can the government ensure an unregulated adviser, who is not a member of a PB, has PI cover or that a complaints body has sufficient teeth? If these could not be assured, then it might be necessary to place restrictions on what advice an unregulated adviser can provide, which could include an outright ban. If more subtle intervention is to be allowed for, this option then merges into either Option E or Option F.

Option C: improving transparency – helping consumers to make better choices

33. Better consumer choice would help drive up quality in the broadest sense. However, there are many aspects to quality so informing consumers about it could be a complex and challenging task. Warning consumers about egregious avoidance may not always be easy, but it is at least conceptually straightforward. Certainly, consumers could be helped to make better choices by having a better understanding of tax and their obligations as taxpayers.
34. Research recently published by HMRC³ into the behaviour of tax agents and those who use avoidance schemes identified that some individuals were often unaware that they were using such a scheme. This indicates that greater measures could be taken to raise awareness amongst UK taxpayers on ways in which they can ensure that they are accessing reliable tax advice.
35. HMRC and any government subsidised resource should seek to educate consumers on what HMRC considers to be 'egregious' tax avoidance and what may lead to an investigation into their tax affairs.
36. When devising a programme of consumer education, information should be conveyed simply, using clear and concise language, remain factual and neutral in its approach and be such to take account of the wide ranging audience who use tax advisers including factors such as the socio- economic or age profile of consumers. By raising awareness in this manner, the government can enable consumers to understand products and advice on offer, and the complexity of taxes.
37. Guidance can include simple messaging on the 'red flags' taxpayers should be aware of. If this approach is successful in combatting egregious avoidance, HMRC could move on to the broader issue of how customers can decide who is a suitable adviser. To aid with reaching an informed decision, the information would provide an awareness of the different types of advisers and the advantages and disadvantages of each type which would include an understanding of the available qualifications to look out for, membership of professional bodies, available redress mechanisms to dissatisfied consumers including whether a tax adviser holds Professional Indemnity Insurance and adheres to a Code of Conduct or is obliged to follow professional practice regulations.
38. To disseminate this information as widely as possible, HMRC/ the government could make greater use of established public information sources. By providing consistent information across resources such as Citizens Advice Bureau or Trading Standards, awareness amongst consumers that the designations provided by PB membership offer additional certification and provide assurance will be raised, in the same vein as the need for the public to use a 'gas safe' registered boiler engineer, thereby driving up standards.
39. HMRC should also continue to maximise use of all its existing powers by calling out poor tax advice at each opportunity.
40. We agree in principle with the idea of better informing consumers of the choices they have to make, including making them aware of the value of using qualified professional advisers, and would be happy to consider possible options with HMRC. However, it would be necessary to review whether the consumer information led to improvements in individual taxpayers' behaviours and the choices they make.

Option D: penalties for tax advisers

41. It is hard to see how the tax system could operate unless the fundamental principle remains that taxpayers remain responsible for their own tax affairs and any actions and omissions. However, if these result from bad advice, they should, separately, have recourse against advisers.

³ [HMRC Research Report 582](#)

HMRC 23 April 2020 (research by KantarPublic in February and March 2017)

42. That said, there is an existing penalty regime aimed at those advisers and others who 'enable' tax avoidance. We note that there are separate proposals to enhance these, with published draft legislation, currently the subject of a separate call for evidence. We will engage positively in that call for evidence. However, we doubt that, so far as tax advisers specifically are concerned, the path of greater penalties will have much impact on the quality of services in the tax market. This is because the broad range of poor performance, as distinct from egregious avoidance, is not addressed at all. Our professional advisers are covered by PCRT (adherence to which, the government accepts, makes it unlikely that these penalties will be in point), and because, as noted earlier, promoters of egregious avoidance increasingly do not operate as advisers in the normal sense at all.

Option E: maximising the regulatory/supervisory role of current professional bodies

43. As regards raising quality in the broadest sense, the benefits of using Option E would include that there is an existing regulatory regime in the professional bodies that works (and could be improved further, for example if HMRC made more 'public interest disclosures' and engaged in more positive ways, for example in relation to continuing professional development). In addition, the costs of regulation should be mitigated if the chosen option builds upon the existing model. As regards egregious avoidance, there is a danger that this option misses the target if promoters are able to argue that because they are not 'advising' they are not within the scope of the expanded regulatory/supervisory regime.
44. The main problems identified by HMRC arise from agents who do not belong to professional bodies and we understand that the main problems around standards arise disproportionately in those agents who are not members of any professional body.
45. Any proposal around Option E may need to consider that approximately 30% of tax agents do not currently belong to any professional body. We understand the 30% figure to be unweighted – so that a small adviser with very few clients counts equally as a single agent for this purpose as a large firm with many thousands of clients. Many of these agents may well provide a satisfactory service and help to improve tax compliance, so to 'outlaw' them would probably be highly disruptive to tax compliance and it is unlikely that their clients or HMRC would, generally speaking, be better served, by their immediate removal from the tax services market.
46. The first thing to say is that we collectively need to assemble more evidence as to the problems caused by any of the 30%: only then can we decide what should be done. Much of this evidence is likely to exist within HMRC, though we accept that it may not be collected and retained in a ready-to-use form and that it will be a job of work to access it. But although we understand that 30% of tax agents are not members of professional bodies, we know little or nothing about their market share, their age profile, or their earnings or profitability (in contrast to the amount of public information there is about professional firms). So we are not well placed to judge which interventions, and over what period, would incentivise the relevant individuals to raise their game, and whether some such agents should be encouraged, or required, to withdraw from the market altogether. Different requirements might be imposed over time, starting perhaps with a requirement for indemnity insurance and to conform to the PCRT standards of tax planning. There could be an escalating series of interventions which could culminate in a restriction on who can provide tax services. Such a step would probably have to be phased in with a reasonable transitional period.
47. Most tax agents and advisers are members of professional bodies, but the number and diversity of different professional bodies (extending across accounting, law and tax specific) means that a key requirement will be to ensure that equivalent standards can be achieved and upheld by different bodies.
48. In considering a self-regulatory regime with the professional bodies, it may be noted that current regulation relates to both individual members and to their firms. Individual members of professional bodies that meet suitable criteria (and professional firms whose tax work is effectively controlled by such individual members) should be given recognition, for example by way of a kite-mark, that they are 'professional tax agents' who provide tax services to a recognised standard. Such recognition could be awarded, for example, based around the criteria established by the PCRT and effectively awarded through membership of a professional body that is a signatory to the PCRT. Another alternative, which would be more costly and administratively burdensome, could be by way of a public register: this might then sit with an independent body which oversees which bodies are recognised professional bodies.

Option F: External regulation

49. External regulation may have its advantages and disadvantages. The advantages include:
- Only those who are satisfactorily regulated could be tax agents (but we note that the requirements set out in the Call for Evidence would not seem to impose a particularly high standard, relative to existing professional requirements).
 - A level of consumer protection would be prescribed (with the same proviso).
 - There would be a level playing field for tax advisers – all would have equal costs of regulation (but professional body members would still bear the differentiating costs of conforming to higher professional standards).
50. There would be disadvantages, including:
- External regulation may lead not only to duplication with the professional bodies, but there is the further potential impact and costs for professional body members who have dual membership (for example, of both an accountancy and a tax professional body). There would need to be consideration of how any tax advice regulatory model would sit in relation to existing regulation.
 - It may be costly (relative to the benefits) as 70% of the market already meets appropriate standards under existing self-regulatory schemes of professional bodies.
 - It could be counterproductive if it drives taxpayers to do it themselves when any help would be better than none.
 - The extra costs involved, and the fact that all advisers would derive a certain respectability from being regulated, might cause some professional advisers to abandon their professional body, and others starting out not to follow this path, leading to a reduction of standards of (for example) competence which the regulatory regime may not seek to replicate. The need to accommodate the 30% of unqualified advisers would act as a brake on driving higher standards through the regulatory regime itself, as evidenced by the limited ambition in the articulation of this proposal in the Call for Evidence itself.
 - As with Option E, a regulatory scheme might not address the problem of promoters of egregious tax avoidance (who we understand are typically not professional body members; and often do not hold themselves out as ‘tax advisers’).
51. Issues that would need to be resolved include:
- Whether the individuals and/ or the firm/ company providing the tax advice would be required to be registered.
 - Whether regulation of the service provider would be sufficient or whether there is a need to define the regulated services; if so, it is no easy task to set proper boundaries around ‘tax services’.

What constitutes a professional body?

52. The tax services sector is diverse, and there are a number of self-regulatory bodies that provide oversight and set standards. However, many of the hallmarks of professionalism and ethics in the sector are shared across the bodies. Indeed, the tax market is remarkable for the combination of huge diversity and even competition between different types of professional providers and their professional bodies on the one hand, and long-standing collaboration between the bodies in defining and promoting shared ethical and professional standards on the other.

Criteria for inclusion as a professional body

53. We note that paragraph 86 in the Call for Evidence lists potential criteria for recognising professional body status; we support this. However, we also note that the ‘recognised professional body’ criteria identified in the Consultation make no reference to either PCRT or HMRC’s own Standard for Agents.

Background

Professional Conduct in Relation to Taxation (PCRT) sets out the Fundamental Principles and Standards of Tax Planning behaviours that all members, affiliates and students of our organisations must follow. Our ethical guidance was introduced in 1995 and has been regularly reviewed and revised since then. The latest revision of content incorporated the Standards for Tax Planning which went live on 1 March 2017. Two years later saw a major structural revision following feedback from users.

The Professional Bodies that subscribe to PCRT each have a suite of standards, of which PCRT is a part. PCRT does not stand in isolation, and members who are in breach of it are also likely to be in breach of other regulatory requirements.

All the professional bodies have made it clear to their memberships that compliance with the PCRT Fundamental Principles and Standards for Tax Planning is mandatory.

PCRT is intended to guide members in their behaviour, to assist them and to ensure that they undertake work effectively and appropriately.

Our members operate in a complex business and financial environment and a core purpose of the tax system is to fund public services and to ensure the good health of our economy and society. All members thus have a responsibility to serve their clients' interests whilst upholding the profession's reputation and the need to take account of the wider public interest. PCRT can therefore provide a powerful tool in retaining public confidence in the work that our members undertake.

Members of our organisations are encouraged to place ethical leadership at the heart of their professional responsibilities, to shape the culture and values of their organisations, and to have ethics at the core of business and tax practices.

The role of PCRT

PCRT supports our members by describing the standards of behaviour that clients can expect when seeking advice on their tax affairs.

The professional bodies also use the guidance if concerns are raised about members. When deciding whether to investigate a complaint or act on information received, the professional bodies will consider the PCRT Fundamental Principles and Standards of Tax Planning to assess whether the professional practice has been appropriate, and whether disciplinary action needs to be taken. We are clear with our members that a failure to comply with PCRT is a serious matter and could put their membership of the professional body at risk.

PCRT is jointly produced by:

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