



ICAS response to the HMRC Informal Consultation on
Draft Regulations and Guidance for the
Financial Institution and
Tax Adviser Notification Requirement

12 February 2016

About ICAS

1. The following submission has been prepared by the ICAS Tax Committee. The ICAS Tax Committee, with its five technical sub-Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 committee members. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 20,000 members working across the UK and internationally. Our members work in all fields – predominantly across the private and not for profit sectors.

General Comments

2. ICAS welcomes the opportunity to comment on the draft regulations and guidance for the implementation of the Financial Institution and Tax Adviser Notification Requirement.
3. We have concerns about the informal nature of the consultation in 2015 on the original proposals, and the current consultation on the draft regulations and guidance. Our concerns are:
 - Interested stakeholders have almost certainly been omitted from this consultation and the one in 2015;
 - Due to the limited and informal consultations many of those affected will not be aware of the notification requirement;
 - The deadline for responses on the draft regulations and guidance is very short so that it is unlikely that we can gather a full range of views from our members; and
 - Key components, the draft HMRC notification document, and the draft set wording for the covering letter, are not available.
4. As stated in our submission last year we believe that HMRC should make the notifications rather than advisers. We are disappointed that no response to the informal consultation has been issued, explaining the government decision to proceed with the notification requirement for advisers, although we recognise that some of the specific practical points we raised last year have been partially addressed.

We have the following further comments and requests for clarification.

5. We suggested last year that if the notification requirement went ahead a standard HMRC branded notification document would be important to ensure that all recipients received an identical message. However we also said that the wording of the notification document would be critical because of the need to minimise the adverse impact on client/adviser relationships and that further consultation on the details would be required.
6. We would therefore have expected a much earlier opportunity to review the proposed wording and obtain views from our members. Many clients receiving the notifications will not have anything to disclose and will be upset and/or angry at the apparent implication from their adviser or former adviser that they have been taking part in tax evasion. In view of the possible adverse consequences for the client/adviser relationship this must be addressed through the wording of the proposed notification. As noted in our general comments the timescale for consultation is inadequate and the omission of this critical element undermines the process further.
7. We also believe it is essential that advisers are able to make clear, if they wish to do so, that the mandatory wording included in the covering letter is not their own and is being included because of the statutory requirement. We cannot comment further on this aspect until the proposed wording is available.
8. We expressed concern in our submission last year that many clients could receive multiple notifications from current and former tax advisers and also from other advisers such as solicitors and financial advisers. This could cause distress. Whilst some limit has been placed on notifications by former advisers it is clear that many people will still receive multiple notifications. We believe that the wording of the notification itself should make clear that multiple notifications may have been received but that this does not

necessarily mean that the recipient has done anything wrong. We do not consider that it is adequate only to make this point in the guidance because many clients may not refer to the guidance (or may not even have online access to enable them to access it) before calling their adviser. As noted in our comments above we need to see the proposed wording of the notifications in order to comment further on this.

9. Conversely we also pointed out that taxpayers who have never used a tax adviser may not receive a notification at all unless they have one of the other advisers covered by the requirement. We suggested that even if the notification obligation for advisers went ahead, HMRC should ensure that the notification appeared on the Gov.UK website and should also undertake a publicity campaign. What plans do HMRC have for publicising the messages contained in the notification?
10. As there has still been no public consultation on the requirement it is clear that many of those affected may be unaware of the impending legislation. We would therefore like some clarification from HMRC as to how it intends to ensure that all advisers, particularly those who do not belong to professional bodies, are aware of their obligations.
11. The requirement will impose considerable costs on advisers, both financial and in terms of time. In addition to the cost of issuing the notifications, considerable time will also be taken up dealing with concerned and upset clients, many of whom will have nothing to disclose.
12. We are disappointed that no attempt appears to have been made to address these issues, other than limiting the number of former clients who need to be notified. We are also surprised to note that the default position is issuing notifications on paper by post which is clearly more expensive than email. This is hard to reconcile with HMRC's approach in other areas which is to compel people to use digital mechanisms. The cost will be further increased because a standard covering letter cannot be used – the guidance states that the letter should include 'the name and address of the customer and be written to them'. We believe that these aspects of the notification process should be reconsidered and that serious attempts should be made to reduce the cost burden for advisers.
13. We envisage that some advisers may wish to deliver the notification and covering letter to clients by hand – for example by handing it to the client in a regular meeting. The draft regulation suggests that this would be an acceptable method of delivery as it refers to the notification being 'sent or supplied in a paper copy.' However the draft guidance appears to indicate that the paper copies must be sent by post. We would appreciate confirmation from HMRC that delivery by hand will be acceptable and we suggest that this option should be specifically mentioned in the guidance.
14. We would like clarification on whether the notifications have to be made to executors and trustees. The draft regulation refers to 'individuals' so we assume that executors and trustees are not included but clarification would be helpful.
15. We would also appreciate clarification on the position where an adviser has worked for a company but as part of that work has given advice to employees or shareholders of the company. Would the adviser be expected to send notifications to the individual employees and shareholders (if the adviser has their contact details, which may not be the case)? Similarly if an adviser has provided payroll services to a company which has some internationally mobile employees would the adviser be expected to notify some or all of the employees (again assuming the adviser has contact details which may not be the case)? We assume that in these situations notifications would not be required because the client is the company rather than the individuals but it would be helpful to have confirmation that this is the case.
16. We would appreciate confirmation on the application of the penalty regime. Regulation 13 of the principal regulations states "A person is liable to a penalty of £300 if the person fails to comply with any obligation under these Regulations." Reading this in conjunction with the draft guidance and draft regulation it appears that the obligation is to notify all relevant clients, with one potential penalty of £300 for not doing so. Therefore if an adviser should have made 20 notifications but only made 10 the potential penalty would

be £300 rather than £3,000. We would appreciate confirmation that the obligation is to send a notification to all relevant clients (or all clients if that option is adopted) and hence only one penalty of £300 per firm is possible - not one for each notification which is not made.

17. Additionally we would appreciate clarification on the application of regulation 14. This provides for a daily penalty for continuing failure once a penalty under regulation 13 is assessed. It would appear that HMRC could therefore assess a penalty of £300 and then penalties of up to £60 per day for continuing failure. How would this work where an adviser issued say 10 notifications (either initially or after HMRC issued the regulation 13 penalty) but should have issued 100? Would HMRC then seek the daily penalties until every required notification had been issued? If this is the intention we think this should be explained in the guidance.