6 May 2025

Enhancing HMRC's powers: tackling tax advisers facilitating non-compliance

Response from ICAS

Enhancing HMRC’s powers: tackling tax advisers facilitating non-compliance

1. The Institute of Chartered Accountants of Scotland (‘ICAS’) is the world’s oldest professional body of accountants. We represent over 24,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 11,500 of our members are based in Scotland and 10,000 in England and Wales.

2. 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.

3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. We welcome the opportunity to respond to the HMRC consultation ‘Enhancing HMRC's ability to tackle tax advisers facilitating non-compliance’ published on 26 March.

5. We are pleased that the consultation rightly recognises that most tax advisers are competent and adhere to professional standards and add value to the tax system by supporting people to comply.

6. ICAS has extensive experience as a tax regulatory body over many years. Our members must meet various regulatory requirements, including:
   - Knowledge, skills, and experience requirements for admission to membership.
   - Licensing requirements covering technical as well as conduct requirements.
   - Ongoing monitoring of work through quality review and associated workstreams.
   - A requirement to retain professional indemnity insurance at an appropriate level.
   - The need to maintain professional knowledge through ongoing CPD.
   - Detailed guidance on conduct requirements, e.g. through our Code of Ethics and Professional Conduct in Relation to Taxation (PCRT).

7. Our members are subject to a complaints and disciplinary process to deal with any complaints about incompetence and misconduct. We have no evidence to suggest widespread concerns about the quality of tax practitioners licensed by ICAS both by reference to the lack of referrals from HMRC under the Memorandum of Understanding and the small number of regulatory and disciplinary orders we have applied.

8. We recognise, as set out in our response to the 2024 consultation: ‘Raising Standards in the tax advice market – strengthening the regulatory framework and improving registration’ that there is a minority of incompetent, unprofessional, and unscrupulous advisers whose activities harm clients, reduce public revenue, and undermine the tax advice market. We support action against these advisers. We have been calling for some time, for the introduction of a requirement for all tax advisers to be qualified and to be a member of one of the main professional bodies; we supported ‘approach 1’ in the 2024 consultation.

9. It is disappointing that in spite of majority support for ‘approach 1’ in responses to that consultation, there is no indication that it will be taken forward; in the longer term we believe that this would address many of the identified problems in the tax advice market, including some of those featured in this consultation. If it is adopted, any transition to mandatory membership of a professional body would take time, so we support actions in the meantime to tackle agents who do not meet professional standards.

10. However, it is essential that any enhanced powers, such as those proposed in this consultation, are properly targeted, proportionate and include adequate safeguards. We strongly agree with the statement in the 'Safeguards' paragraph at the end of section 1 of the consultation that any changes to existing powers must still ensure that two important principles are met, ie that:
    - tax advisers feel able to work with clients who find it difficult to comply; and
    - there is recognition that mistakes can happen even when someone is acting to a high standard, and it must still be possible for advisers to get insurance to cover their work.

11. It is vital that any new powers are well designed, fit for purpose and that there is minimal scope for unintended impacts on agents who do adhere to high professional standards (including PCRT). If the scope of the new powers is unclear and safeguards are inadequate, there will be uncertainty about how they will be applied which will inevitably adversely affect agents adhering to professional standards, as well as the intended targets.

12. We believe that the proposals in Chapter 5 (Enhancing powers to enable HMRC to investigate and request information from tax advisers) and Chapter 6 (Enhancing financial penalties for tax advisers who cause harm to the tax system) require amendment to ensure that they are properly targeted on the minority of problem agents, with adequate safeguards in place. Some of the details of the proposals in Chapter 8 (Broadening the scope of publication of tax adviser details) also need clarification.

13. We are broadly supportive of the proposals in Chapter 7 (Broadening disclosure of HMRC's concerns about tax advisers to professional bodies), subject to agreement of appropriate thresholds for reporting.

Specific Questions

Question 1: Do you agree that HMRCs powers to tackle tax advisors who harm the tax system could be more effective?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

14. Yes, although we would also like to see HMRC making full use of its existing powers to tackle some of the problems highlighted in the consultation.

15. It is essential that any enhanced powers are properly targeted and that there are adequate safeguards. The consultation rightly notes that most tax advisers are competent and adhere to professional standards and add value to the tax system by supporting people to comply. These advisers should not be at risk of being within scope of any enhanced powers.

Question 2: Do you agree with the government's aim that any enhanced powers should allow for swift, effective, and proportionate action in cases of tax adviser activities that result in harm to the tax system and facilitates non-compliance?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

16. Yes.

17. It is important that any enhanced powers are proportionate and that there are safeguards to prevent disproportionate outcomes or unintended consequences. A clear and proportionate definition of ‘facilitating non-compliance’ is essential. Part of the consultation appears to suggest that submission of one inaccurate return could be treated as ‘facilitating non-compliance’ – which ignores the two important principles set out in section 1 of the consultation (discussed in our response to Question 3 below).

Question 3: What actions that lead to harm being done to the tax system should be within scope of the proposals outlined within this consultation? Please give reasons for your answer.

18. We agree that the submission of multiple income tax repayment claims without checking entitlement, or submitting claims for R&D tax relief that do not meet the requirements, should be within scope. Key features of these examples are repetition and deliberately submitting claims/returns that do not meet the requirements. Any other examples that display these features should be within scope, for example, establishment and operation of disguised remuneration schemes designed to reduce taxable pay for multiple individual taxpayers.

19. However, the third suggestion to include ‘providing advice on tax to clients which they rely on, and which results in inaccuracies in the clients’ returns’ is too broad and open to producing unintended consequences. The definition needs to be tighter and properly targeted – not so broad that it could catch, for example, a mistake. HMRC has limited resources, and its focus should be on identifying agents whose poor behaviour is repeated and deliberate.

20. Two important principles are set out in the ‘Safeguards’ paragraph at the end of section 1 of the consultation. Changes to existing powers must still ensure that:
    - tax advisers feel able to work with clients who find it difficult to comply; and
    - there is recognition that mistakes can happen even when someone is acting to a high standard, and it must still be possible for advisers to get insurance to cover their work.

    Any changes must be compatible with these key principles.

21. Later in the consultation, it appears to be suggested that the submission of a single inaccurate return could potentially bring an adviser within scope of some (or all) of the proposals, particularly those relating to Schedule 38 of Finance Act 2012. This would immediately undermine the two important principles. It would inevitably affect advisers who are competent and adhere to professional standards but make a mistake.

22. Advisers who adhere to professional standards may not be willing to work with difficult clients if this could potentially expose them to some of the sanctions proposed. It would sometimes be impossible to be confident that a completely accurate return was submitted, for example where poor records have been kept by the client, but a basic level of compliance could be achieved. Difficult clients would then struggle to obtain assistance and would be likely to fall into outright non-compliance.

Question 4: Do you have any other suggestions for how HMRC might enhance its powers to tackle non-compliance facilitated by tax advisers? Please give reasons for your answer.

23. As set out in our general comments above we have been calling for some time, for the introduction of a requirement for all tax advisers to be qualified and to belong to one of the main professional bodies; we supported ‘approach 1’ in the 2024 consultation on a possible regulatory framework.

24. We would like to see ‘approach 1’ taken forward; in the longer term we believe that this would address many of the identified problems in the tax advice market, including some of those featured in this consultation.

25. We have received feedback from members that a lack of HMRC visibility in terms of enquiries and inspections is unhelpful. Taxpayers who are inclined to ‘bend the rules’ may be using non-regulated advisers, or making submissions themselves, on the basis that they are unlikely to be challenged by HMRC and will ‘get away with it’. Increased visibility of HMRC compliance activity and more publicity for the outcomes of that work might change this perception of risk and improve compliance.

Question 5: Do you have any comments on the proposed scope?

26. The consultation mentions cases where ‘a bad actor’s business model is entirely driven by profiting from lost tax revenue’. This is presumably intended to refer to some repayment agent businesses, some firms selling R&D relief services or entities setting up and operating disguised remuneration arrangements. In these cases, it makes sense for the firms to be held responsible for the actions of individuals. However, we do not believe that such business models are widespread.

27. Professional firms, whose members belong to one of the main tax and accountancy professional bodies, should have procedures in place to ensure that individual employees or partners comply with Professional Conduct in Relation to Taxation (PCRT) and other professional standards (including, for example, CPD requirements). However, even with procedures in place, there may occasionally be problems with an individual who deliberately does not uphold standards and conceals their behaviour from colleagues.

28. The corporate offences of failure to prevent the criminal facilitation of tax evasion include provisions specifying that a business will have a defence if it can prove that it has put in place reasonable procedures to prevent the facilitation of tax evasion, or that it was unreasonable (in the circumstances) to expect there to be procedures in place.

29. A similar approach could be adopted here, so that the firm could be held responsible for the actions of the individual, if it had not put in place reasonable procedures to ensure compliance with PCRT or HMRC’s standard for agents.

30. Alternatively, incorporating a level of flexibility may be desirable. HMRC could consider adopting the approach taken to audit regulation, where disciplinary and regulatory action can be taken against either the registered auditor (a firm) or a Responsible Individual (an individual).

Question 6: Are there any other groups HMRC should consider?

- **yes**
- **no**
- **maybe**
- **don’t know**

Please give reasons for your answer.

31. No.

32. We agree with the proposed scope set out in section 4, including those providing tax advice and services who do not interact with HMRC directly. As the consultation notes, this would ensure that those providing R&D advice but not filing the return that includes the claim, will be within scope. We agree that lawyers should be in scope for work that amounts to tax advice or services, as it is important that there should be a level playing field for those providing these services.

33. We agree that charities and those providing advice in a voluntary capacity should not be within scope.

Question 7: Do you agree that it should be easier for HMRC to obtain information from tax advisers where HMRC reasonably suspects the tax adviser's activity has facilitated an inaccuracy in a taxpayer's document or return.

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

34. Maybe.

35. As noted in our response to Question 3, this proposal appears to suggest that it would be sufficient for an adviser to submit one inaccurate return (or document) to bring them within scope of the file access notice. That would be disproportionate and would clearly breach the two important principles set out at the beginning of the consultation (see our comments in response to Question 3 above). Requiring authorisation by a senior approving officer within HMRC would not be an adequate safeguard if the threshold is this low.

36. The consultation notes that the purpose of the measures is to deter facilitation of 'non-compliance, of their clients' by tax advisers. This requires a clear and proportionate definition of 'facilitating non-compliance' – the submission of one inaccurate return for one client should not be sufficient to trigger the issue of the file access notice. We assume that this is probably not what is intended, but the true intention should be reflected in the legislation.

37. As set out in our response to Question 3 above, key features of activities that should be within scope are repetition and submitting claims/returns either without checking that requirements are met or knowing that they aren't. Submission of multiple inaccurate returns/claims (particularly relating to one type of claim/relief) would justify investigation and potentially the issue of a file access notice, whereas one inaccurate return could be the result of a simple mistake.

38. For this purpose, returns/claims submitted by a firm could be taken into account. Submission of multiple inaccurate claims for R&D relief by the same firm would usually indicate a problem and could justify issuing a file access notice.

39. However, there could be an issue where HMRC classifies a return as incorrect solely because the taxpayer withdraws a claim to R&D relief, after it has been challenged by HMRC. Anecdotally, we understand that some claims are being withdrawn because the taxpayer cannot afford the costs of an enquiry, or the amount of the claim does not justify paying the agent's costs to deal with HMRC's queries. The claim may be valid, but this will not be tested.

Question 8: Do you believe that 'reasonable suspicion' is the right threshold to issue a conduct and information notice? Are there any alternatives HMRC should consider?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

40. Maybe.

41. ‘Reasonable suspicion’ is a very subjective test. It could only potentially be acceptable if there was a requirement for multiple incorrect documents to have been submitted by an individual or firm. We do not believe that a ‘reasonable suspicion’ could generally be based on one incorrect return – and the proposed safeguard (approval by a senior HMRC official) would not be adequate.

Question 9: Do you agree with the proposed changes to the powers to gather information from tax advisers?

- **yes**
- **no**
- **maybe**
- **don’t know**

Please give reasons for your answer.

42. Maybe.

43. See our responses to Questions 7 and 8. Any changes to the powers to gather information need to be compatible with the two important principles set out in section 1 of the consultation and discussed in our response to Question 3 above. As the proposals stand, they do not seem to recognise the possibility of a mistake made by an otherwise competent adviser and could also deter advisers from working with difficult clients (or prevent them working with them altogether).

Question 10: Do you have any comments about the proposal to remove the safeguard requiring tribunal approval for a file access notice?

- **yes**
- **no**
- **maybe**
- **don’t know**

Please give reasons for your answer.

44. Yes.

45. Approval from an independent tribunal is an important safeguard. Given the serious sanctions being proposed, we do not believe that authorisation by a senior HMRC official would usually be an adequate safeguard. If the requirement for approval from an independent tribunal is removed, it is essential that any changes are properly targeted and the definition of facilitating incorrect returns is clear and proportionate. As set out in our responses to Questions 7, 8 and 9 we do not believe that this is currently the case.

Question 11: Are any other changes to safeguards needed to ensure Schedule 38 can be used more swiftly and effectively?

- **yes**
- **no**

- **maybe**
- **don’t know**

Please give reasons for your answer.

46. No.

47. See our response to Question 10 above. Safeguards should not be removed or watered down, where this is likely to have unintended consequences for the majority of agents who are competent and adhere to professional standards. If the proposal to remove the tribunal safeguard is adopted, the other proposals should be amended, as outlined above.

Question 12: Are there any unintended consequences of the proposed changes?

- **yes**
- **no**
- **maybe**
- **don’t know**

Please give reasons for your answer.

48. Yes.

49. See our responses to Questions 7 to 11 above. The proposals as they stand do not take sufficient account of the two important principles set out in section 1 of the consultation (and discussed in our response to Question 3 above). They could deter agents from acting for difficult clients (or prevent them acting altogether) and do not recognise the possibility that a return might be incorrect due to a mistake by a competent adviser.

50. The proposed changes could also negatively impact the ability to obtain PII or increase the cost of PII.

Question 13: Are there additional/alternative ways HMRC should gather information related to tax advisers who cause harm to the tax system?

- **yes**
- **no**
- **maybe**
- **don’t know**

Please give reasons for your answer.

51. Yes.

52. We have made suggestions above for potential amendments to the proposals. We agree that HMRC should be able to gather information more easily from tax advisers who are not competent and do not adhere to professional standards, but the powers need to be well designed and targeted to exclude unintended consequences, for example, application to competent advisers who generally operate to a high standard.

Question 14: Do you believe that the current penalties under Schedule 38 Finance Act 2012, Tax Agents: Dishonest Conduct provide an adequate deterrent against non-compliance that causes harm to the tax system?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

53. Maybe.

54. We are not aware that HMRC currently makes widespread use of the Schedule 38 powers, and we would not expect that our members – who are required to adhere to PCRT – would usually be affected by these penalties.

55. The consultation mentions cases where 'a bad actor's business model is entirely driven by profiting from lost tax revenue'. As discussed in our response to Question 5 this is presumably intended to refer to some repayment agent businesses, some firms selling R&D relief services or entities setting up and operating disguised remuneration arrangements. However, we do not believe that such business models are widespread – they would be unacceptable for members of the main tax professional bodies who must follow PCRT.

56. We assume that such models largely exist amongst unregulated advisers (some of whom do not regard themselves as tax advisers and have no real tax knowledge). As set out in our general comments, some of the problems outlined in this consultation could be reduced or removed by introducing a requirement for anyone giving tax advice to be a member of a professional body that mandates compliance with PCRT.

57. Without additional information about the penalties imposed under the existing Schedule 38 – and how they relate to the income generated by those who receive such penalties, it is difficult to comment further.

Question 15: Do you believe that penalties should be introduced for tax advisers who have facilitated non-compliance that causes harm to the tax system?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

58. Maybe.

59. The consultation discusses potential changes to the penalties that can be imposed under Schedule 38. This question suggests introducing new penalties. It appears that any new penalty, or any enhanced Schedule 38 penalties, would not only apply to cases of dishonest conduct but also (as for the file access notices) to facilitation of inaccurate returns or documents.

60. If this is the case, the issues we have raised in our responses to previous questions must be addressed, to ensure that the definition of 'facilitating inaccurate returns and documents' is

proportionate and takes account of the two important principles set out in section 1 of the consultation (see our responses to Questions 3 and 12 above). We do not agree that any new penalty (or updated Schedule 38 penalty) should potentially apply where an agent submits one inaccurate return (for example, as a result of a mistake). Competent agents would also be unlikely to continue to act for difficult clients if that potentially exposed them to enhanced Schedule 38 penalties or to a new penalty.

61. The introduction of severe penalties (if not properly targeted) could also negatively impact the ability of agents to obtain PII or increase the cost of PII.

Question 16: Should the government reassess how penalties for tax advisers are determined to enhance deterrence against non-compliance?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

62. Maybe.

63. It is difficult to comment in more detail on this question without additional information about existing penalties. Is there any evidence that application of the existing penalties is not having a deterrent effect? For example, the consultation notes that the maximum penalty of £50,000 'could be seen by some tax advisers as an acceptable cost of doing business' but it is not clear whether this is something HMRC see in practice.

Question 17: Which approach do you think will be most effective to reduce tax advisers facilitating non-compliance in their client's returns?

A. a penalty based on the potential revenue lost
B. a penalty based on the tax adviser's fees
C. a penalty based on a business's global turnover
D. other (please specify)

64. As noted in our response to Question 16, it is not clear whether there is any evidence to support the position that the present penalties are not acting as a deterrent. We would expect penalties (at least initially) to be set at the lowest level that seems likely to achieve the desired outcome – if that proved to be insufficient, a more robust approach could be adopted.

65. We have received no feedback supportive of penalties based on global revenues – in addition to the issue mentioned in the consultation, this approach could be disproportionate if applied to an adviser whose global revenues do not wholly arise from tax services.

66. We have received some feedback in favour of both options A and B - penalties based on potential lost revenue or based on fees.

67. If penalties were to be based on potential lost revenue, they would need to be properly targeted at those repeatedly and deliberately submitting incorrect returns or claims. In the absence of that proper targeting, robust safeguards (independent oversight) would also be required to ensure that severe penalties (which could potentially put an agent out of business) were only applied in appropriate cases.

68. Other potential issues with penalties based on potential lost revenue include:

- Deterring advisers taking on clients with complex affairs where the tax at stake would be significant or deterring advisers from giving advice on complex areas of tax. This could make it difficult for some taxpayers to get good advice.
- In some cases, the adviser who submitted the claim or return may have ceased to act - they will therefore have no ability to challenge the determination of the lost revenue. Similarly, as set out in our response to Question 7, the taxpayer may decide not to pursue a claim that has been challenged by HMRC (or may decide to settle a case) because they cannot afford to pay the agent's fees. Again, the agent will have no way of challenging the tax due.

69. Penalties based on fees charged for the service provided would still need to be properly targeted, but the outcome would be less likely to be grossly disproportionate. The consultation refers to bad actors whose business model is entirely driven by profiting from lost tax revenue – if the penalties clawed back the fees charged, this would appear to make the business model unworkable, so would be sufficient to act as a deterrent.

70. One possible alternative to options A to C would be to adopt a flexible approach, permitting a proportionate but effective penalty to be applied, having regard to the facts of each case. It is possible that any of the options A to C could be unduly lenient or too severe, depending on the circumstances. However, we appreciate that a tailored approach might be more difficult to administer and could give rise to inconsistencies in practice.

Question 18: Do you believe there should be a maximum penalty amount?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

71. Maybe.

72. If the penalties were properly targeted and proportionate, a maximum penalty might not be essential. However, putting in place a maximum would be important to protect a competent adviser, who makes a mistake, if the targeting and safeguards are insufficiently robust.

73. As set out in our response to Question 17, we believe the starting point should be to begin at the lowest level considered likely to be necessary to achieve the desired outcome, with scope to increase penalties later if the outcome is not achieved.

Question 19: If you believe a maximum penalty should be in place, how do you feel it should be calculated? Please give reasons for your answer.

74. See our responses to Questions 17 and 18. This would depend on the targeting and safeguards in place. It would also be useful to have some evidence on the effectiveness, or otherwise, of penalties as a deterrent.

Question 20: Do you agree the penalty should escalate in stages, based on additional instances of facilitation of non-compliance?

- **yes**
- **no**
- **maybe**

- **don’t know**

Please give reasons for your answer.

75. Maybe.

76. See our responses to the previous questions – whilst it is difficult to comment in detail without additional information or evidence, we accept in general terms that repeated examples of non-compliance would be an aggravating factor which would normally justify a more robust sanction.

Question 21: What other changes to the maximum and minimum financial penalty thresholds would be needed to ensure that a penalty charged in a case is more proportionate to the tax loss poor tax advice has caused?

77. See our responses to the previous questions.

Question 22: Do you agree with the government’s proposal to introduce an option to charge penalties on tax adviser business entities rather than individuals, except where it can be evidenced that the wider business was not aware of the individual tax adviser’s actions?

- **yes**
- **no**
- **maybe**
- **don’t know**

Please give reasons for your answer.

78. Yes.

79. As set out in our response to Question 5 professional firms, whose members belong to one of the main tax and accountancy professional bodies, should have procedures in place to ensure that individual employees or partners comply with Professional Conduct in Relation to Taxation (PCRT) and other professional standards (including, for example, CPD requirements). However, even with procedures in place, there may occasionally be problems with an individual who deliberately does not uphold standards and conceals their behaviour from colleagues.

80. The corporate offences of failure to prevent the criminal facilitation of tax evasion include provisions specifying that a business will have a defence if it can prove that it has put in place reasonable procedures to prevent the facilitation of tax evasion, or that it was unreasonable (in the circumstances) to expect there to be procedures in place.

81. A similar approach should be adopted here, so that the firm could be held responsible for the actions of the individual, if it had not put in place reasonable procedures to ensure compliance with PCRT or HMRC’s standard for agents.

Question 23: What else should be considered when looking at penalties charged on tax advisers?

82. Transparency of approach is very important, for example, HMRC guidance on how it will apply the penalties should be published. The operation of the new system should be kept under review to ensure that it is operating effectively and proportionately.

Question 24: Are there any reasons why HMRC should not make further non-PID disclosures to professional bodies, as well as continuing with PIDs (where appropriate)?

83. We are broadly supportive of the proposals in Chapter 7 of the consultation. As noted in our introductory comments, we have little experience of any HMRC referrals under the current system. Appropriate thresholds for reporting would need to be agreed, but we cannot see any reason in principle why HMRC should not make non-PID disclosures to professional bodies, as well as continuing with PIDs. We would welcome receiving additional information from HMRC that would allow us to make helpful interventions.

Question 25: What types of behaviours or activities do you consider it appropriate for HMRC to make further disclosures about?

84. The examples set out in the four bullets at the end of section 7 of the consultation would be a useful starting point for additional disclosures to professional bodies. However, we believe there would need to be discussion of the details between HMRC and the professional bodies, to agree appropriate thresholds.

85. As a general principle, we believe that repetition of errors or inappropriate behaviour should normally be a feature of cases disclosed to professional bodies. A single error, or an isolated instance of poor behaviour, could be due to a mistake or temporary personal difficulties. Repetition (or possibly an instance of extreme poor behaviour) would indicate that intervention by the professional body could be helpful.

86. As noted in our general comments above, we support the introduction of a requirement for all tax advisers to be qualified and to belong to a professional body. If that approach is not adopted, HMRC should be required to intervene in cases where it would have made a disclosure to a professional body, but the agent concerned does not belong to one.

87. We have also suggested to HMRC that it would be helpful for HMRC to share more information with professional bodies about areas where they see problems arising in practice across multiple agents. If the same technical errors are occurring frequently, this could be publicised by professional bodies/potentially highlighted in webinars etc. HMRC does sometimes highlight risks and areas of difficulty in its own guidance, for example the Guidelines for Compliance, but it can take a long time for HMRC guidance to be produced.

Question 26: Do you believe that it is in the public interest for HMRC to publish more information about its activity, such as the details of tax advisers subject to a formal sanction by, or a restriction on their dealings with, HMRC?

- **yes**
- **no**
- **maybe**
- **don’t know**

Please give reasons for your answer.

88. Maybe.

89. Publication could be helpful, provided the threshold for publication is appropriate. As noted in our response to Question 4, increased visibility of HMRC compliance activity might be helpful in encouraging compliance.

90. However, it is important that the published information is accessible and well publicised. If nobody knows the information is being published, or it is difficult to find, it will not have the desired impact.

Question 27: When considering where to set the threshold of proportionality for publication, which types of sanctions do you believe should be included, and which should be left out?

91. We agree with the comments in the consultation that publication of high volumes of details would diminish the impact. Combined with the potentially severe consequences of publication, we believe publication should be reserved for serious cases.

92. It is difficult to comment in detail on the four sanctions listed in the consultation, without knowing how many agents are affected by each of these sanctions. We assume that the numbers of investigations following a PID and resulting in professional body sanctions would be fairly small (given the number of PIDs set out in the table in the consultation). HMRC also notes that it does not often refuse to work with a tax adviser (RTDW). Both categories would involve serious breaches of standards and (in the case of RTDW), potentially criminal behaviour, so publication, subject to safeguards, would be in the public interest.

93. It is less obvious that suspension of agent codes would always be an appropriate sanction for inclusion. Where HMRC has suspended codes, particularly on an enduring basis, because of breaches of legal obligations or professional standards, inclusion might be appropriate.

94. However, we are aware of cases where agents have had their codes suspended because of attacks by bad actors (including through scam emails, purporting to be from HMRC). Clearly, agents should have appropriate IT security in place, but where an agent has been the subject of an attack, reports the issue to HMRC (where that is possible, ie where the agent realises that an attack has occurred) and cooperates with HMRC (including tightening security where necessary), we do not consider that publication would be appropriate.

95. We understand from members that in some cases they are aware of other agents using taxpayer credentials to submit returns directly, rather than as an agent (particularly where HMRC has taken action against the agent). It seems likely that these agents might already be subject to one of the sanctions identified for publication – it would certainly be an aggravating factor in considering the threshold for publication.

Question 28: Is the short-form and long-form approach to publication sufficiently flexible to allow HMRC to take a proportionate response to different degrees of poor tax adviser behaviour?

- **yes**
- **no**
- **maybe**
- **don't know**

Please give reasons for your answer.

96. Yes.

97. This seems to be a reasonable approach, although as set out in our response to Question 27, we believe that publication should be restricted to serious cases.

Question 29: What information about each tax adviser should be published, and is there anything that should not?

98. The suggested details in the consultation largely make sense. It is very important to avoid any confusion where advisers have similar names.

99. We have reservations about the proposal to publish the name of the firm, where the individual is an employee (rather than a partner or director).

100. As set out in our responses to Question 5 and Question 22, even in firms with proper procedures in place, there could occasionally be problems with an individual employee. As with the proposal to impose penalties on firms, there could be a 'defence' against publication if the firm

had put in place reasonable procedures to ensure compliance with PCRT or HMRC's standard for agents. Alternatively, there could be some flexibility to allow a case-by-case approach, depending on the circumstances.

Question 30: For how long should details remain published and in the public domain for short-form publication, and for long-form publication?

101. We have received mixed feedback on the appropriate length of time for publication of details. We do not believe there is a right or wrong answer to this question, but a balanced approach needs to be adopted – distinguishing between the less serious cases (short form) and more extreme cases (long form) seems appropriate.

102. As noted in our response to Question 27, it is important to avoid publication of high volumes of details as that would diminish the impact. If details remained published indefinitely, the list would become too large to remain effective over time.

103. It might be appropriate to take into account the facts and circumstances of cases, for example, if an adviser had already appeared on the short form list – but is then subject to another sanction - the publication period could be longer.

Question 31: Which criteria for publication would set a fair and proportionate threshold for using publication?

104. We agree that where sanctions apply for less than two months details should not be published. However, if suspension of agent codes is included in the sanctions, there could be some cases, as outlined in our response to Question 27, where publication would not be appropriate even if it takes HMRC more than 2 months to resolve the problem. We envisage that this could happen, if multiple agents have their accounts attacked by bad actors in a busy period.

Question 32: Do the proposed safeguards provide for a fair, proportionate, and workable publication framework?

105. We are doubtful that approval for publication by senior HMRC officials would provide an adequate safeguard. Given the potentially severe consequences for an agent whose details are published, we believe that in most disputed cases there should be independent scrutiny of the decision.

106. However, this might not be necessary where a professional body has imposed a sanction at the end of its disciplinary process and published details, or where the HMRC sanction (RTDW) has been imposed as a result of a criminal conviction.

Question 33: Are there any other safeguards which you think the government should consider for this publication power?

107. See our response to Question 32.

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