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Raising Standards in the tax advice market – strengthening the regulatory framework and improving registration

Response from ICAS



About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 23,000 members in the UK and around the world. Our members work in private practice and in a range of businesses, as well as in the public and not for profit sectors. They contribute significantly to society.
2. The ICAS Royal Charter requires that we act in the public interest. Our regulatory functions are designed and exercised to place the public interest first. Our Charter also requires ICAS to represent its members' views and protect their interests. On the rare occasion that these are at odds with the public interest, it is the public interest that must be paramount.
3. ICAS has extensive experience of regulating tax advisers. For many years, we have been operating licensing regimes, supporting by quality monitoring programmes, as well as complaints and disciplinary functions.
4. As an experienced regulatory body – covering not just tax, but also audit, anti-money laundering, and accountancy services – we hope that our comments will be helpful in HMRC's consideration of regulation. If it would assist, we would be happy to discuss our comments with HMRC and other stakeholders, together with any other issues arising in connection with this consultation.
5. This submission has been reviewed and approved by governance bodies in ICAS, including our Regulation Board and our Tax Board. We have also canvassed the views of our members in preparing the response and have worked closely with other professional bodies.
6. The Regulation Board is the body appointed by ICAS Council to be responsible for regulatory policy at ICAS, including AML/CTF. In addition to overseeing how ICAS maintains professional standards amongst members, student, affiliates, and firms, the Regulation Board is also a strategic body, discussing developments in regulation, and closely monitoring ICAS relationships with its oversight regulators.
7. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community and does so with the active input and support of over 60 committee members, from a variety of practice areas, with a range of expertise.

General comments

8. ICAS welcomes the opportunity to respond to the consultation document [Raising Standards in the tax advice market – strengthening the regulatory framework and improving registration](#), published by HMRC in March 2024. We were pleased to be able to participate in earlier discussions with HMRC about these proposals, as well as with other professional bodies. We look forward to continuing this collaborative approach in the follow-up to the consultation and in wider work on raising standards in tax advice across the UK.
9. We are pleased to note that the foreword to the consultation says that the government recognises that the majority of tax advisers are competent and adhere to high professional standards. It also recognises that many taxpayers rely on tax practitioners to provide quality advice and services, helping them pay the right tax at the right time and access the tax reliefs to which they are entitled. The important role of tax agents in society should not be understated.
10. We accept 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 have no evidence to suggest that there are widespread concerns about the quality of tax practitioners licensed by ICAS (by reference to the lack of referrals from HMRC under the Memorandum of Understanding and the comparatively small number of regulatory and disciplinary orders applied by ICAS over the years). However, we recognise the need for government action to mitigate the risks to the public interest and have been calling for action for some time.

11. There is presently an uneven playing field for the regulation of tax agents. An ICAS member providing tax advice is subject to a wide range of regulatory requirements which are robustly administered by an experienced team. These include:
- 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).
 - Complaints and disciplinary process to deal with findings of incompetence and misconduct.
- Members meet the cost of such regulation through annual subscriptions and licence fees.
12. By contrast, unregulated tax agents are free to provide services to clients without any protections in place in relation to competence or conduct. While there are many agents in the unregulated population who do good work for their clients, the evidence suggests that bad practices are more likely to arise amongst unregulated tax agents than those who are members of a professional body. With the public not well-informed about the differences between regulated and unregulated advisers, there is a clear public interest rationale to support a review of regulatory requirements.
13. We believe that expanding the scope of tax regulation is likely to be the most effective way to achieve clear and measurable improvements in overall tax agent standards in the UK. ICAS is committed to maintaining standards amongst our members and improving them where necessary.
14. On this basis, our response supports approach 1, namely mandatory professional body membership for all tax agents. This would remove the uneven playing field for agents, raise standards, and provide a better level of protection to clients, all of which should increase public confidence in the UK tax regime. In contrast to the other two approaches set out – which we do not support – this change could be achieved in a proportionate and cost-effective way, allowing HMRC to focus its resources on its core responsibilities.
15. With the consultation understandably presenting a relatively high-level view of mandatory professional body membership, detailed further discussion would be required of exactly how it would be implemented, and within what timescale. We would hope, however, that all stakeholders would be able to work together to ensure a reasonable and proportionate approach is taken, balancing the interests of the affected agents with the needs of the professional bodies and the wider public interest.
16. In supporting approach 1, we record our view that ICAS currently operates a sufficiently robust and effective supervision regime for tax practitioners and we would have reservations about any proposals from HMRC to significantly change the way in which the professional bodies operate, to the extent that these would impact our current processes.
17. Our response supports the wider application of the proposed new requirements (covering all tax advice, rather than simply agents interacting with HMRC). We also disagree with the suggested exclusion from a new regulatory regime for individuals who are members of a 'regulated profession' (as defined in the consultation), which has the potential to damage effectiveness and undermine public confidence. Any professional body acting as a regulator under the new regime should be required to meet published eligibility criteria that will need to be put in place, as part of the implementation process.

Specific questions

Question 1: Do you agree the limitations in the partial framework across the tax advice market contribute to issues observed? Select all that apply.

- **no requirements of technical competence to practice**
- **no general deterrents for dishonest practitioners operating in the market**
- **disjointed monitoring of tax practitioners**
- **variations in the action taken against substandard and unscrupulous tax practitioners**

- clients being unable to easily assess the competence of a tax practitioner
- other (please specify)

18. While questions might be asked about the strength of the evidence provided, we believe that commonsense would dictate that the five factors listed here represent limitations in the partial framework across the tax advice market.

19. As to other factors, there are issues connected to HMRC which are also relevant, including the challenges in accessing HMRC services, and the push towards digital engagement when the associated digital framework is insufficiently robust and accessible for taxpayers and agents.

Question 2: Are there other components of a regulatory framework that would support the delivery of these objectives?

20. We have positive experiences of working alongside professional bodies and government agencies to improve standards in other regulated areas. Securing a collaborative approach in the tax advice market, with the professional bodies and HMRC working closely together, would support the delivery of the listed objectives.

21. Consideration could also be given to strengthening the evidence-gathering and analysis which goes into reviewing the system, as that should improve the solutions identified.

22. Finally, emphasis needs to be placed on the speed of the delivery of regulatory functions. If these functions do not operate in an efficient and timely manner, then it will be difficult or impossible for the objectives to be delivered.

Question 3: Is there anything else that the government should consider?

23. We are of the view that some of the 'bad actor' problems which have been identified stem from factors that sit within the government's control. The tax system is overly complicated, meaning that it is not easy for taxpayers to 'self-assess' and be confident that they are fully compliant.

24. ICAS has been advocating for simplification of the tax system for many years and believe this should be given more prominence at a policy level.

Question 4: Do you think the government should mandate the approach to registration for tax practitioners who wish to interact with HMRC?

25. Yes, any agent interacting with HMRC should have to register with HMRC. We cannot identify any reasons to suggest that this would not be a sensible change. HMRC needs to know who it is dealing with. Unless agents are registered, HMRC will not be able to track poor behaviour across different cases handled by an agent.

26. With regard to the framework objectives, this is a proportionate measure that could introduce greater effectiveness at a relatively low cost, with a reasonable resource burden.

27. We do, however, caveat this response by noting that mandatory registration would largely capture compliant tax agents, and would not deal with bad actors improperly using another agent's credentials or filing directly using their client's credentials (which is contrary to the ethical requirements applied to tax agents who are subject to PCRT).

28. Without further effective measures to verify that those using non-agent credentials are who they say they are, mandated registration would not achieve the desired outcome and might be viewed by some as an additional administrative cost to business and HMRC with limited benefits.

Question 5: What are your views on the intention to apply the requirement to all tax practitioners who interact in any way with HMRC in a professional capacity?

29. We support the intention, as limiting the scope here would inevitably reduce its overall effectiveness, as well as increasing the possibility of confusion over who is covered.

Question 6: HMRC currently applies several checks at the point of registration including: whether the tax practitioner has outstanding debt and/or, returns with HMRC, and the status of their AML supervision. Are there additional checks that the government should consider for tax practitioners at the point of registration with HMRC?

30. Professional bodies consider whether applicants for licences are 'fit and proper' individuals, with reference to a series of standard questions covering:
- Financial integrity and reliability.
 - Criminal convictions and civil liabilities.
 - Director disqualification orders and undertakings.
 - Regulatory and disciplinary findings by a professional body or regulator.
31. Any questions answered in the affirmative are then investigated and analysed to consider the potential impact on licensing.
32. HMRC should engage with the professional bodies to discuss how a similar process could be applied to tax agents at the point of registration. When dealing with tax agents affiliated with professional bodies, HMRC might consider how reliance could be placed on that status, possibly through information-sharing arrangements with the professional bodies and associated digital processes.

Question 7: Are there specific criteria or checks HMRC should apply if:

- **an individual, who has previously registered a company with HMRC as a tax practitioner, and attempts to register a new company?**
 - **a tax practitioner operating as a sole trader becomes incorporated?**
33. Multiple registrations can have various legitimate explanations – e.g. a desire to ringfence service lines subject to different licensing regimes, with audit, financial services, and legal services often housed in different entities.
34. Similarly, it is common practice for an accountancy or tax practitioner to consider incorporating or becoming an LLP if their practice is growing, or if they are considering introducing new principals into the practice.
35. HMRC might therefore consider a risk-based approach, having regard to the number of companies registered by an individual, the relevant timescale, and the capacity in which they are acting.
36. For individuals and firms connected to a professional body, HMRC could request information from the relevant body, as it should have full records and a better understanding of the reasons for any such changes.

Question 8: Which approach do you think would best meet the objectives set out in chapter 4?

Approach 1: mandatory membership of a recognised professional body

Approach 2: joint HMRC-industry enforcement

Approach 3: regulation by a government body

Please give reasons for your answer.

37. While there are pros and cons of each of the three approaches – as set out in our response to Question 9 below – ICAS believes that approach 1 (mandatory membership of a recognised professional body) would best meet the objectives set out in chapter 4.
38. For the avoidance of doubt, when referring to professional body *membership* in this response, we are using the term in a wider sense, covering regulatory affiliation and licensing, rather than membership per se (which provides certain privileges, including voting rights and use of designatory letters).

39. In broad terms, approach 1 builds upon structures which are already in place, and which can demonstrate effectiveness in maintaining and improving professional standards. It requires less than the other two options in terms of introduction costs and ongoing resourcing.
40. When contemplating system change, it is generally appropriate to pursue the least disruptive option which may achieve the stated aims. Evolution in regulation tends to work better than revolution. If approach 1 is implemented but is then deemed insufficiently effective, HMRC could then consider approach 3 (or other options).

Question 9: What are your views of the merits and problems of the 3 potential approaches described in this chapter?

41. We have set out some considerations in relation to each of the 3 potential approaches in the following tables.

Approach 1 – mandated professional body membership

Merits	Problems
Minimal disruption to the majority of tax agents who are already members of a professional body.	Migrating the currently unregulated population of agents would be logistically challenging and would require a transitional period (which could be lengthy, depending on the entry criteria applied by ICAS and other professional bodies).
Professional bodies can demonstrate that regulatory functions – including licensing, CPD, quality monitoring, and enforcement functions – can effectively maintain and increase professional standards. It would be logical to assume that extending regulatory coverage to currently unregulated agents would increase standards over time.	It is presently unclear what portion of the unregulated community would be able to satisfy the conditions applied to professional body membership or regulation (and we would not want to have to lower these from present levels). While there will clearly be much variation across the presently unregulated community, it would be prudent to assume that some agents might find it difficult to adhere to professional body requirements.
Currently unregulated agents who can't satisfy professional body standards would be forced to exit the market, which would hopefully remove at least some of the agents whose activities are generating concerns for HMRC.	HMRC's expectations for professional bodies would need to be clarified. ICAS considers that its regulatory framework is sufficiently robust, satisfying the requirements of our existing oversight regulators (with no concerns expressed to date by HMRC). While recognising the need for minimum standards amongst professional bodies, we would be concerned if HMRC were to dictate significant changes to how we should regulate (bearing in mind our regulatory model covers various workstreams).
With some of the professional bodies having mature regulatory structures in place, there should be minimal disruption for the bodies.	
There is a public interest benefit in having all agents registered with a professional body, providing clarity to service-users over standards, PII cover, and ways to complain. Research to date suggests that there is a common misconception over the level of regulation across the tax and accountancy sectors.	

Approach 2 – joint HMRC-industry enforcement

Merits	Problems
Depending on the eligibility criteria applied by HMRC, this could make it easier for all unregulated tax agents to be subject to regulation.	Much would depend on the regulatory functions exercised by HMRC. If these do not duplicate the functions exercised by the professional bodies, there is a risk of an uneven playing field for tax agents, with a two-tier system created.
HMRC would develop experience of tax regulation, deepening its knowledge of the challenges involved, and making it better-placed to consider further improvements.	A conflict of interest would arise if HMRC is involved with setting and enforcing rules in relation to tax advice.
This could, in theory, be a cheaper option for unregulated tax agents (although experience of other regulatory schemes suggests that the opposite might easily apply).	There seems little doubt that HMRC does not have sufficient resources available to expand its remit, with expert staff required to exercise regulatory functions. Costs would inevitably rise and other core workstreams would suffer.
	No evidence has been provided to suggest that HMRC would be able to regulate as effectively as the professional bodies.

Approach 3 – regulation by a government body

Merits	Problems
in theory, this ought to introduce a greater level of consistency to tax regulation, with a single body discharging all functions (albeit regulation is always complicated and unlikely to generate complete consistency of outcomes).	A conflict of interest would arise if HMRC is the regulator and is involved with setting and enforcing rules in relation to tax advice.
Minimises confusion for service-users when it comes to complaints (i.e. one body to complain to, rather than several potential options).	Considerable additional resource would be required to set up and run the new body. This could easily end up as the costliest option.
	Expert staff currently employed by professional bodies are unlikely to transfer to the new regulator meaning that considerable regulatory experience would be permanently lost.
	Experience of similar projects (e.g. in insolvency) suggest that the challenges involved with establishing a single regulator would create considerable uncertainty over a long period.
	Risk of intelligence and data loss, as information about tax practitioners is transferred from the bodies to a new regulator, with considerable time required for that regulator to match the bodies' understanding of their supervised practitioners.
	No evidence has been provided to suggest that a new regulator would be able to more effectively regulate than the professional bodies.

Question 10: Are there any other approaches to raising standards the government should consider?

42. If the government decides that the three approaches outlined in the consultation would not be effective, then consideration could be given to the following options:
- Providing more information – and supporting evidence – to the professional bodies in relation to areas of bad practice and poor standards, enabling the bodies to take action against agents of concern, and to do more to promote better practice in identified areas.
 - Simplification of the tax system, making it easier to: (i) identify what is and is not permitted, and (ii) take action against agents engaging in activities which are not permitted.
 - Better targeting of poor behaviours by bad actors, as HMRC has already started to do with the new rules for R&D and for repayment agents (i.e. better use of existing powers).
 - Consider introducing targeted regulation for high-risk areas – i.e. restricting certain activities (e.g. R&D claims) to agents who are members of a professional bodies, as distinct from all tax agents. This might represent a more proportionate approach. If R&D claims were restricted to professional body members, this could also act as a pilot for wider regulation – with experience gained used to develop the wider framework (whilst at the same time being a significant step in improving standards in R&D claims).

Question 11: Do you think membership with a professional body raises and maintains standards of tax practitioners?

Please give reasons for your answer.

43. We firmly believe that membership of a professional body (such as ICAS) maintains and raises the standards of tax practitioners, for the following reasons:
- The robustness of the training and the knowledge, skills, and experience requirements before individuals are admitted to membership and licensed for certain activities.
 - The level of ongoing assistance and CPD provided to members to maintain their professional knowledge at the required level (webinars, toolkits, events etc).
 - Ethical requirements that mean members can only provide tax advice where they have appropriate knowledge and experience.
 - Ongoing quality review programmes which identify bad or poor practice and provide positive assistance to improve performance.
 - The threat of regulatory and disciplinary sanctions to deal with misconduct and/or incompetence (with the ultimate threat of removal of a licence and/or membership).
44. Notwithstanding some of the comments in the consultation paper about unacceptable levels of non-compliance among taxpayers using agents who are professional body members, we have no evidence to suggest that there are widespread concerns about the quality of tax practitioners licensed by ICAS (by reference to the lack of referrals from HMRC under the Memorandum of Understanding and the comparatively small number of regulatory and disciplinary orders applied by ICAS over the years).

Question 12: What is your view of the capacity and capability of professional bodies to undertake greater supervision of tax practitioners?

45. We can only speak for ICAS in responding to this question and considering two aspects: (i) greater supervision of current members, and (ii) supervision of currently unregulated practitioners.
46. So far as (i) is concerned, ICAS has been operating robust supervisory functions for many years, including a quality review process which entails a detailed examination of our firms' compliance procedures and a sample of their client files. Visits are scheduled according to a detailed risk assessment process, with higher-risk firms visited more frequently and reviewed in greater depth.
47. Similar processes are applied in other regulated areas – audit, AML, insolvency – and are subject to regular and detailed scrutiny by a range of oversight regulators. Feedback from such regulators gives us confidence that our supervisory processes are robust and effective. We also take confidence from the lack of referrals from HMRC under the Memorandum of Understanding.

48. Our starting position is therefore that our current supervisory regime is sufficient to achieve the objectives listed in the consultation, and we would not expect ICAS to extend the scope of its activities under a new model. No evidence has been provided to support alternative conclusions.
49. As for (ii), ICAS would be able to regulate currently unaffiliated agents through two possible routes.
50. Firstly, we could allow such agents to follow the same route to membership as other individuals, by completing the CA qualification, with the possibility of some exemptions based on practical experience.
51. An alternative option would be to regulate agents as ICAS Affiliates, similar to the model that we have in place in audit and insolvency. Licences would be issued to individuals who could satisfy – and continue to satisfy – appropriate eligibility criteria. Affiliate status is different to membership status in that it is limited to the specific area of regulation and doesn't confer some of the wider benefits of membership (including voting rights and use of the CA designation).
52. Given that our regulatory functions are designed to operate on a cost neutral basis, we would use the fees paid by new licence-holders to fund any additional resource required. The only concern from a resourcing perspective would be the limited pool of sufficiently experienced individuals who might want to take on such work (with other professional bodies likely to be recruiting at the same time).

Question 13: What more could the professional bodies do to uphold and raise standards for their members?

53. While we are confident in the generally high standards of ICAS members providing tax services, we accept that there is always more that could be done to improve the position, for example:
 - More frequent communication of areas of concern, with guidance provided to mitigate against problems, with an emphasis on targeted and accessible communication.
 - Evolution of risk-based processes, with better use of data to ensure that supervisory resources are targeted against higher-risk practitioners.
 - Better cooperation with HMRC and the other professional bodies to ensure effective sharing of intelligence and promotion of best practice.
 - Increased use of AI to make regulatory functions more effective and efficient.

Question 14: What additional costs may professional bodies face if strengthening their supervisory processes?

54. As noted above, we do not believe that ICAS would need to significantly strengthen its supervisory processes to effectively deal with our existing population of tax agents. Were HMRC to take a different view then additional costs might arise which would need to be passed on to licence-holders (depending on the nature and extent of additional supervision required).
55. Were we to expand the scope of supervision to currently unaffiliated agents, we would use the fees paid by new licence-holders to fund any additional resource required. Our aim would be to operate such supervision on a cost-neutral basis.
56. In either scenario, the most likely additional cost incurred would be through further staff recruited to discharge our functions. HMRC should be careful to consider the impact on clients if costs for tax agents are to increase (with the expectation that costs will be passed on to clients).

Question 15: What is the best way to ensure current and new professional bodies maintain high standards?

57. Most professional bodies have mature and robust governance processes in place to ensure that high regulatory standards are maintained. This includes the use of qualified and lay members on boards and committees, acting in accordance with published rules and regulations, supporting a robust system with independence and appropriate checks and balances.

58. While we are confident in the outcomes of our internal processes, there is a role for oversight regulators to play in ensuring proper standards. Such oversight should be proportionate and exercised on a risk basis, having regard to prior performance. Enforcement powers would be available but would be expected to be used infrequently.

Question 16: What role could the professional bodies play in supporting the clients of their members?

59. The main support offered to clients is an accessible and robust complaints process through which complaints against members are subject to detailed investigation and determined appropriately (often with conciliated outcomes), with further protection through professional indemnity insurance.
60. Clients will also benefit from the requirement for members to undertake adequate CPD on an ongoing basis. This should give clients confidence that their agent is maintaining their skills and knowledge in an ever-changing environment. ICAS can also offer a 'kitemark' for regulated agents, with a public directory, to allow clients to make a better-informed choice.
61. In addition, some clients may benefit from our content and communications on tax issues.
62. Beyond this – and the general public interest benefit in maintaining and raising standards – we do not directly support the clients of our members and do not consider that it is our role to do so (e.g. it would not be appropriate to provide tax advice or to recommend agents).

Question 17: Should government consider strengthening customer support options beyond the current complaints processes offered by professional bodies?

Please give reasons for your answer.

63. If the government decides to require all tax agents to become members of a professional body, clients should be sufficiently supported through: (i) the body having a robust complaints process, and (ii) a requirement for members to hold adequate professional indemnity insurance (PII).
64. Some of the professional bodies require their members to hold PII which meets certain minimum standards, and we believe this should be one of the requirements for professional body status in a new regime.
65. If a member of a professional body has made an error, directly leading to a substantial financial loss, their PII might address any financial prejudice to the client.
66. Having regard to the support functions already in place, we would not support the introduction of compensation schemes operated by professional bodies. These would generate considerable challenges for the bodies and would unduly supplant the role of PII, as well as civil processes for compensation. At present, we have effective mechanisms in place to address 'service level complaints', with no evidence to suggest widespread service issues amongst our members.
67. If the government wishes to consider compensation schemes, then a detailed consultation with the professional bodies would be required, to ensure that the pros and cons are fully explored.

Question 18: What role should HMRC/the government play under approach 1: mandatory membership of a recognised professional body?

68. One of the key benefits of this approach is that it would allow HMRC to play a lesser role in the supervision of tax agents, relying on the robustness of the supervision of the professional bodies.
69. HMRC would be expected to prescribe which bodies are able to licence tax agents (against a set of published eligibility criteria) and would also fulfil some ongoing oversight function in relation to the professional bodies, to ensure that they are discharging their functions appropriately.
70. The oversight role could be performed by HMRC but might be better performed by a more independent body, with dedicated regulatory resource. There are already widespread concerns

over HMRC's resources and its ability to perform its core functions adequately. Adding new functions might therefore be undesirable.

71. Consideration should also be given to what is already a crowded regulatory landscape, with a range of bodies (HMRC, FRC, FCA, OPBAS) discharging some broadly similar functions, and whether consolidation would make for a clearer and more effective approach.

Question 19: Do you agree that the requirement should only apply to those who interact with HMRC? Please give reasons for your answer.

72. While such a restriction might make the system easier to implement, we would be concerned that it would reduce the effectiveness of the requirement and would not address or resolve the concerns which have been identified. There are clear examples where restriction of scope elsewhere in regulation (including R&D claims, IVAs) has allowed bad actors to more easily circumvent requirements through inventive practices (including new corporate structures).
73. In addition, it could lend itself to avoidance behaviours and offer opportunities to bypass regulation. Bad actors might undertake work/advice but then ask the client (or another agent) to submit on their behalf. Questions could also arise in connection with advisers who are at one remove from HMRC systems, such as R&D advisers or promoters of tax avoidance schemes.
74. If the government is going to make the effort of considerably expanding the scope of tax agent regulation, it makes sense to go all the way with it.

Question 20: Do you agree that the requirement should only apply to controlling or principals of firms? Please give reasons for your answer.

75. Careful thought would need to be given to the most effective and proportionate approach, having regard to further details of the requirements.
76. If any regulatory model is to reflect the models already operated by the professional bodies, then it might make sense to have the regime based on principals, which is the basis of the bodies' practising certificate regime (with no concerns identified over its effectiveness).
77. However, consideration would also need to be given to how best to scope in the 'controlling minds' of a business and ensure they are adequately covered. There is evidence in some other areas of regulation – e.g. insolvency – that bad practices can be maintained by providing individuals as 'regulatory fronts', with the real power being exercised by people behind the scenes. The position is not straightforward and would require careful thought and clever drafting.
78. Additional consideration would also be required of the approach to individuals within an organisation who play an important role in relation to tax advice but are in less senior positions (and not considered to be 'controlling').
79. A firm-based model would need to be supported by extensive legislation, and would require considerable adjustment to the rules, regulations, and processes of the professional bodies (increasing the time and resourcing demands required to make the changes). However, there are existing models which could be referenced, including statutory audit, of which some of the professional bodies have experience.

Question 21: Are there any other regulated professions that should be excluded from this requirement?

80. The proposed exclusions lack clarity and require further explanation and justification to explain why the government would not choose to apply a level playing field for all agents.
81. A main point of confusion is why legal professionals are deemed to be members of a regulated profession, whilst accountants who are members of a professional body are not.

Question 22: How can the government ensure members of regulated professions have high standards in relation to their work providing tax advice or services?

82. Our view is that this point would be addressed by removing the proposed exclusion for individuals who are members of a 'regulated profession' (as defined in the consultation). It is not clear from the consultation how the same high standards of tax advice would be ensured in professions proposed for exemption from the requirements.
83. What would be the benefit in creating a robust new regime, with clear justifying rationale, only to exclude parts of the population? It should be open to the professional bodies of the other professions listed, to apply to become regulators for tax purposes – if they meet the published eligibility criteria referred to in our response to Question 18.

Question 23: What are your views of the proposed exclusions?

84. As noted above, we are concerned that the proposed exclusions would mean there would not be a level playing field for the regulation of tax agents.
85. The proposed exclusions lack clarity and require further explanation and justification. Why are legal professionals deemed to be members of a regulated profession, whilst accountants who are members of a professional body are not? As noted throughout this response, we believe that ICAS members are robustly regulated.
86. In our view, any professional body that wanted to be a regulator for tax purposes should be required to meet the published eligibility criteria referred to in our response to Question 18.

Question 24: Do you think the following tax practitioners should be in scope of the requirement to become a member of a professional body member? Select all practitioner types you think should be in scope.

- **charities interacting with HMRC on behalf of taxpayers**
- **tax practitioners providing Pro-bono services**
- **promoters and enablers of tax avoidance**
- **overseas/offshore practitioners other (please specify)**

Please give reasons for your answer.

87. Inclusion of practitioners servicing charities and clients on a pro-bono basis can be justified with reference to the public interest (although some de minimis level might be considered for the latter).
88. Effective oversight of overseas/offshore practitioners would require supporting legislation to require that tax advice and services in relation to UK taxpayers can only be provided by an entity operating in and regulated in the UK (similar to the requirement that overseas entities operating in the UK must register with Companies House). In the absence of this, the position here would be challenging for professional bodies.
89. As regards practitioners promoting and enabling tax avoidance, we would be surprised if many of these would seek association with a professional body, even if a mandatory requirement were introduced. Unfortunately, we are sceptical that any of the proposals in the consultation would have a significant impact on promoters of tax avoidance, with legislative change (where possible)

a better solution. It is unlikely that professional bodies could succeed, where government and HMRC have failed, to eradicate the remaining promoters of tax avoidance.

Question 25: What could be the consequences of introducing a legal definition of a provider of tax advice and services?

90. This is a tricky area in which ICAS has previously provided detailed input. In theory, having clear definitions here would benefit all stakeholders and would be in the public interest. However, experience would suggest that the drafting of such definitions might be complicated, with the risk of unintended consequences.
91. The most obvious consequence is that those who do not wish to fall within the definition will work to fall outside it. In the absence of a given legal definition, the judiciary tends to rely on the common dictionary definition to clarify the meaning of a concept. In this case, HMRC has provided a definition of 'Tax advice' in [CH22264](#) as being "*the opinion of an adviser on the effects of tax law on potential or actual transactions*". It is up to HMRC and the government to decide whether this definition is something that should be enshrined in law. The Oxford English dictionary provides definitions of the words "tax" and "advice" as two separate nouns which could be combined.
92. Consideration would need to be given to how definitions for tax advice overlap and interact with related definitions, for example, how we define legal advice.

Question 26: What gaps or issues can you see arising because of this definition?

93. If the government decides to put in place a legal definition of tax advice, there will need to be further detailed consultation on the precise wording and on any gaps and issues that might arise from the wording chosen. Those gaps and issues are likely to vary, according to the wording selected.
94. If this route is taken, consultation should cover some of the existing definitions which have been adopted, including the definition in PCRT.

Question 27: How could unaffiliated tax practitioners be transitioned into professional body membership?

95. ICAS could allow such agents to follow the same membership route as other individuals, by completing the CA qualification, with the possibility of exemptions based on practical experience.
96. An alternative option would be to regulate agents as ICAS Affiliates, similar to the model that we have in place in audit and insolvency. Licences would be issued to individuals who could satisfy – and continue to satisfy – appropriate eligibility criteria (which would need to be carefully considered and publicised in advance).
97. The membership route would more strongly guard against any lowering of professional body standards, although it is unlikely to be favoured by the majority of unregulated agents, given the time required, and the high bar which is set in our assessments.
98. The most effective means of handling the transition would be for HMRC and the professional bodies to work together to try to ensure a consistent approach is adopted.
99. ICAS wishes to emphasise that it has no appetite for the lowering of our standards in transitioning currently unaffiliated tax practitioners into some form of membership. If such membership is going to be mandated, the government must ensure that professional bodies retain their discretion as to who is admitted to membership/regulation and on what terms.

Question 28: Should a legacy scheme be adopted? Please give reasons for your answer.

100. A legacy scheme might be appropriate, but further details would be required before ICAS could provide a detailed view.

101. There is a balance to be struck between assisting unaffiliated agents in maintaining their livelihoods and ensuring that the professional bodies maintain high standards amongst their members. In our view, greater emphasis should be given to the latter, rather than the former.

Question 29: Do you agree a transition period of 3 years would give sufficient time for the market to adapt to the introduction of mandatory professional body members?

- yes
- no
- maybe
- don't know

Please give reasons for your answer.

102. If those who are not currently affiliated to a professional body wanted to join ICAS then it is generally a three-year programme to qualify, meaning that this is the minimum transition period which would work.

103. In practice, we believe that a five-year transition period might be more practical (although much will depend on how the transitional period is designed and who and what it covers).

Question 30: What future developments would need to be accounted for in implementing mandatory professional body membership?

104. While we consider that this question has already been largely answered by our responses above, there are a number of further issues which might need to be considered, perhaps by a consultative committee, for which ICAS would be happy to put forward a representative.

These include:

- Cost and administration burden (inside and outside of HMRC).
- Behavioural responses.
- Admission of unregistered tax practitioners, including hardship cases.
- Education.
- Regulation.
- Records checks.
- Transition timeline.
- Sanctions (professional bodies and/or HMRC) for acting as an unregistered tax professional.
- Growing use of AI as the basis of tax advice to client.



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