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"Raising Standards in the tax advice market" consultation
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By email to raisingstandardsconsultation@hmrc.gov.uk

29 May 2024

Dear Ms De Brito

Raising standards in the tax advice market

I am writing on behalf of the Association of Consulting Actuaries in response to the consultation on Raising Standards in the Tax Advice Market: strengthening the regulatory framework and improving registration, published on 6 March 2024. As an association of professionally qualified actuaries, we welcome any initiative to improve standards of advice.

The main purpose of our response is to fully support and endorse the sensible and practical decision to exclude the well-regulated professions listed in the consultation document, notably lawyers, actuaries and independent financial advisers, as well as professionals regulated by The Pensions Regulator, the Financial Conduct Authority and the Prudential Regulatory Authority from the mandatory regulation requirement.

The reasons given in the consultation for excluding these professions are sensible and sound. The actuarial profession is already well regulated and is not the source of problems or concerns about standards of tax advice. Duplicating regulation would be inappropriate and unnecessary, and it would increase costs for users of advice without any material additional benefits for them.

Regarding the meat of the consultation: of the three options outlined in the consultation document for raising standards in the tax advice market, we would advocate approach 1 (mandatory membership of a recognised professional body) in preference to approach 3 (regulation by a government body). We appreciate the government's caution about asking HMRC to act in a dual role as both the tax assessment and collection department and the regulator of unaffiliated tax agents, which would be a consequence of approach 2 (joint HMRC-industry regulation).

We are neutral as to whether it would be preferable to extend the remit of the existing mainstream tax professional bodies to cover the tax agents who are presently not affiliated to a professional body, or whether a new body, focused on smaller, unaffiliated advisers, would be better. This is a matter for the mainstream tax profession and HMRC rather than for actuaries.

We set out a more detailed response to selected questions from the consultation document in the attached appendix.

We would be happy to discuss this matter further if you wished. **Please contact Tim Sexton, who led on this paper on our Pensions Taxation Committee, at** tim.sexton@vialto.com or on **07841 494194.**

Yours sincerely

Steven Taylor
Chair
On behalf of the Association of Consulting Actuaries Limited

About the Association of Consulting Actuaries

Members of the ACA provide advice to thousands of pension schemes, including most of the country's largest schemes. Members of the Association are all qualified actuaries and all actuarial advice given is subject to the Actuaries' Code. Advice given to clients is independent and impartial. ACA members include the scheme actuaries to schemes covering the majority of members of private sector defined benefit pension schemes. Members also advise thousands of smaller pension arrangements and individuals (many in self-employment) as well as advising life and general insurers.

Particularly relevant for this consultation, our members' work includes general consulting to enable the proper running of pension schemes from the perspective of sponsoring employers and trustees. This includes advice on benefit design (including what structures provide benefits that fit within pensions tax rules), on appropriate funding levels and on member communications. Several of our members' firms also provide third party administration for pension schemes and so are key agents for the trustees running schemes (including operating tax rules at a granular level). We are therefore also concerned that the proposals work for pension administrators. Without our work it would be difficult for pension schemes to comply with the very complex pensions tax regime, and our work also supports activities to enable compliance by scheme members with all the pension tax rules.

Appendix

Raising standards in the tax advice market

Consultation questions

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

We support in principle the requirement that tax practitioners who wish to interact with HMRC's systems should register with HMRC. It is not clear what the consequence would be of HMRC refusing to register a practitioner, but this might possibly prevent the practitioner from operating. Where the practitioner is not competent or is promoting aggressive and egregious tax avoidance products this might be both one of the intentions of refusing registration and a desired outcome. However, it would be a severe sanction on the intended practitioner. Because of this:

a) The criteria for registration should be as transparent and objective as possible.
b) There should be a mechanism to appeal through an independent process against a refusal by HMRC to register, including any revocation of a registration. This needs to be a swift process since it may affect both the practitioner's clients or customers and the practitioner. Waiting in the queue for a tax tribunal hearing might not be swift access to an independent review.

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?

We support agent registration before a tax practitioner can access taxpayer data directly from HMRC's systems.

We can also understand the attraction of applying the requirement that all mainstream tax practitioners who regularly interact in any way with HMRC in a professional capacity should register. Our main concern would be professional advisers who work in adjacent fields, such as advising on pension schemes, who irregularly and on an ad hoc basis might be asked by a client to follow up a tax point with HMRC. Unless registration was very quick and very simple, this could be a disproportionate barrier relative to a very minor interaction with HMRC as part of wider non-tax work.

The consultation notes that registration with HMRC might be misunderstood by the public to imply that HMRC has verified a quality of work or standards. We are unclear whether the intention is to introduce this registration before or at the same time as the requirement for mandatory professional body membership. The consultation describes this registration as a 'first step' but also, in section 9, suggests that the mandatory registration will be introduced 'alongside' mandatory membership of a professional body and that checking the professional body membership would be part of the registration process. We agree that the better approach would be to bring in both the registration and mandatory professional body membership at the same time. However, given the efficiency gains of having a single system, if might be necessary to bring in the HMRC registration in advance of the requirement for mandatory professional body membership.

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?

It may be hard to have a single, simple set of criteria for registration and the appropriate checks that the agent is fit and proper to be registered. Agents will vary from individual sole traders performing a limited range of simple tax services (entirely appropriately), through to large or multinational companies or very large LLPs with significant dealings with HMRC across a range of tax matters. If the desire is to have consistent uniform checks, then this would suggest that these are initially limited to simple objective matters that HMRC can easily verify.

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**

We would advocate approach 1 (mandatory membership of a recognised professional body) in preference to approach 3 (regulation by a government body). We appreciate the government's caution about asking HMRC to act in a dual role as both the tax assessment and collection department and the regulator of unaffiliated tax agents.

The tax advice market is diverse and complex. Tax permeates into many different parts of business and people's lives in many different ways. As a consequence, there are many different types of taxpayer and types of advisers helping them. As noted in the consultation, this is reflected in a range of professional bodies, with many focused on regulating the professional advisers operating in a specific area.

One size cannot fit all when addressing the tax advice market, and a new government regulator (approach 3) would both duplicate the work currently being done by the professional bodies and might struggle to provide appropriate and consistent oversight across the widely different areas in which tax advice and advisers operate.

Approach 2 (joint HMRC-industry enforcement) is a hybrid of the other two approaches. It would involve asking HMRC to become a regulator of tax practitioners, which is a role that would sit awkwardly with its role as the tax administration centre for the UK, unless there was a distinct separation of powers and responsibilities within HMRC between its tax administration arm and its regulation of standards arm. Approach 2 might be attractive if the mainstream professional tax bodies are not currently set up to cover the advisers who are unaffiliated at present. These unaffiliated advisers might need a support body and regulator geared to their needs and circumstances.

We are neutral as to whether it would be preferable to extend the remit of the existing mainstream tax professional bodies or whether a new body, focused on smaller, unaffiliated advisers, would be better. This is a matter for the mainstream tax profession and HMRC rather than for actuaries.

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

We cannot comment on the wider mainstream tax advice market. However, within the actuarial profession we consider that membership of the Institute and Faculty of Actuaries, our professional body, is very important and ensures high standards.

A high-quality professional body, typically one established by Royal Charter, would have a public interest function to promote high quality of professional practice. There would be rigorous examinations of knowledge, skills and experience in order to qualify as a member, and mandatory continuing professional development to keep this knowledge refreshed and up to date. This would be accompanied by a mandatory code of ethics or conduct backed up by a disciplinary process to ensure high standards. There would also be checks including by way of annual declarations. These are the desired outcomes of this consultation, and the Institute and Faculty of Actuaries meets all these requirements. The relevant professional bodies for tax practitioners, through also meeting these requirements, would promote high standards by their members.

Within a profession it is common for different professionals to specialise in particular areas. The actuarial profession's requirements for members only to do work they are competent to do means that, where someone has a strong focus on tax matters in their professional career, the person usually takes appropriate steps to develop the specialism. For example, we are aware of a few actuaries, advising on retirement and wider wealth planning, who have supplemented their actuarial qualification with the qualification of the Society of Trust and Estate Practitioners ("STEP").

Question 19: Do you agree that the requirement should only apply to those who interact with HMRC?

Yes. We agree that the requirement should apply only to those who interact with HMRC.

For the reasons given in the consultation document, it would be more complicated and more costly to apply mandatory professional body membership across all practitioners, including those who do not interact directly with HMRC. It therefore makes sense to apply the requirement only to those who interact directly with HMRC. Once this has happened, the position could be reviewed since this step might achieve the objectives of raising standards sufficiently. If not, then there would be an established platform on which to design any extension of a requirement for mandatory professional body membership to the wider tax practitioner marketplace.

Question 20: Do you agree that the requirement should only apply to controlling or principals of firms?

Yes. A client's engagement would usually be with the firm. The controlling persons or principals of the firm should be responsible for the quality of the firm's activities.

There are a number of reasons for this including:

- Many firms will have junior staff who are studying for professional qualifications and, under supervision, these people need to gain experience in providing advice. It would hinder the raising of standards if those studying for professional qualifications were unable to provide even limited advice under supervision as they proceeded to qualification. Firms typically have quality assurance processes, including four-eyes review, peer reviews, and a requirement for particular grades of staff or only qualified staff to review or sign-out material work or advice.
- Most firms do not consist entirely of qualified principals or staff, each of whom belonged to a relevant professional body. It is more common for the firm to have a mix of individuals together with adequate procedures to ensure standards of advice. For example, it is common amongst our members' firms to also provide third party administration for pension schemes.

The consultation document implicitly seems to assume that all the controllers or principals of a firm would belong to the same professional body. While this might often be the case, there will be examples of either multi-disciplinary firms, or firms with partners in the same profession but perhaps some partners qualified with and members of the English professional body and other partners who belonged to the equivalent Scottish professional body.

Provided that there were identifiable controllers taking responsibility for any processes/staff who provide tax advice, the requirement should still be met if those controllers met the requirement. For example, if an actuarial firm included some non-actuaries on the board.

In a very large or multidisciplinary firm, where a subsidiary or division has day to day operational independence and is where the control of professional standards sits day to day within that division, it would probably be more appropriate to apply the "principals or directors" test at that divisional level rather than at the level of the main board of directors of a plc. The main board of a large public company or similar organisation might be based outside the UK. While the main board would have overall strategic oversight, the professional standards and conduct at an operational level would be a matter for the relevant operating division, which would be based in the UK and which would be staffed with appropriately skilled people to perform those functions.

We are unclear as to what the reference to professionals regulated by The Pensions Regulator ("**TPR**") means. If this includes trustees of TPR supervised pension schemes, then would this mean that where those trustees appoint someone to transact on their behalf, for example a third-party administrator, then the exemption would flow down to the administrator?

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

We think that the list of professions currently excluded from the requirements is sound but, depending on how the reference to The Pensions Regulator and/or the Financial Conduct Authority is defined, HMRC might want to expand the list slightly to ensure that it works as intended.

Pension schemes operate under detailed and complex tax rules and those operating and administering pension schemes often have to take those tax rules into account when advising employers and scheme members. We understand and agree that because pension schemes are already robustly regulated, the operation of pension schemes does not need further duplicate regulation, which is why we welcome and agree with the exclusion of actuaries, lawyers and professionals who are regulated in accordance with The Pensions Regulator and the Financial Conduct Authority.

We note that pension scheme administrators handle these rules every day and regularly provide timely help and information to employers and scheme members, for example illustrating the benefits that can be taken within the tax rules, which helps the pension schemes and their members to remain compliant. We understand that HMRC is meeting with pension industry representatives to discuss the interaction of the current proposals in this consultation document and the efficient administration of pension schemes so that both the objectives of the current proposals and the continued efficient administration of pension schemes are achieved. The ACA expects to be part of those discussions through our membership of HMRC's Pensions Industry Stakeholder Forum.

Fundamental to those discussions is a better understanding of the intention behind the reference to "professionals who are regulated in accordance with The Pensions Regulator". If this would mean that professional administrators who provide operational administration of pension schemes would be excluded from the main requirements on mainstream tax professionals, then this would be sensible and might make the proposals workable. If so, then it would be very helpful if the more detailed legislation or regulations included this to make it explicit.

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

You will be aware from previous discussions with the actuarial profession of an example of collaborative working to ensure high standards of actuarial professional advice. In 2013, the Financial Reporting Council ("**FRC**") established a Joint Forum for Actuarial Regulation ("**JFAR**"). This brought together senior actuarial representatives from the Financial Conduct Authority, The Pensions Regulator, the Prudential Regulatory Authority, the Institute and Faculty of Actuaries and the FRC to coordinate the identification and analysis of public interest risks around actuarial advice. Having achieved its purpose, the forum has now been replaced by the FRC holding frequent bilateral and multilateral meetings as needs arise with relevant regulators. The other regulators are also in regular contact with each other, as and when needed.

Bilateral and multilateral meetings, as needs arise, with relevant regulators would be a simple and effective way to ensure that members of regulated professions have high standards in relation to their work providing tax advice or services. We would be very surprised if the relevant professional bodies or regulators of the regulated professions were not open to discussions about promoting high standards of work amongst their members.

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

We fully support and endorse the sensible and practical decision to exclude the well-regulated professions listed in the consultation document, notably lawyers, actuaries and independent financial advisers, as well as professionals regulated by The Pensions Regulator, the Financial

Conduct Authority and the Prudential Regulatory Authority, from the mandatory regulation requirement.

The reasons given in the consultation for excluding these professions are sensible and sound. The actuarial profession is already well regulated and is not the source of problems or concerns about standards of tax advice. Duplicating regulation would be inappropriate and unnecessary, and it would increase costs for users of advice without any material additional benefits for them.

Because it is hard to qualify as an actuary, it is very unlikely to be an attractive or even a feasible route for a sub-standard tax adviser to use to circumvent the more general mandatory regulation proposed for mainstream tax advisers. Even if someone did qualify as an actuary, that person would then automatically be exposed to the full professional and ethical requirements of the profession, including a duty to act competently and with integrity, and would also be subject to the robust disciplinary procedures if those standards were not met.

A benefit of excluding actuaries and lawyers from detailed supervision and regulation, on the basis that their professional bodies are already doing this regulation to a high standard, is that it frees up finite government resources to focus on parts of the tax advice market where there might be greater need for that focus.

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

Any legal definition of a provider of tax advice and services would need to be carefully considered because the definition is likely to be recycled and used again in other future legislation. A proposed definition must not only meet the current intended need but should be considered against how HM Treasury or HMRC might want to use it in future, possibly for quite different purposes.

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

Legal definitions should be based on facts and what happens in reality rather than on suppositions of what might be plausible or reasonable, but which might also not be true.

It will always be challenging for a definition to both be sufficiently wide-ranging to avoid gaps and at the same time precise enough to be clear.

There are ambiguities in the provisions proposed for the definition, for example:

- What does 'in relation to UK taxation' mean. Does that have to be [one of] the main purposes of the advice? How is it determined what the purposes are?
- The proposed definition suggests that advice can be provided 'directly, indirectly, or at the request of someone other than the client'. Under a pension scheme, pension payments are always taxable, but a lump sum at retirement (subject to limits) is tax-free. If the trustees of a pension scheme instruct a pensions administrator to provide figures for all retirements with and without commutation of pension to provide the maximum permitted lump sum, is that advice/assistance and, if so, who is providing it?
- Does 'advice' include services such as data transfer?

There might also be a temptation to draft a definition as an anti-avoidance provision, i.e. to draw a very wide definition and include phrases such as “if it is reasonable to suppose that in essence” [a person might be providing tax advice]. This would create a problem because while it would help to capture a rogue operator seeking to circumvent regulation, it would also separate the definition from reality. A tax adviser would end up being defined in a hypothetical world based on what might reasonably be supposed (and the bar for reasonableness might be both vague, i.e. “in essence”, and low), as opposed to the actual world based on whether the person was providing or purporting to provide tax advice.

Legal definitions should be based on facts and what happens in reality rather than on suppositions of what might be plausible or reasonable, but which might also paint a false picture.

Response from: Association of Consulting Actuaries

29 May 2024