ASSOCIATION OF CONSULTING ACTUARIES

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Tax Advice: Call for Evidence
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By email to taxadvicecallforevidence@hmrc.gov.uk

31 July 2020

Dear Sirs

Raising standards in the tax advice market: call for evidence

I am writing on behalf of the Association of Consulting Actuaries in response to the call for evidence on raising standards in the tax advice market.

As an association of professionally qualified actuaries, we welcome any initiative to improve standards of advice. However, we would strongly urge that these measures should be carefully targeted at the intended mischiefs and do not inadvertently restrict or damage the ability of many individuals who are not primarily tax advisers to provide professional advice in related areas, such as pensions, where commenting on tax is an essential component of that advice.

Tax is often an important, integral and inseparable part of good pension advice simply because pension schemes are so regulated by tax rules (under a complex regime). Advice on pensions could be to individuals, employers or scheme trustees. It is essential that actuaries, lawyers and others involved in giving professional advice relating to pension schemes and retirement matters can comment freely and fully on tax as a component of that advice. The effect of tax is sometimes the most important component of the advice, for example, helping a client to comply with tax law.

Although the call for evidence does not mention guidance, one route to preventing difficulties in this area while enabling HMRC to tackle poor tax advice might be to target only the provision of tax **advice** but not to target the provision of **guidance** given as a component of other wider advice. Work which could fall within the remit of guidance would not be affected by the proposals. However, we can see that it may be difficult to draw a clear consistent boundary between tax advice and guidance, and that promoters of tax avoidance schemes might try to camouflage their activities as "guidance". Furthermore, because the distinction between guidance and advice could be subjective, HMRC's view on what constituted guidance could be very different from practitioners' views, and this potential for confusion would be unhelpful for both parties.

An alternative, which we think may be preferable, would be to **use membership of professional bodies as a trusted hallmark**. Poor quality tax advisers and many promoters of aggressive tax avoidance schemes would find the examinations required to qualify in most professional bodies to be a formidable barrier. Furthermore, the professional bodies guard their reputations jealously and so have strong incentives to stamp out unacceptable practices within their ranks.

The professional bodies already have existing codes of professional and ethical conduct, and where necessary a disciplinary regime with sanctions. By using membership of such bodies as a trusted hallmark it would enable HMRC to focus its resources on tax advisers who did not enjoy that hallmark, thereby maximising the ability of HMRC to disrupt the activities of the minority of unacceptable tax advisers who are the target of this policy. It would not preclude action against any individual, but we would expect it to be very rare that, for example, an actuary would need to be the subject of HMRC attention or intervention.

We accept that in many cases someone can be a member of a professional body before having completed the examinations to qualify in that profession. For example, student actuaries are still members of the actuarial profession, but non-qualified members of the actuarial profession are equally bound by the professional code. If HMRC preferred, the trusted hallmark could be restricted to those members who hold a relevant level of qualification in their profession.

We set out a more detailed response in the **attached appendix**.

We would note in passing that this issue affects not only actuaries and actuarial analysts but also other professional groups involved in advising on pension schemes such as lawyers and members of the Pensions Management Institute and the Chartered Insurance Institute.

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@pwc.com or on **07841 494194.**

Yours faithfully

Patrick Bloomfield
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.

Appendix (attached)

Appendix

Defining tax advice and tax services

Q2 What clear distinction can be drawn between tax advice and tax services?

There is a distinction in the area of regulated independent financial advice between pension services, pension guidance and pension advice.

> **Services** are usually functional. While the services must be provided accurately and competently there is usually no obligation on the service provider to offer guidance or advice. However, in a number of cases the knowledge held by the service provider means that the provider may also extend to providing either guidance or advice to the recipient.
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> **Guidance** provides information and general high-level statements, but the provider would neither attempt to draw personal conclusions nor apply the knowledge and principles to the personal circumstances of the recipient. A person providing guidance would still have obligations to be technically competent and appropriately knowledgeable, and to act honestly and with integrity.
>
> **Advice** involves the provider applying knowledge and judgement to the personal circumstances of the recipient to distil the options into a recommendation of a possible action for that client.

Many pension advisers would assert that they provide pension advice, in which the tax rules on pension schemes have to be relevant factors, but those pension advisers would not see themselves as giving tax advice. At best, the advisers would consider themselves as giving guidance on tax matters within pension advice. This reflects the fact that pension advisers would not have a formal qualification in tax, such as accountancy or membership of the Chartered Institute of Taxation, even though many pension advisers can have a deeper and more detailed knowledge of the particular tax rules around pension schemes than many accountants. The pensions tax regime is particularly complex, interacting with the other statutory and governance regimes operating for pensions, and so it is very much specialist knowledge.

On the other hand, it is usually impossible to provide specific pensions advice, whether to an employer, to scheme trustees or to an individual member, without regard to the pension tax rules and without having to apply those rules to the specific circumstances of the recipient of the pension advice. To this extent, consideration of tax is often an important, integral and inseparable part of good pension advice simply because pension schemes are so regulated by tax rules. It is essential that actuaries, lawyers and others involved in giving professional advice relating to pension schemes and retirement matters can comment freely and fully on tax as a component of that advice, and the effect of tax is sometimes the most important component of the advice.

At first glance, it might be tempting to argue that simply providing tax guidance should not be regulated even if providing tax advice became a regulated activity. As such, many but not all pension advisers would continue to operate untouched by any regulation of tax advisers. However, the problem with this approach is that in practice the boundary between guidance and advice might be blurred and hard to define clearly. Furthermore, the danger is that the targets of this consultation, i.e. those who provide poor quality advice or promote aggressive tax avoidance schemes, might seek shelter by arguing that they too provided merely guidance and not advice. This would lead to the following bad outcomes:

a) HMRC might be forced to spend a disproportionate amount of time attempting to define, police and pursue through tax tribunals a distinction between appropriate guidance activities and unacceptable tax advice or avoidance that was being camouflaged as guidance.

b) As a consequence, legitimate advisers, e.g. pension advisers, legal advisers or independent financial advisers, would end up subject to regulation, scrutiny or unhelpful restrictions on their legitimate activities involving tax matters as an unfortunate consequence of HMRC's necessary activities to tackle the unacceptable practices that were being camouflaged as guidance.

c) Socially important activities, e.g. providing good quality pension advice, good quality legal advice or legitimate personal financial planning, and enabling the good governance of pension schemes by trustees would be constrained, reduced or made more expensive because of tax regulations or restrictions. A poor policy decision about how to go about raising standards in the tax advice market could be damaging to the provision of other socially important activities.

In light of the above, rather than attempting to define a boundary between tax guidance and advice, using membership (or fully qualified membership) of professional bodies might be a better way to provide a trusted hallmark for identifying legitimate advisers. This would also be much harder for the targets of this consultation to shelter within.

Approaches to raising standards
Current professional bodies (Option E) vs External regulation (Option F)

Q28 Views on the benefits of the options set out in the consultation document

We consider that using professional bodies would be a simpler and quicker way to ensure quality of service by the vast majority of advisers, not only those who advise on tax but also advisers in other fields who need to comment on tax matters as an integral part of their advice. This may leave a smaller core of tax advisers who are not members of a professional body, albeit still acting fully professionally, such as former HMRC staff. We are neutral as to whether HMRC would want to register or otherwise regulate such a smaller group who primarily advise on tax in return for remuneration.

There are a number of advantages of relying on current professional bodies.

a) HMRC has already established the code of Professional Conduct in Relation to Taxation ("PCRT") with the main accountancy and tax professional bodies, and already has extensive regular dialogue with them.

b) Although tax affects a very wide variety of activities, a very large number of advisers in other fields who need to comment on tax matters as an integral part of their advice in those other fields, such as actuaries or solicitors advising on pension schemes, will be members of a professional body. These advisers are already fully covered by a professional code of conduct, a requirement of competence and a regulatory and disciplinary regime of their relevant professional body, including an obligation to act in the public interest, without the need for further intervention by HMRC.

c) The problems caused by poor tax advice or the promotion of aggressive tax avoidance schemes do not arise from professional activities by actuaries and similar professionals advising in fields adjacent to tax. By using membership of a professional body as a quality hallmark HMRC could then focus its resources on tax advisers who did not enjoy the hallmark of a professional body, thereby maximising the ability of HMRC to disrupt the activities of the minority of unacceptable tax advisers who are the target of this policy.

d) Using professional bodies as quality hallmarks means that HMRC would not have to try to define the boundary between tax advice and either tax guidance or commenting on tax as a part of other advice. This would be helpful since if tax advice was regulated but tax guidance left unregulated then unscrupulous tax advisers would be likely to try to camouflage their activities as being merely guidance on tax. By contrast, it would be much harder for such unscrupulous advisers to shelter behind professional bodies:

    i. It is not easy to qualify as a member of most professions. For example, the arduous examinations required to become a qualified actuary would act as a formidable barrier. (Those who have not completed the required exams would still be members of the profession and bound by the professional code, but this could be further restricted by relating the hallmark to qualified members of the profession only.)

    ii. Professional bodies jealously guard their professional reputations and have strong incentives to stamp out any material unprofessional activities within their ranks, including applying sanctions to any members found to be carrying out such activities.

All reputable professional bodies would take seriously any complaint of professional misconduct made by HMRC against one of its members, provided that any process within HMRC was suitably objective, rigorous, considered and had appropriate senior individuals involved in signing-off any complaint. However, we would expect such complaints to be very rarely needed or made.

We would suggest similar but slightly different criteria from those set out in paragraph 86 of the consultation document for what constitutes a professional body.

a) The organisation has a public interest function which involves promoting or regulating the activities of its members in the public interest.

b) The organisation has a published code of ethics or professional conduct to which its members must adhere.

c) Members must be required to demonstrate professional competence either through a relevant qualification or through a minimum period of experience. This may also include a requirement to undergo continuing professional development ("CPD") to keep up to date with best practice.

d) The organisation has a disciplinary process to ensure that its members remain competent to practice and abide by professional and ethical standards, with sanctions for those found to be failing in this regard.

For the avoidance of doubt, the professional qualification would not need to cover the full range of tax knowledge. For example, the examinations for actuaries require candidates to show an appropriate understanding of the tax treatment of pension schemes and insurance companies sufficient to enable an actuary to advise properly in those areas, but the examinations would not cover a detailed study of taxes such as stamp duty land tax ("SDLT") or the Scottish Land and Buildings Tax or the Welsh Land Transaction Tax.

The professional obligation to act only in areas where the individual is competent to advise would automatically preclude an actuary from advising on SDLT unless he or she had subsequently studied and acquired adequate knowledge and experience in that field. For example, an actuary who had moved into advising on investment matters including commercial property investments for institutional investors might become knowledgeable and competent to comment in this field, but that would be a less common case. However, it would be common practice for actuaries to advise in respect of insurance companies, pension schemes and retirement benefits, and for that professional advice to take account of tax law and to include advice on tax.

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