Should tax advisers be regulated and if so, who by?

This webinar will begin at 11am
Ask ICAS Webinar Series

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This webinar begins in 05:01
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Should tax advisers be regulated and if so, who by?
Your experts for today

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Raising Standards in the Tax Advice Market – HMRC Call for evidence

• Call was issued 19 March 2020
• Closing date is 28 August 2020

The topic has been on and off the agenda for years, if not decades

• **Asks** – how to raise and maintain high standards of competence and behaviour
• **Why** – to protect consumers and improve compliance

[Call for evidence]
Why now?

There are three main strands:

• Promoters and their networks of enablers who continue to promote/sell aggressive tax avoidance schemes

• Addressing the recommendations made by Sir Amyas Morse in his report on the Loan Charge, and

• More generally, standards across the tax advice market – if standards were higher elements of the tax gap would be reduced.

See Tax Gap report issued 9 July 2020
<table>
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<th>Spectrum of potential approaches put forward by HMRC</th>
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<td><strong>Improve current system</strong></td>
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<td>Use current levers such as dishonest tax agent penalties, public interest disclosures, and refusal from HMRC to interact with agents digitally in a more effective way.</td>
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<tr>
<td><strong>Improve current system</strong></td>
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<td>Improving market transparency, eg empowering consumers to make better choices through schemes such as kitemarking.</td>
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<td><strong>Expand influence</strong></td>
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<td>Maximising the self-regulatory role of the professional bodies.</td>
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<td><strong>Maximal approach</strong></td>
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<td>Controlling entry to the market by introducing a statutory body enforcing regulated standards on tax advisers.</td>
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What are the options?

A – better use of HMRC’s or government's current powers
B – improve rights of recourse for consumers
C – improving transparency - helping consumers to make better choices
D – penalties for tax advisers
E – maximising the regulatory/supervisory role of current professional bodies
F – external regulation
Are there other options?

Pick and mix?
An incremental approach, for example,
• more could be done to differentiate and support the use of properly qualified agents
• more could be done around consumer education.
Are these the only options?
Do they address the problems?
ICAS Tax Board policy position

ICAS members are subject to qualification and quality control measures which give important standard safeguards for HMRC and taxpayers. Accordingly, further regulation of ICAS members by HMRC is not necessary; the unregulated sector should be required to operate to regulated sector standards.

See [ICAS policy positions](#)
See [Future of Taxation in the UK](#) paper
Arguments in favour of a regulatory scheme

• Only those who are satisfactorily regulated could be tax agents.
• Consumer protection – a level of consumer protection would be provided such as PII, a complaints process.
• There would be a level playing field for tax advisers – all would have equal costs of regulation.
• In the Option E version this would build on, not sideline, what the PBs do (though much would depend on what form it took).
Arguments against a regulatory scheme

- Potential impact for PB members who have dual membership (e.g., lawyers) - how would any tax advice regulatory model sit in relation to existing regulation.

- Would it be costly (relative to the benefits) as 70% of the market already meets appropriate standards under existing self-regulatory schemes of PBs.

- A regulatory scheme might not address the problem of promoters (who are typically not PB members; and often do not hold themselves out as ‘tax advisers’).

- A regulatory scheme aimed at the aggressive avoidance problem would be a ‘sledgehammer to crack a nut’.
Issues that need to be addressed

What is it that would be regulated?

• Members of the professional body? And if so, what would be the features of a qualifying professional body?

• Tax advice?
• Tax services?
• Tax compliance?

It’s stating the obvious – but if you regulate around the service line you need to define the service. However, it’s not that easy.
Option E….

…but what about the existing 30% of tax advisers who are not currently members of any Professional Body?

Make them join a PB? And if so, by

- The exam route?
- Affiliation?

- ICAS supports the affiliation route
The existing ICAS Affiliate model

- Tax – for those who have passed the ITP exams
- Insolvency Practitioners
- Audit

Each has an existing affiliate model whereby the affiliate is bound to the ICAS regulatory regime.

Each affiliate is subject to the same rules and regulation as an ICAS member – including investigation and discipline.
Tax affiliates – arguments in favour

• If PBs want to work with HMRC and government to address the issue of poor standards they need to be part of the solution; they need to find a way to assist in raising standards.

• The leading tax PBs ought to be seen to assist HMRC in getting to a workable solution.

• If members want a level ‘playing field’ with all tax advisers regulated to PB standards, and incurring the same costs of operation, this offers a route to achieving that.
Tax affiliates – arguments against

• It is understood that the 30% advisers who are not members of PBs give rise to a higher proportion of concerns in HMRC (around 70% of the ‘poor’ agents) - the PBs should be wary of taking ownership of this problem, whether by an affiliate scheme or otherwise.

• A key argument against is if members think this would undermine their qualification.

• There need to be distinct differentiators between PB members and non-members (which would not be the case under an affiliate programme).
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