

# TAXATION DISCIPLINARY BOARD

## The Taxation Disciplinary Board Raising standards in the tax advice market: call for evidence

### 1. Introduction

1.1 The Taxation Disciplinary Board (TDB) is pleased to submit its comments in response to HMRC's call for evidence on 'Raising standards in the tax advice market' issued on 19 March 2020 ('the Document'). We look forward to participating in discussions as the issues within the Document are taken forward and would be very happy to join meetings to explore further any or all of the specific points raised.

### 2. Who we are

2.1 The TDB is an independent body set up in 2001 by CIOT and ATT to handle complaints against members and students. It has an ambit covering some 30,000 people involved in the tax profession. We therefore have a unique perspective on some of the issues raised in the Document.

2.2 As set out on our website <https://tax-board.org.uk/> the purpose of the TDB is to ensure that tax advisers maintain the highest professional standards of conduct and to exercise professional discipline over those who fail to comply. The TDB is empowered to deal with complaints alleging breaches of professional standards and guidance<sup>1</sup>, the provision of inadequate professional service<sup>2</sup>, and conduct unbecoming a professional person. This is all about maintaining public confidence in our profession.

2.3 The TDB exists to:

- Support and maintain the high professional standards of the CIOT and ATT;
- Handle complaints quickly, impartially and effectively.

The TDB promises to operate economically, have easy to understand policy and procedures and publish simple guidance for complainants and members.

### 3. General observations on the Document

3.1 The Document takes forward an issue that has been the subject of consultations, statutory changes, and much discussion since at least 2011<sup>3</sup>. It is pleasing that HMRC is taking forward the discussions again, but it is disappointing that so little progress has been made in nine years. To us, many of the issues identified in 2011 remain. Whilst we appreciate this is a 'call for evidence' rather than a roadmap for how matters might be

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<sup>1</sup> In particular 'Professional Conduct in Relation to Taxation' (PCRT) our sponsoring bodies are two of the seven contributing members.

<sup>2</sup> In particular our sponsor bodies' 'Professional Rules and Practice Guidelines' (PRPG).

<sup>3</sup> See 'Establishing the future relationship between the tax agent community and HMRC', 31 May 2011, often referred to as 'Agent Strategy'.

progressed, it is also disappointing that the Document has little to say about a way forward on some issues that were apparent in 2011 and which arguably were factors in the formation of the TDB.

3.2 The Document is largely focussed on members of professional bodies (PBs), and indeed the seven bodies that produce PCRT. The TDB agrees that it is appropriate to look at ensuring the high standards set by the seven bodies and exemplified in PCRT and PRPG are monitored and met. That, in many ways, is our *raison d'être*. We note in our responses to some of the specific questions how this can be achieved.

3.3 But we think more needs to be done concerning members of PBs who are not part of the PCRT core. Some do subscribe to PCRT: how should their members' adherence be monitored if they do not have a body comparable to the TDB to draw on? If they do not subscribe to PCRT, why not – and how to monitor their standards?

3.4 Beyond the members of all PBs generally, as the Document acknowledges, there are many tax advisers who are members of no PB. There is little concrete in the Document about raising, monitoring and maintaining their standards. Who would do this? It must be borne in mind that at present the tax advisory market is 'open', in the sense that anyone can be an adviser; indeed, someone excluded from membership of CIOT or ATT by the TDB can, and sometimes does, continue to practice.

3.5 The Document rightly notes the considerable amount of work done by voluntary advisers – either as 'friends and families' or through bodies such as TaxHelp for Older People and TaxAid. Whilst it is important to recognise the value of such work, and even encourage it, we think the key to making progress in the issues raised by the Document is to focus on paid tax advisers (by which we mean those in practice and also those employed as advisers – which in principle includes those employed by HMRC and other government bodies). Raising standards for voluntary advisers can come along at a subsequent stage, building on the experience gained in considering paid advisers, though we would note that the TDB's remit covers poor work by a member operating as a volunteer adviser.

3.6 The Document seems to us to have too great a focus on what we might term **bad** behaviour – instances close to fraud or deception, deliberate misdescriptions etc. – to make its case. Whilst this is understandable in one sense, we think it would be wrong to build any system to improve standards with only such instances in mind. The TDB does of course see cases of such reprehensible behaviour. But we also see many cases of **poor** work: the adviser who has not kept up to date or who is dealing with something that they should realise is outside their area of expertise; the adviser who is simply overwhelmed by their workload; the adviser who does not cope and proves to be ill. Both these overall categories need standards to be raised but the approach to these two broad categories should be different. The former may well merit punishment and deterrence; the latter may be more a case of support to get back on track, possibly with a carefully chosen sanction.

3.7 One point we find a little curious about this Document is that it is badged as a 'call for evidence'. The TDB does have evidence of cases that come before it and we are happy to contribute from our experience and knowledge of these and wider professional issues. But

we would have thought that the one body that is best placed to supply evidence is HMRC, who do after all see all tax returns and dealings. We trust that there will be more drawing on HMRC's data and placing such data before stakeholders: for example, statistics on whether advisers guilty of poor behaviours in HMRC's eyes are PB members; and whether advisers who give bad advice to clients also manage their own tax affairs poorly. (We appreciate that HMRC's systems are not always set up in a way that makes this easy.)

3.8 We note in various places in the Document reference to the issue of so-called 'High Volume Repayment Agents' (HVRAs). The TDB has no experience of dealing with cases arising from such activities as far as we know. But we would make the point that it seems to us that the core problem here is with the tax system and that the main solution is to remove the outdated or difficult to claim allowances that attract HVRA activities, rather than try and devise a regulatory structure for such work with the risk that the resulting regulation impacts on compliant advisers.

#### **4. Comments on specific questions in the Document**

4.1 We will now comment on some of the questions in the Document. We cannot provide comments on all as some are in areas outside the TDB's remit or experience.

4.2 In making our comments, we should say that we believe, based on all the contacts we have with PBs and their members, that all proper advisers will be happy to endorse the principle of raising standards. Similarly, they will always say that taxpayers should be able to rely on professional advice. Such endorsements would no doubt come with a tinge of caution – even worry – as to whether 'raising standards' means bureaucracy such as intrusive checking and form-filling that ultimately achieves little, especially for members of bodies such as those within the TDB's remit who are already subject to high standards, careful monitoring and TDB supervision.

##### **Q1. Is the HMRC *Standard for agents* comprehensive enough to provide a baseline standard for all tax advisers?**

4.3 The TDB's experience is with PCRT and we note that the HMRC Standard is less comprehensive than PCRT. There is no requirement for confidentiality and objectivity (contained in PCRT); these are in part aimed at enhancing consumer protection, which the Document seems to want to promote. Nor does the HMRC Standard require work to be 'client specific' – something that might be seen to restrict the generic schemes and blanket marketing that cause HMRC concern. Thus, we do not think HMRC's Standard is entirely adequate and have to wonder why the overall aim of raising standards does not start from the premise that all should aspire to the existing highest level of professional standards, as set out in PCRT.

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

##### **Q3. From your professional point of view, how do standards differ between different types of tax advice? Could you provide examples?**

4.4 Tax services is a broader term, including tax advice (which in principle means advice to a client of a specific matter) but also more mechanical work such as submission of tax returns and calculation of PAYE. Whilst the *nature* of such work may differ, we are not sure

that the *standards* to be observed should. Certainly, in the TDB's experience, we look at whether the member has adhered to the constant required standards and practices in their work, whatever it is, though will have regard to the context to a degree.

**Q5. What more could the government do to promote the work of good advisers?**

**Q6. Where else do good agents add value - for customers, HMRC and the wider economy? How could this be extended further?**

**Q7. What are the general characteristics of good and bad advisers?**

4.5 The main thing the government could do to promote the work of good advisers, such as those monitored by the TDB, is to do more to publicise standards such as PCRT, including that the public (and businesses) should ensure their advisers subscribe to such standards. To achieve this end, TDB recommends that HMRC works with the PBs to help raise public awareness of the hallmarks of a good tax professional. Furthermore, the Department must be prepared to bring in supervision for those advisers who are not under TDB (or comparable body) supervision. There is, after all, the example of the financial advice market as a comparator.

4.6 One area where the good agent adds value is simply removing worry from their clients/employers by dealing with HMRC and giving assurance that all is in order. (The 'fear factor' that surrounds HMRC must not be underestimated.) Allowing this assurance to be enhanced where the agent adheres to standards is a potential way forward.<sup>4</sup>

4.7 The TDB would observe that the differences between good and bad advisers are essentially mirror images. The good adviser is up to date technically, deals with things promptly and comprehensively, advises only on things within their competence, treats clients fairly and individually and communicates well. The TDB sees advisers who do not meet these characteristics. There are also advisers who set out to deliberately falsify or obfuscate but they are a tiny number. Those people must of course be tackled but in many ways more attention needs to be towards the former category of those who are guilty of poor, rather than deliberately bad, work.

**Q9. Do you have any evidence about the impacts of unqualified agents or agents that don't meet standards?**

4.8 We cannot really comment on unqualified agents: they do not come within our remit. Agents that do not meet standards can and do damage their client's (or employer's) interests by mismanaging their tax affairs and (typically) leaving them with higher tax bills and/or penalties that should not have happened. The client/employer can also be left with considerable work to do to remedy matters, often with a damaged reputation with HMRC to repair as well.

**Q10. How could HMRC and the professional agent community work together to identify poor practice at an early stage?**

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<sup>4</sup> As suggested in the 2011 consultation document and generally endorsed.

4.9 The key is better reporting by HMRC. The TDB has always been surprised at the lack of cases coming to it stemming from HMRC reporting to our sponsor bodies. However, in saying that we reiterate that there needs to be care in distinguishing poor (e.g. out of date) work and deliberately bad practice. HMRC must appreciate that proper PBs such as those who sponsor the TDB are keen to tackle both poor and downright bad practice. They will be supported by their members who want to see poor and bad practice tackled to help maintain the standards they have to adhere to, and to prevent poor advisers undercutting them.

4.10 One way to improve standards could be for HMRC to share examples of recurring poor agent standards that it encounters with the PBs. They would then work to reduce their members' error rates through their education programmes.

**Q11. How effective are HMRC's interventions? Are there other interventions that the government should be using to tackle poor practice?**

**Q12. Is there more that HMRC could do to manage agent performance through its transactional services (such as IT systems)?**

4.11 We would simply observe that HMRC must be readier to invoke a sanction of refusal to deal with an adviser exhibiting egregiously bad behaviour.

**Q14. Who should take the primary role in improving consumer protection, government, the profession, or another third party?**

4.12 This is surely an area for joint working – government/HMRC to take the lead in promoting the need for high standards and that taxpayers should understand their adviser's qualifications and standards, supported by PBs such as CIOT & ATT ensuring members adhere to standards and authorities such as the TDB showing that those standards are enforced. This may encourage individuals to take more responsibility for their affairs – or increase their confidence in an adviser. Either way benefits the tax system.

4.13 We have to say that it would be much easier to improve consumer protection if it were put over a simple message of 'ensure your tax adviser is a member of a professional body', together with a list of relevant bodies. It seems to us inevitable that the way forward must include a requirement for all tax advisers to be members of a proper PB and adhere to the standards laid down in PCRT (and PRPG), together with appropriate supervision. That said, we can see such a way forward has to be a long term one, with a lengthy transition<sup>5</sup> to allow those who are not members of a PB to obtain membership<sup>6</sup> and for all PBs to achieve 'PCRT status'.

**Q19. What future changes do you consider will most impact the standards expected of the tax advice profession?**

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<sup>5</sup> How long a transition will be for the PBs and HMRC to advise on, based on how long it takes them to be ready to run the necessary systems and support. We cannot imagine it would be less than five years.

<sup>6</sup> It may also be possible to develop a form of accredited status by which a non-member can demonstrate adherence to key standards such as PCRT, PII, CPD etc., though the question will inevitably arise as to who supervises such an arrangement.

4.14 We have seen increased automation already having an impact on practitioners; presumably, this is likely to increase further. We do wonder whether there may be a move to the tax adviser having to take on more of HMRC's work in getting the tax bill right as part of the 'fee' for being allowed to practice.

**Q20. What other examples are there of existing powers (HMRC or other government powers) that could be used to tackle poor tax adviser behaviour?**

**Q21. What is your view of the effectiveness of HMRC's current powers?**

4.15 As we have noted already, we think more use can be made of existing HMRC powers to report poor/bad behaviour to an adviser's PB. From what we have seen from our caseload we do not think HMRC generally lacks powers – though the major gap may be in paralleling the sanction of reporting an adviser to their PB for an adviser who does not have a PB, or has a PB that does not impose standards comparable to the PCRT bodies.

**Q22. What evidence do you have of problems clients have experienced due to lack of redress and what solutions would you propose?**

4.16 We do not see any such problems: clients of CIOT and ATT members can complain to the PB and onwards to the TDB. The TDB already has power to award capped compensation as an additional consumer protection under the current system and members will have professional indemnity insurance (PII) to draw on. But no doubt there are problems for clients of advisers who are not members of a PB, or whose bodies do not have a proper disciplinary process, and advisers who do not carry PII.

**Q23. How could consumers be helped to make better choices?**

4.17 We have already observed that the key to this question is better information and understanding, properly signposted and highlighted.

**Q24. Are there any circumstances where a penalty should be levied on the adviser instead of, or in addition to, the client?**

4.18 We have seen instances of blatant bad practice by an adviser who has kept a client in ignorance or has misrepresented the possible benefits of their advice, or indeed the methods they employ. For a client who does not understand what they are getting into, finding themselves liable to a penalty as well as a tax bill when they may already have paid fees seems very unfair. Of course, clients should take responsibility for their actions and ensure they are properly advised, but in the absence of carefully promoted standards by the authorities, there may be occasions where a penalty should really be levied on the adviser. Such instances would be rare and extreme cases.

**Q25. What scope is there for the professional bodies to take on a greater regulatory role in a similar way to anti-money laundering (AML) supervision?**

4.19 It is hard to see how bodies such as CIOT and ATT, with their establishment of the TDB and development and promotion of PCRT and PRPG can do more. What is surely

needed is that all PBs adhere to comparable, enforced standards and that there is a mechanism to ensure that those who are not PB members do likewise.

**Q26. What would the impacts be of introducing external regulation, particularly on clients and on those agents already meeting high standards?**

4.20 The risk is that administrative costs are imposed for no gain in standards for those who are already practising at the right level. The challenge is to ensure that there are mechanisms so that all advisers meet the appropriate high standard, with sanctions if they do not. There is no point in pretending that the problems HMRC sees will be solved solely by increasing supervision of the PCRT bodies and their members.

**Q27. Are there any existing bodies that might be well-placed to act as regulator? What potential conflicts of interest could you see?**

4.21 We naturally feel the TDB should have a role to play in running a disciplinary system for advisers beyond the CIOT and ATT who are not already covered by an equivalent scheme. At a minimum the TDB should be involved in developing arrangements for these advisers. The issue is one of funding: it would not be acceptable to expect the CIOT and ATT to fund an expansion of the TDB's role to cover all such people and it is impractical to expect such expansion to be funded from fines and cost recoveries.

**Q28. General questions about the options**

4.22 We have made our points in commenting on the previous questions. We should perhaps say that we do not read the options as being mutually exclusive: we do not think that the way forward is a choice between (e.g.) Option B and Option E. We envisage that features of a number of the options might be the resulting way forward.

**5. Concluding paragraph**

5.1 The TDB would be pleased to amplify any of the points made in this submission in meetings or correspondence. We would certainly wish to be involved in how the matters raised in the Document are taken forward and anticipate playing a full part in this. Please contact Susan Humble, Chair, Taxation Disciplinary Board ([suehumble@tax-board.org.uk](mailto:suehumble@tax-board.org.uk)) or John Whiting, Director, Taxation Disciplinary Board ([jwhiting@tax-board.org.uk](mailto:jwhiting@tax-board.org.uk)) in the first instance.

5.2 We will be publishing this submission on our website in due course and confirm that we have no objection to our views being cited in any response document or other follow up materials.

The Taxation Disciplinary Board

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