

To: J De Brito, Intermediaries Directorate, HMRC, 14 Westfield Avenue, Stratford, London E20 1HZ

Open Consultation

Raising Standards in the Tax Advice Market – Strengthening the Regulatory Framework and Improving Registration

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Dear Ms De Brito,

We would like to thank HMRC for publishing the above open consultation document and welcome the chance to both formally respond to the questions raised and also to contribute more widely to the debate on this extremely important issue.

As we explain below, the Taxation Disciplinary Board Limited (TDB) was established by two professional bodies for tax advisors as an independent body to manage complaints against their members. We have had sight of the draft responses to the consultation from these two bodies but stress that the responses below have been produced independently and represent the views of the board of directors of TDB in relation to the aspects of the consultation on which we feel TDB is able to comment.

The Taxation Disciplinary Board

Before addressing the questions posed by the Condoc it may be helpful to provide some background information about the TDB.

In 2001 the Chartered Institute of Taxation (CIOT) and The Association of Taxation Technicians (ATT) established an independent Taxation Disciplinary Scheme to manage complaints made regarding the professional conduct of members and students of the two bodies.

One of the objectives was to ensure that there was a common approach to procedures and philosophy in handling disciplinary matters, with a consequent improvement in efficiency and effectiveness. In addition, there was an awareness of the concepts of the Human Rights Act and in particular the need for complaints regarding alleged breaches of professional rules of conduct to be considered by committees and tribunals which are independent of the body establishing the rules. Therefore, the disciplinary arrangements, although established by the CIOT and the ATT, are administered through the independent Taxation Disciplinary Board Limited. Members of the various committees and tribunals set up by the Board consist of individuals who have no current involvement with the professional standards setting of CIOT or ATT.

Overall responsibility for the Scheme rests with a small Board. The lay Chair is a joint appointee of CIOT and ATT. The other members are individual appointments made by each participating body and a lay member.

The Scheme is accompanied by regulations governing the procedures which apply to the processing of complaints and disciplinary matters. The Scheme applies to allegations of professional misconduct, inadequate professional service, and conduct unbecoming a professional person. Although the arrangement originally applied only to members of CIOT and ATT, it was structured so that other tax bodies might join at a later stage. Early in 2011 the Institute of Indirect Taxation (IIT) joined as the third participating body (please note that IIT has since been subsumed within CIOT). The regulations have very recently been updated effective from 1st January 2024.

The 2024 regulations provide that the TDB Operations Team undertake the initial assessment and examination of complaints. Unless the reviewer is of the opinion that the complaint is trivial or out-of-time (in which case the complainant may request that the reviewer's decision be examined by an independent assessor), the TDB Operations Team will refer it to the Investigation Committee (IC), having sought the member's response to the complaint first.

The role of the IC is to determine whether there is a prima facie case for the member to answer. Where the IC finds that there is a prima facie case to answer, it will consider whether the case is appropriate for the Consent Order procedure. This involves the member agreeing to accept a sanction decided by the IC. The IC can impose any sanction that would be available to the Disciplinary Tribunal (DT) upon finding a charge proved. If the Consent Procedure is not appropriate, the IC will refer the case to a DT.

This Tribunal, which consists of three members, comprised of a legally qualified chair, a tax professional and lay member of the public, judges the case and, if satisfied that the member is guilty of a breach of the professional rules and standards, imposes the appropriate sanction. If the member is found guilty of an offence, the member has a right to appeal to an Appeal Tribunal.

One of the responsibilities of the Board is to appoint the members of the Investigation and Disciplinary Panels, from whom the IC, DT and Appeal Tribunal members are selected. In doing so the Board seeks to achieve a balance between lawyers, tax professionals and lay (i.e. non-tax technical) members. This is to ensure that there is a balanced review of the issues from a legal, technical, and practical viewpoint.

The aim of the Scheme is to provide protection for the public and the right level of discipline over members, as tax practice continues to play an increasingly key role in fiscal affairs. The Scheme must at the same time operate fairly for members and respect their rights. If other tax bodies join the Scheme at some later date, it may provide a model for the previously unregulated parts of the tax profession thereby:

- ensuring that professionals meet required standards;

- providing customer support, when things have gone wrong, or not as the customer expected; and
- helping to support trust in the tax system.

Introduction

Whilst it is outside the scope of the TDB's remit to make our tax system fairer and simpler, we share the government's commitment to driving up advisory standards, protecting taxpayers and maintaining trust in our tax system.

We believe that the best way to achieve these latter aims is for taxpayers to take expert advice where necessary from properly qualified, specialist tax advisers who belong to an appropriate professional body. Whilst such membership cannot completely protect a taxpayer against receiving substandard advice, we believe that this is much less likely to occur than when tax advice is received from an adviser who is not a member of such a body (for convenience we will refer to such advisers as the "Unaffiliated").

There are a number of reasons for this assumption.

Firstly, a member of an appropriate professional body will have passed a series of rigorous examinations in both technical and applied taxation matters and also in professional ethics.

Secondly, a member of an appropriate professional body is subject to the professional standards of that body. The professional standards teams within such bodies work closely with HMRC and are also able to refer breaches worthy of investigation to the appropriate disciplinary body (being the TDB in the case of CIOT and ATT)

Thirdly, a member of an appropriate professional body will be subject to rigorous continuing professional development which, properly undertaken, should ensure that they remain fully up to date with both relevant technical developments as well as regulatory and ethical change, such as changes to the Professional Conduct in Relation to Taxation (PCRT) rules.

Fourthly (and critically in terms of protecting taxpayer clients), a member of an appropriate professional body must have appropriate and up to date professional indemnity insurance.

Fifthly, a member of an appropriate professional body will be subject to a robust disciplinary process which allows complaints made by clients and other third parties to be properly and impartially investigated and, where necessary, for the member to be appropriately sanctioned (which may include expulsion from the professional body).

Where a taxpayer client needs to assess the competence of a tax practitioner we suggest that the best place to start is to ascertain whether that practitioner is a member of an appropriate professional body.

Questions

TDB is a disciplinary rather than a professional membership body. Consequently, not all of the questions asked are relevant and/or within our area of expertise and knowledge. Where this is the case we have responded with a short explanation of why we feel that this is the case or simply with the words "Not Appropriate to TDB". There are however also a number of questions, specifically targeted at professional bodies, which we have addressed to provide a disciplinary body perspective on the same issue.

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

-no requirements of technical competence to practice

Yes. Please see the Introduction section above for TDB's view of the importance of both rigorous professional examinations and continuing professional education in this regards.

-no general deterrents for dishonest practitioners operating in the market

No. A number of offences in statutory and common law (e.g. Cheating the Revenue) deal with dishonest behaviour by both taxpayers and their advisers. Where a member of an appropriate professional body is convicted of such an offence the judgment of, in our case, the TDB is unlikely to be lenient and will impact on the member's ability to practice as a member of either CIOT or ATT. However, as the consultation document states, no such penalty exists for the Unaffiliated.

-disjointed monitoring of tax practitioners

Yes. The Unaffiliated are not monitored at all and where an adviser cannot be held to account that adviser is arguably not working to any profession standard. Even members of appropriate professional bodies are only subject to specific monitoring (e.g. AML) as well as the requirement to make an Annual Declaration (which effectively self certifies their fitness to practice). At present CIOT, ATT and, indeed, TDB rely on referrals from taxpayers, HMRC and third parties in order to investigate potential behaviour involving poor professional standards.

-variations in the action taken against substandard and unscrupulous tax practitioners

Yes. Action against the Unaffiliated will only be conducted by HMRC or, in some cases, through a private law suit (perhaps in negligence or breach of contract) by a taxpayer client. In terms of actions taken by appropriate professional bodies, CIOT, ATT and TDB seek consistency with other PCRT bodies through regular discussion and benchmarking. Working together to create a consistent position is important as there is clearly otherwise a risk of inconsistent handling of misconduct allegations

across different professional bodies. TDB seeks to avoid any inappropriate variation in action taken against CIOT and ATT members where referrals are made to IC and DT.

-clients being unable to easily assess the competence of a tax practitioner?

Perhaps, although please see comments above in relation to the advantage of seeking tax advice from a member of an appropriate professional body. Nonetheless, problems can occur when a tax adviser (being a member of an appropriate professional body) takes on technical work which may be beyond their technical competence and experience (which the PRCT warns advisers to guard against).

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

Yes. Even with increased monitoring (as mentioned in Question 1 above) professional bodies will never be able to identify all issues which may warrant intervention and/or investigation. A greater willingness by HMRC to share relevant concerns about specific tax advisers with, in our case, CIOT, ATT and TDB at an early stage would be extremely helpful. A robust and comprehensive investigation, adjudication and enforcement regime would be the ideal, perhaps as part of a common code to which all advisers (and HMRC) would sign up.

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

No.

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

Although our role is that of a disciplinary body (and, as such, this question is somewhat outside of our expertise) we would support mandatory registration for tax practitioners wishing to interact with HMRC.

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?

Applying the same qualification as at Question 4, above we would support applying the requirement to all practitioners who interact in any way with HMRC in a professional capacity.

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?

Not appropriate to TDB.

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, attempts to register a new company?

-a tax practitioner operating as a sole trader becomes incorporated?

Not appropriate to TDB.

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**

We believe that approach 1 would best meet the government's stated objectives primarily because the existing professional bodies (CIOT and ATT in our case) and disciplinary processes (such as those operated by TDB) already exist and are well-proven.

-**approach 2: joint HMRC-industry enforcement**

-**approach 3: regulation by a government body**

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

In respect of approach 1, TDB may face some limited initial challenges, as some of the potential new members may be unaccustomed to operating within a regulatory regime.

Both approach 2 and approach 3 would involve the creation of new rules, structures and teams which would be time-consuming, costly and involve risk.

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

Given where TDB sits in the tax system we have the opportunity to observe that, from time to time, problems could be avoided with a better public understanding of the UK's tax system.

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

Yes. As set out in the responses to the questions above, membership of a professional body raises and maintains standards provided that the professional body has robust qualifications for admission to full membership (and sets standards for student members while they are acquiring qualifications), requires continuing

professional development, and has arrangements for investigating and disciplining members whose conduct and competence are alleged to have fallen below the standards set by the professional body.

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

TDB's processes and operations are capable of growth to provide capacity to handle an increase in cases if there is an increase in CIOT and ATT membership or an additional professional body joined CIOT and ATT as a sponsor of TDB.

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

Not appropriate to TDB.

Question 14: What additional costs may professional bodies face if strengthening their supervisory processes and/or taking on new members?

Increasing TDB's capacity to accommodate new members joining CIOT and ATT, as a result of all tax advisors being required to join a professional body, or to support another professional body would increase the total cost of TDB's operations but would not increase the cost per member of the sponsor organisations (and potentially would reduce the cost per members as a result of improved overhead recovery).

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

As noted in the response to Question 2 above the implementation of a common code would help to ensure high standards are maintained.

TDB is not in a position to comment on the level of any oversight required of professional bodies.

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

Not appropriate to TDB.

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

See answers to Questions 2 and 10 above.

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

HMRC might consider making “tax adviser” (and any appropriate variants) a protected title so that a person holding themselves out as such, without being a member of an appropriate professional body, would be committing a criminal offence.

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

No. We believe that making this requirement apply only to those interacting directly with HMRC would create a loophole which could effectively completely undermine approach 1.

It is already common practice (at the request of clients and usually for entirely benign reasons) for tax advisers to produce draft letters for clients to “top and tail” and send to HMRC. As we understand the current proposals in the consultation document, such an approach would allow currently Unaffiliated tax advisers to continue providing advice to clients without any obligation to join an appropriate professional body.

It is worth bearing in mind that those who have made a career of, for example, selling egregious tax avoidance schemes are generally adept at identifying and fully exploiting any potential “loophole” in legislative provisions and would, we believe, be certain to structure their affairs in order to do the same here.

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

No. Whilst it would be absurd (and probably unworkable) to create an obligation for all staff (including, say, purely administrative staff) of a tax advisory firm to join an appropriate professional body we believe that all those staff who are providing technical tax advice directly to clients (i.e. are able to send advice “out of the door” themselves) should be so obligated. In other words, the requirement to be a member of an appropriate professional body should apply to any member of staff who holds themselves out (or allows themselves to be held out) as providing tax advice.

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

No.

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

Members of all regulated professions are required to uphold high standards. Failure to do so, should be treated in the same way, including requiring them to operate within the scope of their remit. Government should from time to time review the adequacy of the regulatory arrangements for the provision of tax advice, either through the work of supervisory bodies for regulators such as the Legal Services Board and the Financial Conduct Authority, or agencies such as HMRC.

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

TDB role is to investigate possible misconduct by members of professional taxation bodies. It is not TDB's role to comment on the adequacy of the regulatory processes and sanctions applied by other professional regulators.

However, we draw attention to the answers we have provided above to Question 1 in relation to the concerns raised in the consultation about the problems of disjointed regulation. We believe that the government should ensure that standards applied by all professional bodies whose members provide tax advice should be consistent with those required of bodies representing tax advisors potentially directly regulated by HMRC in future. This should extend to requiring that the supervisory bodies for regulators who are outside the scope of this consultation (for example the Legal Services Board and the Financial Conduct Authority) secure equivalent standards of compliance in relation to the provision of tax advice and consistent enforcement to that required of bodies within the scope of this consultation.

Question 24: Do you think that the following tax practitioners should be in scope of the requirement to become a member of a professional body?

- charities interacting with HMRC on behalf of taxpayers
- tax practitioners providing pro bono services
- promoters and enablers of tax avoidance
- overseas/offshore practitioners
- other

TDB has no comment to make on this question.

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

A legal definition of tax advice and services is clearly essential.

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

TDB has no comment to make on this question apart from stating that the definition as currently drafted looks sensible.

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

TDB is a disciplinary body. It will be for the professional bodies themselves to determine transitional timescales

Question 28: Should a legacy scheme be adopted?

TDB is a disciplinary body. It will be for HMRC and the professional bodies to determine whether a legacy scheme should be adopted.

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 membership?

TDB is a disciplinary body. It is for the professional bodies to determine whether 3 years would be a sufficient time period to allow currently Unaffiliated persons to pass the relevant examinations. However, this timetable would be sufficient for TDB to accommodate any scaling up in its operations required as a result of reforms.

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

Not appropriate to TDB.

In conclusion

The TDB welcomes the opportunity to contribute to the Government's consultation and looks forward to continuing to play a role in the raising and maintaining the standards of the tax advice market as a provider of the investigation and disciplinary component of professional regulation in the sector.

On behalf of the board of TDB, I confirm that we would be pleased to provide any further input required into the Government's consideration of potential reforms and, in particular, to provide any clarification needed in relation to our response to the consultation. In the first instance, please contact Sarah Gardiner, Executive and Strategy Officer (sgardiner@tax-board.org.uk)

Your sincerely

Tom Hayhoe
Chair
Taxation Disciplinary Board