

Consultation Response

Raising standards in the tax advice market:
strengthening the regulatory framework and
improving registration

5 June 2024

Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful, and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

We welcome the opportunity to consider and responds to HM Revenue and Customs consultation: Raising standards in the tax advice market: *strengthening the regulatory framework and improving registration*.¹ This consultation has been considered by our Tax Committee and the Regulatory Committee and we have the following responses, comments and observations to put forward for consideration.

General Remarks

As we stated in our responses to previous consultations in this package of work², and again repeat for the purposes of this consultation exercise, Scottish solicitors who undertake tax services, including advising and representing clients on tax law related matters, are robustly regulated under the provisions of the Solicitor (Scotland) Act 1980 (the 1980 Act). Although, under the provisions of the 1980 Act, only a small number of legal activities are reserved to solicitors holding a current practicing certificate, the solicitor is regulated to the extent of all work undertaken in the normal course of their business. This includes advising and representing clients on tax law related matters and Scottish solicitors are expected to work to standards which reflect the legal, ethical, and professional obligations solicitors owe to clients.

The Scottish solicitor regulatory regime is underpinned by strict professional service and conduct rules which are aimed at ensuring a robust level of consumer protection and to provide adequate and appropriate redress in the unlikely event that a client suffers detriment or loss because of fault on the part of a solicitor. We would be strongly opposed to any additional statutory and regulatory burden being placed on those members of the Scottish solicitor profession who choose to undertake tax-related services on behalf of their clients and who are already robustly regulated to the extent of those services provided. We are, however, pleased to note that the consultation clearly recognises (at section 8) that some professions, such as solicitors, are appropriately regulated and it is therefore intended to exclude those professions from the scope of the proposals. This recognises that Scottish solicitors are already robustly regulated and therefore it is not necessary to impose additional regulatory requirements.

¹ <https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market-strengthening-the-regulatory-framework-and-improving-registration>

² i) Law Society of Scotland Response: Raising standards in the tax advice market: professional indemnity insurance and defining tax advice, see: [Law Society of Scotland Response June 2021](#)

ii) Law Society of Scotland Response: Raising standards in the tax advice market, see: [Law Society of Scotland Response August 2020](#)

In addition, and for further information, the Regulation of Legal Services (Scotland) Bill currently progressing through its parliamentary passage³, will further strengthen and enhance the Scottish solicitor regulatory regime. This will introduce greater investigatory and enforcement powers for Scottish legal sector regulators and build upon the already robust protections for consumers, which will include those receiving tax services from a Scottish solicitor.

We also note that the consultation proposals refer to the necessity to ensure that those providing tax services are complying with AML requirements. We therefore highlight that, as part of our role as the regulator for the Scottish solicitor profession, we hold supervisory authority responsibilities in relation to anti-money laundering compliance for solicitor firms in Scotland. The Law Society itself is regulated by the Office for Professional Body AML Supervisors (OPBAS).⁴

We adopt a risk-based approach in relation to our supervisory capacity, which allows us to be robust, fair, and responsible - balancing the commercial realities and the environment in which our members operate with our overarching legal responsibility to ensure our members are complying with their AML obligations. We employ a range of tools to assess the risk of our population and of our individual members. These include thematic reviews, desk-based assurance reviews and specific file reviews via the AML Certificate. These tools ensure we not only supervise effectively, but also create more focused and relevant educational materials and training events to aid firms in compliance with their obligations.

We have responded to those questions below where we are able, and it is appropriate, to do so.

Consultation Questions

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

- no requirements of technical competence to practice
- no general deterrents for dishonest practitioners operating in the market
- disjointed monitoring of tax practitioners
- variations in the action taken against substandard and unscrupulous tax practitioners
- clients being unable to easily assess the competence of a tax practitioner
- **other (please specify)**

Members note that a key issue encountered in this context is the lack of deterrents for those acting in the tax field who are not looking to provide tax advice in the traditional sense, but rather in offering a “product” as a tax solution so that it can be rolled out to many customers with no bespoke advice. This can therefore be provided at minimal cost by unqualified staff with no or minimal training in, or understanding of, tax law. We understand that those involved in such models are less likely to be interested in being a

³ [Regulation of Legal Services \(Scotland\) Bill](#)

⁴ Further information on the Law Society of Scotland’s supervisory role in relation to AML activity can be accessed via: [Law Society of Scotland - Anti-Money Laundering](#)

member of any professional body or cooperating with standard-raising educational processes. It appears that these individuals are often aware of views (from other tax professionals) that their product or service does not comply with tax law, but the commercial benefit means they are content to proceed given the lack of deterrents and action taken against them.

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

We are not in a position to answer this question.

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

Improved monitoring and effective enforcement action by HMRC (especially in known problematic areas) could be coupled with publishing the names of individuals or entities and their (or others') tax products or solutions which have been repeatedly subject to enforcement action. This would assist with the aim of helping customers make informed choices when seeking tax advice.

It may be more likely that customers would look to the HMRC website for information on this than to professional or regulatory bodies' websites. The issue is often not one of standards but of certain firms or individuals taking a different view of what is permissible under tax law in order to maximise their client's claim for refunds or deduction or minimise their tax burden. Members have noted that it is not always a question of lack of knowledge or information; rather advisors choosing to take an approach that financially benefits their clients and themselves, despite other advisors pointing out inaccuracies.

Strong enforcement action by the tax authority in refusing such claims and publicising its view and actions would counter this, including by allowing consumers to search online for information on their proposed advisor or the solution they are being offered and determine the risk that HMRC would later challenge this.

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

- yes
- no
- maybe
- don't know
- If no, please give reasons for your answer.

It is important to be clear on who is intended to be caught by the term "agent" or "tax practitioner" and what services this is intended to apply to.

For example, we would not consider it appropriate to require registration by a law firm acting for a client in obtaining a statutory (or non-statutory) tax clearance for a proposed transaction. We note the proposal to exclude certain already regulated professionals, such as solicitors, from regulation by another body. We fully agree with this proposal, and refer to our comments at question 23. We also consider that it should be made clear that the registration with HMRC requirement will not apply in such instances.

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 refer to our comments at question 4.

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?

We suggest that HMRC may also need to consider the threshold for removing the ability to register as an agent. For example, this could relate to the number of past enforcement actions, successful enquiries into that agent's returns, or the level of potential tax lost over a certain period.

The consultation document refers to the use of automatic checks. There may also be merit in an online search into any known issues identified by the tax community with that entity and its practices, e.g. reputable commentators, websites etc. This would likely require some human involvement so that HMRC could assess any findings and weigh the risk or put extra safeguards in place if registration is permitted.

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, and attempts to register a new company?

a tax practitioner operating as a sole trader becomes incorporated?

We refer to our comments above at question 6, and agree with the principle that HMRC also gives consideration to the main individuals behind the company.

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
- Please give reasons for your answer.

We are not in a position to answer this question.

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

As above, we do not wish to comment substantively on which of the proposed approaches would best meet the objectives.

We would, however, make the following general comments. We consider that the success of approach 1 would depend on which professional bodies are involved; for example, the current industry bodies will not have the appropriate governance arrangements to achieve this function, and greater clarity would be required on how and whether they would be able to do so (including regarding financial implications and questions of funding).

We agree there would need to be some overarching criteria set by government for new bodies. If that is the case, it may then be appropriate (e.g. to ensure consistent standards) for it to be a government body or HMRC which supervises tax professionals who are not affiliated with any existing professional body. Additional benefits of this could be that

HMRC gains direct insight into issues as they emerge in the market and is directly engaged in finding ways to address them. However, there may be, or perceived to be, a conflict of interest in HMRC being the regulator for unaffiliated tax agents.

Approach 1 may be the “simpler” alternative; by closing down the market to non-professionals it could remove the most egregious behaviour, making it more cost-effective for HMRC, as well as aligning with the public expectation that tax professionals are qualified and regulated persons, e.g. accountants or lawyers.

We highlight that the consultation paper does include provision for the interaction with the devolved tax authorities, including Revenue Scotland. We would welcome greater clarity and consideration of this point (particularly in the context of future-proofing the proposals).

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

We refer to our comments at question 3.

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

In general, yes. Membership of a professional body brings consumer confidence through the providers’ compliance with the standards set by the body.

Further, in this context we consider that a practitioner will not want to be subject to disciplinary action or removed from the relevant membership body, making it more likely that they would look to avoid the most egregious tax avoidance schemes.

However, as the consultation recognises, this is dependent on the extent that compliance of those standards is monitored and enforced. It is important that the professional body is empowered to vigorously ensure that its members are complying and to take any necessary action where failure is identified.

In addition, the membership body will be best placed to regularly review standards and, in appropriate circumstances, make changes necessary to address any potential or identified risk to consumer protection and to reflect increased expectations within society.

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

We are not in a position to provide a definitive response. As with question 14 below, this will vary between each professional body and will be dependent on the extent of its current regulatory reach and what will be required to attain the level of supervision activity required.

Further, as noted above (at question 3) in cases other than those of simple errors or lack of training or education, there is a large role for HMRC in responding quickly to trends emerging in the market (of unacceptable forms of tax planning or “productisation” without due advice being given) and publicising that it is doing so. Professional bodies may not always be in a position to address these sorts of cases as some bodies may lack the specialist expertise required to review what is occurring, or be reluctant to determine one way or the other in instances where there may be differing views on the law and what is acceptable.

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

Professional bodies need to ensure that they react to materialising, potential and identified risks in a timely manner, adjusting standards accordingly.

It is also important that the membership is supported and educated on standards and regulatory requirements through the provision and monitoring of continued professional development.

Professional standards may be upheld by professional bodies by ensuring that standards are reflected through codes / rules of conduct and ethics, underpinned by a complaints and disciplinary processes.

As above, there may not be the necessary level of tax expertise within the professional bodies, and views on what is acceptable tax planning differ between advisors and could also do so between different bodies. Therefore, clear guidance from HMRC would be needed on what it considered unacceptable and why (albeit advisors may still take a different view).

Question 14: What additional costs may professional bodies face if strengthening their supervisory processes?

This is difficult to estimate and will vary between each professional body. The cost will be influenced by the extent to which the professional body will be required to strengthen its existing regulatory structure and regime. It will be dependent on factors such as membership size, the need to update system requirements, developing appropriate processes, procedures, and policies, promoting awareness of members responsibilities and the increased supervisory powers of the professional body and the need for additional resource and training. It is also worth highlighting that increased supervisory costs will be borne by those receiving tax services from providers who will see their membership fees increased to facilitate increased regulation.

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

It is important that professional bodies have the necessary, proportionate, and permissible powers to maintain, improve and enforce standards. Without sufficient and appropriate powers, it may be challenging for any professional body to ensure and demonstrate that high standards are being maintained. As noted above, there will need to be significant steer given by HMRC on what unacceptable behaviour it is seeing.

Where there are several or more professional bodies in a sector, then we would suggest it is crucial for consumer confidence and protection that the extent and robustness of their respective regulatory powers, approaches and requirements are consistent. This will help to ensure that there is a 'level playing field' across the sector, dissuading service providers from 'shopping around' for the professional body / regulator with the least stringent regulatory approach and thus undermining consumer confidence.

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

We are not in a position to answer this question.

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

This is difficult to answer without knowing what those ‘*support options*’ might be. However, it is important that consumers of tax services have access to a route of redress should anything go wrong. We note that the consultation proposals refer to a route of ‘*compensation*’ for consumers with a possible ‘*market-wide compensation scheme.*’ This would seem to be a sensible approach where there is no appropriate recourse through the professional body.

Those consumers who seek tax services via Scottish solicitors have the certainty of protections offered by the Society’s Guarantee Fund (Client Protection Fund) which protects consumers in the unlikely event that they have lost money because of the dishonesty of a solicitor, and the Society’s Master Policy which provides profession-wide professional indemnity for cases of solicitor negligence. This is in addition to a complaints regime for complaints relating to both the service received and the conduct of the solicitor.

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

It is important that HMRC / UK Government recognises that it is not necessarily sufficient to only require mandatory membership of a professional body, as that body may not have powers conferred that allow it to monitor and enforce standards to the extent required. As highlighted in response to question 15 above, HMRC and the UK Government should ensure that recognised professional bodies are provided with the powers needed to ensure that the primary objectives it is seeking to achieve can indeed be met.

More information is needed on the suggestion that HMRC would take action to deal with those who breach regulatory requirements and how this would tie in with the relevant processes and procedures of the professional body.

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

We are not in a position to answer this question. We would note, however, that some issues with tax services provided to consumers are not driven by those who interact with HMRC. For example, those who create and sell standardised solutions or services.

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

We are not in a position to answer this question.

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

We are not in a position to answer this question.

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

Professional bodies will often be best placed to identify potential risks at an early stage and therefore to determine the appropriate standards to be met by its members. Consequently, it is important that there is an ongoing collaborative approach between

HMRC, the UK Government and professional bodies/regulators regarding determining and maintaining standards in the tax advice and service sector.

Particularly in this context, we highlight the importance of high standards of tax education for professionals working in this space. We note that many advisors will be subject to regulation by multiple regulators/professional bodies in their roles, for example the Law Society of Scotland, the Solicitors Regulation Authority, the Chartered Institute of Taxation, the Association of Taxation Technicians, ICAS, and ICAEW.

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

As highlighted in our general observations and comments above, we note that the proposal is to exclude those who are members of a regulated profession, which will include Scottish solicitors. We fully agree with, and are supportive of, this exclusion.

This recognises that Scottish solicitors are robustly regulated to the extent of all professional services they may provide in their capacity as solicitor, and consumers are afforded with routes of redress in the unlikely event that something goes wrong. This includes an accessible complaints process, the protection of compulsory professional indemnity, through the Law Society of Scotland's Master Policy⁵, and Client Protection Fund.⁶

However, we highlight that the consultation document incorrectly references '*...legal professionals providing tax services regulated by an 'approved regulator' within the meaning of the Legal Services Act 2007 and Legal Services (Scotland) Act 2010...*'

We point out that the definition of '*approved regulator*,' and indeed the Legal Services (Scotland) Act 2010, relate **only to** the regulation of Licensed Legal Service providers. This is a distinct business model and the legislation applicable should not mistakenly be considered or referred to as being that under which Scottish solicitors are regulated, as is suggested in the consultation document.

Scottish solicitors are regulated under the provisions of the Solicitors (Scotland) Act 1980, and it is this legislation which confers regulatory powers and duties on the Law Society of Scotland. We also highlight that this legislation is currently subject to amendment by the Regulation of Legal Services (Scotland) Bill which will bring substantial change, increasing, and tightening legal services regulation through enhanced regulatory powers.

We are supportive of charities being out of scope. Charities often support and provide a valuable service to the most vulnerable in society, providing an avenue of advice and assistance that would otherwise not be available to the disadvantaged. It is important that charities are afforded as much support as possible and not impeded with significantly increased regulation where it may not be necessary and where it would increase its costs. However, we do further agree it may be appropriate that those charities providing tax advice and assistance should be required to demonstrate the quality and competence of their representative activity, given that they will be supporting consumers whose access to advice and assistance in tax matters may be significantly restricted and only realistically available via charitable means.

⁵ [Law Society of Scotland - Master Policy](#)

⁶ [Law Society of Scotland - Client Protection Fund](#)

Question 24: Do you think the following tax practitioners should be in scope of the requirement to become a member of a professional body member? Select all practitioner types you think should be in scope.

- charities interacting with HMRC on behalf of taxpayers
- tax practitioners providing Pro-bono services
- promoters and enablers of tax avoidance
- overseas/offshore practitioners
- other (please specify)
- Please give reasons for your answer.

As highlighted above, we are supportive of charities being out of scope.

Excluding offshore practitioners may drive providers to establish themselves that way to avoid regulation which would then defeat the purpose of the proposed changes and create an unfair playing field for UK based providers, as the consultation document recognises.

It is not clear why promoters and enablers of tax avoidance should be excluded as they are likely driving many of the difficulties and issues being experienced by consumers. This may also risk the perception that HMRC is seeking to regulate the “easy targets”, who cause more minor issues through a lack of competence or education; rather than those causing serious problems through more deliberate actions (but who are more difficult to deal with).

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

It is always challenging in adopting a prescriptive definition, as inevitably loopholes will always be found and innovative ways identified by those seeking to circumvent regulation. A prescriptive definition will always be approached and strictly interpreted, which is when ambiguity and gaps can arise. We would suggest that any definition should be drafted in a way that it would capture any current or future unforeseen tax advice and services activity. For example, the definition could be non-exhaustive and include, in addition to advice and assistance, the provision of a service or use of an app, website, or other tool or product related to tax compliance or calculations.

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

See our response to question 25 above.

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

We are not in a position to answer this question.

Question 28: Should a legacy scheme be adopted?

It would appear to be the sensible approach which would allow those already registered with HMRC, to continue operating as usual for a period while gaining qualifications or meeting any other regulatory requirements placed on them by a professional body / regulator. This would also mitigate the risk of disadvantaging consumers and restricting access to service providers.

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 members?

We are not in a position to answer this question. We highlight that consideration should also be given to the time required to gain the relevant qualification or experience that is required by the relevant professional bodies.

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

It is difficult to foresee what future developments may materialise, how the provision of tax services might be expanded and delivered, and therefore what mandatory requirements would best meet future needs.

To avoid challenges in relation to supervising and regulating tax services, it is important that requirements are permissible rather than prescriptive – giving as much flexibility to professional bodies as possible to adapt and adopt a regulatory approach that reflects both foreseeable and un-foreseeable future needs and developments.

For further information, please contact:

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