

HMRC and the regulation of tax advisers (Lecture B1360 – 15.23 minutes)

Background

The professional standards of tax advisers are variable. Furthermore, around 65% of individuals and firms who undertake tax work are not members of any professional body, so are unregulated in that sense.

Regulation by professional bodies

The professional standards for those engaged in tax work who are members of professional bodies are generally set out in regulatory documents produced by those bodies.

For example, 'Professional Conduct in Relation to Taxation' (PCRT) was produced by seven professional bodies, '...to assist and advise members on their professional conduct in relation to taxation, and particularly in the tripartite relationship between a member, client...and HMRC'.

Those professional bodies include the CIOT, ICAEW, ICAS, and STEP. Solicitors and barristers who advise on tax are subject to their own rules and regulations, but still need to be mindful of the PCRT standards for members of the relevant professional bodies.

HMRC regulation of tax advisers

HMRC has been engaging with the tax profession to agree a single common standard for all agents, but this has not been achieved at the time of writing.

In the absence of common standards and regulations for qualified and unqualified advisers alike, HMRC has set its own standards for tax advisers, with sanctions for advisers who fail to meet those standards. HMRC expects all tax advisers who interact with them to maintain HMRC's standards, regardless of professional body membership.

HMRC's standard for agents

HMRC has produced a document 'HMRC: the standard for agents', which sets out the minimum standards expected of agents ('agents' in this context applies to both agents and tax advisers).

For compliance work, the HMRC standard requires agents to maintain high standards in respect of the following three areas:

- Integrity;
- Professional competence and due care;
- Professional behaviour.

In addition, HMRC applies the following standards for those advising on tax planning:

- Lawful behaviour;
- Disclosure and transparency;

- Tax planning arrangements (i.e., agents must not create, encourage or promote tax planning which sets out to achieve results contrary to the clear intention of Parliament in enacting relevant legislation, or which are highly artificial or highly contrived and seek to exploit shortcomings in the relevant legislation); and
- Professional judgement and appropriate documentation.

HMRC monitors agents and collects evidence of poor agent behaviour. The HMRC standard is a benchmark, and if the behaviour of an agent falls below that standard, HMRC will consider taking action against the agent. HMRC has a range of powers and practices to deal with breaches of the standard by agents.

The HMRC standard for tax agents can be downloaded from the gov.uk website (<https://www.gov.uk/government/publications/hmrc-the-standard-for-agents/the-hmrc-standard-for-agents>).

HMRC and agents

HMRC have also produced guidance on its approach to working with agents in a document entitled 'How HMRC works with agents', which was published on 11 January 2023. The document sets out HMRC's approach to working with tax agents and advisers.

Those agents who are compliant with the HMRC standard for agents benefit from full access to HMRC's agent services. However, HMRC warns that if an agent does not meet the standard for agents, action will be taken against the agent, which HMRC states will be proportionate, reasonable, justifiable, lawful and procedurally fair.

The HMRC approach to working with agents in its document 'How HMRC works with agents' can be downloaded from the gov.uk website at:

<https://www.gov.uk/government/publications/hmrc-approach-to-working-with-agents/how-hmrc-works-with-agents>

HMRC sanctions for breaches

HMRC's range of approaches, policies and powers for addressing poor agent behaviour is set out in a separate HMRC document 'Raising standards in the tax advice market – HMRC's review of powers to uphold its standards for agents'. Once again, the term 'tax agent' refers to all individuals and businesses involved in a professional capacity representing or advising taxpayers.

The document points out the actions HMRC will take to help support good tax agents and continue to tackle poor tax agent behaviours.

HMRC policies and statutory powers

There are three main HMRC policies and statutory powers:

- 1) HMRC might consider suspending agent codes to limit access to self-assessment and corporation tax functions.

- 2) HMRC can adopt a 'refusal to deal with' approach to agents. This approach is reserved for extreme and exceptional circumstances of poor agent behaviour, such as threatening, abusive and rude behaviour towards HMRC staff, and serious abuses of the tax system.
- 3) Certain statutory powers are potentially available for HMRC to address what it considers to be poor agent behaviour. In summary:
 - HMRC has the power to issue conduct notices and financial penalties of up to £50,000 to tax agents who have acted dishonestly in their dealings with HMRC (FA 2012, Sch 38).
 - Public interest disclosure - This applies to tax agents who are members of professional bodies with responsibility for regulation of their members. The power is contained in The Commissioners for Revenue and Customs Act 2005, s 20(3), and is a public interest disclosure power that enables HMRC to make a disclosure of conduct to the tax agent's professional body.
 - The penalty regime for errors in tax returns and other documents, where an error in the taxpayer's document is attributable to another person (FA 2007, Sch 24, para 1A).
 - The promoters of tax avoidance scheme (POTAS) provisions (in FA 2014 and FA 2021). POTAS allows for the issue of formal notices, such as 'conduct notices' and 'defeat notices', to tax agents who promote avoidance schemes.
 - The disclosure of tax avoidance schemes (DOTAS) rules (FA 2004, Pt 7) and corresponding rules for the disclosure of avoidance schemes relating to VAT and other indirect taxes (DASVOIT) (F(No 2)A 2017, Sch 17), which require promoters of tax avoidance schemes to disclose to HMRC details of the schemes they are promoting, how they work, and who their clients are.
 - The 'enablers' provisions (F(No 2)A 2017, Sch 16), which allow HMRC to impose financial penalties on those who have enabled tax avoidance where abusive tax arrangements have been defeated.
 - The money laundering regulations, which require external accountants and tax advisers to be supervised for anti-money laundering purposes.
 - The corporate criminal offences power introduced in September 2017, which created two criminal offences; one relating to the evasion of UK tax, and the other relating to the evasion of foreign tax.
 - In the most extreme cases, HMRC may carry out criminal investigations into tax agents that have potentially committed offences such as tax fraud.

The list of statutory powers is not exhaustive. For example, further powers (introduced in FA 2022, ss 85-91) include provisions to enable HMRC to name promoters, the websites they use and the schemes they promote, to warn taxpayers of the risks of entering into avoidance arrangements and to help those already involved to exit avoidance.

The HMRC document 'Raising standards in the tax advice market – HMRC's review of powers to uphold its standards for agents' can be downloaded from HMRC's website (tinyurl.com/HMRC-RPUSA).

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