

# HMRC Consultation Paper “Modernising Powers, Deterrents and Safeguards: Working with Tax Agents”

## ICAI Response Paper

August 2009



THE INSTITUTE OF  
*Chartered Accountants*  
IN IRELAND

## Institute of Chartered Accountants in Ireland (ICAI)

### *About the Institute*

ICAI is the **largest and longest established accountancy body** in Ireland. It has over 17,000 members and 6,500 students, and it is the leading voice of the accountancy profession in Ireland. Over 4,000 of our members work and practice within the jurisdiction of the United Kingdom and Northern Ireland.

ICAI was established by Royal Charter in 1888. Its activities and those of its members are governed by its Bye-Laws and by Rules relating to professional and ethical conduct. These provisions are contained in the Handbook which is available to all members.

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## ***Chapter 2: Design principles***

### **1. Have we identified the correct design principles? In applying these principles, are there any other matters that we need to take account of?**

The design principles as listed do not appear to take account of many of the discussions which have taken place at the Tax Agents and Advisors Steering Group (TAASG) in recent years, and of the conclusions of the OECD's Forum on Tax Administration (FTA).

#### *TAASG*

With regard to the former, we point for example to discussions held during 2007. These were in the context of a paper presented by Mr Geoff Allen of HMRC entitled "Understanding agent behaviour and managing poor performance" and concerned, inter alia, potential interventions and involvement by HMRC in the regulatory work of professional bodies. More recently (2008-09), the professional bodies have engaged with HMRC on the "Monitoring Agent Standards" project.

For example, the ICAI contributed to the HMRC study on "Sharing Work Flow Processes" as part of the "Monitoring Agent Standards" project. One of the key conclusions reached by the "Sharing Work Flow Process" review team was that HMRC's policy of not communicating common mistakes, risk areas and audit target sectors was a significant contributing factor to re-occurring compliance mistakes made by agents. There appears to be no mention of this HMRC's project conclusion.

It seems from the current consultative document that little of the work the professional representative bodies have already put in has influenced HMRC thinking.

#### *Study into the Role of Tax Intermediaries*

We expected that a starting point for HMRC in an exercise of this type would be the FTA's January 2008 report entitled *Study into the Role of Tax Intermediaries*<sup>1</sup> (The "FTA study") especially given HMRC's acknowledged leading role in the formulation of this study.

In the context of the FTA study, consultation was invited and provided. In many instances the current consultative document appears to disregard the published conclusions of the FTA study, as described in the following paragraphs. In our view the FTA study took a much more positive view of the role of accountants and other practitioners, and in particular was careful not to advocate the creation of some form of registration system by a Revenue Authority though it did explore the topic in some detail. In the interest of balance, we would have expected an acknowledgement of the FTA's conclusions, especially given the fact that its comments on registration were cited in your report.

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<sup>1</sup> Study into the Role of Tax Intermediaries – ISBN-978-92-64-04179-0 © OECD 2008

In light of this we are concerned that our submission to this consultation may also fail to influence policy decisions. Nevertheless, with regard to your design principles we observe:

***Reassure competent tax agents that any additional powers would be used appropriately***

We would see this as a self-evident requirement if HRMC are to observe the rule of law.

***Support professional standards and where appropriate work with professional and regulatory bodies***

We are not convinced that HMRC fully appreciate what private sector regulatory bodies, specifically ICAI, actually do.

We are particularly concerned with your description of professional standards monitoring as generally “light touch”<sup>2</sup>. The Chartered Accountants Regulatory Board which is the regulator for ICAI members, is responsible for developing and issuing Standards of Professional Conduct with which members of the Institute **must** comply. This includes rules setting out the system of licensing for members and member firms and for supervision of members and member firms through a proactive system of monitoring and a robust complaints handling and disciplinary system. The Standards include regulations on the professional conduct and behaviour of members, the procedures of supervising member compliance with the regulations and the procedures for investigating complaints relating to misconduct and the taking of disciplinary action.

We would refer you to the dedicated website of the Chartered Accountants Regulatory Board, [www.carb.ie](http://www.carb.ie) for full details.

***Recognise that the use of any new powers could have an impact beyond ensuring that the correct amount of tax is paid i.e. the scope for reputational damage.***

The FTA study cited above identified the concept of a tripartite environment between the Revenue authority, the intermediary and the taxpayer.<sup>3</sup> However it went on to observe:

In this ‘tripartite’ environment, the primary relationship – from both a statutory perspective and a practical one – is that between the taxpayer and the revenue body.

The suggestion in relation to the impact of powers applied against the intermediary or agent disregards this primary relationship. Further, your amplification of the concept suggests HMRC investigation of a taxpayer not because of how they conduct their tax affairs but because of who they choose to engage as agents. This would be unacceptable at many levels.

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<sup>2</sup> At para 2.8

<sup>3</sup> Op. cit. p11

***Respect the confidentiality of client's data where it is not relevant to the tax risk.***

It is not, as suggested<sup>4</sup>, that “professional bodies generally take the approach that information confidential to a client acquired in the course of professional work should not be disclosed to a law enforcement agency or similar body, except where consent has been obtained from their client”. The concept of legal professional privilege is intrinsic to our system, and indeed there are specific tax statutes limiting Revenue’s entitlement to information in keeping with the general legal professional privilege concept.

The principle as enunciated does not address the question as to how you will know the data not relevant to the tax risk while still retaining confidentiality.

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<sup>4</sup> At para 2.11

## **Chapter 4: How HMRC might respond to risks**

As already observed, the FTA study dealt with many of the issues the consultative document raises again. Some of the issues will and are being addressed by market forces, as indeed your own document observes but does not develop – “Taxpayers may be lured by low fees, especially in the current climate, but they may come to find that the cost of sorting matters out is considerable if HMRC check their tax returns.”<sup>5</sup>

It must be reiterated that there are risks from poor agent work for both the agent and for HMRC. For HMRC the risk is a potential loss of revenue. For the agent there is the additional risk that as a consequence of poor work the client might underpay OR overpay tax. In either circumstance the agent is exposed to losing the client work, or having to make some form of restitution.

### **1. What is the most effective way of assessing the presence of a particular risk across a tax agent’s client base?**

This is a matter for HMRC. In a self assessment environment the Revenue Authority must determine what it regards as risk, and how it measures it. The FTA study advocates that Revenue Authorities should not publish full details of how taxpayers or issues are selected for enquiry.<sup>6</sup>

We would note however that whatever risk assessment approach HMRC take, there must be appropriate safeguards, set at a very high standard, to ensure that no action be taken against an agent based solely on a risk assessment report

### **2. How can HMRC and professional bodies best work to ensure risks are resolved for the future?**

and

### **3. What safeguards would be needed?**

Our comments at 1. refer.

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<sup>5</sup> At para 3.2

<sup>6</sup> Op. cit., page 55

**4. What guidance should HMRC produce for setting the standard of pre return assurance work and therefore provide comfort to practitioners that adherence to a certain level of assurance would amount to a defence against either compliance checks or other action?**

Any such guidance would, of its nature:

- Not be comprehensive, and thus not offer much comfort. Indeed a prescriptive guidance would run the risk of creating a twin track approach between tax statute and tax return completion requirements, possibly making the former redundant
- Not be appropriate – the guidance for larger firms with larger clients would be inappropriate for smaller firms with smaller clients, and vice versa
- Remove professional judgment from the preparation process

It would also be impossible to establish adherence to guidance precepts, without a form based system to capture income streams, allowance claims and related computations, along with details of personal and corporate circumstances etc. These already exist and are sufficiently dealt with as returns of income.

**5. What methods would be appropriate for ensuring that a tax agent's past failings are remedied, and good standards adhered to in the future?**

In our (ICAI) context, these are remedied through our practice review, complaints and disciplinary procedures and through market forces.

**6. Are there cases where it would be appropriate to charge behaviourally based penalties to tax agents?**

No. We acknowledge that there may be an argument for the application of penalties where there is collusion between the taxpayer and their agent on matters resulting in tax fraud in that particular taxpayer's case.

**7. If financial penalties are appropriate, on what basis should they be calculated: fixed, up to a certain amount, or linked to the tax at risk, fee income or relevant turnover?**

Our comments at 6. refer.

## **8. Is there merit in seeking the power to disclose to professional bodies cases where HMRC are satisfied that there has been persistent careless or incompetent behaviour?**

The ICAI's regulator CARB is extremely transparent in that it will investigate a complaint in respect of a member received from clients, other accountants, regulators, oversight bodies, members of the public and the internal committees. The subject matter of complaints is comprehensive in that members and member firms become liable for disciplinary action if they:

- breach a bye-law or regulation;
- fail to comply with standards of professional conduct;
- bring discredit on themselves, the Institute or accountancy profession

It is a matter for HMRC to decide if its own powers are sufficient to avail of the established CARB complaints procedures. If HMRC's powers are to be extended to utilise the ICAI's established regulation and disciplinary procedures, then there should be a thorough internal review procedure within HMRC to safe guard against frivolous complaints being lodged against our members.

The consultation document states that "there is also no certainty that a professional body will necessarily take action that HMRC considers appropriate."<sup>7</sup> It is suggested that professional bodies focus on professional issues without any consideration of instances of poor quality service. This view fails to recognise that such "professional issues" are dominated by professional *service* quality assurance of the highest standard. The ICAI takes its professional services quality assurance procedures very seriously and again we would refer you to the website [www.carb.ie](http://www.carb.ie) for further information.

## **9. What safeguards would be needed?**

There are adequate checks and safeguards against frivolous or vexatious complaints being made under our Bye-Laws. HMRC may wish to consider a system for managing internally the complaint making process.

## **10. Could there be a wider role for professional bodies working with HMRC to ensure that a tax agent's past tax failings are remedied, and good standards adhered to in the future?**

We do not believe that HMRC has any role in the regulation of ICAI members.

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<sup>7</sup> At 4.19

## ***Chapter 5: Registration and definition of a tax agent***

### **1. Is a form of registration for tax agents needed in the UK?**

No.

### **2. What benefits for tax agents and taxpayers could a registration system deliver?**

We consider that any potential benefits would be eroded by an increase in compliance costs (to which you refer at para 5.4) and believe that this proposal would fall foul of the European and Competition Law consequences of state interference with the market (to which you don't apparently refer).

### **3. Would there be a benefit in defining "tax agent" in legislation? Should such a definition distinguish: those who do not offer their services for reward, or those that are members of a professional body, and should different provisions apply to them?**

We do not see how such a definition might improve the system in any way. If, for instance, an individual failed to match the legislative definition of "tax agent", yet described himself as such on a business letterhead, could HMRC seek to apply a sanction? And if HMRC will not or cannot apply a sanction, why have such a definition.

### **4. How wide should the definition of tax agent be: should it embrace lawyers, valuers, shipping agents, payroll bureaux, and others? If so, for which functions and in respect of which tax regimes?**

AND

### **5. What additional issues need to be considered in respect of tax agents who are not based in the UK?**

As indicated we don't consider that "Tax Agent" should be defined.

## ***Annex C: International comparisons***

### **1. Are there any other international models that we should consider?**

As indicated we don't consider that "Tax Agent" should be defined.