

Summary: Intervention & Options

Department /Agency: HMRC	Title: Impact Assessment of Working with Tax Agents	
Stage: Consultation	Version: 1	Date: 22 April 2009
Related Publications: Consultation Document – Modernising Powers, Deterrents and Safeguards: Working with Tax Agents		

Available to view or download at:

<http://www.hmrc.gov.uk/consultations>

Contact for enquiries: Tony Zagara

Telephone: 0207 147 2861

What is the problem under consideration? Why is government intervention necessary?

Tax Agents play a vital role in helping HMRC to tackle risks to the tax base. The overwhelming majority of tax agents advise their clients appropriately and calculate the right amount of tax. They have good systems, processes and staff training in place leading to accurate returns. However, there are occasions when the performance of a small minority of tax agents falls below the standards expected of their profession and this can lead to the risk of tax being lost. At the more serious end of the scale, the actions of a few unscrupulous tax agents can result in attacks against the tax system and/or tax being deliberately understated. Tax at risk in these cases can be significant, and considerable HMRC resource may be required to address it.

What are the policy objectives and the intended effects?

To improve HMRC's relationship with tax agents by supporting professional standards, working more closely with professional bodies and working with practitioners to identify and address tax risks generated by tax agents.

The intended effect is for fewer inaccurate returns to be submitted and to help tax agents provide correct information and make legitimate claims on behalf of their clients and for represented taxpayers to receive a good standard of service from their tax agent.

What policy options have been considered? Please justify any preferred option. 1 Do nothing
2 Create new information powers and sanctions and safeguards to specifically address tax risks which involve tax agents.
3 Create a registration system that enables HMRC to monitor performance of the agent and where appropriate offer support or seek to take appropriate action if the level of performance fell below agreed levels.

This consultation is intended to raise questions rather than prescribe solutions so there are no preferred options at this stage

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Post implementation review would take place around three years after the full implementation of any option.

Ministerial Sign-off For Consultation Stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:



Date: 20th April 2009

Summary: Analysis & Evidence

Policy Option: 1	Description: Do nothing
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' This approach would mean preserving the status quo. HMRC would continue to engage with tax agents through the use of existing information powers.	
	One-off (Transition)	Yrs		
	£ nil			
	Average Annual Cost (excluding one-off)			
	£ nil		Total Cost (PV)	£ nil
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Taking this approach would lose the benefits of properly considering the wider issues in a rounded way and an opportunity to improve the integrity of the tax system.	
	One-off	Yrs		
	£ nil			
	Average Annual Benefit (excluding one-off)			
	£ nil		Total Benefit (PV)	£ nil
Other key non-monetised benefits by 'main affected groups'				

Key Assumptions/Sensitivities/Risks Significant risks generated by tax agents whose performance falls below acceptable standards would remain. More fundamental change would be needed in order to properly address these risks.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ nil	NET BENEFIT (NPV Best estimate) £ nil
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What is the geographic coverage of the policy/option?			United Kingdom		
On what date will the policy be implemented?			Already in force		
Which organisation(s) will enforce the policy?			N/a		
What is the total annual cost of enforcement for these organisations?			£ N/a		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			No		
What is the value of the proposed offsetting measure per year?			£ N/a		
What is the value of changes in greenhouse gas emissions?			£ N/a		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase of	£ Nil	Decrease of	£ Nil	Net Impact	£ Nil

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: 2	Description: Create new information powers and sanctions and safeguards to address tax risks generated by tax agents.
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Only tax agents who fall within an identified risk area or perform below acceptable standards would be significantly affected. HMRC, tax agents and clients will incur costs of new learning and guidance to familiarise themselves with any new powers and safeguards.			
	One-off (Transition) Yrs		£ to be quantified		
	Average Annual Cost (excluding one-off)		£ to be quantified		
			Total Cost (PV)	£ to be quantified	
Other key non-monetised costs by 'main affected groups' It is not possible to identify or quantify such costs at this stage.					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Any new approach to working with tax agents that improves risk assessment of careless or deliberately non compliant tax agents would help reduce the tax gap. Taxpayers would gain if poor practice were to be improved and the unscrupulous were to leave the market.			
	One-off Yrs		£ to be quantified		
	Average Annual Benefit (excluding one-off)		£ to be quantified		
			Total Benefit (PV)	£ to be quantified	
Other key non-monetised benefits by 'main affected groups' Agents who provide a professional service would benefit from any new approaches which reduced unfair competition from less diligent or scrupulous elements of the market. This might include HMRC working more closely with professional bodies.					

Key Assumptions/Sensitivities/Risks The costs and benefits of any new powers or safeguards are yet to be quantified. We are developing plans for how to do this if new approaches do emerge from consultation.

Price Base Year	Time Period Years	Net Benefit Range (NPV) £ to be quantified	NET BENEFIT (NPV Best estimate) £ to be quantified
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	Not yet Known			
Which organisation(s) will enforce the policy?	HMRC			
What is the total annual cost of enforcement for these organisations?	£ N/a			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ N/a			
What is the value of changes in greenhouse gas emissions?	£ N/a			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro N/K	Small N/K	Medium N/K	Large N/K
Are any of these organisations exempt?	No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)		
Increase of	£Negligible	Decrease of	£Negligible	Net Impact	£ Negligible

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: 3

Description: Create a registration system that enables HMRC to monitor performance standards.

COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups'. Any form of registration would place additional costs on tax agents which might be passed to clients. Overall costs (time and money) in developing a mechanism for setting and monitoring standards would be significant for both tax agents and HMRC. Registration would impose new costs on agents not currently within professional bodies.	
	One-off (Transition)	Yrs		
	£ to be quantified			
	Average Annual Cost (excluding one-off)			
	£ to be quantified		Total Cost (PV)	£ to be quantified
Other key non-monetised costs by 'main affected groups' It is not possible to identify or quantify such costs at this stage.				

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Registration should incentivise good levels of performance across the full range of tax agents and, depending upon its type, should also actively address any issues of poor quality work.	
	One-off	Yrs		
	£ to be quantified			
	Average Annual Benefit (excluding one-off)			
	£ to be quantified		Total Benefit (PV)	£ to be quantified
Other key non-monetised benefits by 'main affected groups' Taxpayers would get a better standard of service and better value for money. They would have greater protection from currently unregulated and unscrupulous tax agents and greater certainty that returns and claims were accurate				

Key Assumptions/Sensitivities/Risks The key assumption is that all tax agents will be subject to the new provisions. There is a risk that some will continue to trade outside of the scheme and not deal directly with HMRC. Costs and benefits have not yet been quantified.

Price Base Year 2009	Time Period Years p.a.	Net Benefit Range (NPV) £ to be quantified	NET BENEFIT (NPV Best estimate) £ to be quantified
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What is the geographic coverage of the policy/option?		United Kingdom		
On what date will the policy be implemented?		Not Known		
Which organisation(s) will enforce the policy?		HMRC		
What is the total annual cost of enforcement for these organisations?		£ Negligible?		
Does enforcement comply with Hampton principles?		Yes		
Will implementation go beyond minimum EU requirements?		No		
What is the value of the proposed offsetting measure per year?		£ N/A		
What is the value of changes in greenhouse gas emissions?		£ N/A		
Will the proposal have a significant impact on competition?		No		
Annual cost (£-£) per organisation (excluding one-off)	Micro N/K	Small N/K	Medium N/K	Large N/K
Are any of these organisations exempt?	No	No	No	No

Impact on Admin Burdens Baseline (2005 Prices)		Not yet known		
Increase of	£ N/K	Decrease of	£ Nil	Net Impact £ N/K

Key: Annual costs and benefits: (Net) Present

Introduction

Following the creation of HM Revenue and Customs (HMRC) from the merger of the Inland Revenue and HM Customs and Excise, HMRC has been taking forward through its Review of Powers, Deterrents and Safeguards a programme of consultation and legislative change to provide a modern and effective framework of law and practice for the new Department. The changes resulting from this work will help HMRC deliver the O'Donnell Review aims of better customer service, greater effectiveness and improved efficiency.

Since the start of the Review, HMRC has consulted on a number of aspects of the tax system with a view to modernisation and reform. As part of this process, the Review is now looking at how HMRC interacts with tax agents across a number of fronts including:

- supporting professional standards;
- how HMRC works with professional bodies;
- how to identify and address tax risks generated by agents and
- the role of information powers and penalties in respect of tax agents.

This consultation is intended to raise issues and ask questions rather than propose solutions. Consequently, a lot of the data needed for the purposes of this Impact Assessment, to quantify the costs and benefits of the options proposed is not yet available. As any options are developed during the course of consultation, details of cost implications and benefits for the main affected groups will be made available in subsequent Impact Assessments.

Purpose and intended effect

The policy objective is to improve HMRC's relationship with tax agents and to work more closely with them so that risks generated by tax agents can be addressed more effectively. Risks can occur in the processes supported by tax agents and the processes of tax agents themselves leading up to the submission of tax returns or claims to HMRC.

Where problems are identified, these can often be most effectively resolved where advisers and HMRC work together from the outset. For instance, sometimes risks are identified for relatively small amounts of tax in any given case, but if the error is replicated across a number of taxpayers or claimants, the cumulative impact could represent a significant risk in itself. Where risks apply across a taxpayer population or to particular sectors it is often possible for HMRC to work with advisers, representative bodies or trade organisations to address them. Their clients or members then have the opportunity to correct matters without a compliance check. Such a working relationship helps to improve mutual trust and can be less burdensome for all parties.

Rationale for Government intervention

Tax agents play a key role in the preparation of tax returns. They represent 70% of all SME businesses within the UK and over 60% of other Self Assessment taxpayers (mainly individuals). There are approximately 43000 tax agent establishments in the UK who act for more than five clients. Beyond this professional community HMRC recognises in the region of a further 80000 advisers who act for five or fewer clients, predominantly friends and family, but also supporting the not for profit community.

Around 70% of those traditionally thought of as tax agents are affiliated to one of the main professional bodies within the UK. Although some 80% of agents have a professional qualification there are a considerable number who have neither any formally recognised training nor are subject to the monitoring procedures used by the main bodies.

The vast majority of tax agents advise their clients appropriately and calculate the right amount of tax. They have good systems, processes and staff training in place leading to accurate returns. If this were not the case, the tax system as we know it simply would not function. In doing so, it is wholly appropriate for agents to take a firm stance to protect the interests of their clients, and HMRC fully accept this.

But a minority of agents act in a manner that can or will result in the wrong amount of tax being calculated. In some instances, an agent may simply have made a mistake despite making every attempt to get it right. But in others cases, their performance may have fallen below the expected standards of their profession, and in a few the agent's actions may have constituted a deliberate attempt to understate tax (e.g. by falsifying information or promoting fraudulent avoidance schemes).

HMRC's risk based approach and agents

Risk assessment is at the heart of HMRC's approach to meeting its objectives. Compliance checks powers and safeguards in Finance Act 2008 have facilitated the addressing of risk while protecting taxpayers' interests.

In some cases, risk-based checks into individual taxpayers can identify problems which have the potential to be replicated across an agent's wider client base. In other cases it may have been the actions of the agent that have led to the problem. It can be very resource intensive for HMRC to address on a client by client basis, and if the problem is down to deficiencies in the agent's work, there may be no effective means to improve this.

Policy options for addressing tax risks generated by agents

The policy options considered so far are as follows:

Option 1 – Preserve the status quo

The work of the Powers Review so far will already be having an impact on tax agents - in particular the information and inspection powers contained in Schedule 36 to Finance Act 2008 which came into effect from 1 April 2009.

The powers in Schedule 36 to FA 2008 enable HMRC to require information and documents from any third party, including a tax agent in order to check a person's tax position. There are penalties for failing to comply with an information notice and for concealing, destroying or otherwise disposing of a document that is required by a formal notice. The penalties also apply where the person has been told that the document is likely to be the subject of a formal notice. In addition, it is proposed that penalties will apply where a person carelessly or deliberately submits incorrect information or documents.

The powers may be used in respect of a particular known tax or taxpayers, but also for persons or a class of persons whose individual identities are not known to HMRC. A notice in the latter category can only be issued with the approval of the Tribunal and serious loss of tax must be suspected. It is considered that such a notice could be used, for example to obtain a list of clients of an adviser known to have performed shoddy work on a particular client provided the information is not readily available from another source.

In addition various initiatives such as pre-return support, working together etc should secure a continuing improvement to accuracy of taxpayer returns and a mutual understanding of and agreement to address key risks.

However, significant revenue risks remain which would require more fundamental change to address:

- the expansion of online tax agent businesses allowing agents with little or no financial or tax training to offer services. A specific developing aspect of this low and restricted contact market is an emerging risk around tax agents who submit a high volume of repayment claims. Left unchecked this can be a major threat to tax revenues, and can place a further strain on HMRC resource, particularly where individual agents submit thousands of claims in single batches, many of which have little or no merit. The relationship between the client and their main agent if one is acting (who may be completely unaware of the involvement of the secondary agent) may also be undermined;
- agents' performance falling below acceptable standards e.g. failure to keep knowledge up to date, failure to take reasonable care, ineffective processes, inability to maintain objectivity and knowingly submitting incorrect returns or claims;

- mass marketing of tax avoidance schemes producing results that were never intended when the legislation was drafted and ultimately leading to significant shortfalls of tax.

While it may be possible to address some of these concerns through discrete targeted measures, this would lose the benefits of properly considering the wider issues in a rounded way, fully engaging with all affected stakeholders. This fits with the remit of the Powers Review - to consider alignment and modernisation where it makes sense to do so, and to improve the integrity of the tax system.

Option 2 - Additional information powers and sanctions

There is a duty on HMRC to address the risks of the type mentioned above which lie with the tax agent rather than (or possibly as well as) the taxpayer. The response to the risk needs to reflect the underlying cause. Where a risk has not arisen deliberately, HMRC's main objective would be for the position to be put right and to have assurance that the risk will not reoccur. The following paragraphs look at what might be proportionate responses from HMRC in respect of different circumstances.

Assessing risks

HMRC will generally identify a risk in respect of individual taxpayers, and will address that risk in the context of those taxpayers (by taking corrective action and perhaps charging penalties). But a problem that recurs (or has the potential to recur) may flag up a risk involving the tax agent. HMRC will need to be able to assess the extent of this risk as well, decide upon the appropriate remedial action and take a view on whether or not it was the result of careless or deliberate behaviour on the part of the tax agent.

This could be achieved by undertaking a compliance check on a representative proportion or all of the tax agents' clients. This approach presents significant resource implications for the agent and HMRC and it could result in unnecessary costs for clients who have submitted correct returns.

Alternatively HMRC could seek to work with the agent to understand the extent of any risk and where appropriate agree a remedy. This would build on the evidence discovered as a result of the compliance checks into one or more of the agent's clients. One option would be for HMRC to request that the agent commission an independent report assessing the extent and the cause of the risk.

While this could often be done on a voluntary basis, if that were rejected, HMRC would need to be able to act more formally. This might include in appropriate cases obtaining access to the tax agent's working papers. Any such approach would require strong safeguards to assure tax agents that such powers would not be used inappropriately. Safeguards could include:

- appropriate high level authorisation;
- the degree of certainty that the risk could apply to more than one or a small number of cases; and
- an ability to demonstrate that there was reason to believe the risk had been created carelessly or deliberately by the tax agent's actions.

Where a tax agent has made a mistake

Where HMRC has identified that tax is at risk due to the agent making mistakes, HMRC would wish to understand how this occurred, ensure that the position was put right for relevant past tax periods and that the tax agent took steps to guard against mistakes in future.

In addition depending on how the risk occurred, HMRC may want to put the agent on warning that reoccurrence may be treated as a failure to take reasonable care.

Where a tax agent has failed to take reasonable care

Where HMRC has identified a tax risk due to the agent having failed to take reasonable care, which may include a pattern of mistakes, HMRC would wish to consider the position beyond the case or cases that gave rise to the risk and would expect the agent to conform with specified standards across their entire client bases. In significant cases this could be supported by independent confirmation that the necessary changes had been made.

Where a tax agent has been deliberately non-compliant

Where there is sufficient evidence that the risk arose as a result of deliberate actions by the tax agent HMRC would have to consider its relationship with the practitioner. Options for HMRC could include:

- a requirement to put matters right for the past and the future plus
 - financial penalties, and/or
 - a report to a representative body, and/or
 - an appropriate period of monitoring.
- a refusal to deal with the tax agent in future.

Finally, there is a small minority of people who are determined not to pay tax or who set out to defraud the tax and credit system. At the extreme end organised criminal gangs make sophisticated attacks on the system itself by making false claims to repayments or tax credits on a massive scale. It is essential that this criminal element (in whatever role they play) is effectively investigated and prosecuted. Criminal investigation is an important part of HMRC's overall enforcement strategy, and as such there will continue to be a need for an effective criminal sanction to enable prosecution in the most serious cases.

Option 3 – Create a registration system that enables HMRC to monitor performance standards.

In some countries tax advisers are self-regulated, generally within a framework provided by professional bodies. In others the revenue bodies may have a regulatory role of some sort.

The UK is an example of the first of these. The ethical standards set by professional bodies are supplemented and exceeded by the major international accounting and legal firms' own standards'.

It is important to be clear what level of engagement might be envisaged. Registration in its most basic form may be a solely administrative function that recognises that a specific agent acts for the affairs of an individual or business. Registration at this level provides access to basic services on behalf of the client and allows the Government body to address issues and communicate with nominated representatives. At the next level a registration scheme would allow the Government body to monitor performance of the agent and where appropriate offer support or seek sanction if the level of performance fell below agreed levels.

Full registration or 'accreditation' would require the Government body to set some form of standard setting and monitoring and an assurance process to ensure that the standards adopted by any agent met an agreed level of competence in the carrying out of their business. From a business perspective there may be distinct advantages in being 'accredited' but this would need to be considered against the costs of regulation, assessment and the impact of withdrawal.

Professional bodies already play an important role in regulating their members. For example one of the main accountancy bodies has five fundamental principles: integrity; objectivity; professional competence and due care; confidentiality; and professional behaviour. However, while professional bodies can provide such controls over their members, professional frameworks do not apply to unaffiliated agents. At least 12,000 tax agents in business in the UK are unaffiliated to any major Institute but that does not suggest their observance of standards and internal controls is any less rigorous.

Downsides to a registration system could include:

- Additional costs being incurred by agents who perform to an acceptable standard or who may become subject to additional checks from HMRC, where that risk was not substantiated. There is a potential of damage to professional reputation, should actions of HMRC not be well-founded.
- Taxpayers may feel their safeguards in respect of compliance checks have been diminished if HMRC are able to deal directly with the agent in more circumstances.
- People may seek to work informally outside the scheme and not deal directly with HMRC
- Significant costs in terms of the tax authority's time and resources and much lower costs to tax agents if the authority charged a registration fee.

Specific Impact Tests: Checklist

The consultation will explore different ideas and options. HMRC is not limited to the options listed on page 1 of this Impact Assessment

The process of Equality Impact Assessment screening has been started and this will continue during the course of consultation and policy development.

Competition Assessment

It will be necessary to ensure that the form of registration (if adopted) does not restrict a taxpayer's freedom to choose their own representation, nor discriminate for or against qualified or unqualified tax agents, or for or against foreign providers so as to amount to a restriction of trade. Under European Law¹ cross-border services (including accountancy) are regulated in the home state. European Law requires any form of full registration to be necessary and demonstrably related to the regulation of the practice of the accountancy profession, and the rules must not go beyond what is necessary to achieve those objectives.

These proposals are aimed primarily at agents whose work falls below a professional standard.

Small Firms Impact Test

To exempt small businesses would be to exempt the vast majority of agents from any proposed changes. If a more lenient approach was offered to businesses of less than 20 employees there would be a risk that larger businesses would disaggregate.

HMRC has carefully considered whether these proposals will have any impact on the following other specific impacts:

- Legal Aid
- Sustainable Development
- Carbon Assessment
- Other Environment
- Health
- Human Rights, and
- Rural issues

and conclude that they do not impact.

¹ Restrictions on the cross-border provision of services are prohibited by article 49 of the Treaty of Nice, albeit subject to exceptions.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No

Annexes