



Modernising Powers, Deterrents and Safeguards

# Working with Tax Agents

Consultation Response Document  
9 December 2009

# Contents

<b>Chapter</b>	<b>Title</b>	<b>Page</b>
1.	Introduction	3
	<i>Responses to consultation</i>	3
	<i>Consultation</i>	3
	<i>Further consultation</i>	3
2.	Responses to consultation	5
	<i>Overview of the April 2009 consultation</i>	5
	<i>Summary of the responses</i>	6
	<i>HMRC's performance – the need to improve</i>	7
	<i>Study into the Role of Tax Intermediaries</i>	7
	<i>Design Principles</i>	8
	<i>The changing tax environment</i>	9
	<i>How HMRC might respond to risks</i>	12
	<i>Assessing risks</i>	12
	<i>Sanctions</i>	13
	<i>Working with the professional bodies</i>	14
	<i>Registration and definition of tax agent</i>	15
	<i>Overseas Agents</i>	16
	<i>Definition of tax agent</i>	17
	<i>International comparisons</i>	17
Annex A	List of written respondents to April 2009 consultation and attendees at consultation meetings	19
Annex B	What HMRC is doing to improve delivery	21
	<i>General</i>	21
	<i>Agents</i>	21
	<i>Understanding our customers</i>	21
	<i>Helping our customers</i>	22
	<i>Our staff</i>	22
	<i>Individuals</i>	23
	<i>Employers</i>	23
	<i>Business</i>	24
	<i>Improved links with Large Business</i>	25

## Chapter 1: Introduction

### *Responses to HMRC Consultation*

- 1.1 This document responds to consultation in 2009 about how HMRC should best work with tax agents.
- 1.2 Tax agents play a vital role in the delivery of the tax system. The overwhelming majority of tax agents advise their clients appropriately, and calculate the right amount of tax. If this were not the case, the tax system as we know it simply would not function.
- 1.3 However, there are occasions where the performance of a minority of tax agents falls below the standards expected.

### *Consultation*

- 1.4 HMRC published *Working with Tax Agents* in April 2009. This was initial high level consultation intended to raise issues and ask questions, but not proposing solutions. The consultation closed on 7 August 2009, and generated a high level of interest within the tax agent community.
- 1.5 HMRC found general acceptance that the maintenance and improvement of standards across the tax agent community was a legitimate subject for debate, and something that should be addressed.
- 1.6 There was less of a consensus on the role that HMRC should play.
- 1.7 In the course of consultation HMRC held meetings with key stakeholders and professional bodies. It also held a workshop with unaffiliated agents (those who are not members of any professional body). HMRC is grateful to all who participated.

### *Further consultation*

- 1.8 This document is published alongside a second round of consultation: *Working with Tax Agents: the next stage*.
- 1.9 Chapter 2 of that separate document discusses some particular topics that arose and shows how the responses might be reflected in HMRC's work.
- 1.10 This second consultation also seeks views on how HMRC proposes to take forward this work. This covers:
  - revised procedures for disclosure to the professional bodies in the case of misconduct;

- aligned and modernised legislation to tackle deliberate wrongdoing by tax agents; and
- high volume agents.

## Chapter 2: Responses to the April 2009 Consultation

- 2.1 This chapter sets out the content of the consultation document published in April 2009 “Working with Tax agents” and summarises the responses received. It also covers further issues discussed at the meetings with external stakeholders during the consultation period.
- 2.2 The April 2009 consultation considered how HMRC interacts with tax agents and asked whether changes could be made that would better serve UK revenue protection, taxpayers, agents and professional bodies. The consultation was intended to raise issues and ask questions rather than prescribe solutions.
- 2.3 While views differed on the substance, respondents welcomed the open minded spirit of the consultation and the balanced approach taken by HMRC. They recognised that HMRC needs to review the way it interacts with tax agents and agreed that it was right to air the issues.
- 2.4 Responses were received from all segments of the tax agent community ranging from sole practitioners with a handful of clients to the “Big Four” firms of accountants. Responses were also received from all the main professional institutions and representative bodies. In line with previous Powers’ consultations, HMRC held a series of meetings and workshops with relevant external stakeholders including unaffiliated tax agents.
- 2.5 HMRC is extremely grateful for the time taken by respondents to consider the issues raised by the consultation document and to those who attended meetings and the workshop. In total 14 organisations were involved in the meetings and HMRC received 62 formal responses.
- 2.6 A list of those who responded can be found at Annex A.
- 2.7 Particular topics, and responses to the questions raised, are set out below.

### *Overview of the April 2009 consultation*

- 2.8 The document started by recognising the vital role that tax agents play in the delivery of the tax system and the work done by the vast majority of them to ensure that returns and claims submitted are correct.
- 2.9 Next it set out the established Review of Powers design principles that underpin the design of any new powers and safeguards and then went on to suggest a number of additional principles that may apply specifically to tax agents. The consultation asked whether these additional principles were correct and if any other matters needed to be taken into account.

- 2.10 Following chapters covered the changing market for tax advice and how HMRC might respond to risks which are attributable to the tax agent rather than (or possibly as well as) the taxpayer. A number of different scenarios were presented describing the risks to tax revenues posed by agents whose performance fell below an acceptable standard. The consultation then went on to look at possible ways of dealing with the risks which could range from simple mistakes to deliberate non-compliance.
- 2.11 Finally, the consultation considered whether there was a case for a form of registration of tax agents in the UK and what benefits could such a system deliver. It asked whether there would be any merit in defining “tax agent” in legislation and how wide ranging should the definition be – in other words should it also embrace those that are not traditionally considered to be tax agents such as lawyers, valuers and freight forwarders.

### *Summary of the responses*

2.12 Some of the main points from those who responded are set out below:

- There was a perception that HMRC was proposing to punish mistakes made by tax agents. Many accepted that on occasions they may get something wrong but pointed out that this applied equally to HMRC staff. The majority of respondents made the point that they operated honestly and tried to get things right but that HMRC was not giving them sufficient credit for this.
- Many agreed that the behaviour of a small number of incompetent or even dishonest accountants led to the risk of significant tax being lost and that HMRC should take action against these individuals. However they expressed surprise that HMRC’s risk based systems were unable to identify these “offenders” and more so at the suggestion that that new legislation was needed in order to tackle the risks they posed.
- Following on from this, there was a view that HMRC needed to share the evidence to support its analysis that there was a problem with incompetent or dishonest agents. Rather than rely on isolated examples, HMRC needed to demonstrate the extent of the problem.
- There was a general consensus that where there was deliberate non compliance or fraud, strong action was needed to safeguard taxpayers’ interests generally.
- Some respondents were worried that any new powers would not just be aimed at non compliant agents but they would also be used against agents who were simply defending their clients’ interests. Others had greater concerns around the suggestion that HMRC would decide whether an agent had acted inappropriately rather than an independent person or tribunal.

They were sceptical about whether HMRC staff had the ability to make such a judgement correctly.

- Respondents had mixed views about the need for a registration system for tax agents. Several commented that registration would provide some assurance to taxpayers that they were dealing with competent individuals. However many pointed out that registration without regulation would be ineffective and that the associated costs and burdens far outweighed any benefits.
- There was widespread agreement amongst respondents that HMRC should make better use of the existing statutory gateway for HMRC to inform professional bodies about misconduct by their members. There was also agreement that the gateway should not just be confined to the most serious cases of misconduct but that it should be widened to facilitate disclosures relating to lower level persistent errors and reporting of those agents whose performance generally falls below an acceptable standard.

### *HMRC's performance - the need to improve*

- 2.13 A significant number of responses were very critical of HMRC's service standards and its lack of accountability for mistakes. Furthermore, they were disappointed that these shortcomings and the impact they had on tax agents were not recognised in the document. The general feeling was that HMRC should put its own house in order before attempting to raise tax agents' standards. Overall, this was the most common theme that emerged from the feedback received.
- 2.15 HMRC fully accepts that there are areas where it must continue to improve its performance. Examples of what it is doing to address this can be found in annex B.
- 2.16 However, HMRC has a statutory duty to protect the Exchequer. The need to improve its own performance does not weaken the need for HMRC to have appropriate powers to address cases where the actions of individual tax agents results in tax a loss of tax.

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

- 2.17 Some respondents to the consultation expressed surprise that the consultation had not referred to the OECD Forum of Tax Administration Study into the role of Tax Intermediaries. They felt that the material on an enhanced relationship with tax advisers would answer some of the issues raised in the consultation document.
- 2.18 The consultation attempted to set out a wide range of issues and floated various ways in which they might be resolved. The introduction of an "off the shelf solution" in the initial consultation would have constrained that debate. Moreover, the focus of the Study was clearly

intended to be aggressive tax planning and the relationship between Revenue authorities and taxpayers engaged in such planning. The Study certainly identified that there was an opportunity to establish more co-operative relationships between taxpayers and Revenue bodies. But this is a long way from many of the issues raised in the consultation.

- 2.19 That said, the Study did suggest that positive engagement with tax advisers could also offer significant benefits to both parties. Chapter 1 of the consultation document included a section on “Working Together” (paragraphs 1.10-1.12) which sets out how HMRC has been seeking to improve its relationship with tax agents and their professional bodies. Much of what is described is very much in line with the aspirations of the enhanced relationship with tax advisers. The relevant parts of the Study will be taken into account as HMRC takes this work forward through both formal and informal consultation over the coming months.

### *Design Principles*

- 2.20 A number of responses indicated that the design principles outlined in the document were generally sound and the four additional principles, namely the need to reassure competent agents, support professional standards, recognise the potential impact of powers on a tax agent’s business and taxpayer confidentiality, were a step in the right direction.
- 2.21 With regard to supporting professional standards, some pointed out that the professional bodies already have effective processes in place to regulate their members. The fact that the processes for current monitoring of professional standards and integrity vary across the different regulatory bodies was not seen as a cause for concern. What mattered most was that high standards were maintained and as such it was felt that this could be achieved by a variety of co-existing methods that achieve the same ends.
- 2.22 Others who generally supported the specific design principles said that they were not convinced the consultation document had clearly identified the key problem areas, and as a result were unable to confirm they were correct. They wanted HMRC to set out clearly the areas of risk in order of importance before any solutions could be considered and they pointed out that different behaviours and risks were likely to require a range of responses. They also pointed out that the vast majority of agents who in the main do a good job should be allowed to do so without being subject to any further burdens.
- 2.23 One respondent commented that the basic design principles were successfully used elsewhere in the Powers review and agreed that they should also apply to Working with Tax Agents. It was suggested that one additional principle should be that efforts to improve standards should apply to HMRC as well as to agents, whilst another stated that



HMRC should ensure that its officers act appropriately at all times to ensure that an agent's reputation is not inappropriately put at risk.

2.24 Other suggestions for additional design principles included:

- adding the principle that no power should be taken that is wider than the specific need;
- ensuring that the impact of any costs on agents should not be burdensome;
- HMRC acknowledging that agents are not infallible and that mistakes will be made;
- HMRC recognising that agents operate in a commercial environment and that the use of Revenue powers will have a commercial impact even on competent agents; and
- recognising that the work carried out by competent agents should by definition be of lower risk than taxpayers without tax agents.

2.25 The design principles will be kept under review during the course of the next consultation. HMRC will take into account the responses received particularly as it starts to consider in more detail the areas of risk that it wishes to address.

### *The changing tax environment*

2.26 The April 2009 consultation considered the changing tax environment and the risks posed to the tax base across a number of areas:

- the market for tax advice;
- tax avoidance;
- changes to taxpayer penalties;
- existing legislation relating to tax agents; and
- when performance falls below an acceptable standard.

2.27 Several respondents commented that the tax landscape has changed dramatically over the last few years and this has impacted on the way they deal with HMRC. One respondent stated that the structural changes within HMRC in recent years had resulted in a widening gulf between HMRC, tax agents and taxpayers. The closure of local offices and the reduction in staff numbers has led to a more formal relationship with HMRC with less direct contact thereby reducing HMRC's knowledge of the local environment.

2.28 Another respondent recalled the days when local offices were staffed by people who knew their caseloads and their advisers and when tax

agents were risk assessed based on that local knowledge. In their view tax agents should be risk assessed in the same way as taxpayers. It was suggested that in the absence of local knowledge, HMRC needed to develop risk assessment tools for agents as part of its internal management processes.

- 2.29 The availability of cheap, simple to use tax software has meant that many agents are able to operate without the technical expertise that may have once been necessary. One respondent acknowledged this but pointed out that those agents who were members of professional bodies were subject to regular scrutiny and quality assurance monitoring. Whilst this offers some reassurance, he felt the same could not be said for a significant proportion of tax agents that are not affiliated to a professional body and therefore not subject to the same regulatory controls.
- 2.30 The issue of complexity even within the provision of basic services was raised by a number of respondents. They felt that the tax system was overly complicated and as a result many small and micro businesses were unable to complete tax returns with the confidence that they had done so correctly. Agents have to make decisions on transactions and tax consequences that are by no means obvious which adds to their costs in terms of time and resources.
- 2.31 Some respondents expressed a view that all agents must attend or take part in continuing professional development to keep up with changes in procedure or changes in law and practice. One however, conceded that although their particular institute required this, many agents did not comply.
- 2.32 It was suggested that complexity within the tax system is used to engineer dubious avoidance schemes. On the other hand, simplification of the tax system would reduce mistakes and threats to the Exchequer.
- 2.33 There was a general acknowledgement that sometimes avoidance schemes are not disclosed correctly or their intended purpose is misrepresented. However, the point was made quite forcefully by several respondents that tax planning is perfectly acceptable and that a taxpayer should not have to pay any more tax than the circumstances require.
- 2.34 Regarding high volume repayment claims, there was a consensus that action should be taken against agents who deliberately submit false claims. Respondents agreed that action should be taken generally against agents who submit bulk claims many of which have little or no merit but at the same time reputable agents should not be tarred with the same brush.

- 2.35 One respondent suggested that the burden of making proper checks rested with HMRC and it would be wrong to return these claims (even bulk claims) to the agent. As the April consultation pointed out this places an enormous strain on HMRC resources and creates significant risk to tax revenues. There are also negative impacts on claimants especially if the claims are invalid.
- 2.36 There was cautious agreement that existing legislation relating to tax agents such as the information powers under section 20A Taxes Management Act 1970 and the penalty provisions under S99 Taxes Management Act 1970 should be modernised and aligned across all the taxes HMRC administers. One respondent warned however, that the S20A information power, once exercised, could drive a tax agent out of business. As such, the bar for any new information power must be set at an appropriately high level before it can be used.
- 2.37 Another respondent feared that any new power requesting sight of a tax agent's papers would not provide sufficient protection for the taxpayer sacrificing client confidentiality and privilege for the sake of a minority of cases. They suggested that the most appropriate safeguard would be a court hearing (inter partes) allowing the tax agent to give evidence.
- 2.38 The majority of respondents did not agree with the suggestion that there should be some sanction against a tax agent in cases where the taxpayer has taken all the necessary steps to ensure that he has taken reasonable care but instead it turns out that it is the agent that has acted carelessly. They felt that the responsibility for the tax return ultimately rests with the taxpayer. Others commented that the fear of reputational damage would act as a far greater deterrent than any penalty.
- 2.39 Some respondents were aggrieved by the suggestion in the April consultation that some agents were willing to take responsibility for inaccuracies so that their client would escape incorrect return penalties. The point was made that the new error penalties legislation only came into effect in April 2009 so it was surprising that there was evidence to show this.
- 2.40 The evidence the April consultation referred to related to pre April 2009 cases where penalties could only be charged where an inaccurate return could be shown to be the result of taxpayer negligence. In the light of the changes to penalties introduced in Schedule 24 Finance Act 2007 and the evidence gathered under the previous penalty regime, HMRC feel it was right to consider whether a penalty should be sought from the tax agent.

### *How HMRC might respond to risks*

- 2.41 The consultation document provided some examples at paragraphs 3.16 – 3.20 of where a tax agent's performance falls below an acceptable standard. HMRC has a duty to address risks which lie with the tax agent rather than (or possibly as well as) the taxpayer. How the risk is dealt with depends on the underlying cause.

### *Assessing risks*

- 2.42 Some respondents felt that the consultation did not make sufficiently clear what the problems were that HMRC was trying to address. They asked whether it was occasional mistakes, failure to take care, deliberate failure, fraud or indeed all of these. It was also pointed out that it was difficult to know from the examples given at chapter 3 of the consultation document, whether the problems were isolated instances of poor work or if they reflected more widespread concerns.
- 2.43 In response to these questions, HMRC's concerns lie predominantly with those tax agents whose performance falls below an acceptable standard which can lead to a risk of tax being lost. HMRC realises that no one is infallible (including HMRC staff) therefore HMRC are not talking about 'one off' errors where a genuine mistake has been made. But HMRC do mean persistent, systemic errors which point to a failure to take reasonable care. At the more serious end of the scale, the actions of a few unscrupulous tax agents can result in attacks against the system and tax being deliberately understated. The tax at risk in these cases can be significant. HMRC recognises that there are various components to each of the problems and different risks and behaviours require different responses.
- 2.44 HMRC will normally identify a risk in respect of individual taxpayers and will address that risk by taking corrective action. But a problem that recurs or has the potential to recur may flag up a risk involving the agent. Some respondents suggested that HMRC should, with the use of information technology, be able to identify those agents that posed the greatest risks in terms of the number of errors on returns submitted.
- 2.45 Having established a risk, the initial response should be to discuss the issue with the agent concerned. In most cases the agent would be able to either reassure HMRC that there was no actual problem or take necessary measures to evaluate and deal with the problem if one exists.
- 2.46 If contact with the agent did not resolve the matter it would be reasonable for HMRC to take their concerns into account when considering risks associated with other clients of the same agent. However respondents warned that any extension of this into a wider review of the agent's clients or an information power to obtain access to an agent's working papers where a risk had not yet been established

should not be disproportionate and burdensome. Another concern expressed was that the powers suggested in paragraphs 4.2 – 4.6 of the consultation document would be used either on ‘fishing expeditions’ or against agents who promoted aggressive, but perfectly legal tax planning.

- 2.47 HMRC want to reassure people that it is conscious of the risk that ‘powers creep’ could occur. Any new information power would only be used to identify poor behaviour. Nor would any regulatory powers be introduced just in case they may subsequently prove useful. New powers would only be introduced where it could be demonstrated that the existing legislation was not working (for example the circularity between S99 TMA 1970 and S20A TMA 1970) or if legislation were needed in order to protect tax revenues and the interests of taxpayers (for example high volume repayment claims that quite often have little or no merit).
- 2.48 One respondent pointed out that some advisers may be operating in areas where the clients they advise have affairs that are much more complex than the average e.g. CGT or IHT. As a consequence the number of mistakes made may be higher. This needed to be taken into account if recurring problems were going to be considered to amount to a failure to take reasonable care. The respondent felt that such an approach could lead to advisers refusing to take on clients with complex tax affairs causing an adverse effect on the quality of tax returns submitted.

### *Sanctions*

- 2.49 Most respondents agreed that there should be strong sanctions against those agents involved in deliberate wrongdoing or fraud but most expected HMRC to prosecute in these cases.
- 2.50 The views on behaviourally based penalties for persistent errors or a failure to take reasonable care were mixed. Some respondents felt that penalties were not the right approach as they would have to be rather draconian to give agents the incentive to make the necessary improvements. Penalties would cause conflict and any increase in the number of appeals would cause additional burdens on both agents and HMRC. Others claimed that it was HMRC’s intention to raise penalties where it would not otherwise be able to raise additional revenue.
- 2.51 Some respondents disagreed with penalties for failing to take reasonable care on the grounds that most agents are already strongly incentivised to do a good job to keep their clients and build a reputation leading to the acquisition of more clients. The risk of reputational damage leading to a loss of clients is a greater deterrent than any financial penalty. Other respondents pointed out that if tax agents were exposed to penalties for errors, they would have to insure themselves against penalties leading to increased costs. Professional indemnity

insurance covering a new category of risk would be more expensive and the cost would invariably be passed on to clients.

- 2.52 Another point made by a few respondents was that it can be difficult differentiating errors made by an agent from those actually made by the client when providing information. The penalty has always been on the taxpayer if there are errors on the return. By and large if a client is penalised for an error made by the agent, the client will have the option of suing the agent or terminating their engagement. The idea of a “suspended” sanction along the lines of the suspended penalty in Schedule 24 FA2007 was suggested by one respondent. A failing such as over-frequent technical errors could lead to a warning to the agent giving the agent an opportunity to improve. If standards did not improve a report could be made to the professional body or equivalent sanction if the agent was unaffiliated.
- 2.53 Those respondents that agreed with behaviourally based penalties in cases of recurrent systemic error were also in favour of enforcement notices or suspended penalties. The suggestion that ‘a requirement to bring knowledge up to date’ might be imposed alongside a suspended penalty was considered to be sensible. They also acknowledged that refusal to reform would need to be met with sterner measures. However, they were not convinced that a refusal to deal with an agent was a viable option as this could amount to a restraint of trade. Other respondents who also mentioned refusal to deal with an agent were divided on the issue. Although some saw this as the ultimate sanction, others believed that the agent would continue to trade underground or behind the scenes.
- 2.54 There was no clear steer from the responses given on the question of whether penalties should be fixed up to a certain amount, calculated on tax at risk, fee income or relevant turnover. The question of penalties is something that HMRC will be consulting further on over the coming months. HMRC want to explore with stakeholders, the basis on which penalties should be charged, what levels they should be set at and if there is a need for penalties at all.

### *Working with the professional bodies*

- 2.55 Virtually everyone who responded took the view that there was merit in HMRC working more closely with the professional bodies. Some welcomed the moves HMRC had made recently to build a more open dialogue with the professional bodies, for instance to help practitioners with the release of the CGT and small companies’ toolkits. Although they agreed that HMRC and the professional bodies should work closer together, some were keen to stress that HMRC should not become the compliance arm of the professional bodies tasked with policing the tax agent community. That was best left to the professional bodies.

- 2.56 One respondent was opposed to HMRC having a power to disclose persistently careless or incompetent conduct to professional bodies relating to a taxpayer's employees. In such cases the taxpayer would be subject to penalties for incorrect returns. It was also difficult for them to see the need for this type of power in the context of employees of large corporates given the new Senior Accounting Officer requirements introduced in FA2009.
- 2.57 Many were surprised that the existing power to disclose information to regulatory bodies under Section 20 Commissioners for Revenue and Customs Act 2005 (CRCA) was not being used to report persistent careless or incompetent behaviour. One respondent referred to the joint initiative between certain professional bodies and the Inland Revenue in March 2000 covering low level persistent errors. The objective was to use professional bodies' member support schemes on a personal basis, allowing the former Inland Revenue or HM Customs and Excise to provide information specific to individuals in the support scheme without breaching Civil Service confidentiality requirements. It was recommended that if doubts existed over the effectiveness of the Section 20 CRCA 2005 disclosure gateway, it should be reviewed so that it can be used in a wider variety of circumstances in line with the expectations set out in 2000.
- 2.58 Another respondent pointed out that the main reasons for wider disclosure should always be public interest and public protection. However, it was important to ensure that those who are members of professional bodies are not subject to greater penalties for equivalent behaviour than those who are not members of such bodies.
- 2.59 A number of respondents could envisage a wider role for professional bodies working with HMRC to agree and publicise standards. Concerns raised by HMRC over an agent's standard of work could lead to a member being referred to their professional body's support services rather than formal disciplinary action.

### *Registration and definition of tax agent*

- 2.60 The response on whether a form of registration for tax agents was needed in the UK was mixed although the balance between the views was more against registration than for it. Those that supported registration saw it as an opportunity to root out the 'rogues' as well as those agents that were simply incompetent. Some suggested a partial registration scheme covering only agents that were not affiliated to a professional body but with minimal additional costs imposed on HMRC and the agents concerned. However others felt that a broad brush approach for all agents that were not members of a professional body was not the answer. Several respondents pointed out that unqualified or part qualified agents behave just as professionally and diligently as their qualified counterparts keeping their continuing professional development up to date. They did not want to be classed in the same

category as the small minority of incompetent or untrained people mentioned in the consultation document.

- 2.61 There was also a suggestion that the existing arrangements for money laundering purposes could be used as the registration and control systems for all unaffiliated accountancy service providers. Those agents that were found to be below the required standard could be asked to bring their training up to date but if they refused they would be de-registered and not recognised by HMRC.
- 2.62 Another suggestion was that the 64-8 form or other evidence to act could be adapted to include a question about an agents qualifications or whether they are a member of a professional body.
- 2.63 The majority of those who opposed a registration system said that it would be of no value or benefit unless it was introduced together with a system of regulation with a sanction of de-registration for persistent failure. It was felt that the wide range of tax agents in the UK would make such a regulatory system complex and expensive to administer removing choice and flexibility from the market.
- 2.64 Some respondents said that a registration system without an examination system or a requirement to maintain continuing professional development up to date would not be worthwhile and instead it would simply give unqualified agents recognition that they were 'HMRC registered'.
- 2.65 If a registration system were to be introduced, several respondents wanted to see a new regulatory body formed outside of the existing HMRC framework thus ensuring independence and fairness.
- 2.66 Other respondents saw a registration system as an additional layer of bureaucracy. They felt that it would be over the top to require individuals who for example prepared an elderly parent's tax return to register as a tax agent.

### *Overseas Agents*

- 2.67 Most of the respondents who commented on this issue said that there would have to be a requirement for overseas agents to register in the UK if they provided advice or services to UK taxpayers. If overseas agents were not included it would create a two tier system encouraging UK based agents to circumvent registration by moving offshore.
- 2.68 Respondents also mentioned that a UK registration system would need to look at enforcement methods used in other countries so that the UK agent was not put at a disadvantage to overseas based agents. HMRC would need to work with other fiscal authorities to ensure that monitoring regimes are broadly in line with one another. Some respondents doubted whether overseas agents would be susceptible to



control by HMRC – for example the IRS accepts tax returns from overseas agents even though they do not meet its requirement for US tax preparers.

### *Definition of tax agent*

- 2.69 The vast majority of respondents did not think there would be any benefit in defining ‘tax agent’ in legislation. Some felt that a single definition accompanied by a single regulatory system was not viable in a tax system as wide and varied as that of the UK. Some thought that if a wide definition was adopted it would result in confusion while others felt that HMRC should concentrate its resources on those agents who are causing concern and addressing problems that arise.
- 2.70 Some respondents did not see the need to widen the definition to include for example lawyers, valuers and shipping agents. They felt that where there were already well defined relationships in areas of taxation such as shipping agents, there appeared to be no benefit in changing the title of the agent.
- 2.71 Other respondents were concerned that if a definition were to include unqualified and unaffiliated agents registration would add legitimacy to them. They pointed out that tax agents that do not belong to professional bodies are not subject to the requirements that those bodies impose such as the need for professional indemnity insurance and the requirement to undertake continuing professional development.
- 2.72 Another respondent’s view was that the only benefit in defining ‘tax agent’ in legislation would be if particular types of work done by tax agents was restricted or regulated. In other words, tax agents deliberately breaching the law could be prevented from acting as agents. In these circumstances, if a definition did exist, it would have to be limited to individuals acting as agents rather than simply those who provided advice.
- 2.73 Those respondents who saw some merit in defining the term ‘tax agent’ said that they would welcome the use of a clear statement or description to indicate someone with whom HMRC have agreed to deal and who agrees to adhere to professional standards.

### *International comparisons*

- 2.74 One respondent commented that the two principal international models (Australia and the United States) outlined in Annex C of the consultation document were schemes operated by the tax authorities. One of the weaknesses with these models is that they fail to recognise that tax advice is just one part of a range of financial and legal services. It was suggested that an alternative approach would be to consider setting up a wide ranging regulator based on the model used

in Jersey which has the power to look across the totality of any organisation offering financial services.

- 2.75 The consultation document mentioned that the US and Australian tax authorities were in the process of making significant changes and therefore there would be no evidence of how well or otherwise the new systems operate. This prompted one respondent to say that it was meaningless to make comparisons with the old models and too early to consider the new models. Furthermore, the US model considered in the document is linked to a fundamentally different tax system.
- 2.76 One respondent stated that international models are not relevant. Instead fundamental questions about the independence of advisers needed to be addressed in the light of HMRC's now considerable powers which are yet to bed down.

## **Annex A: List of written respondents to April 2009 consultation and attendees at consultation meetings**

### ***Written respondents – representative bodies***

AccountingWEB.co.uk  
Association of Accounting Technicians  
Association of Chartered Certified Accountants  
Association of Taxation Technicians  
AstraZeneca  
BDO Stoy Hayward  
Chartered Institute of Management Accountants  
Chartered Institute of Public Finance & Accountancy  
Chartered Institute of Taxation  
City of London Law Society Revenue Law Committee  
Deloitte  
Ernst & Young  
Federation of Small Businesses  
Institute of Certified Practising Accountants  
Institute of Chartered Accountants in England and Wales  
Institute of Chartered Accountants in Ireland  
Institute of Chartered Accountants of Scotland  
Institute of Directors  
Institute of Indirect Taxation  
KPMG  
Law Society  
London Society of Chartered Accountants' Taxation Committee  
Low Incomes Tax Reform Group and TaxHelp for Older People  
PricewaterhouseCoopers  
Professional Contractors Group Ltd  
Society of Professional Accountants  
Society of Trust and Estate Practitioners  
TaxAdviceNetwork.co.uk  
TaxAid  
Technical Advisory Committee South Western Society of Chartered Accountants  
Vantis Group Ltd  
VAT Practitioners Group

### ***Written respondents – individuals***

There were also 29 responses from individuals.

### *Attendees at consultation meetings*

Deloitte

KPMG

Association of Chartered Certified Accountants

Institute of Chartered Accountants in England and Wales

Association of Taxation Technicians

PricewaterhouseCoopers

Chartered Institute of Taxation

VAT Practitioners Group

Low Incomes Tax Reform Group/ TaxHelp for Older People

TaxAid

Federation of Small Businesses

Baker Tilly

Institute of Chartered Accountants of Scotland

Law Society of Scotland

## Annex B: What HMRC is doing to improve delivery

### *General*

1. HMRC are committed to driving forward continuous improvement in everything we do. For example, we have established our PaceSetter programme to deliver strategic change. PaceSetter is a set of principles, supported by tools and techniques that build on established industry practices. PaceSetter is designed to reshape our internal processes, putting the customer at the heart of what we do. Working with our frontline staff, it has reduced lead times and wait times.

### *Agents*

2. We work closely with representatives across the tax agent and employer communities, both nationally and locally, consulting on new developments and identifying opportunities to improve services.
  - The Working Together Partnership, with over 60 local branches across the UK, was re-launched in 2009 to help us progress the service issues they have raised locally. We expect this stronger contact with agents to facilitate better communication and joint training opportunities.
  - In response to agent feedback, we introduced a dedicated call centre service across all our ITSA call centres to meet agents' needs more effectively.
  - We have trialled the use of Agent Relationship Managers and Customer Relationship Managers for agents and we are improving key processes, for example, agent authorisation and allocation of customer reference numbers.
  - We have worked jointly with the representative bodies and other agents to develop and share guidance for the new penalties and compliance checks introduced by the Powers review. We have recently started to run a series of 40 joint learning events engaging around 2000 participants to help tax agents and HMRC staff understand and explore the operation of the new legislation.
  - We have also worked closely with tax agents on the introduction of the new SA filing deadlines and using our online service.

### *Understanding our customers*

3. We have implemented a major new programme of surveys covering individuals, small and medium businesses and tax agents. In the last quarter of 2008-9 all three groups reported an overall improvement in their satisfaction compared with a year before, with 70 per cent rating

their recent experience of dealing with HMRC as either fairly or very good.

4. We have introduced a series of seminars for HMRC staff in local compliance on practical ways of improving the customer experience and the impact of their actions on customers. By October 2009 over 3,600 staff had received this training.

### *Helping our customers*

5. As part of the Customer Contact Directorate, HMRC's Contact Centres business aims to provide a high quality, accessible service for customers and their agents looking for advice and information across a range of telephone helplines. Our main helplines are for Tax Credits, PAYE/Self Assessment and Child Benefit.
  - Last year we handled nearly 60 million calls across 19 centres. Our Contact Centres are (mainly) open from 8am to 8pm seven days a week and our staff (who number in excess of 10000) work various shift patterns to cover our business hours.
  - Contact Centre advisors receive a comprehensive training package prior to taking up duty. In addition to this they receive regular coaching sessions from their managers and support from more experienced members of staff to help to consolidate their knowledge and experience. The quality scores for September 2009 show a sustained upward trend over the past year. This is also reflected in customer satisfaction surveys which show an overall satisfaction level of 89 per cent which compares favourably with the private sector benchmark of 87 per cent.
  - We use customer research and management information to understand why people call and how we can deal with high volume calls in an efficient way.
  - We issue around 29 million P2 forms advising employees of their tax code, which generate a high volume of calls seeking reassurance. By providing clearer guidance and improved online information, we reduced the number of PAYE call attempts by 34 per cent compared with the same period in the previous year.
  - We have improved our communication by rewriting more than 120 standard letters that will impact over 600,000 customers annually – work that has been praised by the Administrative Burdens Advisory Board (ABAB) amongst others.

### *Our staff*

6. We are committed to our Leitch skills pledge of providing support for those of our staff with no Level 2 qualification.
7. As part of a long term investment to raise the level of expertise among our tax professionals we are:

- developing a new modular framework of tax qualifications with external accreditation. The first of our foundation level Tax Professional Qualifications has been recognised by the Qualifications and Curriculum Authority at level 3. These qualifications will be linked to job roles to ensure that all our tax professionals are trained and developed to the right standards.
- committed to the continuous professional development (CPD) of our tax professionals: they are required to devote at least 5 days a year to keeping their tax knowledge and skills up to date. We support this commitment with the delivery of a comprehensive CPD programme of tax technical conferences, seminars, and on-line products.

### *Individuals*

8. Between 2004/2005 and 2007/2008 we improved quality across HMRC's high volume processing areas of PAYE, Self Assessment, National Insurance Contributions and Tax Credits. The combined performance across these areas rose from a baseline of 91 per cent to 93.5 per cent.

- Our Carter programme has delivered a huge increase in online filing, as a result of extensive customer research and stakeholder engagement. Online filing improves the accuracy of returns and reduces processing errors. By 31 January 2009, 5.8million Self Assessment returns were filed on line – a 52 per cent increase on the previous year.
- 2009 saw the implementation of the new PAYE service, the biggest change to the operation of the personal tax system for 25 years. The new system provides a faster and more effective service for employers and employees. It is now handling over 1.5 million transactions a day.
- Improvements to our internal processes for manually calculating code numbers for Pay as You Earn have helped drive year on year accuracy improvement for the last four years to a level of 93 per cent during 2008-09.
- Similar improvements have also been achieved with the accuracy of Self Assessment tax calculations issued. Between 2004 and 2009 accuracy levels have increased from 93.8 per cent to 97 per cent.
- Tax Credit renewals were changed in 2009 to better meet the needs of our customers. The changes included earlier planning; redesigning the marketing strategy to smooth the peak; new Interactive Voice Response (IVR) messages to remind customers of the information they needed to give us and direct

them to the most appropriate person to handle their call; better use of contact centre and enquiry centre advisers; and more help for our most vulnerable customers. We also changed our processes so that customers received the right money faster minimising overpayments. The result was that in the period from April to 31 July 2009 we handled 74 per cent of telephone calls, compared to 36 per cent in 2008 and received renewals declarations from 500,000 more households than in the same period in 2008.

## *Employers*

9. Employers play an essential role in operating PAYE for some 30m employees and pensioners, one sixth of whom start or leave each year. Initiatives to build awareness and capability of new employers include:
  - The basic calculators on the Employer CD-ROM which help smaller employers manage their regular payroll and submit end of year forms online, have proved a significant success and have been enhanced following customer feedback.
  - Employer representatives have continued to support our programme to improve the services they use. This has helped us to understand the cost implications for employer and pension providers and to develop new products to help their employees and pensioners understand their tax more easily. This contribution is leading to more cost effective solutions and is reducing the contact employers and employees need with us.

## *Business*

10. The Business Payment Support Service, introduced at the Pre-Budget Report 2008, was extended to take into account the likelihood of a business loss for the current year, when deciding whether extra time can be given to pay duties due on its profits from last year. In addition, the self-employed three line account threshold was increased in line with the VAT threshold, to £68,000 for the tax year 2009-10 and the enhanced trading loss relief, announced at the Pre-Budget Report 2008, was extended for an additional year.
11. In 2008-09, we processed 75 per cent of VAT registration applications within 13 calendar days against a target of 70 per cent (and our target for 2009 -10 is to process 70 per cent of applications within 12 days). Future IT and business process changes are planned to continue to deliver improved service. Feedback from customer groups, such as the Joint VAT Consultative Committee and the Working Together Forums also provide ideas for improvement. Since the application form was made available on line in July 2008, there has been a progressive increase in the number of e- applications, increasing from 38 per cent in April 2008 to 54 per cent in March 2009.



12. Our Business.gov programme manages the businesslink.gov.uk website on behalf of the Government, acting as a single point to access support and information to help them improve productivity and save money. The site receives over 1 million visits a month and over 90 per cent of users are satisfied with the service. The site is growing and has a wide range of transactions, information and tools, including:
  - Maternity, Paternity and Adoption content from multiple sources, brought together for the first time, resulting in a more than four-fold increase in visits to this material;
  - a new free online UK Trade Tariff tool;
  - over 400 guides from HM Revenue & Customs;
  - company name and Trademark search;
  - Companies House Web Filing and WebCheck services;and
  - dedicated areas for Transport & Logistics and Farming.
13. By March 2011, business-facing content from 95 per cent of government websites will be available through businesslink.gov.uk.

### *Improved links with Large Business*

14. Our Large Business Service works with over 700 of the UK's largest businesses. These businesses pay over 40 per cent of the business tax and duties that the UK collects.
  - During 2008-09, we continued to implement the recommendations made in the Review of Links with Large Business, published in November 2006, which looked at the way we do business.
  - We have trained all our customer-facing staff so that they understand the new way we work with our customers.
  - This has not only delivered an improved speed of response and certainty for our customers, but has also increased our compliance yield.