



**Low Incomes  
Tax Reform  
Group.**

A voice for the unrepresented

## **Raising standards in the tax advice market: professional indemnity insurance Response from the Low Incomes Tax Reform Group (LITRG)**

### **1 Executive Summary**

- 1.1 As an initiative of the Chartered Institute of Taxation (CIOT), we endorse the comments made in the CIOT's response to this consultation. Our supplementary response focuses on points relevant to low-income unrepresented taxpayers in relation to making professional indemnity insurance (PII) mandatory for all tax advisers. Our wider comments on raising standards in the tax advice market can be found in our response to the previous call for evidence.<sup>1</sup>
- 1.2 Low-income taxpayers often cannot afford to pay for advice (or believe they cannot afford to pay for advice). Even if they can, there is often an assumption that tax advisers only help people in business and people do not always know where to look for tax advice. We think there is more HMRC can do to help people find tax advice from qualified tax advisers.
- 1.3 The research commissioned by HMRC is welcome. We also think it is important to carry out further research to help understand the consumer perspective around finding and using tax advisers. Having a greater understanding of this would allow for better decisions around how to implement the PII requirement.
- 1.4 We are generally supportive of the introduction of mandatory PII. However, we see this as the first step in raising standards in the tax advice market. As set out in our response to the previous call for evidence, we remain supportive of the CIOT's preferred option of making it

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<sup>1</sup> See <https://www.litrg.org.uk/latest-news/submissions/200826-raising-standards-tax-advice-market-call-evidence>

a legal requirement for tax advisers (after a lengthy transition) to be a member of a recognised professional body.<sup>1</sup>

- 1.5 Mandating PII for those giving tax advice, of itself, will not necessarily meet the policy aims outlined unless certain issues are addressed, and other steps are taken in tandem. In particular, there must be minimum standards and the PII must cover the activities being undertaken. There is also work to be done to raise public understanding of using advisers who have PII and how to pursue complaints where things go wrong. This might mitigate one of the downsides of the measure, in terms of consumer protection, which is that it relies on the adviser acknowledging the issues and claiming against the insurance – there is no direct route for individuals.
- 1.6 This is especially the case in relation to low-income taxpayers as although they may not be able to afford traditional paid tax advice, they may interact with high-volume repayment agents (HVRAs) and payment intermediaries. HMRC need to take urgent action, separate to this PII work, against those High-Volume Repayment Agents (HVRAs) who mislead people into signing deeds of assignment.
- 1.7 The definition of tax advice should be drafted as widely as possible. Although we recognise there will need to be some exemptions, we feel strongly that it should not exclude all pro-bono advice. Those offering tax advice services, on a pro-bono basis to the public, should not be exempt.
- 1.8 As some payment intermediaries, such as certain umbrella companies, appear heavily involved in the ongoing issues around the use of disguised remuneration (DR) to pay workers, HMRC need to consider how they might be able to capture these DR arrangements within ‘tax advice’, to help achieve the overall objectives of the measure.
- 1.9 For this measure to achieve any of its objectives, there must be sufficient checks and swift enforcement action from HMRC. We agree with the proposed transparency measures set out in the consultation document. HMRC should use their Standards for Agents in order to help enforce the requirement.

## **2 About Us**

- 2.1 LITRG is an initiative of the CIOT to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving

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<sup>1</sup> Both CIOT and LITRG’s previous responses cautioned against the cost implications of government intervention and the downsides of a one size fits all approach to the different segments of the market.

the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.

- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

### **3 General comments**

- 3.1 We are specialists in tax and related welfare benefits for people on low incomes. We provide free information about the UK tax system to the public via our websites, which are accessed by over 5.5 million unique visitors a year.
- 3.2 LITRG itself is not an advice-giving organisation. Despite this, we are frequently contacted by members of the public who clearly need tax advice. From these enquiries and through working with other stakeholders, we have specialist insight into the tax issues affecting those on low incomes and where there are gaps in the current provision.
- 3.3 It is often thought that people on low incomes do not have complex tax affairs. This is incorrect. As a result, low-income taxpayers need access to good quality, yet affordable, tax advice and assistance (even if they do not recognise themselves as needing it). Even if guidance is publicly available, the people who contact us still need 'advice' because they struggle to apply this guidance to their own circumstances or feel they need reassurance.
- 3.4 Low-income taxpayers often cannot afford (or think they cannot afford) professional tax advice. Even if they can, they may not know how to find a reputable and professional adviser. And then, even if they know how to find such an adviser, there may be a perception that accountants or tax advisers only deal with business services or those who have more complicated tax affairs and need tax planning services. Therefore, we think there is more that HMRC can do to help people find reliable tax advice.
- 3.5 We also want to reiterate the importance of gathering more evidence on the population of advisers who are not members of any professional body, and we therefore welcome HMRC's confirmation that research has been commissioned (paragraph 44 of the consultation) to understand the characteristics of unaffiliated agents. In addition, we think it would be helpful to commission some research to understand the consumer perspective – such as how people find tax advisers, whether they do any checks and what influences their decision. It would also be helpful to understand what stops people seeking professional advice. Having a better understanding of this would allow for better decisions around how to implement the PII requirement.

## 4 Specific questions

### 4.1 **Q1. In your opinion, do you agree that introducing a requirement for anyone providing tax advice to have professional indemnity insurance satisfies the policy aims of improving trust in the tax advice market, by targeting poor behaviour and allowing taxpayers greater redress when things go wrong?**

- 4.1.1 We are generally supportive of the introduction of a mandatory PII requirement for tax advisers, as a first step in a longer-term solution to raise standards in the tax advice market. As set out in our response to the previous call for evidence, we remain supportive of the CIOT's preferred option of making it a legal requirement for tax advisers (after a lengthy transition) to be a member of a recognised professional body which requires PII as a condition of membership.<sup>1</sup>
- 4.1.2 Mandating PII insurance for those giving tax advice, of itself, will not necessarily meet the policy aims outlined unless certain issues are addressed, and other steps are taken in tandem. This is especially the case in relation to low-income taxpayers as although they may not be able to afford traditional paid tax advice, they may interact with HVRAs and payment intermediaries.
- 4.1.3 Although the intention seems to be that HVRAs should be captured by any definition of 'tax advice', we have some concerns that some may simply ignore the PII requirement and continue to operate without it. We make some general comments about the shadow tax advice market below, but when it comes to HVRAs, we are firmly of the view that HMRC must refuse to engage with those who do not meet the PII requirement, for example by not accepting claims/64-8 forms/deeds of assignment.
- 4.1.4 For payment intermediaries, like umbrella companies, the situation is not so clear cut. Many simply act like a PAYE bureau for agency workers and process workers' pay through the payroll like any other employer. These bodies arguably do not provide tax advice simply by offering this function.
- 4.1.5 However, some may advise on the 'benefits' of certain remuneration structures which may not be tax compliant. Those who operate disguised remuneration schemes – like contractor loan schemes – are surely intended to be in scope of these measures, given this whole initiative was borne out of the Amyas Morse review into the loan charge, in which he made the following recommendation:

*'The Government must improve the market in tax advice and tackle the people who continue to promote the use of loan schemes, including by clarifying how taxpayers can challenge promoters and advisers that may be miss-selling loan schemes. There should be a new strategy*

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<sup>1</sup> Both CIOT and LITRG's previous responses cautioned against the cost implications of government intervention and the downsides of a one-size-fits-all approach to the different segments of the market.

*published within 6 months, addressing how the Government will establish a more effective system of oversight, which may include formal regulation, for tax advisers.'*

- 4.1.6 Yet although loan schemes and similar arrangements are still around, they are no longer typically the arrangements 'of old' – that is, those that involving overseas promoters, sophisticated planning, organised and networked avoidance supply chains and boutiques enabling clients (some with a personal avoidance motive) to avoid their taxes – all of which might be curtailed by this PII requirement.
- 4.1.7 Instead, the schemes we hear about today are basically a variation on the theme of an agency worker being paid (through an umbrella company that they may have been told to sign up to), a minimal amount of taxable income, topped up with a purportedly non-taxable element (which may be described as loans, investment payments, advances, grants, loans, credits etc.), with little or no paperwork to support the 'planning'. While some umbrella companies may be doing this as part of a bigger avoidance supply chain, others will have casually concocted such schemes in house without any real 'promoter' behind them.
- 4.1.8 Therefore, if this policy to have the desired effect in terms of helping to clamp down on the disguised remuneration arrangements that are around today, HMRC will need to consider carefully about whether they can capture non-compliant umbrella companies within this policy, without encompassing ordinary employers/'vanilla' payroll arrangements (if indeed, that is the intention).
- 4.1.9 In any case, HMRC urgently need to consider other ways of cutting off the DR problem.<sup>1</sup> This is all the more pressing given the payment of workers via DR schemes is all too often driven by the motivations of others in the supply chain, not by a tax avoidance motive on the part of the worker, meaning they can be put into schemes without their knowledge.
- 4.1.10 Whilst none of these issues should prevent the introduction of the PII requirement, it is important that they are addressed to ensure that the proposal meets its policy aims as far as possible. Even if all these issues are addressed, a lot of stages<sup>2</sup> must be met in order for this change to be effective as a consumer protection measure and that is why we think it must be a first step and combined with other work to raise standards in the tax advice market.

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<sup>1</sup> We set out in our recent submission on Clamping down on the promoters of tax avoidance<sup>1</sup>, some ideas for how HMRC can and should address DR: <https://www.litrg.org.uk/latest-news/submissions/210601-clamping-down-promoters-tax-avoidance>

<sup>2</sup> It requires the adviser to be able to get insurance, the insurance to cover the type of advice the adviser gives, the taxpayer knowing the safeguard exists and being able to identify bad advice, the taxpayer having the confidence/ability to pursue the case and, if necessary, pursue the case to court. The adviser must then claim off their policy.

#### 4.1.11 These issues can be summarised as follows:

- Just having PII should not be enough to meet the requirement, it must also be mandatory that the policy is sufficient to cover the activities/level of advice given. If it is not, then it is unlikely to provide taxpayers with redress if things go wrong and those advisers exhibiting poor behaviour would be incentivised to buy the cheapest, most basic PII.
- Whether it provides greater redress for taxpayers depends on the person's ability to pursue the issue. If the adviser refuses to engage with the client or refuses to acknowledge their complaint, then they may feel unable/ill-equipped to continue seeking redress.<sup>1</sup> This is a greater risk where the adviser is not a member of a professional body because there is no other avenue to raise a complaint and the individual cannot claim against the PII insurance directly – it is the adviser who must make the claim. In some cases, it may be necessary for the client to take legal action (with associated costs) to pursue the issue.
- Taxpayers may not be aware of the need to check if their adviser has PII and further work is needed to increase education around this and how to choose an adviser. There must be a straightforward way for taxpayers to check if a particular adviser has PII cover.
- The consultation document notes there is a risk of some advisers continuing to operate in a shadow tax advice market. This is a risk that could be mitigated if HMRC ensure proper enforcement of the requirement and take swift action to identify those not complying and operate appropriate sanctions. Failure to do so would mean this risk could undermine the policy aims.
- The definition of 'tax advice' needs to be widely defined to ensure that it captures the range of situations where people may act upon advice given. In particular, it must be drafted such that HVRA's are covered by the definition.
- Those on the lowest incomes may not be able to afford advice and may need to rely on pro-bono advice. Whilst we agree that there should be exemptions from the PII requirement – for example, for people providing pro-bono advice to a family member or friend – voluntary sector organisations which provide tax advice (and those advising on their behalf) should not be exempt. This should also include HMRC where advice, rather than guidance, is given.

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<sup>1</sup> Our understanding is that in some areas, individuals can claim directly from a third-party insurance policy but that is not the case for PII where it relies on the person seeking redress from the adviser who then claims from their insurance.

- 4.2 **Q2. If the government introduces the requirement for professional indemnity insurance, what further steps would you recommend? Q3. Are there any alternative options you would recommend?**
- 4.2.1 As identified above, there are a number of further steps that we suggest should be taken in relation to the PII requirement itself. These steps could be taken in tandem with introducing mandatory PII, to raise standards in the tax advice market.
- 4.2.2 Just having any level of PII cover is not sufficient. There must be specific requirements which set out minimum standards (such as level of cover and permitted exclusions) as well as a requirement that the PII must cover the activities being undertaken.
- 4.2.3 Our concern is that those who are not members of professional bodies, and who are seeking to reduce costs, would simply take the cheapest cover available to meet the requirement. There is a risk that such PII cover would not pay out, in the event of poor advice, if it were given as part of an activity that was not covered by the policy.
- 4.2.4 HMRC will need to have a robust process in place to carry out checks to ensure tax advisers have PII and that it is sufficient. Where these standards are not met, HMRC will need effective enforcement procedures in relation to advisers who are not a member of a professional body.
- 4.2.5 As paragraph 35 of the consultation acknowledges, there is a small risk that the introduction of the PII requirement alone may not sufficiently protect consumers, as they are still reliant on the adviser having a sufficiently robust complaints process. Therefore, an appropriate complaints process should also be one of the minimum standards.
- 4.2.6 However, we are also concerned that some taxpayers may not pursue a complaint even if there is an appropriate complaints process. This may be for a number of reasons, including their circumstances (for example, they may have sought advice due to a bereavement or separation), their levels of literacy and numeracy, or simply because they are not aware that they can make a complaint or need support to be able to do so. HMRC must take steps to ensure taxpayers have information about what they can do in the event their adviser falls below the required standards.
- 4.2.7 Beyond the PII requirements, there are other steps that HMRC can take to raise standards of tax advice more generally, especially for those on the lowest incomes. As we said above, although we are supportive of a longer-term aim of ensuring those giving tax advice are members of professional bodies, there are several smaller steps that should still be taken to make the tax advice market work better for the low-income, unrepresented taxpayer even if this longer-term solution is not pursued.
- 4.2.8 On an urgent basis, and separate to this PII intervention, we think HMRC could and should do more around the issue of taxpayers signing deeds of assignment with HVRAs without appreciating their scope, or even being aware that they have signed them, as it is a very

serious 'live' consumer protection issue, as shown by the following query we recently received:<sup>1,2</sup>

*'My mother received a P800 from HMRC informing her of a tax refund. However the cheque is being sent to a third party who are a tax agent. My mother is in her 70s never signed any authorisation letter for this company to act on her behalf. How do we remove this third party?'*

- 4.2.9 It would appear here that this lady may have used a tax refund company or associated claims management company for a prior, discrete claim, and as part of that process, signed a deed of assignment for *all* tax purposes meaning her P800 refund was diverted.
- 4.2.10 This is an extremely concerning situation. HMRC have a duty of care towards taxpayers and can and should do more to raise taxpayer awareness where such arrangements are 'live' and make it easier to change or remove them. For example, HMRC should make it possible for a taxpayer to view or amend their deeds of assignment through their PTA. Taxpayers would then be less likely to fall foul of the kind of situation described above.
- 4.2.11 We outlined some of the other steps HMRC can, and should, take in our previous response to the call for evidence, but in summary these are:
- A more structured initiative to expand and enhance the provision of non-profit tax advice. More funding should be provided to organisations qualified to provide tax advice. Whilst HMRC's extra support service is welcome, in some cases taxpayers need independent advice.
  - HMRC should consider how they can monitor or improve other sources of advice and support relied upon by low-income taxpayers.
  - HMRC could also implement aspects of Options A to C in the original call for evidence (better use of HMRC's existing powers, improve rights of recourse for consumers, help consumers make better choices).
  - There is much scope for HMRC to improve the advice and guidance that they provide to unrepresented taxpayers. Whilst welcome steps have been taken in this area in recent years, there is still a long way to go to ensure those who cannot pay for advice are adequately supported to help get things right.
  - We also encourage HMRC to consider ways in which it can work with professional bodies to help taxpayers find a qualified tax adviser or accountant via GOV.UK. Currently, it can be difficult to find good quality support.
  - The factors that drive taxpayers towards using HVRAs need to be addressed. These include the complexity of claims processes, the reluctance of some taxpayers to engage directly with HMRC and the fact that an individual does not understand what is claimable or even that they need to make a claim in the first place. HMRC must

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<sup>1</sup> <https://www.litrg.org.uk/latest-news/news/200707-tax-refund-company-deed-assignment-warning>

<sup>2</sup> Example 3, paragraph 48



also do more around excessive HVRA fees. LITRG have seen several examples of people subject to these high fees as well as refunds being claimed erroneously by the agent but having to be paid back by the taxpayer.

### 4.3 Questions 21 to 25 – Defining tax advice

- 4.3.1 The definition of tax advice for this purpose should be as wide as possible but there will undoubtedly be the need for some exemptions.
- 4.3.2 Whilst it can sometimes be helpful to use existing definitions as a starting point, we do not think the existing definitions in Annex A are wide enough to cover the range of people giving tax advice who should be covered by this requirement. Our CIOT colleagues cover the many deficiencies of these existing definitions in further detail in their response. We agree with the CIOT's proposal that a bespoke definition, taking proper account of the context in which it is to be applied, should be developed.
- 4.3.3 In particular, the 'Dishonest tax agent' definition only applies to those who are assisting people 'in the course of business'. Paragraph 55 of the consultation paper says that this means a family member or friend helping with a tax return would not be included because they are not giving advice in the course of business. There is certainly a strong argument in favour of excluding informal advice to family and friends from the requirements, but it does raise some interesting questions about what duty of care exists in situations where informal advice is given.
- 4.3.4 However, we do not agree that there should be an exemption for charities providing tax advice, nor for advisers acting on a pro bono basis where such services are being offered to the public (rather than to family and friends). Low-income, unrepresented taxpayers are likely to rely heavily on pro-bono advice – and they should be able to expect the same standards as those getting paid advice. We are aware that some organisations assist taxpayers in accessing HMRC digital service, which is a much needed and helpful service, but we don't think assisting someone to access a digital service should fall under the tax advice definition unless it is accompanied by actual tax advice. Such tax advice may be as simple as advising a taxpayer in which box to enter a certain figure on a return or form or whether or not income needs to be declared on a tax return.
- 4.3.5 To further reiterate this standard for those giving pro-bono advice, HMRC should assure themselves that the organisations they fund to provide tax advice have the technical skills and qualifications to do this to the required standard. We are not convinced that the current grant-in-aid programme places sufficient weight on competency to give tax advice, nor does it seem to fully recognise the different levels of advice and support that people may need. Whilst some individuals may only need support to engage with HMRC (without the need for specific tax advice), many do need tax advice and this should only be provided by those who are qualified to do so.
- 4.3.6 On the question of whether tax software should be included in the definition of tax advice and/or the requirement to hold PII, we think that it should where it does give advice. The

definition, as a matter of consumer protection, should be wide enough to include anyone who gives tax advice including via tax software that has advice embedded in it. This also includes HMRC services such as interactive tools (which advise a specific course of action based on individual answers to questions) and advice given by HMRC on Twitter and in HMRC community forums.

#### 4.4 **Enforcement – Questions 26 to 29**

- 4.4.1 We do agree with the three elements of enforcement. All three are essential if the introduction of mandatory PII for those giving tax advice is to meet its policy objectives.
- 4.4.2 We are supportive of the transparency ambitions set out in paragraphs 64 and 65 of the consultation document. We highlighted above (in 3.4) the need for HMRC to do more to help taxpayers find good quality tax advice and this is an extension of that suggestion. However, this needs to be coupled with helping low-income unrepresented taxpayers understand more about the options open to them in respect of paid advice. They may not automatically think that tax advice is appropriate for their situation (perhaps a one-off issue) or that tax advice is outside of their reach due to cost. This is not always the case. That is why we suggested in para 3.5 above that HMRC commission research to find out more about taxpayers' views on finding tax advice.
- 4.4.3 One possibility would be to include a further legislative requirement, for those who are required to have mandatory PII, to submit that information to HMRC (say, annually). This could be done through an online portal and HMRC could use that information to help with the transparency ambition outlined and could also use it to carry out the checks suggested above ensuring not only that the adviser has PII but that it meets the relevant minimum standards). We think that meeting this new requirement (if covered under whatever definition is decided upon) ought to be part of HMRC's Standards for Agents such that HMRC could refuse to interact with an agent who had not demonstrated they had appropriate cover in place.
- 4.4.4 The other suggestions in paragraph 66 of the consultation document are not as helpful for taxpayers as the government's ambition set out in paragraph 64. For example, a certificate of insurance displayed in premises or on a website does not signify that a policy meets particular requirements, or that it will provide redress in event of a failure by the agent.
- 4.4.5 On the issue of agents moving offshore to circumvent the new requirement, we think that PII should be mandatory to all those who provide advice on UK taxation regardless of where they are based. This avoids having to define what it means to provide tax advice 'in the UK', which could be tricky in the case of advice being provided online in a cross-border situation. In any case, we do not see clearly how an individual who happens to be based in the UK but may provide advice on entirely non-UK tax matters is part of the problem which this measure is designed to address. However, there will be a territorial limit on the ability to enforce this requirement in the case of an adviser based offshore. This will be mitigated where there is an onshore presence, but it is difficult to see how offshore advisers can be

required to have such a presence if they are outside the scope of any enforcement action from HMRC.

- 4.4.6 Question 29 states that the government's ambition is for HMRC to share information about the adviser with the client digitally. Many people use digital channels and indeed find digital channels to be easy and faster to use. However, that is not the case for everyone, and a non-digital alternative must be provided. Those who are unable to transact digitally or who struggle with digital channels should not receive less protection than those who can. At the very least, it should be possible for HMRC advisers to access any proposed digital search system on a taxpayer's behalf if they contact a HMRC telephone helpline.
- 4.4.7 There must also be visible enforcement of this policy if it is to meet its policy objectives. We think HMRC should, more generally, make greater use of the current HMRC standards for agents and should revoke agent authorisation where agents are not meeting those standards. This PII requirement, when introduced, should be added as one of those standards. We therefore agree with the proposal in paragraph 76 of the consultation document, which would see suspension of the adviser's access to online services/refusal by HMRC to deal with them until they had the required insurance in place.
- 4.4.8 HMRC do also need to be aware of the potential for phoenixism amongst those advisers who are not members of professional bodies, particularly in the HVRA and employment intermediary areas. In our experience, there is clear risk that any companies that are subject to scrutiny or measures for not having PII may just close down and re-establish themselves under another name.
- 4.4.9 It is important that HMRC find a way to track firms/individuals who use this as an attempt to circumvent these rules. For this reason, checks need to be robust and enforcement needs to be swift.

LITRG  
15 June 2021