



## ICAEW TAX REPRESENTATION

### HMRC'S TAX AGENT STRATEGY

Comments submitted on 16 September 2011 by ICAEW Tax Faculty in response to the consultation document *Establishing the future relationship between the tax agent community and HM Revenue & Customs* published by HM Revenue & Customs on 31 May 2011.

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## INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation document *Establishing the future relationship between the tax agent community and HM Revenue & Customs* published on 31 May 2011 by HM Revenue & Customs (HMRC).
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. We responded to HMRC's previous consultations published on 22 April 2009 and 9 December 2009 in TAXREPs 48/09 and 11/10 submitted on 7 June 2009 and 3 March 2010 respectively. We have been involved in discussions and attended meetings with HMRC, some jointly with other professional bodies, in which we have put forward some key comments and concerns. This response reflects these discussions.

## WHO WE ARE

4. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
5. In the region of 43,000 ICAEW individual members are in practice. 12,000 firms, ranging from the 'Big 4' to sole practitioners, are authorised by ICAEW to practice.
6. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
7. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including *TAXline*, a monthly journal sent to more than 8,000 members, a referral scheme and a weekly tax newswire sent to over 18,000 registered users.

## KEY POINTS SUMMARY

8. We welcome this consultation document and the discussions that we and the other professional bodies have held with HMRC so far. The Consultation document sets out a strategy to reduce the costs of HMRC operations substantially. Provided that systems are properly designed and tested so that they do not merely pass on the cost of the solutions to the profession, in the long run taxpayers should be better and more efficiently served.
9. The consultation raises important questions about the nature of the tax profession, the role of professional bodies and whether all agents should be qualified. We believe that qualified professional tax agents such as chartered accountants play an important role in maintaining standards. However, currently HMRC does not recognise or give proper credit for membership of a professional body or, in the case of ICAEW, for that body's monitoring of

the performance of members. The proposals should look to build on these important foundations and give credit for them.

10. HMRC needs to examine the particular risks posed by unqualified agents and how these are addressed, for example whether the tax profession should be fully qualified.
11. Given that one of the key elements of these proposals is to improve standards and performance, it will not be surprising that in their responses ICAEW members have expressed serious concern about HMRC's performance. If this package of proposals is to receive the support of the profession then it is essential that HMRC's service standards are improved. We welcome the statement of 14 September 2011 as an important step in HMRC meeting the same performance standards that agents are expected to meet.
12. Of the proposals, self serve is the most attractive to agents and it offers clear benefits to HMRC in improving service standards. This will be the most difficult part of the package to implement but it is essential that enrolment, self serve and the agent view proposals are developed and implemented as a package.
13. IT security will be an essential part of this process, both for HMRC and for agents. We would be happy to discuss further with HMRC what enhanced IT security will be required and whether we may be able to assist with any accompanying certification process.
14. We support measures to maintain and improve standards and agree that the tax system has no place for dishonest agents. Clear channels of communication are needed for identifying and addressing concerns about poor work.
15. The performance indicators for establishing an agent view need to be developed in consultation with the profession and must be considered 'in the round'. Client performance is not likely to be a useful measure and placing reliance on it could be counterproductive. Agents should have the opportunity to challenge HMRC's view.
16. Where poor performance is identified, HMRC should first discuss any concerns with the firm and give them a chance to improve. If this does not work then further measures will be needed which might involve reporting any member to the relevant professional body. HMRC should only refuse to deal with an agent if all other options have failed and, even then, the agent should have the right to have the case reviewed by an independent body and thereafter by a Tribunal.

## **CONSULTATION WITH MEMBERS FOR THIS RESPONSE**

17. We have consulted widely with our members to publicise the proposed changes and to give members the opportunity to find out more about them and let us have their views. We prepared an outline briefing followed by detailed briefings on enrolment, self serve, monitoring agents and the role of professional bodies respectively; these are on our website and can be accessed via a special page 'Tax news – HMRC Agent Strategy', [www.ion.icaew.com/TaxFaculty/blog/filteredlist/?cat=3911](http://www.ion.icaew.com/TaxFaculty/blog/filteredlist/?cat=3911).
18. The briefings were publicised in our weekly newswires sent by the Tax Faculty to those ICAEW members who have expressed an interest in tax, and to all ICAEW members through our ICAEW monthly newswires. We also held a webinar with over 200 participants, giving members the opportunity to raise questions, and through our tax representatives at District Societies around the country we publicised the consultation and held meetings to explain the proposals and seek feedback.

19. We received over 60 detailed responses in addition to numerous views reported at meetings and comments on the website and received via the webinar. Our response takes into account this member feedback.
20. Our detailed response set out below is as follows:
  - Paragraphs 21 to 42 set out the general points that arise.
  - Paragraphs 43 to 66 contain our comments on the three specific proposals in the consultation document, namely enrolment, self serve and establishing an agent view.
  - Paragraphs 67 to 139 contain our answers to the detailed questions posed in the consultation document which are summarised on pages 36 and 37 of that document.

## **GENERAL POINTS**

### **Improving HMRC's performance**

21. The most frequent comment from our members, whether supportive of the overall package or not, was that HMRC's service standards were not good enough and that HMRC should first improve its own standards and professionalism. We believe that if trust is to be rebuilt to the levels we all wish to see, it is essential that agents see significant improvements in HMRC's service delivery and standards of training. We believe that the joint statement from HMRC and the professional bodies issued on 14 September 2011 represents a significant commitment to addressing these concerns. It will be essential that real progress is made on improving service standards if this package of measures is to receive the trust and support of the tax profession.

### **HMRC's proposed approach**

22. We note that HMRC sees enrolment as a means by which it can properly service what it calls 'the agent community', and that this would be a first step to providing secure access to new online services and to better segmentation of agents, which would, for example, enable HMRC to direct guidance specifically at agents to whom it is relevant. The proposals on enrolment and agent view are essentially sought by HMRC as tools to improve management of the tax system.
23. Given the important role that agents play in ensuring that the tax system works, it is clearly right that HMRC improves its management information on agents. It is surprising that, following the closure of local offices and centralisation of processing, HMRC appears to lack data and information on the performance of tax agents. We therefore understand HMRC's desire to develop an agent database. We believe it is important that HMRC recognises and gives credit for the work of competent agents and distinguishes them from those agents whose performance needs to be improved.

### **The benefits of the proposals**

24. A key consideration of the proposals is whether they are separate proposals or all part of a single package. The proposed enrolment process is the key to operation of both self serve and obtaining an agent view. In terms of self serve and the agent view, both of these developments have potential benefits for HMRC. Self serve clearly has more direct benefits for agents than the other parts of the package.
25. In terms of delivery, we recognise that developing a robust and effective self serve operation is likely to be lengthy and expensive. Nevertheless, we believe that it has considerable potential to cut costs out of the system, particularly for HMRC but also agents. We therefore think it is very important that self serve is progressed as an integral part of this package, and that this part is not dropped in favour of progressing just the enrolment and agent view parts if HMRC encounters cost, technological or practical barriers to delivering self serve. We

would be very disappointed if HMRC discovered that it was unable to deliver a meaningful level of self serve or other benefits for agents.

### **IT security**

26. Good levels of IT security will be essential as opening up HMRC's systems to third parties introduces the risk of fraud. We accept that HMRC may require agents to demonstrate or certify a certain level of security before they can access self serve and we would welcome further discussions on what would be a reasonable level of IT security. These costs need to be kept reasonable and proportionate for smaller firms, as it is important that self serve is made available to all sizes of firms and not just the larger firms where IT costs will usually be proportionately lower. If the costs of entry are too high then self serve take up will be lower and the potential cost benefits to HMRC will not be realised.

### **IT development**

27. Key to the successful delivery of this package will be well designed IT systems. In order to achieve this, HMRC must ensure that the development work is undertaken in close consultation with tax agents and that it is subject to thorough testing in accordance with the principles set out in the March 2006 Carter report. We agree that HMRC should first pilot self serve and take account of feedback from that phase before it rolls it out more generally. The IT systems will need to be capacity tested so that backlogs do not start to build up as we have seen in recent years with post.

### **Paid agents**

28. We understand why HMRC wishes to separate out paid agents from 'friends and family' and the voluntary sector. Our responses below are in respect of paid agents only.

### **Self regulation and the role of professional bodies**

29. This consultation document raises important questions about the future of the tax profession.
30. The UK tax profession is not regulated, but the majority of agents belong to one or more of the self regulating professional bodies such as ICAEW. HMRC has indicated that it has no intention to regulate the tax profession and that self regulation is the right model going forward. We support that approach.
31. We welcome HMRC's wish to recognise competent agents by, for example, trusting them to represent clients with less involvement from HMRC, or in the way HMRC engages in tax enquiries. Given HMRC's desire to reduce its costs while not increasing them for others, as a general principle it must make sense to give credit for, and place a degree of reliance upon, existing membership of a suitable professional body that already has in place procedures and processes designed to uphold high standards and protect the public interest.
32. We recognise that these procedures may not necessarily meet HMRC's requirements, but we would be happy to consider whether the processes could reasonably be modified so that HMRC is able to recognise the value of membership of a professional body.

### **Reliance on membership of a professional body**

33. Given that in order to practice ICAEW members have to maintain high professional standards, we believe that HMRC should place some reliance and trust on this fact and give proper recognition for it.
34. Bodies such as ICAEW were formed with the public interest responsibility to promote high technical and ethical standards among members, thereby promoting public confidence in ICAEW Chartered Accountants and allowing members to use and be known by that designation. That fundamental responsibility still applies.
35. Members must maintain and demonstrate adherence to high standards. For example, in January 2011 the professional bodies published their latest code on how they expect

members to behave when dealing with clients' tax matters, *Professional conduct in relation to taxation*, published by ICAEW as TAXGUIDE 1/11. Although this code provides a minimum benchmark that could be extended to all tax agents, it is important to stress that it forms only one part of a much more detailed and comprehensive ICAEW code of conduct. Further, it is one thing to sign up to a Code, it is quite another to be confident that it is being adhered to. In short, it is not enough for a person to sign up to a Code where there are no sanctions for failing to abide by it, and they should not be treated on an equal footing to someone who is subject to such oversight.

36. Specifically, membership of ICAEW involves the following requirements.

37. For all ICAEW members:

- passing demanding exams that involve a significant tax element undertaken while under a workplace-based client-facing training contract;
- maintaining Continuing Professional Development (CPD) and making an annual declaration of having complied (which may be checked);
- adhering to the ICAEW's rules, regulations and bye-laws (which include, but are not limited to, the pan-professional body code of conduct on taxation, referred to above); and
- being subject to a disciplinary scheme that can be invoked where the member has fallen down, leading to possible fines and sanctions (which could include publication and disqualification).

38. For ICAEW members in practice:

- in order to call themselves practising ICAEW Chartered Accountants they must obtain a Practising Certificate, maintain adequate professional indemnity insurance (PII) and submit an annual return; and
- practising firms must also register with ICAEW – they are then subject to regular Practice Assurance visits which monitor compliance with the four Practice Assurance standards.

39. Practice Assurance covers the quality processes of a firm, rather than the technical quality of its output. Firms registered with ICAEW to practise provide a degree of confidence to clients and third parties (such as HMRC) that the professional personnel are competent, that they abide by recognised codes of conduct and rules, and that there are procedures and processes in place to address problems when they arise. HMRC should therefore be able to place a degree of reliance on a tax agent being a registered ICAEW Chartered Accountancy practice.

### **Unaffiliated tax agents**

40. According to HMRC's statistics, 30% of the 40,000 tax agents are 'unaffiliated' to any professional body. HMRC needs to assess whether this segment of the market poses specific risks and public interest considerations as compared to affiliated agents and, if so, how they should be tackled.

41. Unaffiliated agent firms are those not registered with a professional body. Some agents within the firm may have qualified professionally but decided for whatever reason not to remain affiliated and thus relinquished the need to meet the professional standards required by that body.

42. There are a number of possible approaches HMRC could use to address risks posed by unaffiliated agents. These range from maintaining the status quo through to regulation of the unaffiliated – possible policy approaches could therefore include:

- allowing them to continue as now with no restrictions;
- allowing them to continue as now with no restrictions but ensure that taxpayers are aware of the differences between affiliated and unaffiliated agents;
- allowing them to continue as now but with some restrictions, for example only 'read only' access to HMRC's systems rather than full self serve;
- requiring agents to sign up to certain minimum standards – this might include for example abiding by the professional code of conduct in relation to taxation, maintaining CPD and PII, etc – but the key question then is how such standards are upheld and monitored;
- making it a requirement that all tax agents must have minimum qualifications;
- making it a requirement that all tax agents must belong to a recognised professional body or arrange for monitoring from a recognised professional body; or
- that HMRC either regulates the unaffiliated or it is delegated to some other body.

## DETAILED COMMENTS ON ENROLMENT, SELF SERVE AND ESTABLISHING AN AGENT VIEW

### Enrolment

43. We note that the National Audit Office (NAO) report *Engaging with Tax Agents* published on 13 October 2010 highlighted deficiencies in HMRC's approach to assessing and monitoring the role that tax agents play and recommended that HMRC establish a new agent database. The agent enrolment and agent view proposals largely reflect the NAO recommendations. Given that HMRC could have sought to impose these developments as necessary responses to the NAO report, we welcome the fact that HMRC has instead consulted with the tax agent community on these proposals.
44. A new clean agent database will form the foundation for the self serve and agent view proposals. It is essential that the system is designed with the Carter principles in mind, that it is robust and easy to use and that the data requirements are reasonable and do not place an undue burden on firms disproportionate to the benefits that HMRC will obtain. It would be better to start with a relatively simple, secure set of requirements and build on that as necessary in the future. On the assumption that all tax agents (including unqualified and unaffiliated agents) will be allowed to enrol, HMRC will need to stress that mere enrolment must not be used in any tax agent marketing material to imply that the agent is somehow 'approved' by HMRC.
45. The opportunity should be taken to radically simplify and streamline agent authorisation processes which are far too cumbersome and unnecessarily complicated. If HMRC is to move to have 'trusted agents', then it should trust them to self authorise clients. We see the potential for considerable administrative savings for HMRC and agents if agent registration could be improved.

### Self serve

46. In principle, we welcome the ability to self serve some of the functions currently undertaken by HMRC. It is a natural extension of the development of electronic services. Other tax authorities around the world are developing such solutions and we have for some time now been suggesting that HMRC should pilot self serve, so it is right that HMRC is looking to develop such services, provided that use of self serve by agents is optional, not compulsory. The ability to have electronic correspondence with HMRC is welcome and long overdue.
47. Properly designed, self serve should bring an overall improvement in efficiency, both for agents, HMRC and clients. This may expand the market for tax agents' services, thereby improving tax compliance in the UK.

48. Self serve systems must be designed to be agent-friendly and easy to use so that the time agents spend on processing is no more than they would have to spend under the current system assuming it worked properly – in other words, by the time agents have told HMRC what to do and checked HMRC has done it properly, the agent could have done it themselves. We anticipate that the introduction of self serve facilities will take a few years, to allow time to develop the IT and to run pilots to test the system for each self serve option.
49. Self serve represents a major difference from the current operation of the tax system and it is vital that it is introduced in accordance with the recommendations made by Lord Carter of Coles in his report of 22 March 2006 ([www.hmrc.gov.uk/budget2006/carter-review.pdf](http://www.hmrc.gov.uk/budget2006/carter-review.pdf)). The introduction of the National Insurance and PAYE Service (NPS), and, before that, the P35 online filing system, showed that there was not enough attention focused on the design of the operations – HMRC needs to work with tax agents to ensure that any self serve systems are well designed, user-friendly and subject to thorough testing. The new system must also be flexible so that it meets the different needs of all practices from sole practitioners through to the largest multi-national partnerships. Earlier HMRC IT systems have suffered from a lack of advance testing using real data, in contravention of Lord Carter's recommendations. Self serve must not suffer from the same deficiency.
50. We support the proposal to carry out some pilots. The results of these will need to be assessed before any further decision is made to roll it out more generally. The agent strategy package should proceed as a whole: if there are problems with self serve, other elements should be delayed to keep pace. This is essential if trust in the stated objectives is to be maintained.
51. We support the proposal that self serve will be voluntary and that agents will be able to continue to use existing communication channels. In the event, therefore, that an agent was removed from self serve (for example because of security breaches), HMRC would continue to deal with the agent using existing channels.
52. Assuming that the pilots are successful, parallel running will be essential to check all is working and agents do not lose the ability to service their clients as it is being introduced.
53. HMRC must consider whether self serve should only be allowed if an agent meets certain basic criteria. IT security will need to be set at a high level to prevent fraud. This is only to be expected if agents are to be allowed access to HMRC's systems to input data and make amendments. IT security will be subject to further detailed discussion with the professions and HMRC needs to define at an early stage what they would expect. This is likely to require more than just confirmation that the agent has up-to-date anti-virus software, but also include IT security policy, firewalls, contracts and service level agreements with third parties, etc. As to how this would be demonstrated, we believe that for ICAEW members self certification would be appropriate with reliance being placed on our membership rules. Finally, while we understand the need to have a secure self serve system, it is important that it is not unnecessarily onerous.
54. Detailed consideration needs to be given to what happens if something goes wrong or the agent makes a mistake. Where mistakes are made in changing standing data or for in-year adjustments, this may not in practice be a particular problem (although it might be for the client – see below) as it could be corrected later. However, the situation becomes much more problematic if interest and penalties are at stake. Agents will need to consider the potential risks of self serve and design their own systems and processes to minimise those risks. The self serve system will need to be designed to help ensure that risks to agents are minimised, for example by designing-in checks to prevent agents making obvious mistakes and providing them with confirmation of any changes they make so they can review it.
55. In respect of PAYE coding notices, there are limits that HMRC puts on restrictions to allowances, such as the amounts of underpayments that can be coded out. These are not



necessarily statutory. Presently some HMRC guidance on how code numbers are calculated, eg *Business Guidance Notes*, is not accessible to the public, which may mean that agents will change codes to amounts that are not allowed under the guidance. This will presumably result in agents' changes being reversed. Automatic updates to codes, for example arising from processing of forms P11D or claims for expenses under 336, Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003), may also reverse changes input by agents. A system that allows those external to HMRC to change taxpayer code numbers will need to include the means of enabling those people to see what the 'rules' are and be able to override them and not have their changes reversed.

56. Client expectations will need to be considered and changes may be needed to engagement letters etc to clarify what the agent will and will not do. Some clients may put pressure on agents to deal with things that they do not currently handle, for example coding notices. Agents may also need to make changes to existing PII arrangements.
57. It is important that self serve cuts costs and does not merely displace HMRC's existing costs onto agents and ultimately clients. Clients are unlikely to be prepared to pay for the agent to spend more time on doing work that is currently carried out by HMRC staff. While self serve might save time in correcting errors when they arise, it must not increase costs for the majority of clients where HMRC does not ordinarily make mistakes. In other words, an agent should spend no longer on dealing with making changes under self serve than they would if they made changes using the existing communication channels.
58. There remains some concern among some smaller agents that HMRC will seek to charge for using self serve. We appreciate that in the consultation document HMRC has stated that there will be no charges made and given the potential benefits to HMRC, we believe that this is the right decision. We recommend that HMRC continues to reinforce this assurance during the consultation process.

#### **Agent view**

59. HMRC does not have a single coherent and consistent view of the total engagement that agents have with HMRC. At present in the UK anyone can set themselves up as a tax agent. We understand that HMRC's systems cannot distinguish between, on the one hand, an agent who has no qualifications or experience and on the other a practising Chartered Accountant. HMRC's systems do not give credit for work done by good agents and do not appear to distinguish potential bad agents. We do not think this is good for the tax system.
60. HMRC has indicated that membership of a professional body should be recognised in this process. We agree. The professional standards and quality of ICAEW member practitioners should be such as to ensure that they will fall within the category of good agents and that action to address poor work should not normally be relevant. In the longer term poor agents who do not have the same levels of expertise and quality may be required to improve as a condition of retaining tax agent status.
61. We welcome the opportunity to have been consulted on what factors should be used as a measure of performance. HMRC proposes that the 'agent view' will include the compliance performance of the agent's clients in addition to information about the agent (type of clients, size of business, type of work etc).
62. The proposals for what should be taken into account raise a number of concerns. HMRC has suggested using filing and payment profiles of the client portfolio, and levels and types of cases selected through risk assessment initiatives as measures. HMRC must appreciate that the performance of tax agents is separate from that of their clients. Clients are fined for late payment and submission of tax returns. Although agents will do their best to control their clients, they will not always be successful but they should not be penalised for something which is ultimately outside their control. If the agent is at fault, then the client is likely to ask for redress from the agent for any fines or interest they incur.

63. Similarly, the number of enquires and reversal of mistakes is not necessarily a measure of agent performance. Clients will usually come to an agent for help when they have a problem that needs resolving.
64. The above examples show that measuring agent performance is in practice more difficult than it may appear and any results and conclusions should be treated with considerable caution.
65. Agents will need to have confidence that HMRC can accurately judge the ability of agents. Ultimately, the information gathered is management information and as such is merely a means to an end (HMRC's effective management of the tax system), not an end in itself. HMRC will need to exercise considerable skill and judgement in interpreting the data to ensure that it acts on the data in a way which properly and reasonably reflects the exercise of its powers.
66. As part of identifying a comprehensive agent view HMRC will need to address the following questions:
  - will it be dependent on individual judgement?
  - how will a consistent approach be adopted?
  - will the information used to determine the 'agent view' accurately represent the agent's business (for example certain agents only deal with enquiry cases)?
  - what different interventions may be needed to address any problems that are identified?
  - where poor work is identified, how agents might be helped to improve? and
  - crucially, what safeguards are needed to ensure that agents are treated fairly?

## RESPONSES TO SPECIFIC CONSULTATION QUESTIONS

### Enrolment

#### ***Q1 To which types of agent should the new enrolment process apply and why?***

67. The answer to this question depends on what HMRC sees as the purpose of enrolment.
68. If it is to enable HMRC to build up a complete database of agents with whom it deals then all agents, whether paid or unpaid (ie including friends and family) should enrol, as the database would be incomplete if some agents are excluded from the obligation to register.
69. If it is simply to enable agents who have enrolled to 'share secrets', for example ascertain what tax and NIC payments clients have made to HMRC or even reallocate misallocated remittances, then enrolment needs to apply only to agents, whether paid or unpaid, which intend to participate in these arrangements.
70. As a general point, we are concerned that some agents who are enrolled, perhaps those who are unqualified or unaffiliated, may use the fact that they are enrolled as a marketing tool to suggest that they undergo HMRC quality assurance in the same way as firms who are affiliated to and supervised by professional bodies. Any public information needs to make it clear that enrolment does not reflect the competence of an agent and that this should not be used as a marketing tool.

#### ***Q2 How should enrolment apply to multi-office/location agent firms?***

71. We recognise that there needs to be consistency in the enrolment approach as otherwise this could undermine the management processes. We would envisage that enrolment would be firstly at the firm level, otherwise separate enrolments for different offices, partners, types

of work or departments of the same firm will lead to duplication on HMRC's agent database. Many tax agents now operate as companies and the system will need to capture corporate information such as the directors' details.

72. Within that, agents with multiple offices, partners or departments will need to be identified and provide additional information about offices, partners, departments, etc, depending upon how they structure their businesses, so HMRC can be sure that they are dealing with the same agent, albeit out of different offices. The system would also need to be sufficiently flexible to identify firms that may have some association, for example an agent may operate through a company but also retain a partnership, or it may have separate entities for different types of work.
73. This area will require considerable further thought as there are numerous practical issues to resolve before system design can begin.

### **Q3 Is the proposed 'data set' reasonable to provide?**

#### *Business address, contact telephone number, email address*

74. This data set will need to be clarified to specify which address(es), telephone number(s) and email address(es) are required. In practice, direct dial telephone numbers and email addresses are allocated to individuals within the firm. We suggest that HMRC will find it helpful to have data covering both a primary contact point within the firm or office (eg the partner with overall responsibility for liaison with HMRC) and the day-to-day dealings between HMRC and agents (eg office addresses, HMRC-facing employee emails and telephone numbers) for security purposes. However, checking whether an incoming telephone call is from an authorised number can be complicated where the call originates from a multi-line organisation.

#### *Bank information*

75. While some firms find it convenient to accept clients' tax refunds from HMRC so that there are funds to hand to put towards payment of professional fees, for many other firms handling client money gives rise to professional body compliance obligations and professional indemnity premiums that they do not wish to take on. Such firms will not have client bank accounts. Providing client money bank account data should therefore be optional.

#### *UTR and confirmation of tax compliance*

76. Provision of the firm's tax reference will help HMRC cross-check the *bone fides* of an agent. We do not see, however, why as part of the enrolment process a tax agent needs to confirm that their own relevant tax obligations have been met. In any event, from a practical aspect each partner of a firm is responsible for his or her own personal tax affairs. It is not the business of partnership management to be involved with individual partners' personal tax affairs, which may include non-practice sources of income. Taking the example of a large partnership of say 50–500 partners, such a request would clearly be disproportionate, burdensome and completely unrealistic – what would happen if, say, one partner had not complied with his tax obligations? This becomes even more problematic if not all partners are located in the UK.
77. It is our firm view that this requirement should not be included in the dataset.

### **Q4 Are there other elements of data that you believe would further substantiate the identity of a tax agent business?**

78. The complexity of the enrolment process needs to be balanced against the need for proper security. The proposed data set is relatively straightforward but may not provide the level of security that HMRC needs to operate self serve. For agents who wish to self serve, it might be reasonable to consider further information, for example:

- whether the agent is registered for VAT;
- whether the agent is registered with an appropriate professional body;
- whether the agent maintains PII cover; and
- what body supervises the agent for anti-money laundering rules and data protection.

***Q5 The enrolment process could be introduced in several ways. How should it be rolled out, and over what timescale/at what point in the year?***

79. HMRC has suggested running pilots for self serve and this approach could also be adopted for enrolment to iron out any problems before it is rolled out nationally. When it is rolled out we recommend that it be introduced at the quietest time of year for agents and in parallel with the other elements of the package. For firms that have predominantly personal tax or unincorporated business clients this will be in February and March following the 31 January filing deadline. On the other hand for firms with corporate clients, January, February and March are likely to be busy as many companies have December year ends and agents assist clients to prepare tax estimates for statutory accounts.
80. Given that the process will involve (according to the document) up to 30,000 firms, this suggests that enrolment should be phased in over, say, a year and that firms may be allowed to enrol at any time within that period.
81. During the transitional period there will need to be parallel running with the old system.

***Q6 Should re-enrolment be an annual requirement for all? If not, how should HMRC ensure that agents provide updates to the information when there are significant changes?***

82. The need for an up-to-date database must be balanced against the administration burdens that result. We believe that there should be an annual requirement for agents to confirm that the standing data of the firm is correct. This could include, for example, the tax agent's address(es) and changes in partners/directors. This could take the form of a prepopulated return similar to those used by Companies House so that where details have not changed an agent merely needs to review the information and confirm it is still accurate.
83. Given that this process will no doubt be electronic, it should also be possible for self serve agents to amend the enrolment standing data directly on an ongoing basis. A process is needed to ensure that practice mergers or acquisitions can be transacted without interruption to the tax affairs of clients affected.

***Q7 In addition to administrative burden savings, what other performance indicators should be used to assess the effectiveness of the proposed enrolment process?***

84. Performance indicators might include:
  - the extent to which the data provided on initial enrolment is amended or augmented subsequently (which might be a result of the wrong data having been requested or provided or in the light of experience of using the data);
  - the number of queries raised by agents of HMRC and HMRC of agents during the initial enrolment window (which might arise owing to poor enrolment instructions);
  - the extent to which the number of calls and letters from agents to HMRC is reduced (as a result of agents being able to access client data); and
  - the reduction in fraud arising from a new secure enrolment process.

## Self serve: online options

### ***Q1 Are the self service options identified those that agents would find most relevant or are there other transactions that should be included?***

85. We think that HMRC has identified the most relevant transactions. In particular: the facility to update client databases; access to update codings (for SA and non SA cases); and access to payment information for clients, including PAYE payment information for employers. We recommend that HMRC should concentrate first on the initial offering and ensure that it works properly before self serve is extended. Once it has been proved to work and the security is satisfactory then it should be extended to other taxes and processes. Access to aspects of VAT, IHT, and Stamp Duty are worthy of further consideration and more generally the ability to track and submit correspondence electronically.
86. As to other transactions, many PAYE codes are incorrect because, for example, P11D data is processed which is not matched with a s 336, ITEPA 2003 claim. In the past the employer would have been attached the claim to the paper form P11D so that HMRC processed it onto the employees' records at the same time as the benefit-in-kind data. Given the move to online filing and the consequent need for employees themselves to submit a claim, it would be helpful if a facility were included to self serve s 336 claims so that codes can take these into account without the need for the taxpayer to submit a claim. We acknowledge that HMRC has made it quick and easy for employers, even one-man companies, to apply online for and obtain dispensations, but agents will be cautious about making declarations on behalf of clients.

### ***Q2 What safeguards should HMRC apply if agents are able to self-authorise to act on behalf of a client?***

87. If self serve is only operated by trusted agents then any safeguards should be light touch. The most appropriate safeguard would be to enable the client to confirm authority to self serve. This might be by HMRC automatically sending the client an email or letter (to an address already provided by the client, not the agent) when a new agent claims they are acting, to which the client can respond, perhaps via a website with the link/address provided in the email/letter, signifying their approval or otherwise. This could be done systematically or on a sample basis.
88. There needs to be a process in place to address incorrect and inappropriate use of self serve. We would expect HMRC to first contact the agent and explain the concerns and what needs to be done to put them right. HMRC would need to reserve the right to remove the agent from self serve (particularly if security concerns were raised which might warrant immediate if temporary suspension) but we would expect this to be used sparingly. Consideration will have to be given to how to apply such a sanction in the case of multi-office/partner agents.
89. HMRC's system should notify an agent if it is replaced by a new agent. If the agent has been incorrectly removed the client should confirm and authorise the new agent.
90. There needs to be a facility to have multiple agents, not only for the same taxpayer but also for the same head of duty for a taxpayer. For example, for employee remuneration a business may have a different agent/adviser needing access to HMRC taxpayer data for, respectively, payroll, income tax on benefits-in-kind, and national insurance contributions.

### ***Q3 Would tax agents welcome the degree of control indicated and does this alter the potential relationship between agents and their clients should errors be made?***

91. We welcome the ability to access clients' data. We understand that access to payment data will come on-stream from April 2012 as a separate exercise. Accessing employer payment

details will be especially welcome because it is not currently possible to guarantee that the complete reference number attached to payments by employers or agents reaches HMRC so that HMRC can allocate the payment to the correct month. We suggest there should be a structured email facility to enable viewers to notify HMRC of necessary reallocations.

92. While in principle we welcome the ability also to self serve alterations to client data, we are concerned that changing code numbers is not as straightforward as taxpayers may believe. This is because of the need for agents to have regard to HMRC standing instructions, covering, for example, the maximum monetary deduction that can be made as a result of underpayments or the restriction that tax deducted as a result of adjustments to a code number should not be more than double the normal deduction (the 50% rule). We also wonder whether changes made by agents with their clients' approval which countermand such standing instructions might subsequently be overruled by HMRC staff who are unaware of the client's approval or automatically by the NPS system, for example, when subsequently processing forms P14 or P11D.
93. Given the potential difficulties and risks about who will be held responsible if things go wrong and the potential impact on PII claims, we anticipate that some agents will prefer to continue with the current arrangements and ask HMRC to make such changes. In order to encourage take-up HMRC will need to consult further with agents on these risk areas and how they can be minimised while ensuring that the integrity of HMRC's IT systems and taxpayer data is protected.
94. Provided that the agent and taxpayer rather than HMRC are in control of the data, and HMRC's computer systems are robust and easy to use so that agents do not waste time when viewing or inputting changes, we do not believe that the ability either to access HMRC's client data or alter it should adversely alter agents' relationships with clients. The additional facility to update information online by agents is, in principle, no different to the current process of an agent sending a letter to HMRC to update information. Agents will have to set up new processes internally for the changes in procedure. HMRC should continue ultimately to be responsible for checking that they are satisfied with the accuracy of information.
95. Use of self serve must be optional so that take-up builds naturally as the business benefits of adopting self serve become compelling – which we believe they will.

***Q4 At what industry level should security requirements be set for office and IT processes?***

96. As we said earlier IT security is essential if self serve is to work and HMRC should work with the professional bodies and others to set a minimum standard needed to access self serve.
97. Larger firms may want to restrict the availability of self serve to different categories of staff, for example to restrict it to certain staff dealing with specific types of work (eg payroll, SA, VAT) or where they have more than one office. The ability of firms' own IT to interface with that of HMRC's would have a bearing on promoting good security.

***Q5 Would you anticipate that your professional body can monitor/check the IT security and other requirements for HMRC to allow self service as part of the professional body assurance processes for members?***

98. Members' feedback indicates that they would prefer for this to be monitored through ICAEW Practice Assurance processes of annual returns and periodic visits. However, given that HMRC has not yet set out the detailed requirements, we are not at this stage able to comment on whether ICAEW's Practice Assurance processes would meet them. We have, however, had some preliminary discussions with HMRC staff about our Practice Assurance scheme and are very happy to explore this possible approach further once we have a better

idea of the likely requirements. Where professional bodies have similar assurance arrangements, it would make sense to adopt a coordinated approach,

99. We are concerned as to who will monitor unaffiliated agents. We would not want to see extra compliance costs being imposed on affiliated agents with unaffiliated agents remaining unmonitored and therefore not exposed to such costs. We therefore think that HMRC will need to set up an equivalent process to monitor unaffiliated agents or restrict their ability to access self serve.

***Q6 If you think it necessary or appropriate to restrict self serve access, what criteria, safeguards and transitional arrangements should be applied?***

100. As noted earlier, IT security is essential. In order to protect the integrity of its computer systems, we think it would be reasonable for HMRC to reserve the right to carry out its own checks on agents' computer systems. However, we would only expect this to be necessary in cases where genuine concerns have arisen and there is a real threat to the tax system.
101. We think it is reasonable for HMRC to restrict self serve to agents who meet appropriate benchmarks. One possible approach would be to rely on agent firms which are affiliated to, and are therefore monitored by, professional bodies who meet agreed standards. This should provide a level of assurance that the member firms which have access to self serve, and therefore those who work for them, will be subject to professional conduct rules and guidelines and will have in place appropriate IT security. In respect of unaffiliated agents, they would only be allowed access if they obtained an independent certificate of compliance.

***Q7 Are there any other aspects of the proposed self serve pilot that you think should be monitored or evaluated?***

102. It should run in parallel to the current system.

## **Understanding an agent's engagement with HMRC**

***Q1 What client and agent performance indicators would you suggest are used to inform HMRC's 'agent view' and what should an acceptable level of performance be in each case?***

103. In principle we support improving the performance of agents doing poor work. As part of its management of the tax system, HMRC should be monitoring the performance of poor agents, but this function appears to have been rather lost with the move away from tax districts and local knowledge.
104. HMRC should provide a channel to report poor service and link with professional bodies where applicable to see if similar reports have been received.
105. Concerns have been expressed about HMRC's ability to form an accurate view of an agent's performance, and that actions may be taken based on insufficient and unreliable information, and about the difficulty in identifying genuinely useful performance indicators. It is absolutely vital that HMRC consults in detail on any such measures to ensure they are regarded as reasonable and therefore have the support of the tax agent community.
106. We would be concerned if HMRC's agent view were based on the compliance record of clients, not least because it will be counterproductive if agents no longer acted or refused to take on clients with a potentially poor compliance record – that will merely drive those clients to the edges or out of the tax system altogether.
107. More generally, we consider that HMRC needs to build a picture of the agent and no one factor should flag an agent as poor. In order to ensure that HMRC adopts a transparent

approach to agent performance, HMRC should consider publishing performance indicator data. This should help to allay any concerns of competent agents that HMRC's approach will be based on a reasonable set of measures as mentioned in paragraph 105 above. We are assuming for these purposes that poor performance does not involve dishonest conduct – this is being dealt with separately and we agree that the tax system has no place for dishonest agents.

**Q2 What would be appropriate safeguards, and how should an agent be able to challenge HMRC's views?**

108. If HMRC is concerned about the performance of an agent, then it should as a first step approach the agent and give them an opportunity to explain why the firm's performance indicators appear to be below what would be expected.
109. HMRC should continue to work with professional bodies, so together both HMRC and professional bodies can ensure that standards are maintained in a spirit of mutual cooperation, with each understanding the stance and approach of the other.
110. We believe that HMRC should have simple and easy to use safeguards in place to enable agents to challenge HMRC's assessment of them. There needs to be a process in place for agents to question and make representations to HMRC if they consider that they have been incorrectly targeted. All powers should be enshrined in the law with full rights of appeal. The procedures by which HMRC interacts with agents and the circumstances in which it will take sanctions against an agent should be set out in a Code of Practice.
111. Given that removing an agent's ability to act for clients would destroy the business: such a power should only be used *in extremis*. Any HMRC decision to refuse to deal with an agent should be first considered by an independent body, with the right of appeal to the Tribunal.

**Q3 Would it be appropriate for HMRC to seek confirmation that a tax agent firm should hold and maintain a formal qualification (through individual members of staff) before allowing them to act in relation to tax matters?**

112. We believe the more important question is whether the tax agent is registered with a professional body, not necessarily whether each member of staff holds a formal qualification in tax. For example, if a firm is registered with ICAEW, a minimum proportion of the partners must be Chartered Accountants and the firm and its staff will be required to meet certain levels of competence by reason of the registration. The use of the term Chartered Accountant is restricted to firms registered with ICAEW, ICAI and ICAS.
113. The existence of unqualified tax agents means that there is not a level playing field for all agents but instead a two-tier system where unregulated agents do not have to maintain professional standards or prove academic qualifications. We appreciate that some unqualified agents maintain high professional standards, but even then this compliance is optional rather than obligatory, and there is no independent oversight or sanctions.
114. It is also important to recognise that although someone may hold an appropriate professional qualification in tax, the very nature of tax is that it is always changing. Holding a formal qualification is therefore only the start – to keep knowledge up-to-date an agent must undertake CPD and members of ICAEW have to confirm on an annual basis that they have done so.
115. Ultimately the extent to which tax agents should hold professional qualifications is a policy question for Government, based on the risk that unqualified agents pose as compared to qualified agents. Given that HMRC does not appear to hold management information on agent performance, this question can only be addressed in detail as HMRC starts to develop its agent view.



116. If at some stage a decision is taken to restrict the activities of unqualified tax agents, then Government will also need to decide what, if any, transitional arrangements are appropriate. One approach would be for HMRC to set tests for unqualified or unaffiliated tax agents, as happens currently in the US where a test is set by the Internal Revenue Service. However, this would be a major development and would result in considerable costs for HMRC as it sought to, in effect, duplicate what the professional bodies already do. Such a step would almost amount to regulation, something that HMRC has stated it does not wish to do.

***Q4 Should HMRC recognise a less onerous standard of qualification with a proportionately reduced ability to transact with HMRC e.g. a recognised classification of 'bookkeeper' to enable the holder to submit self assessment returns but not access a self serve facility?***

117. In effect this would be a two-tier system similar to the suggestions that we have made previously. Such an approach has some merit although the difficulty in monitoring such a system could be considerable and may merely confuse the public. It would perhaps be a better approach to ensure that all agents were encouraged to meet the higher standards.
118. As for the example quoted - given the complexity of the UK tax system, that underpayments can be collected via PAYE or under SA for the same taxpayer, our lack of confidence that NPS problems have yet been resolved, and that the majority of UK tax returns are completed by taxpayers whose affairs are not straightforward and so need further advice, we cannot see the point in having a separate qualification enabling agents only to submit tax returns.

***Q5 What would be an appropriate and reasonable period of time for currently unqualified tax agents to obtain a relevant tax qualification and what should the transitional arrangements be?***

119. If the profession of tax agent were to become an all-qualified profession, we suggest a transitional period of, say, five years. We believe that this would be a reasonable period of time to allow give people time to study and pass the exams of one of the professional bodies that sets tax exams that meet the necessary standards.

***Q6 What advantages or disadvantages would membership of a recognised institute or body provide for HMRC and customers/clients?***

120. The advantage of membership of a recognised body is that it should provide HMRC and clients with the assurance that the agent has attained and maintains a certain level of technical competence and acts in line with the standards expected of that body for ethics, competence, behaviour, governance and mandatory PII as well as a framework for resolving disputes. In addition to this the ICAEW Practice Assurance scheme oversees the work of members in practice to ensure that standards of quality are maintained.
121. Professional bodies' procedures for supporting and, where necessary, disciplining members ensure that those who do not meet the standards expected of them are helped, reprimanded and in extreme cases removed from membership.
122. This all gives confidence to the public about the quality of work and advice of ICAEW Chartered Accountants, which in turn promotes public confidence in the tax profession.

***Q7 What action/sanctions could be applied to those who act unprofessionally other than HMRC refusing to deal with them?***

123. Action/sanctions that might be applied to those agents who act unprofessionally will depend upon the nature and gravity of the problem. This could extend from agents being given some help and support (either from HMRC or from their professional bodies, for those who belong to one), through to HMRC refusing to allow the agent to access self serve and, as a final

sanction, refusing to deal at all with the agent concerned and reporting qualified agents to their respective professional bodies.

124. As we have mentioned on previous occasions, as a public interest body with a duty to promote and uphold high standards among our members, we should welcome discussions about how HMRC could make better use of the 'gateway' in ss 18–20, Customs and Revenue Act 2005 to address poor work. If there remain concerns about whether the legislation is defective, then we would be happy to discuss how it should be amended to achieve its purpose.
125. Under the Working with Agents pilot initiative announced on Budget Day 2000 following discussions between the then Inland Revenue and professional bodies including ICAEW, a procedure was identified to address cases where the Inland Revenue was concerned about errors which were not so serious as to warrant a report to the agent's professional body disciplinary section but nevertheless warranted some action. The Inland Revenue was to recommend to the member that they consult a nominated support member of their professional body, the Inland Revenue having also alerted the support member. Support members, who have a duty of confidentiality to members so are not allowed to make reports to the disciplinary section of their respective Institutes, would then provide counsel and help to the member to help them improve.
126. Very few reports were made under this scheme, but we understand it was considered a success by HMRC as most agents who were approached about poor performance voluntarily improved their work without the need for a support member to become involved. It also confirms that the possible escalation of the concerns – even confidentially through a support member – was a sufficient deterrent to a member of a professional body to encourage them to make improvements themselves. This experience suggests that more could be done to address poor work through dialogue and discussion, with the agent given time to rectify problems and improve performance. ICAEW would be happy to reconsider this initiative and other approaches that encourage and help members voluntarily to improve their performance.
127. In more serious cases, or if the above approach did not work, HMRC could consider a sanction such as removing the ability of the agent to self serve. For more serious cases still, where an agent is a member of a professional body HMRC might want to consider making a formal complaint. Where an agent is unaffiliated, there may need to be an independent disciplinary board. In extreme cases HMRC may also refuse to deal with a tax agent.

***Q8 In the most serious cases how should HMRC best address their responsibility to take action against an agent by refusing to deal with them? Should that decision be informed by an independent panel?***

128. We agree with the proposal that an independent panel should make or at least inform HMRC in their making the final decision to remove an agent. Such a panel should include representatives of professional bodies, so that the agent is judged by their peers.
129. HMRC's decision to refuse to deal with an agent should be subject to appeal to the Tax Tribunal.

## **Taxes Impact Assessment**

***Q1 What changes do you expect to make as a result of the proposals in this consultation document?***

130. Given that most professional firms will have IT and practice management systems in place, other than the impact of enrolling any extra impact on firms should be manageable. Tax

agents will need to reconsider their internal processes and procedures in the light of these developments and in particular what extra IT security requirements may be needed. Potential cost savings of self serve would be undermined if these costs were too high and if HMRC then reviewed and/or overrode any changes made by the agent.

131. The important proviso is, however, that HMRC IT systems work efficiently and accurately to effect the changes, for example to enable viewing of code numbers and payments and for self serve of changes to employee codes.
132. If the systems work effectively there should in the long term be efficiency savings for both agents and HMRC as the costs of dealing with inefficiencies, delays and correcting mistakes should be reduced.
133. There will be an impact on those whose IT requires upgrading, on unaffiliated or unqualified agents who currently do not keep themselves up to date nor meet high levels of professional standards nor hold PII, and on the few members of professional bodies whose level of competence is below standard.

***Q2 Do you have any views on the potential 'one-off' costs involved in making the changes?***

134. As mentioned above, the one-off costs for ICAEW members will be re-enrolment, any changes to systems the firm would have to introduce to ensure a secure self serve process and possibly changes to existing client engagement letters.

***Q3 What are your views on the anticipated 'ongoing' costs of the proposed changes and the impact of this on those you represent?***

135. As set out above, we consider that on an ongoing basis there should be efficiency savings for both ICAEW members and HMRC provided of course that the HMRC IT systems work accurately and efficiently.
136. There remain concerns from some of our members that HMRC is passing responsibility to agents and that any extra costs would have to be borne by the agent. We understand these concerns but on the basis that agents would have to do the work in any event and that HMRC's systems work efficiently and accurately, we would expect that processing costs ought not to be any greater than those which would be incurred in any event under existing systems, and that the scope for efficiency savings thereafter could be considerable.

***Q4 Do you consider that these proposals would have a disproportionate impact on smaller agent businesses, for example, those with less than 20 employees? How could these impacts be addressed?***

137. Smaller firms will not be able to reap economies of scale to the extent of bigger firms. Smaller agents are therefore likely to face proportionately higher implementation costs. However, there is nothing new with this – the key requirement will be for HMRC to ensure that the burdens on small firms are proportionate and that the security costs to access self serve are reasonable.
138. It is also possible that some firms may not wish to adopt self serve and instead will decide to communicate with HMRC through existing channels. We would welcome confirmation that HMRC has no plans to make self serve compulsory in the foreseeable future. It is important that HMRC improves service standards for existing communication channels such as post and telephone regardless of whether self serve is adopted.

**Q5 Do you consider that these proposals would have a disproportionate impact on unqualified or unaffiliated agents? How could these impacts be addressed?**

139. The proposals are likely to have an impact but they are unlikely to be disproportionate given the additional costs that members of a firm affiliated to a professional body are obliged to incur. Whether it will result in a more level playing field between qualified and unqualified agents will depend upon the precise proposals adopted and what transitional arrangements are put in place. Ultimately, these are policy questions for the Government to decide.

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