

Enhancing consumer protection reducing regulatory restrictions: will-writing, probate and estate administration activities

1 Introduction

- 1.1 The Chartered Institute of Taxation (CIOT) and the Association of Taxation Technicians (ATT) submit their comments in response to some aspects of the above consultation paper.
- 1.2 Our members are bound by an exacting professional code of conduct. As well as passing challenging technical exams our members must also pass a fit and proper test. Members in practice are required to hold Professional Indemnity Insurance and to certify annually that they have undertaken 90 hours (CIOT) or 45 hours (ATT) of relevant Continuing Professional Development. Failure to comply with our ethical rules may result in disciplinary action by the independent disciplinary body, The Taxation Disciplinary Board Ltd (TDB). Further details about the CIOT, ATT and TDB can be found at www.tax.org.uk, www.att.org.uk and www.tax-board.org.uk respectively.

2 Partial regulation of tax services

- 2.1 We do not express a view on the merits or otherwise of regulation of will writing and probate as, generally, we do not believe that this is work undertaken by our members unless they are also legally qualified. However our members may, possibly as an inadvertent consequence of the proposals, be drawn in to the scope of the proposed regulation. As tax advisers our members do undertake some of the suggested ancillary activities, namely 'preparing the relevant HMRC papers (where necessary), preparing estate accounts and providing advice about the administration of the estate' (paragraph 169) and 'providing advice related to the preparation of the will (and subsequent amendments) such as advice about tax' (paragraph 168). If implemented in its current form this would result in the regulation of some elements of taxation services. That we consider is a separate debate and one which is being addressed in large part by HM Revenue and Customs' (HMRC) Tax Agent Strategy project. The CIOT and ATT are closely involved in those discussions.
- 2.2 It would be inconsistent and confusing to have certain taxes and tax services subject to regulation and some not, eg advice on IHT given strategically, advice on IHT where client has not revealed he is preparing a will, and advice on IHT in conjunction with will preparation, which of these would be regulated? Advice on the tax consequences of a

will, estate accounts and tax returns do not constitute the high risk areas identified in the consultation document against which these proposals are intended to guard. They are in effect peripheral to the main service of will writing, probate and estate administration. The main areas of risk appear to be defective will drafting and misuse or misappropriation of estate assets.

- 2.3 The majority of our members do not handle client money nor are they involved in administering and distributing the assets of an estate. In such cases the opportunities for financial wrongdoing are negligible. In reality, tax advisers provide tax expertise and technical support to will writers, probate handlers and estate administrators and their clients. To the extent that members and tax advisers write wills, apply for probate and administer estates it is proper that they should be treated in the same way as any other service provider. However we are unconvinced of the need for regulation in the peripheral areas of IHT advice, estate returns and accounts.

3 Impact on the consumer

- 3.1 It is inevitable that the cost of regulation will result in higher charges for the service provider and the consumer in turn. It is therefore advisable to ensure that only the essential elements of this work are regulated. It is not the stated intention of these proposals to restrict public access to good quality advice but that is a real possibility if the tax and accounting aspects discussed above are included.
- 3.2 It is not clear who would regulate tax advisers providing these services. Potentially, in the absence of a suitable regulator, our members could be prohibited from carrying out this work. This would deny the public access to technically qualified and competent advisers and would also impact on their fee earning capacity. Family members turn to the deceased's tax adviser for advice on dealings with HMRC because they know the tax adviser has a detailed understanding of the client's financial affairs and they trust him/her.

4 Regulation of principal provider of services to cover the taxation ancillary services offered to client by tax adviser

- 4.1 If ultimately it is decided that estate tax returns and accounts and IHT advice should be regulated we suggest that the aspects of the work carried out by the tax adviser should not be covered by separate regulation.
- 4.2 In many instances where our members are involved in this work, it will be on behalf of the solicitor who is drafting the will, or who requires assistance with the forms which need to be completed to obtain Probate, including determining the final tax position to the date of death, or who wants help with the preparation of the estate accounts and determining the income due to the beneficiaries and when it arises for tax purposes. In all these situations it seems to us that it is the solicitor who needs to be the one regulated as he is the principal who is 'buying in' the specialist tax services which are provided by our members.
- 4.3 Further, where the tax adviser is only providing tax ancillary services without any connection to will writing or estate administration this should not be regarded as a reserved activity and should fall outside regulation. For example, a client who is handling the administration of a family member's estate themselves but seeks

assistance with the tax returns for the period of administration.

5 CIOT and ATT as Anti Money Laundering (AML) Supervisory Authority

- 5.1 Unlike will writing, the provision of tax advice comes within the regulated sector under the Money Laundering Regulations 2007. All tax advisers must be supervised for compliance with the AML regulations. The CIOT and ATT are HM Treasury appointed Anti Money Laundering Supervisory Authorities. In this role we supervise our members taking a risk based approach as encouraged by the Treasury. We observe the requirements of the Better Regulation Regulators Compliance Code. Members are aware that tax crimes (tax evasion, deliberate intent to underpay tax, etc) and misappropriation of client funds constitute money laundering and are a reportable offence under the legislation with substantial fines and custodial sentences for those convicted. This offers an additional layer of supervision over and above the usual requirements of professional body membership. For those tax advisers who are not members of a professional body HMRC acts as Supervisor.
- 5.2 Should it be decided that the definition of ancillary activities remains unchanged and tax advisers must be regulated, we strongly recommend that supervision be along the lines of AML Supervision. This is risk based with a broadly consistent approach across the tax and accounting sector. All Supervisors have to supply a detailed report annually to HM Treasury giving details, *inter alia*, of how they supervise members, what enforcement steps are taken and what support and training is given to supervised members. We would be happy to discuss this in more detail if requested.
- 5.3 We recognise the concern about compensation for consumers. As set out in the consultation document, the main risks lie in inadequate will drafting and improper retention of client money during the administration of the estate. Providers of tax advice and tax compliance services would not typically be engaged in these activities. Professional Indemnity Insurance (PII) should provide adequate cover for the services provided by tax advisers and we understand that most PII claims are settled without lengthy recourse to the courts.

6 Appointments in a personal capacity

- 6.1 We note at paragraph 183 that the LSB supports the principle of individuals in a private capacity being able to provide free advice to help others. We welcome this. The CIOT and ATT have a strong charitable ethos and are closely involved in the work of the Low Income Tax Reform Group and Tax Help for Older People. Whatever the outcome is as to if and how regulation is introduced, it would be critical that their work supporting vulnerable members of society could continue without the need for regulation.

7 Summary

- 7.1 To summarise our position is as follows:

- 'Preparing the relevant HMRC papers (where necessary), preparing estate accounts and providing advice about the administration of the estate' and

'providing advice related to the preparation of the will (and subsequent amendments) such as advice about tax' should be removed from reserved ancillary activities for the reasons given above. These services are not the high risk activities the consultation document is seeking to address. Further, as it stands, this would result in splintering the tax profession between regulated and unregulated areas. Regulation of the tax profession is a separate debate.

- If the tax services are to remain within ancillary activities it is the principal who is providing the will writing or estate administration services who should be regulated rather than the ancillary specialist service provider.
- If tax advisers providing ancillary services are to be regulated directly (rather than the principal provider) we recommend the AML supervision approach as discussed in 5 above.

7.2 We are happy to discuss any aspects of this submission or provide any additional information you might require. Please do not hesitate to contact Heather Brehcist (hbrehcist@ciot.org.uk; 07833 259356) or John Kimmer (jkimmer@att.org.uk; 01903 821066).



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The Chartered Institute of Taxation

The Chartered Institute of Taxation (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.

The CIOT's comments and recommendations on tax issues are made solely in order to achieve its primary purpose: it is politically neutral in its work. The CIOT will seek to draw on its members' experience in private practice, Government, commerce and industry and academia to argue and explain how public policy objectives (to the extent that these are clearly stated or can be discerned) can most effectively be achieved.

The CIOT's 16,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA'.

The Association of Taxation Technicians

Founded in 1989, the Association of Taxation Technicians (ATT) is a charity and the leading professional body for those providing UK tax compliance services and related activities. Our

members are qualified by examination and practical experience to assist individuals and businesses in complying with their tax obligations.

The primary objective of the Association is to promote education and the study of administration and practice of taxation. One of the key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Those who meet the membership requirements have their qualification recognised by use of the title of 'Taxation Technician' and the designatory letters 'ATT'.

The Association has recently admitted its 7,000th member and now has over 10,900 Fellows, members and registered students.