

Raising standards in the tax advice market: professional indemnity insurance and defining tax advice - Consultation

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UK Finance is the collective voice for the banking and finance industry.

Representing around 300 firms across the industry, we act to enhance competitiveness, support customers, and facilitate innovation. Our members include businesses that are large and small, national and regional, corporate and mutual, retail and wholesale.

General Comments

1. We welcome the opportunity to respond to HM Revenue & Customs' ('HMRC') 'Raising standards in the tax advice market: professional indemnity insurance and defining tax advice - Consultation' ('the Consultation').
2. We are not responding to the individual question of the Consultation in detail as we do not believe that they are addressed to the core UK Finance membership. However, we would like to comment on the potentially inadvertent impact of the proposals on banks and other Financial Institutions ('FIs'). These comments support those made by members in a stakeholder outreach held earlier in the month.

Chapter 4: Mandatory professional indemnity insurance for tax advisers

3. We think there are several circumstances where exceptions should be made for firms which are already subject to regulatory supervision or other requirements to protect their customers. Requiring such firms to hold professional indemnity insurance would result in further costs which may make certain services which are beneficial for the public uncommercial and ultimately may not provide any additional protection.
4. We understand that HMRC have already received representations regarding allowing some types of 'tax advisers' to self-insure rather than hold PII. For instance, Financial Conduct Authority ('FCA') rules provide for firms (such as banks) which are deemed to have sufficient regulatory capital to be exempt from needing to hold PII, whereas other FCA-regulated firms (e.g. some Independent Financial Advisers) are required to hold it. The same could potentially apply to businesses regulated by other bodies such as the Solicitors Regulatory Authority ('SRA') or the Institute of Chartered Accounts in England and Wales ('ICAEW').
5. We are supportive of these representations and would suggest that HMRC consider following this approach. To this end, we would recommend engagement with the FCA and other similar organisations to better understand their approach to PII.

6. Additionally, we would note that there are other factors which would support the case for certain businesses being exempted from the requirement. A UK bank, for example, would:
 - a) Be regulated by the FCA and the Prudential Regulatory Authority;
 - b) Use appropriately trained and qualified staff;
 - c) Be required by the regulatory authority to have risk management processes in place;
 - d) Likely committed to complying with the Code of Practice on Taxation for Banks; and,
 - e) Have a vested interest in guarding their reputation against allegations poor or dishonest conduct including the provision of advice.

Chapter 5: Defining tax advice

7. We believe that there is a risk that the proposal in the Consultation to introduce a potentially very wide-ranging definition of tax advice might end up including the activities of some firms (and their employees) that do not appear to be within the main areas of concern called out in this consultation.
8. For example, this may be applicable to the activities of FCA-regulated financial advisers working for banks and other FIs. These financial advisers may not be currently required (under FCA rules) to hold mandatory PII cover, but any customers receiving FCA-regulated advice from such firms or advisers would usually have recourse to the Financial Ombudsman Service ('FOS') if any complaint or claim made to the firm or adviser was not resolved to the customer's satisfaction.
9. As currently drafted, a banker telling a client to do something as basic as use their annual ISA allowance could be viewed as 'tax advice' which would require them to take out PII. This is a nudge service that the FCA expects regulated bankers to provide to protect retail clients, but if PII were required, the likely outcome would be that most bankers would cease to do this as PII would not be commercially viable. Advising a client to use their ISA allowance should not in itself be sufficient to push an adviser into being viewed as giving 'tax advice' as it is no more than what is available on the Government's Money Advice Service website.
10. We believe that it is important to distinguish between 'tax advice' and 'tax guidance'. As part of that it is also important to distinguish between 'tax guidance' and mere 'tax information'.
11. Depending on the outcome of the Consultation, there may be a risk that this definition may end up capturing other activities (over and above those of FCA-regulated financial advisers) undertaken by FCA-regulated FIs such as banks. We set out below three examples of common activities which we believe should constitute only providing generic information or possibly guidance, but which under the Consultation proposals might be classed as providing advice:
 - a) It is common for banks to issue a consolidated tax certificate or 'tax pack' to a customer giving a schedule of income paid on an investment portfolio during the previous tax year to assist the customer in completing their own self-assessment return.

- b) A bank may pay compensatory interest to a customer (e.g. as part of a redress payment) that has had a withholding tax deduction applied, and when explaining this to the customer (e.g. in a letter sending the payment) mentions to the customer that they may have further tax to pay if they are a higher rate taxpayer, or may be able to reclaim the withholding tax already deducted if they are a non-taxpayer and/or the interest is within their Personal Savings Allowance or other tax allowances.
 - c) FIs may promote generic investments such as mutual funds or structured products that come with a standard termsheet or brochure provided by a third party which includes a description of the expected tax treatment for UK resident investors (e.g. fund distributions are taxed as interest or dividends, while gains on maturity are expected to be subject to Capital Gains Tax). We would view this as generic tax commentary or information, not 'tax advice'.
12. Some FIs are also increasingly providing digital journeys or tax software to aid their retail and business customers to prepare and/or submit tax returns. Making Tax Digital relies on this partnership and provides an opportunity to improve accuracy and compliance. Typically, these services would involve an interface with HMRC which is then subject to rigorous control requirements, testing and approval by HMRC. Including these types of services within the definition of tax advice may provide a barrier to FIs wishing to continue to offer these services or to start offering them in the future.
13. Given the above points, we believe that it might be difficult for HMRC to devise a legal definition of 'tax advice' that includes activities done by some types of individuals, firms, or organisations but not others. We understand, based on our discussions on the stakeholder Teams call, that it is more likely that the definition of tax advice will be generic and possibly apply to all, but that certain types of advisers or firms will then be exempted from the requirements to hold PII even though they might be deemed to be giving tax advice as defined. Please see paragraphs 4 and 5 above for our suggested approach to this.

If you have any questions relating to this response, please contact Mark Schofield (mark.schofield@ukfinance.org.uk)

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