

Consultation response

RAISING STANDARDS IN THE TAX ADVICE MARKET

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INTRODUCTION

ForrestBrown is a specialist R&D tax credit consultancy. Formed in 2013 and regulated by the Chartered Institute of Taxation since inception, professional standards have always been at the heart of our culture. We are passionate about the transformative power of R&D tax credits and about our role in providing clear and accurate professional advice to our clients.

Since R&D tax credits were introduced in 2000, there have been positive and negative developments in advisory services. More businesses are benefiting from the incentive, with an increase in awareness across all sectors. However, the lucrative nature of the incentive has drawn 'advisers' who are motivated solely by financial gain, not their clients' best interests.

ForrestBrown instigated the CIOT/ATT professional standards working group, which drafted the recently published topical guidance on the application of PCRT to R&D tax advice. We believe that reputable advisers, alongside professional bodies and HMRC, have an active role to play in raising awareness of professional standards and protecting more businesses from poor advice.

We support measures which create or improve simplicity, certainty and value for money for genuine UK innovative businesses. We welcome this consultation as an excellent example of transparency and collaboration between agents, professional bodies and HMRC.

We recognise that this consultation covers professional standards across the whole tax services market. The principles of many of our recommendations are transferrable. However, as a specialist R&D tax credit consultancy, we pose these recommendations from the perspective of our knowledge and experience regarding the R&D tax advice market only.

SUMMARY OF RECOMMENDATIONS

- 1 A more detailed HMRC standard for agents, applicable to professional agents (including clarification of the meaning of 'professional agents' and the additional expectations where agents charge for their advice).
- 2 A significant awareness campaign supported by HMRC and the professional bodies for PCRT and the safeguards it affords clients of regulated firms.
- 3 Greater oversight and use of disciplinary measures by professional bodies for breaches of the standard for agents or PCRT.
- 4 Requirement for professional firms employing members of professional bodies to take reasonable steps to facilitate their compliance with PCRT.
- 5 Define the characteristics of a bad adviser (and do not rely on over-simplifications) to educate taxpayers.
- 6 Greater and more consistent use of available disciplinary procedures by HMRC for agents found to have breached the standard for agents.
- 7 Publication by HMRC of case studies involving breaches of the standard for agents and actions taken.
- 8 Review the purpose and membership of the RDCC to ensure that non-compliance with standards by its members is addressed.
- 9 Improve HMRC's data gathering processes for better monitoring of agent behaviour.
- 10 Introduction of a formal process for a company to authorise an R&D tax agent alongside their main corporation tax agent.

DETAILED COMMENTARY

Question about the HMRC Standard for Agents

1. Is the HMRC standard for agents comprehensive enough to provide a baseline standard for all tax advisers?

In principle, the standard for agents represents a positive recognition of both the value that agents can bring to the taxpayer/HMRC relationship, and to the additional safeguards which the professional bodies introduce for taxpayers who deal with regulated agents.

However, we do not feel that the HMRC standard for agents provides a comprehensive baseline standard for all tax advisers. The [PCRT](#) provides more comprehensive guidance, yet both are poorly publicised and enforced. Most companies who receive poor tax advice have not set out to engage a spurious adviser, they simply do not know the difference and have entered a professional relationship with no knowledge of the risks.

Many companies assume there are industry safeguards in place; that HMRC would not allow an agent to take such control over a client's tax affairs without some regulation or oversight. While aggressive tax planning and fraud will continue to be an issue which must be addressed, many errors in tax filings could be corrected by taking more accountability for protecting honest taxpayers from spurious advice. This consultation is very welcome for that reason.

There is a clear differentiation between those who may help another person with their tax filings and those who make a living providing professional tax advice. There should be a place for the former group to operate largely outside of regulation. However, any individual or firm who solicits work and gets paid for the provision of tax advice or services should be subject to some oversight and regulation (these would be the "professional agents"). The HMRC standard is the minimum expectation for those advisers, but it isn't fit for purpose if it is not enforced.

Reputable agents will seek out guidance and design their approach to fit within these good practices. Spurious agents will actively ignore such guidance, which necessitates a disciplinary process.

A further group of agents make errors through a lack of proactive adherence to standards. The PCRT, for example, requires a general practitioner to consider whether he or she is competent to provide a specific specialist service. This standard is often not met. However it is likely that this group would respond to greater awareness of the standards, rather than requiring disciplinary action.

We would therefore categorise professional agents as follows:

- Actively complying with professional standards ("actively compliant"),
- Qualified, but passive approach to professional standards ("passively non-compliant"),
- Aware of standards but chooses not to adhere to them ("actively non-compliant").

Active non-compliance is the most challenging behaviour to address. This behaviour can be likened to aggressive tax planning promoters, who actively seek to exploit loopholes, and as each is closed, continue looking for new

ways to exploit the law. Any measures enacted to limit the activities of this group are likely to be met with significant attempts to circumvent the rules. However, by raising awareness of the standard for agents and PCRT among consumers of tax services, it will make the market a more challenging one for these firms to operate in.

Passive non-compliance should be addressed through awareness-raising. These agents are likely to respond positively to greater awareness of their obligations and will not want to risk disciplinary procedures.

It would be tempting to suggest positive action for actively compliant agents, such as some form of approval or accreditation from HMRC, however, this approach would call into question the motivations of such an agent. Active compliance with standards should be the natural result of a culture which seeks to provide valued advice to clients. An approval or accreditation system would also require significant administration and would be vulnerable to misuse.

Questions about the tax advice and services market

2. What clear distinction can be drawn between tax advice and tax services?

There is no distinction in terms of the standards expected. 'Tax services' typically refers to activities such as filing of returns and other compliance functions, whereas 'tax advice' tends to support a client in taking actions or entering into a transaction. However, it is wrong to think that tax services require a lower standard of professional competence or behaviour. Often those providing tax services need to provide tax advice within these services in order to fulfil their engagements. It would not be advisable to make this distinction, other than to clarify that both groups should maintain professional standards in carrying out their work.

The [CIOT](#) professional standards working group, which produced [topical guidance](#) on the application of PCRT to R&D advisers has defined R&D tax advice as: 'Providing any service that contributes directly or indirectly to the preparation, submission, agreement of and advice on any or all aspects of a company's research & development claim.'

The aim of this definition was to be as broad as possible, specifically because some actively non-compliant advisers do not consider themselves to be providing tax advice because they do not deal specifically with the submission of the tax return. These semantics allow them to acknowledge the standards but work outside of them. Any distinction between different tax services that suggests a different standard could apply would not be beneficial.

A more useful distinction may be between general tax services, and specialist tax services. This distinction is dealt with in the PCRT. Generalist practitioners require a broad knowledge and level of competence across all aspects of taxation. It is important that general practitioners stay up to date with changes to tax legislation in order to identify potential implications for their clients. These implications themselves may require more detailed, specialist advice, which is outside of the competence of the general practitioner. The PCRT envisages the general practitioner engaging a reputable specialist at this point.

This logic works in reverse as well. The specialist (for example) R&D tax adviser, when asked a question about capital gains tax or taxation of IP by their client, should not seek to advise where this is outside of their competence as an adviser.

We know that HMRC has experienced poor advice provided by regulated professionals. In these instances, it is likely that this has resulted from passive non-compliance by general practitioners. Greater awareness of their

obligations under PCRT should be sufficient to address this behaviour and save HMRC the time spent on compliance activities.

We are also aware that HMRC has identified significant issues with specialist R&D agents. Many of these agents will fall into the actively non-compliant category, and therefore awareness-raising may have little impact on behaviour. However, it should be possible to assess specialist advisers in respect of professional competence because R&D specialists exclusively deal with HMRC's R&D specialists.

If HMRC were able to centralise quality data on agents, it should quickly become apparent where there are clear and consistent errors from certain advisers. HMRC already has powers to refuse to deal with such advisers. However, more could be done to protect other taxpayers from being affected by the same agents.

In Figure 3 in the consultation document, specialist tax advisers are notably not represented. This misses a substantial important section of the market who provide specialist tax advice. From corporate tax specialists, VAT, employment tax, dispute resolution firms etc. ForrestBrown aligns itself with this group of firms and the fact that this group are not included in the consultation potentially suggests that there is an existing misconception that such firms are spurious by their nature, tarnished by the type of firm which promotes aggressive tax planning schemes.

3. From your professional point of view, how do standards differ between different types of tax advice? Could you provide examples?

The preparation of an R&D tax credit claim and any associated advice relating to this area of tax could include professionals or companies working in one of several capacities. This includes:

- **General practitioners:** firms who offer a range of accountancy and tax services and would include tax advice or compliance services for R&D claims.

General practitioners tend to be members of professional bodies, however standards within this group will depend upon the firm's approach and culture. The group includes both actively compliant and passively non-compliant agents.

Actively compliant agents would generally either outsource R&D tax advice to a trusted partner or invest in specialist training to ensure that claims are handled only by those with relevant expertise. Some larger practices will have dedicated specialist teams within them.

Within this group, we have also seen numerous examples of general practice accountants submitting claims and getting things wrong for a few reasons. From poor or no support to the company in identifying legitimate R&D activities, to not understanding the rules for cost categories, to incorrect calculation of the tax position for the claim.

- **R&D tax specialists:** firms who specialise in R&D tax advice.

Tax specialists are firms which limit their advice to specific areas of taxation. R&D tax specialists focus only on the area of R&D tax reliefs. It is important to note that we include in this group member firms and firms who employ members of professional bodies, likely the CIOT, with both being subject to PCRT oversight.

Good R&D tax specialists will be actively compliant, with a good awareness of PCRT and processes embedded into the firm's

practices. These practices include strong specialist training and oversight to maintain high technical competence.

Bad practice could be as a result of active or passive non-compliance. Active non-compliance includes firms who take the view that, because they do not actually file the claim documents with HMRC, they are somehow not providing advice on the company's tax affairs (which is wrong). Passive non-compliance could be reflected in firms which employ only a small number of qualified staff, where the firm does not properly follow PCRT guidance. Not all clients are serviced or overseen by qualified personnel, although marketing literature often claims that they will be. Such firms also rarely have proper AML and data policies, which are a requirement of PCRT.

- **Boutique R&D firms:** unregulated firms who provide R&D claims services, or a range of services including R&D claims. This group also includes online portals, where firms provide software to facilitate the preparation of R&D claims.

Delivering R&D tax advice or services without relevant tax qualifications is dangerous. It relies on advisers gaining sufficient tax technical knowledge and an understanding of professional services, without the support of the institutes who are designed to train people in these skills. It is not impossible but should be highly unusual.

Such firms are delivering tax advice and services on a paid basis, so it should be incumbent on them to demonstrate how they uphold similar standards without the oversight of the professional bodies.

We can provide a number of unnamed anecdotal examples of positive practices, including general practice accountants who outsource specialist R&D tax advice, or who invest in relevant specialist training and CPD to ensure they have the professional competence to deliver specialist R&D tax advice.

There are also numerous experiences of bad practice that can occur across these types of tax advisers:

- R&D firms who are not regulated for AML
- R&D firms with no or very limited tax expertise
- Unreasonable contracts
- Spurious marketing (claims of 100% success rate or HMRC-approved methodologies)
- Firms not sharing documentation with clients
- Firms making basic errors in submissions
- Firms not defending their own work
- Firms not supporting their clients beyond the claim submission

All these practices are contrary to the PCRT. We believe they must, therefore, occur either because the PCRT is not being enforced or because the firms are not subject to PCRT oversight.

Greater awareness of PCRT and an updated standard for agents will help consumers of tax services to make better choices when engaging with a tax adviser. More active disciplinary procedures, which focus on the behaviour

of the agent rather than the company, will address those who are actively non-compliant.

4. Please share any data which would help develop assumptions on the market share, volumes or impact or on the value added by different sectors of the market?

We recommend that HMRC look at how they could gather this data. HMRC already allow a separate R&D tax agent to be authorised alongside the company's main Corporation Tax agent, and obviously a company can already appoint several different tax agents to cover different taxes. Allowing a more transparent relationship between HMRC and R&D agents should encourage improved transparency with the company's main Corporation Tax agent as well. This lack of collaboration between R&D advisers and Corporation Tax agents has been the cause of many errors (cited by HMRC).

It would also enable HMRC to gather data on how companies use R&D agents and help them to identify any working practices within specific agents that they can address through direct communication with agents.

With this data, HMRC could also engage in dialogue with the professional bodies, who could take a more active role in overseeing the procedures in place to maintain compliance with PCRT at their member firms. The standard for agents states that HMRC may "disclose cases of suspected agent misconduct to professional bodies for them to investigate further and consider disciplinary action." However, without gathering data on the behaviour of R&D agents, this is likely to be an underused power.

Questions about good advisers

5. What more could the government do to promote the work of good advisers?

The standard for agents states that HMRC "recognises the value of having professional agents help taxpayers comply with their tax obligations." How HMRC recognises this value is not clear. On the contrary, our experience is that HMRC is typically reticent to show any preference in dealings with tax agents and this pressure to be neutral means that good behaviour tends to go unrecognised.

Good advisers invest time and money into active compliance with standards, however awareness of the standard for agents is non-existent among consumers of tax services. The government, HMRC and the professional bodies could do more to promote the work of good advisers by using their platforms to raise awareness of professional standards among these consumers.

We recommend:

- A working group to produce a more comprehensive standard for agents.
- A significant joint awareness campaign by HMRC and the professional bodies to raise the profile of the agent standard and PCRT.
- That HMRC actively endorses the CIOT/ATT professional standards working group topical guidance on R&D advice.
- That HMRC seek further information in compliance checks regarding an adviser's professional competence and the processes they have followed. An accurate R&D tax credit claim is far more likely to have been supported by an adviser who can actively evidence compliance with PCRT. Conversely, non-compliance

raises the risk that the claim will include errors, which can in turn inform the approach to the compliance check.

More transparent communication between HMRC and good advisers would be welcomed. The [RDCC](#) meets only twice a year with little interaction or communication between these sessions. Notes from these meetings often take several months to publish (and often there is no notification of publication). It is also difficult to prepare for meetings as agendas are usually only shared the day before the meeting, with no discussion or chance for preparation / input. Many members of the RDCC do not follow PCRT standards, as there is no entry requirement to the RDCC. HMRC does not address this directly, despite the RDCC being its primary route for engagement with this market.

6. Where else do good agents add value - for customers, HMRC and the wider economy? How could this be extended further?

Good agents follow guidance laid out in the PCRT, which adds reassurance and value to both taxpayers and HMRC. It holds them accountable for their work, ensuring that it is completed within their competency and within the ethical principles which are critical to the profession.

This has the effect of saving HMRC compliance resources and helping with the tax gap. As agents who follow this guidance are conscious of their accountability, they are helping to make sure that complex tax calculations are accurate.

Good agents are also valuable in mediating between the claimant company and HMRC. They are often able to understand HMRC's concerns in a compliance check and deal with their questions professionally and clearly.

For example, our enquiry support service helps companies to resolve HMRC enquiries into R&D claims. We often help to explain to companies and agents why HMRC is challenging certain aspects of the R&D claim and how best to go about correcting errors. Often, companies can become quickly frustrated with an HMRC enquiry as they do not understand why questions are being asked, or how to properly answer them, resulting in increased frustration on both sides. Our involvement can often be a powerful and valuable mediation to enable both sides to understand the other's position and seek a resolution. This saves time on HMRC's side, as incomplete answers to questions necessitate further rounds of correspondence, and it also helps both parties to agree the correct amount of relief.

If appropriate confidentiality requirements could remain in place, there could be the opportunity for good agents to help report previous poor agent behaviour. If an adequate reporting process could be created good agents would be motivated to follow this process as this could reduce the scope for poor agents to operate in the R&D advice market.

Good agents are also able to identify areas of policy which would benefit from discussion or updates, and many have a self-interest in helping ensure that HMRC's guidance is as good and up to date as it could be. We are often told that HMRC lack the resources to keep guidance current. Good advisers could be asked, or given the opportunity to, draft guidance based on their understanding of HMRC's policies and the way they are carried out, making it easy for HMRC simply to agree the guidance rather than devote scarce resources to firstly recognising the need and secondly writing new guidance from scratch.

Ensuring that more agents within the R&D tax credit advisory market are considered "good" would help to ensure that the relief is awarded correctly. The incentive itself suffers from the activities of spurious agents, as more businesses and accountants have experienced poor practice, leaving them less likely to access the incentive in the future.

7. What are the general characteristics of good and bad advisers?

There are some characteristics that are useful in distinguishing between good and bad advisers. Good R&D tax advisers promote:

- Transparency
- A realistic assessment of risk
- Professional qualifications and a commitment to training and CPD
- Care in representation of statistics in marketing communications
- Clear and non-onerous contracts
- Seeking HMRC's advice where policy is unclear, rather than taking advantage of a lack of clarity.

Conversely bad advisers exhibit the opposite:

- A lack of transparency, often evident in not sharing R&D claim documents with clients prior to submission
- A careless approach to risk management. Often proclaiming R&D tax relief to be 'risk-free,' and not explaining the potential implications of their advice to clients
- No professional qualifications, poor quality or no relevant training of staff
- Aggressive marketing communications, with claims it would be difficult or impossible to substantiate, or which are deliberately misleading
- Lengthy contracts, with small print which differs from the agreement explained to clients in the sales process. Misleading complex fee calculations and onerous termination clauses. An onus on reducing the risk on the agent, by placing substantial risk onto clients
- Taking advantage of uncertainties in the law, or of HMRC's limited resources for compliance activity

Questions on the impact of poor advisers

8. Are there any parts of the tax advice market where there are particular problems? Please share any evidence you have.

The market in which we are specialists (R&D tax) is an area that has serious problems with spurious advisers. The prevalence of bad advisers has harmed the profession, with both HMRC and the wider accountancy profession developing a general mistrust of R&D specialists. There have been many instances of agents, with limited or no tax knowledge, charging clients for various levels of service relating to the preparation of their R&D tax credit claim. It is an area that has no barrier to entry and has significant financial benefit to clients, making it easy for agents to charge considerable fees without proper oversight.

We have anecdotal evidence of many agents providing very little guidance to their clients - sometimes simply providing them a form to complete with little discussion of the complex rules around R&D tax - yet still filing claims for considerable amounts. In cases where the client has faced a lengthy compliance checking process with HMRC, many of these spurious agents provide no further support. This can have significant financial detriment to their client as they can be liable to penalties for an inaccurate claim.

Additionally, the compliance checking process is not one which can be withdrawn from easily, so without the support of their original adviser, the company faces either dedicating internal resources to resolve the matter or incurring further fees in engaging another specialist. For some businesses this impact could potentially have a serious detrimental effect on their operations or even their financial solvency.

There is also anecdotal evidence that some agents tie their clients in to lengthy contracts. Long contracts remove the opportunity to switch to a more reputable agent if they discover the service delivered by the contracted agent is poor.

Given the generosity of the R&D tax incentive, it is open to being targeted by not just disreputable, but thoroughly dishonest 'agents' involving fraud amounting to hundreds of millions of pounds. The greater the risk of fraud, the greater the need to encourage good agents and to seek their support in reducing the scope for bad agents to operate profitably.

Similar problems are still apparent within the capital allowances market, as a useful comparison. It is a more mature market, but there are still spurious advisers.

9. Do you have any evidence about the impacts of unqualified agents or agents that don't meet standards?

Yes, the impact of these agents can include:

- Companies missing the opportunity to claim relief due to mismanagement of the process and missing statutory deadlines.
- Companies incurring additional enquiry support fees to resolve compliance checks where spurious agents have been unable or unwilling to defend their work.
- Detrimental impacts on cashflow stemming from not receiving the benefit promised, or delays in resolving enquiries.
- Companies facing penalties for inaccurate tax filings.
- Companies with genuine R&D expenditure being put off from making future R&D claims.
- Damage to the tax advice market, as spurious advisers promote a 'race to the bottom' on fees, which makes it harder for reputable firms to operate commercially while continuing to invest in proper processes.
- Reputational damage in the market and stunted development of the incentive due to a misconception that all R&D tax advisers are the same.
- A drain on compliance resource at HMRC. More bad advisers means more error, increasing the need for compliance checks. It is also more time consuming to work with bad advisers.

10. How could HMRC and the professional agent community work together to

HMRC could be more open about what it expects from a good R&D tax adviser, through endorsement of the work of the CIOT/ATT professional standards in R&D group. The RDCC is also a key forum for communication between R&D specialists and HMRC. HMRC could use this forum to target poor behaviour and more clearly set out its expectations. HMRC could require all RDCC members to formally confirm that they meet the

identify poor practice at an early stage?

expectations of the agent standard or PCRT. This would help to raise the profile of professional standards and would help encourage those who are passively non-compliant.

It would need to be recognised that many poor agents would not be members of the RDCC, however collectively the RDCC membership covers a significant number of R&D specialist agents, and, through their membership, these agents choose to interact with HMRC. Targeting this audience would therefore be a significant step forwards in respect of raising awareness of professional standards in R&D tax advice.

Questions on interventions

11. How effective are HMRC's recent interventions? Are there other interventions that the government should be using to tackle poor practice?

We are aware of an increasing number of spurious advisers in the R&D tax advice market. This is an issue and we welcome the government and HMRC seeking input into how best to address the challenges faced. We believe that more could be done to limit the activities of spurious agents.

The consultation document refers to "low quality agents...often working on 'nowin, no fee' bases". We recommend that the government consider a more appropriate description of the characteristics that distinguish a spurious adviser from a good specialist. Relying on a simple descriptor such as 'no win no fee' is not an accurate differentiator as both good and bad advisers can operate on this basis. Such commercial terms (more commonly described as contingency fees or conditional fee arrangements) often make good sense for clients and members of professional bodies are required to ensure they have safeguards in place to prevent any conflict of interest arising from such an arrangement.

The consultation document also refers to the 'new procedures' introduced in April 2019 for agents making R&D tax credit claims. ForrestBrown welcomed these changes and supported HMRC's reasons for introducing them. However, since their introduction, no data on their impact has been shared with the RDCC or wider public. If further procedures are to be developed to address poor behaviour in the R&D tax advice market, it is important that the impact of changes is monitored.

The new procedures were introduced to address errors HMRC had identified and linked to low quality agents. In seeking a more effective intervention, HMRC could publish some of these (unnamed) case studies, to raise the profile of what constitutes poor behaviour and spread the word about what actions they will take to address such behaviours.

If HMRC is dealing with an R&D tax adviser in a company's enquiry, they could ask some basic questions to determine if that adviser operates in compliance with the agent standard (or PCRT). For good advisers, this would provide reassurance to HMRC regarding the competence, behaviour and processes in place. For poor advisers, HMRC could then frame their further questions with this in mind, and potentially look to support the company who is likely to be the one who suffers if poor advice has been given.

We have reported an R&D tax adviser to HMRC for making spurious claims on their website. We noted that the site was offline for a period, but has since returned and we are currently supporting a second client who has fallen victim to the poor advice provided by this agent. We do not therefore have any direct experience of successful HMRC interventions in cases of poor behaviour.

One of the peculiar characteristics of this case is that the name the company uses is inconsistent across its website and communications with its client. We note that there are numerous firms in the market with similar-sounding names and it can be challenging to differentiate between them.

While we recommend that HMRC improves their processes for gathering R&D tax agent information, it will be important to ensure that there are clear identifiers for agents (company number for example).

12. Is there more that HMRC could do to manage agent performance through its transactional services (such as IT systems)?

Visibility within HMRC systems where a company has relied on the advice of a separate R&D tax adviser is essential. The ability to collate data on the volume and quality of claims prepared by specialist agents will foster more transparency between HMRC, the main agent, the taxpayer and the R&D tax specialist.

A proper process for appointing an R&D tax agent formalises this role and attaches it firmly to the company's tax filing. This more accurately reflects the shared responsibility between the client and agent. Although the company retains overall responsibility for their tax filings, they can reasonably rely on the advice of an agent to support them. This relationship should be clearer.

Where the company has engaged the services of a professional adviser to support their R&D tax credit claim, this information could be gathered when the claim or wider return is filed. If companies recognise the value of sharing this information, it should be straightforward to request it and possible to receive it in most cases. This process would recognise that many companies who make errors in their returns due to poor quality R&D tax credit claims are victims of poor advice rather than actively seeking to evade tax or preparing returns carelessly. Focus for the companies should be on education, with disciplinary measures focused on spurious agents.

Measures to increase visibility in HMRC's systems of R&D tax agents should consider how to deal with the practice of "white-papery" reports. This is where an R&D tax specialist has prepared the claim, but there is no identifier included in the submission to confirm their involvement. In itself, this practice is not fraudulent. However it is a potential hallmark of a spurious adviser on the basis that it is an effective way to remain anonymous to HMRC. This prevents HMRC from identifying persistent poor behaviour and addressing this via existing powers. The suggested approach (of requesting companies - or their agent- to disclose the name/identifier of any specialist who provided advice in respect of the R&D tax credit claim) should prevent the practice from being abused.

Questions about consumer protection

13. How might increasing consumer protection affect individuals taking responsibility for their own tax affairs, and what behavioural changes might you anticipate?

We would welcome a future where taxpayers are far more aware that not all tax advisers hold professional qualifications, and to properly understand the protections afforded to consumers who engage a qualified adviser. As many businesses are not aware of this, they will also be unaware that they have some protections if they work with these qualified advisers, but not if they opt for an unqualified adviser.

While it is unfortunate that it is often the company that suffers from poor advice, if there is some other form of protection available to cover unqualified tax advice, this erodes the value of being a qualified tax professional.

Ensuring that individuals and companies have access to current guidance from HMRC on the characteristics of good and bad advisers, support with how to choose a good adviser, and suggesting what might happen if

someone deliberately (either carelessly, negligently or fraudulently) chooses a bad agent could encourage an increase in consumer responsibility.

14. Who should take the primary role in improving consumer protection, government, the profession, or another third party?

We believe it should be the profession that takes an active role in improving consumer protection and monitoring members of professional bodies. The government and HMRC have a role in helping to endorse the work of the professional bodies, but it is the institutes who set the standards and have accountability for their members. These qualifications are sought after because of the value that holding them brings. It is therefore important that the institutes monitor and uphold these standards to maintain this value.

The government should assume responsibility for raising awareness of the standards expected from agents. If HMRC are to continue to allow taxpayers to be represented by agents who are not members of professional bodies, we believe that HMRC should provide access to a robust complaints process to put right any problems. Supporting and educating taxpayers who unwittingly fall victim to bad advisers will help to raise the profile of professional standards in the market. This support also does not erode the important principle that the taxpayer remains accountable for their own tax affairs. However the complexity of the tax system and prevalence of bad advice in R&D tax should afford these taxpayers a route for remediation rather than penalising them.

It is widely accepted that there are companies who undertake R&D but do not access the tax incentive designed for them. It is also true that companies who attempt to prepare their own claims often make errors and that it can be more time consuming for HMRC to work with these companies to identify and correct these errors. Any measures to address poor behaviour among R&D tax agents should be carefully considered to prevent an unwelcome side effect of putting more businesses off claiming or of seeking proper support with their claim.

15. What do professional bodies currently do in respect of customers who need extra support?

As is noted in the consultation document, many companies make assumptions as to the qualifications of their tax adviser and the protection this affords them. They do not seek a thorough understanding and as a result, many are unlikely to seek redress with a professional body for poor advice. Generally, we feel that there is a lack of evidence that much is done to help customers who need extra support. Any measures that are implemented tend to be reactive rather than proactive.

However, our experience with CIOT/ATT and the professional standards team has been incredibly positive. We feel that this positive start should be built upon and progress should continue to ensure greater oversight of R&D tax advisers. Greater collaboration between the professional bodies and HMRC would help. The work of the CIOT/ATT professional standards working group has been covered at RDCC meetings, but it has not been formally endorsed by HMRC. We believe it should be. Further, we recommend that HMRC sets a clear expectation for members of the RDCC and asks them to confirm that they are actively compliant with either the PCRT or the standard for agents. While there is the possibility that some members of the RDCC are, and will continue to be, actively non-compliant, this awareness-raising would be a positive step towards limiting the scope for such firms to participate in RDCC discussions.

Questions on other market interventions

16. Is there anything useful the government can learn from other examples of market intervention, including those led by industry?

We have some understanding that financial advisers have their actions regulated by the Financial Conduct Authority (FCA) and this approach could be relevant to the tax industry. Creating a separate regulatory body would take some of the burden of upholding standards in the tax market away from HMRC. However, there is potential for this body to conflict or overlap with the work and role of the professional bodies already in place. Although there is no one professional body with oversight of the profession, the PCRT is a good example of the bodies working together to produce consistent standards.

One outcome of the strengthened FCA regulation is how visible the regulator is to consumers of financial advice. Any consumer who has met with a financial adviser will have experienced them explaining the regulatory oversight they are subject to, what the consumer can expect, and what that means for them. This behaviour exists because it is now compulsory to be qualified in order to provide financial advice, which differs from the tax industry. It has raised the profile of the regulator to the point that consumers notice its absence when dealing with an unregulated adviser, and they question why. The qualified tax market should keep stride with these positive developments in qualified financial advice.

Much too could be taken from regulation at the company level. For example, requiring registration as an adviser, whether qualified or not; advisers having to display names and addresses, needing to have automatic financial responsibility and being subject to 'striking-off' for non-compliance with reporting processes.

17. Are there other enforcement or regulatory agencies that you think should have a role in this area, and what are the advantages, disadvantages, benefits or risks of any of these organisations taking on a regulatory role?

While this is an incredibly large area to be able to detail who, out of all enforcement agencies, would be best placed, and why, to help, we believe there is one stand-out choice: the Financial Conduct Authority.

They already authorise financial advisers, and many others, to protect consumers from malpractice, and also have experience in enforcement, providing a route to the Financial Ombudsman.

Question on international models

18. Do you know of examples of effective law, or enforcement, from

Aside from the examples given, we are not aware of practices outside of HMRC's jurisdiction and so cannot comment on this question.

other countries or jurisdictions?

Question about the future

19. What future changes do you consider will most impact the standards expected of the tax advice profession?

Within the R&D tax advice market, there are now several suppliers of portals which provide software to support the claim calculation. Like tax compliance software (such as Alphatax and IRIS), this software can help to reduce errors by incorporating the complex financial modelling necessary to properly calculate the R&D tax credit claim and corresponding tax adjustments.

However, as with any tax software, the ideal is to complement tax expertise, not attempt to replace it. As the market produces more options which incorporate technology into tax services, it is important that consumers understand this distinction and do not rely on software in the absence of tax advice. We have seen numerous examples of the marketing of these products suggesting that the software can in some way prevent errors and ensure the quality of the claim submission. Some offer tax professionals in a review capacity, others do not, but this is rarely differentiated clearly in marketing materials.

It's inevitable that more software products will enter the R&D tax advice market, and technology should be welcomed where it enhances the experience of the consumer (and the expertise of professionals) without compromising the quality of the service.

In 2019, HMRC produced its online service for R&D tax credit claims. Since introduction, very little has been shared about take up of the online service and it is not clear if there are plans to increase awareness of the service and/or make any enhancements to it. We are aware that from a technological perspective, its design was limited. It does not, for example, link automatically to a company's tax return. In the future, with Making Tax Digital progressing, we expect further development of this service will be essential.

Questions on Option A: Better use of HMRC's or government's current powers

20. What other examples are there of existing powers (HMRC or other government powers) that could be used to tackle poor tax adviser behaviour?

HMRC and government hold a powerful platform with which to engage the public. There is an inherent degree of trust in information provided by HMRC.

However, HMRC often lacks the resource for outreach work and efforts can sometimes be hampered by lack of expertise. Commercial enterprises are better placed to produce engaging content and delivery mechanisms which are more likely to reach the right audiences.

While it is difficult to anticipate a future where HMRC would be comfortable collaborating directly with agents in awareness-raising efforts, better collaboration between HMRC and the professional bodies would open the door for HMRC to access the expertise within member firms for producing engaging information content and resources.

It is in the interests of members to support HMRC in awareness-raising, therefore it should be expected that they would help with this.

21. What is your view of the effectiveness of HMRC's current powers?

When handling R&D tax credit claims, the most common example of HMRC using their existing powers comes when a claim is scrutinised through the enquiry process. This is typically a detailed process that requires the client to answer numerous questions about the basis of the claim and key elements of technical details (evaluating how the claim meets the definitions set out in the BIS guidelines).

This process holds the client accountable and so, for many tax advisers, has little impact. Some tax advisers do support their client through the enquiry process, an example of good practice that would suggest the capability to defend one's work. The 'no win no fee' or contingency fee model often means that advisers are not financially remunerated until the enquiry is resolved (although this is not always the case and we have seen examples of spurious agents limiting their exposure to the enquiry process).

In practice, only a very small fraction of claims submitted result in an enquiry. Many advisers, as mentioned above, will disengage clients in event of an enquiry. This means the enquiry process acts neither as a deterrent or an opportunity to proactively communicate with these agents.

The small fraction of claims which get reviewed has enabled bad advisers to develop successful business models providing poor quality R&D tax credit claims, and to proclaim a misleading success rate in doing so. Consumers will be naturally reassured to hear that an agent has "successfully" submitted hundreds or thousands of claims, and they would find it hard to believe that it would be possible for this to happen if that agent's working practices were sub-standard. In reality, it is all too possible.

Many companies are not made aware of the risk of HMRC asking further questions on their claim. Nor are they aware of the time required to see through this enquiry process or the penalties that can be incurred for submitting an inaccurate claim. These companies may have taken steps to submit an accurate claim but fell short as a result of the limited capability or poor practices of their adviser.

Question on Option B: Improve rights of recourse for consumers

22. What evidence do you have of problems clients have experienced due to lack of redress and what solutions would you propose?

When HMRC enquire into an R&D tax credit claim that's been poorly prepared, it can be a lengthy, demanding process for the client. They can be left defending a claim they had little input in creating. In some very worrying cases, the claim documents are filed directly with HMRC without being shared with the company first.

If a claim has been poorly handled by a bad adviser, it is likely that the company will have little awareness of the necessary steps required to prepare an R&D tax credit claim. They may be unaware of the definition of R&D for tax purposes, of the importance of the assessment of their competent professional, or any number of other relevant legislative criteria. Most importantly, they are almost never properly advised of the risk inherent in any R&D tax credit claim submission. Many of those who come to ForrestBrown for support in resolving HMRC enquiries first express their confusion at having received an enquiry at all.

As a result of this, many companies will then struggle to understand HMRC's questions. This increases the duration of enquiries and can also lead to a breakdown in communication between the HMRC case worker and the company. Companies may ignore correspondence, simply because they are frustrated and uncertain how to deal with the questions being asked or where to turn for support. Previously, HMRC case workers tended to be more open to guiding the company through the process, but this approach has changed in more recent cases. Companies in this difficult position do

not feel that they can reach out to the HMRC case worker for support in resolving the enquiry.

This puts significant pressure on them, and we have dealt with cases where claim payments have been processed prior to the enquiry being opened, in some cases with the amounts at stake potentially catastrophic for the business.

HMRC might reasonably expect more companies to report the problems faced to them (or a professional body if relevant). However, in our experience, companies in this position prioritise the resolution of the enquiry. Once that is achieved, there remains little motivation to dedicate further time and effort to pursuing their previous adviser. Many of these companies feel naïve for having trusted a spurious adviser in the first place, leaving them keen to put the whole experience behind them.

The focus of the enquiry is on the company's accountability for the R&D tax credit claim, and the impact of poor advice they received is not often discussed in any detail with the company. Greater recognition by HMRC that the company may have been the victim of poor advice might encourage more companies to report their experience, and a clear conduit for this, such as a dedicated body, would provide further encouragement.

Question on Option C: Improving transparency – helping consumers to make better choices.

23. How could consumers be helped to make better choices?

Helping consumers make better choices must be an absolute priority. Spurious agents do not typically retain clients long-term, and therefore often rely on forceful sales tactics and a steady stream of new business. If more consumers can be educated on how to avoid engaging a spurious adviser, this incoming source of revenue will diminish, and such firms will not be able to operate profitably.

Consumers can be helped through education from unbiased sources they can trust. The government/HMRC can help by raising awareness of the unregulated nature of the tax market, promoting their endorsement of the PCRT and improving the standard for agents.

The professional bodies can help by providing resources for members to educate prospects and clients about the protections offered by working with regulated advisers.

Subject to the outcome of this consultation, it is likely that HMRC will continue to deal with both regulated and unregulated agents, as well as unrepresented taxpayers. It would be useful to educate consumers on the differences between these types of agent and the significant impact it might have on their interaction with HMRC.

For example, being aware that working with an unregulated adviser carries more risks may help the taxpayer decide whether they are comfortable taking this risk. This approach leaves room in the tax market for unregulated agents but strives to ensure that consumers make informed choices.

Question on Option D: Penalties for tax advisers

24. Are there any circumstances

While the R&D tax adviser works to collate the company's R&D tax credit claim, the basis of any claim is information provided by the company. We would therefore consider it harmful to introduce a regime which sought to

where a penalty should be levied on the adviser instead of, or in addition to, the client?

penalise an adviser in individual cases, as the company could have knowingly or mistakenly provided inaccurate or incomplete information. However, if a firm regularly collates inaccurate or misleading R&D tax credit claims, or fails to deal with errors professionally and courteously, then it seems that the fault is more likely to lie with the adviser and this could be the case for a penalty. It would be beneficial for such proceedings to be dealt with outside of any particular enquiry case, as the focus in an enquiry should be on the taxpayer and on resolving any errors in their filing.

There could be other implications that would work well to deter inaccurate R&D tax credit claims. For example, material errors could trigger a quality audit of the adviser, to understand and evaluate the processes the agent uses in claim preparation. This would go a step further than the existing enquiry process that only investigates one specific claim and holds the claimant company liable to defend their claim. Focusing on the agent's processes, risk management and training would be a positive investment of time as the interaction then affects several R&D tax credit claims. Compared to the time spent on a single enquiry case, this should be viewed as an efficient way to reduce errors in R&D tax credit claims. An independent regulatory body could take on the auditing role to ensure a consistent and fair approach.

Similarly, the professional bodies could support this process. Members should have robust processes and could work with their relevant body to review these. Transparency between the professional body and HMRC (and a regulator if appropriate) would then negate the need to duplicate reviews.

Question on Option E: Maximising the regulatory/supervisory role of current professional bodies

25. What scope is there for the professional bodies to take on a greater regulatory role in a similar way to anti-money laundering (AML) supervision? (where some professional bodies supervise their members and the professional body in turn is supervised by the Office for Professional body AML Supervision (or OPBAS) within the Financial Conduct Authority)

We believe the greatest impact would come from ensuring that professional bodies take on a greater regulatory role.

ForrestBrown is a firm of chartered tax advisers and is supervised by the CIOT for AML purposes. We would welcome the CIOT taking a more active role in oversight of our firm, provided there is scope for transparency between CIOT and HMRC. For example, we would be very happy to share details of our risk procedures and staff training with CIOT, in return for confirmation from them that we are meeting our obligations, and recognition from HMRC of the same.

There is one peculiar characteristic of the R&D tax advisory market which we would recommend the professional bodies address. There are many firms that are not member firms. However, many of these firms employ members (chartered tax advisers and chartered accountant). These individuals are obliged to comply with the PCRT. PCRT and the professional bodies only envisage individual members being employed by member firms in practice, or as in-house professionals (who do not provide advice to fee-paying clients).

However, many members in the R&D tax advice market do not find themselves in an environment which enables them to meet their obligations. The PCRT and the professional bodies could do far more to support these individual members, which would have a wider positive impact. Currently members who identify a breach of PCRT at their firm are simply obliged to raise this with their employer, but this can often put individuals in difficult situations and there is no consequence if the company does not follow this advice. The employer of a member, where that employer's business is delivering tax advice, should be obliged to provide a working environment that enables them to uphold standards set out in the PCRT.

As an example, a chartered tax adviser is obliged by PCRT to carry out proper AML procedures before providing tax services to a client. If they are employed by a firm that does not carry out AML processes, they are personally breaching the PCRT.

We believe this situation to be unique to the R&D tax market, due to the prevalence of unregulated professional advisers. It is, however, common for these advisers to recruit employees who are members of professional bodies. The requirement set out above would therefore encourage wider adoption of PCRT-compliant practices and increase the quality of advice provided.

The alternative for these firms would be to avoid recruiting members and avoid the corresponding regulatory obligations. While this might restrict job opportunities for members, we believe this is preferable to seeing those members in environments which do not enable them to meet their professional obligations. For the firms, it is likely that they recruit members because they recognise the commercial value which that brings. If they choose not to comply and consequently avoid recruiting qualified staff, this will serve to limit their commercial success in the market.

This structure would also provide far greater clarity for consumers of tax advice, who may currently be reassured by the presence of a small number of qualified staff within the firm they have engaged. In practice, this reassurance may well be misplaced, but it is understandable given the current practice and lack of awareness or oversight.

There are also general practice accountancy firms who sometimes offer R&D tax services. These are likely to be member firms of a PCRT body. However, it would be important that the professional bodies are able to monitor this group, as they could be working outside of their area of competency. The PCRT requires an adviser to have sufficient specialist knowledge and expertise when taking on specialist tax work.

Questions on Option F: external regulation

26. What would the impacts be of introducing external regulation, particularly on clients and on those agents already meeting high standards?

A separate external regulatory body, as described, would appear to overlap substantially with the role of the professional bodies. We believe that there is much which could be enhanced or improved within the existing framework.

A separate body would apply a degree of oversight to firms not currently regulated by the existing professional bodies. For the R&D tax advice market, one important point to address would be transparency. There is currently a lack of visibility of R&D tax advisers. This is due, in part, to there being no formal process for authorising an R&D tax agent separately to the company's main Corporation Tax agent and, in part, as a deliberate attempt by bad advisers to remain anonymous and beyond scrutiny.

A separate regulator should work closely with the existing professional bodies to minimise the impact on members who are already meeting the high expectations of those bodies.

27. Are there any existing bodies that might be well-placed to act as

The Financial Conduct Authority already provides a similar oversight role to the financial advice profession and therefore extending its role could be considered.

regulator? What potential conflicts of interest could you see?

General questions about the options

28. a) The benefits of the options set out above

We believe there would be significant benefits to raising standards, improving awareness, increasing regulation by professional bodies and improving communication between HMRC and agents.

Consequently, we believe that options A (better use of HMRC's / the government's current powers), C (improving transparency) and E (maximising the role of the existing professional bodies) should be prioritised.

Option D should be carefully considered and could provide a robust disciplinary process alongside the more proactive educational options. Option F would require a separate detailed investigation and consultation, considering the impact and cost of this route.

b) Whether there are sectors or types of tax advisers which would face particular challenges, and what those challenges would be

The R&D tax advice market has no barrier to entry and is a generous initiative. It would be a challenge to monitor the quality of advisers in this field yet given these conditions it is a market which would benefit hugely from improved monitoring.

c) Views on the impacts of each option

We recognise that increasing the involvement of the professional bodies would likely result in an increased cost base for the bodies, which is likely to be passed on, at least in part, to members. Some of this would then likely be passed onto the consumers. It would be important therefore that changes also brought about increased awareness among consumers of the value of engaging a regulated firm. R&D tax advice has already suffered from low-cost, low-quality interlopers, setting consumer expectations on price too low.

We expect this would have a positive impact on the behaviour of consumers; raising the awareness of the risk of poor advice and enabling them to recognise poor advisers more easily. Consumers should be able to more actively engage in the process of choosing a good adviser. If consumers are aware that some firms practice outside of their competency (quite commonly in the R&D tax market), they are likely to be more sceptical of low-fee or unregulated advisers, prompting them to carry out more robust due diligence before entering into contracts for services.

d) Alternative options which meet the objectives.

We believe that the consultation covers a good range of options and that significant progress can be made to improve standards in the R&D tax market using the mechanism described.

POINT OF CONTACT:

Jenny Tragner CA ATT, Technical Director

Jenny is ForrestBrown's technical director and one of the UK's foremost R&D tax credit experts.

Jenny has helped to establish a working group for professional standards in R&D tax for the Chartered Institute of Taxation (CIOT) and the Association of Tax Technicians (ATT). This group is working to define the behaviour and standards expected of an R&D tax credit adviser and has published guidance which is endorsed by all of the main accounting bodies.

Jenny is also a long-standing, active member of HMRC's Research and Development Consultative Committee (RDCC). Jenny has worked in the tax industry for 18 years, with ten years' Big Four experience. She has specialised exclusively in R&D tax credits for over a decade.

✉ j.tragner@forrestbrown.co.uk

☎ 0117 926 9022

ForrestBrown

Bristol (HQ): 10 Templeback, BS1 6FL

London: Floor 35, Tower 42, Old Broad Street, EC2N 1HQ

🖱 www.forrestbrown.co.uk

☎ 0117 926 9022

✉ hello@forrestbrown.co.uk