

# Consultation Response

HMRC  
*Raising standards in the tax advice  
market: professional indemnity  
insurance and defining tax advice*

June 2021

# AIA Response: Raising standards in the tax advice market: professional indemnity insurance and defining tax advice

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## Executive Summary

AIA welcomes this opportunity to respond to the 'Raising standards in the tax advice market: professional indemnity insurance and defining tax advice' published by HMRC on 23 March 2021.

This document sets out AIA's response to the questions posed by the consultation and provides further clarity and guidance on how AIA works to uphold standards of tax advice issued by its members in practice.

Although AIA welcomes measures to raise standards in the tax advice market, broadly supporting the benefits of requiring tax agents to hold professional indemnity insurance, there still requires greater understanding of the role professional bodies play in regulating membership beyond requiring members hold PII. There is little evidence to see how simply imposing a PII requirement would allow for significant protection for consumers as the competence and quality assurance of tax agents who are not members of a professional body remains untested. Simply imposing a PII requirement does little structurally to raise standards and mitigate serious risks posed by unregulated agents.

There should also be further consideration given to introducing legal protection for professional titles, such as 'tax agent' and 'accountant', within any strategy for encouraging good tax agents.

Good agents help to improve tax compliance by providing quality advice on tax law and ensuring that clients can only claim their appropriate reliefs and consequently pay the correct tax. Good tax agents help to protect the public interest by reducing resourcing costs for HMRC, allowing for an efficient and targeted taxation system.

There is a wider public interest argument in place for expansion of the role of professional bodies within the remit of improving 'good agents' and how they can add value.

The government should work to promote the effectiveness of good agents by recognising that additional safeguards and public interest concerns are met by consumers undertaking the services of a regulated individual to conduct their tax affairs, with proper recourse to advice if things go wrong and an independent complaints system.

It is clear that the simplest and most robust way of protecting the public interest is to ensure that any individual providing tax advice as a service is a member of a recognised professional body. All options set out within the consultation require careful consideration against the public interest – ensuring a continuation of the availability of tax advice to members of the public whilst recognising the benefits of greater scrutiny over the competence of tax agents to bear down on bad behaviour and agents.

It must be recognised that any option that increases the burden and cost of regulation may result in tax agents leaving the regulated sector and acting with a lower level of scrutiny which would not result in a net benefit position.

## AIA Response – Raising standards in the tax advice market: professional indemnity insurance and defining tax advice

**Question 1: In your opinion, would introducing a requirement for anyone providing tax advice to have professional indemnity insurance satisfy the policy aims of improving trust in the tax advice market, by targeting poor behaviour and allowing taxpayers greater redress when things go wrong?**

In isolation the implementation of a Professional Indemnity Insurance requirement for anyone providing tax advice would not wholly improve trust in the tax advice market.

Making this small change may give the appearance of improving the unregulated market however in reality PII forms only a small part of measures which could be implemented to protect the public interest and improve trust in the market.

**Question 2: If the government introduces the requirement for professional indemnity insurance, what further steps would you recommend?**

A more effective, comprehensive, measure would be to require any individual offering paid for tax and accountancy services to maintain a membership of a relevant professional body, for instance AIA.

**Question 3: Are there any alternative options you would recommend?**

AIA requires all Members in Practice to have suitable Professional Indemnity Insurance cover in place as stipulated by its Public Practice Regulations. In addition, these regulations prescribe rules for example surrounding client monies, internal controls, and training.

Requiring all tax agents to hold membership of a professional body would introduce requirements beyond a blanket PII requirement, such as a requirement to undertake regular Continuing Professional Development (CPD). Membership of a professional body would also provide a further element of protection for the public as all members are accountable to an independent complaints and disciplinary and quality assurance function.

**Question 4: Apart from the costs and potential effects outlined above, are there any other costs you foresee for advisers?**

It is possible that there may be the potential that the introduction of the proposed PII requirement for non-regulated tax agents in isolation will impact both the cost and availability of cover for the remainder of the market that already hold PII as a condition of their professional body membership; it is arguable that insurers may seek to mitigate the impact of a higher volume of claims which could arise from the unregulated advisers.

**Question 5: What are your experiences of obtaining professional indemnity insurance or of the market for professional indemnity insurance?**

This question is best answered by those individuals who actively seek out PII due to their requirement to hold it, for example AIA members in practice.

All AIA members in practice are required to hold a suitable level of PII in line with AIA Public Practice

Regulations.

**Question 6: If you are a tax adviser who practices without insurance, why is this?**

Not applicable for a professional body response.

**Questions 7-9**

Specific to the insurance industry and not applicable for a professional body response.

**Question 10: What checks do you carry out when you engage a tax adviser? Do you check whether they are insured?**

Not applicable for a professional body response.

**Question 11: Do you have any experience of making claims or complaints against a tax adviser for bad advice that you would be happy to share with us?**

Not applicable for a professional body response.

**Question 12: Do you think there are any lessons on how complaints are handled in similar industries that we can learn to help improve redress?**

AIA members are subject to a robust and independent complaints and disciplinary framework which is stipulated by the AIA Constitution and approved and overseen/monitored by regulators such as the Irish Auditing & Accounting Supervisory Authority (IAASA).

To ensure that the public are suitably served by a professional and accountable tax advice market it is therefore logical to conclude that an independent complaints system must be in place to provide reassurance that an individual tax agent is accountable for their actions.

Lessons should be drawn directly from professional bodies implementing an independent complaints and disciplinary framework.

**Question 13: What is the minimum level of cover you recommend, and why?**

Within AIA's Public Practice Regulations the amount of cover, and rules surrounding cover, are set out for all members in practice. The PII cover includes all aspects of a firm's services to the public.

AIA members must hold appropriate indemnity cover for claims against the Member arising out of the Member's professional work, including provision for retroactive cover for liabilities arising from circumstances not known at the time the insurance is first taken out. Members must also make the relevant insurance documents available for inspection by the AIA at any time.

The annual minimum amount of indemnity for a Member in public practice is: where the amount of the total income from fees in the year immediately preceding that to which the insurance relates is less than £400,000, exclusive of VAT or other similar tax, a sum equal to two and a half times that amount subject to a minimum indemnity of £50,000 in the case of a sole practitioner and £100,000 in any other case; or where the amount of such total income is £400,000 or more, £1 million for any one claim and in

all.

Members in Practice must ensure that the professional indemnity insurance cover remains in place throughout the period the relevant certificate is in force and that cover in respect of professional indemnity insurance on a similar basis is maintained for a period of two years following cessation of a Member's practice.

**Question 14: What activities should it be mandatory to cover, and why?**

All accountants in public practice, including tax advisers or agents, should hold PII.

This should be mandated as part of membership of a professional body; professional body membership offers additional support and guidance for accountants in public practice.

As argued elsewhere throughout this consultation response, requiring PII to be held by tax agents should be undertaken as only part of a general reworking of the regulatory arrangements and recognition given to professional bodies who closely regulate and supervise their membership.

**Question 15: Should the government set mandatory minimum or maximum levels of: cover; run-off cover, excess?**

Should there be a requirement imposed to hold mandatory PII then it is logical that a level of cover be stipulated, whether this is a calculation against turnover or work for individual clients.

However, because there are presently many tax agents who are members of professional bodies then the government must be clear about any requirements going forward and ensure that requirements for non-members of professional bodies are not set demonstrably lower in order to avoid a race to the bottom.

**Question 16: What levels should these be?**

We intend to discuss this in greater depth directly with HMRC during engagement meetings.

**Question 17: Should the government specify what advice must be covered by the policy? What advice do you think should be covered?**

Tax advice should always be included within any PII requirements, however professional bodies maintain regulations for members which stipulate that all relevant activities – with guidance – must be covered by the PII.

**Question 18: Are there any other insurance requirements the government should require?**

None identified.

**Question 19: Who should be required to hold the insurance? Should it be the firm, the principal, everyone who is acting as a tax adviser?**

Where a practitioner is acting as a sole practitioner, they should be required to hold the insurance – this is the case for AIA Members in Practice. Where a practitioner is a principal in a firm, it should be their

responsibility to ensure that the firm holds adequate cover, and they should be accountable for this. This is the case for AIA Members in Practice whose firms are regulated by AIA.

**Question 20: What impact do you think setting minimum mandatory levels of cover would have on: the market including availability of insurance or affordability?**

Not applicable for a professional body response.

**Question 21: We intend to model the definition of who the requirement will apply to on one of the definitions currently extant in legislation. What a) benefits and b) issues are there with using the Dishonest Tax Agent definition or the Money Laundering regulations definition? Do you have a preference or alternative and why?**

This question presumes that a tax agent will in the future be able to continue activity without recognition by a recognised professional body.

Requiring tax agents to maintain professional body membership would ensure that all accountants and tax advisers hold PII without introducing new requirements, monitoring and enforcement mechanisms. Additionally, it would have an added benefit of ensuring they are appropriately qualified and undertake regular CPD. Most importantly in terms of protecting the public, which the broad aim of the consultation is focussed on, would be to provide an independent complaints and disciplinary process available for clients when things go wrong.

**Question 22: What activities do you think should be excluded from the requirement for compulsory professional indemnity insurance and why?**

The definition of 'relevant person' within Regulation 8 of the Money Laundering Regulations includes external accountants and tax advisers (for the purpose of AML supervision).

An 'external accountant' is defined as 'a firm or sole practitioner who by way of business provides accountancy services to other persons, when providing such services'. On the other hand, 'tax adviser' is defined as 'a firm or sole practitioner who by way of business provides material aid, or assistance or advice, in connection with the tax affairs of other persons, whether provided directly or through a third party, when providing such services'.

As these two definitions are arguably vague, AIA provides guidance for existing and potential members to define what is meant by 'public practice' - [www.aiaworldwide.com/membership/practising-certificates/](http://www.aiaworldwide.com/membership/practising-certificates/).

AIA maintains that a proportionate approach to raising standards would be to ensure that a tax agent must be a member of a recognised professional body.

**Question 23: Would there be any benefit in having different minimum requirements for different activities?**

AIA does not believe there would be any additional benefit in having different minimum requirements for different activities, and indeed adding additional complexity to requirements would aggravate risk.

**Question 24: What benefits or issues would there be in considering the financial services regulatory**

**distinction between advice and guidance for tax advice?**

None identified.

**Question 25: What benefits or difficulties do you foresee with the inclusion of a provision around UK taxation in the definition?**

Maintaining a focus on provisions around UK taxation in a definition would be cumbersome and problematic. Instead, and to allow for an easier public understanding of the services being provided to a client the government should move to a focus on roles and titles, for example 'accountant'.

**Question 26: Do you agree with the 3 elements of enforcement?**

Should the government insist on mandatory PII without imposing other controls, such as professional body membership, then the three elements of enforcement outlined in the consultation are acceptable. Requiring transparency, checking advisers have insurance, and imposing sanctions for noncompliance are all reasonable enforcement characteristics.

Any enforcement action requires meaningful sanctions and this should be considered in greater depth alongside the development of any PII requirement.

Whilst most professional bodies have a robust sanctions regime the most serious sanction remains exclusion from membership and loss of all associated benefits; whilst the term 'accountant' remains unregulated, however, this sanction merely places the sanctioned individual into the unregulated sector where there are limited checks undertaken on an individual's fitness to practice or provide services to the public.

**Question 27: What are your views on the enforcement options described above?**

A quicker, easier, cheaper, and more effective approach would be to require anyone giving paid-for tax and accountancy services to be a member of a professional body as this would negate the need for Government to create additional layers of bureaucracy for checking and enforcing new requirements.

**Question 28: Do you agree that advisers who already hold professional indemnity insurance as it is required by their professional or regulatory body should automatically satisfy the new requirement? How could we check?**

Regarding the suggested approach for checking existing professional body members insurance cover, AIA requires its members to hold valid PII and this is monitored throughout the membership cycle, including during application and annual renewal. AIA members in practice may be verified online.

Requiring any individual giving paid-for tax and accountancy services to be a member of a professional body would negate the need for additional administrative requirements and would provide a simple solution to verifying whether an individual held appropriate PII.

**Question 29: The government's ambition is for HMRC to share information about the adviser with the client digitally. What are your views of this?**

More detail is required relating to any proposed information sharing before a substantive response can be made.

**Question 30: What effects do you foresee of introducing the requirement for everyone at the same time?**

A gradual and staged approach to any implementation would be preferable.

However, as stated throughout this consultation response, AIA believes strongly that focussing on tax agents who are not members of professional bodies being obliged to maintain PII is not a sustainable approach which will drive long-term improvements to the quality of tax advice in the market; tax agents should be regulated as members of a recognised professional body.

The clearly proportionate strategy, which would be protect the public, is to require all tax agents to hold membership of a recognised professional body which could take place over a gradual implementation.



## About AIA

The Association of International Accountants (AIA) was founded in the UK in 1928 as a professional accountancy body and promotes the concept of 'international accounting' to create a global network of accountants.

AIA is recognised by the UK government as a recognised qualifying body for statutory auditors under the Companies Act 2006, across the European Union under the mutual recognition of professional qualifications directive and as a prescribed body under the Companies (Auditing and Accounting) Act 2014 in the Republic of Ireland. AIA also has supervisory status for its members in the UK under the Money Laundering Regulations 2017. AIA is a Commonwealth Accredited Organisation.

AIA believes in creating a global accountancy profession and supports the International Federation of Accountants (IFAC) in their vision of a global accountancy profession recognised as a valued leader in the development of strong and sustainable organisations, financial markets, and economies. AIA has adopted IFAC's Code of Ethics for professional accountants and incorporates IFAC's International Education Standards (IES) into its qualifications and policies.

AIA has members working throughout the whole spectrum of the accountancy profession. Many of our members are at the top of the accountancy industry, from senior management to director level. Conversely, significant numbers of our members work in small and medium sized businesses (SMEs) and we strive to champion the importance of SMEs and their needs.

## Further Information

The above replies represent our comments on this consultation document. We hope that our comments will be helpful and seen as constructive. AIA will be pleased to learn of feedback, and to assist further in this discussion process if requested.

If you require any further information, please contact:

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