Association of Accounting Technicians (AAT) response to HM Revenue & Customs call for evidence: Raising standards in the tax advice market

AAT is a registered charity. No. 1050724

1. Introduction

1.1 The landmark 2019 reports from the Competition & Markets Authority and the Government commissioned Kingman Review mean that the audit sector of the accounting industry is likely to have one of the strictest regulatory regimes in the world. This brings the manner in which the rest of the accountancy sector is regulated into much sharper focus and ultimately demonstrates the incongruous nature of regulation in the UK.

1.2 AAT welcomes the commitment government made during Budget 2020, to launch a consultation into raising standards in the tax advice market, as foreshadowed in its response to the independent review into the loan charge published in December 2019 and is pleased to be able to respond to this Call for Evidence in advance of that consultation.

1.3 AAT has long argued that anyone offering paid for tax and accountancy services should be a member of a professional body (AAT, ATT, ACCA, CIPFA, CIMA, CIOT, ICAS, ICAEW, STEP) as a means of combatting the serious problems created by the fact that a third of the sector is currently unregulated.

1.4 The suggestion that only using current levers such as dishonest tax agent penalties, public interest disclosures and refusal from HMRC to interact with agents digitally is an unacceptable way forward, ignores the reality of the situation that despite these powers there are large numbers of complaints about unregulated agents, considerable consumer detriment, tax avoidance and evasion, money laundering risks and reputational damage to both the accountancy sector and HMRC.

1.5 Likewise, improving market transparency by, for example, empowering consumers to make better choices through schemes such as kitemarking is insufficiently adequate as an approach to a large scale, serious problem.

1.6 At the other extreme, introducing a statutory body enforcing regulated standards on tax advisers is first and foremost unnecessary. It would also be complex, bureaucratic, costly (for both agents and their clients), potentially result in a range of unwanted/unintended consequences and ignores the various lessons that should have been learned from the establishment of the Office for Professional Body Anti-money laundering Supervisors (OPBAS).

2. Executive summary

2.1. AAT strongly believes that anyone providing paid-for tax advice should be required to be a member of a relevant professional body.

This would ensure greater consumer protection for individuals and businesses, improving taxpayers experience; lower HMRC costs; reduce tax avoidance and evasion; minimise money-laundering risks and greatly enhance trust by improving the credibility, image and reputation of the profession.

2.2. AAT considers that issues with clients accessing redress would also be removed by requiring all agents providing paid-for tax advice to be a member of a relevant professional body.

Clients of professional body members should not experience problems due to a lack of redress given they can utilise the complaints procedures that each professional body has in place. AAT has a comprehensive complaints procedure in place, as do the other professional bodies listed above.

2.3. Compelling agents, who provide paid-for tax advice, to be members of a relevant professional body will also address the challenge around helping consumers to make more informed choices.

AAT considers this would be a far better means of protecting consumers as it would ensure that whichever agent a consumer choses, that agent would be expected to meet their professional body's standards and be subject to a proportionate degree of regulation.

2.4. AAT takes the view that there may be circumstances where a penalty should be levied on the adviser instead of, or in addition to, the client.

Unregulated agents are not only more likely to make mistakes and be the cause of complaints, they are less likely to hold appropriate insurance. As such, joint liability may be a more appropriate approach to take given this is likely to better reflect the reality of many tax advice situations. AAT considers that both the Canadian and Portuguese examples given in the Call for Evidence have merit and are worthy of further exploration.

2.5. AAT has concerns about the impacts of introducing external regulation.

The creation of another layer of bureaucracy, bringing with it increased costs and antagonising the professional body sector rather than working together would be counterproductive. Looking at the list provided in the *Call for Evidence* of likely requirements that an external regulator would impose i.e. possessing relevant qualifications; having professional indemnity insurance; being registered for AML supervision and so on, (all of which are already requirements for professional body membership) begs the question as to why any policymaker would seriously consider reinventing the wheel at considerable expense to the industry (and to consumers and businesses who pay for tax and accountancy services) and simultaneously creating considerable risk, upheaval and uncertainty.

3. AAT response to the consultation document

HMRC Standard for Agents

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

3.1 The Standard for Agents provides a solid starting point but there are areas that could be strengthened.

3.2 For example, in relation to tax planning it states agents must "act lawfully" but makes no mention of acting ethically whereas PCRT requires ethical behaviour and rightly highlights, "*Ethical behaviour in the tax profession is critical.*[1]"

3.3 The Standard for Agents references that HMRC's aim is to *"clarify what is expected of agents, particularly those who are not members of professional bodies."* This would seem to reference that HMRC considers there to be a distinction between those agents who are members of a professional body and those agents that are not. Point 5 in the Standard for Agents is titled *Standards established by professional* bodies which references that the tax services market is self-regulating, in actual fact it is only part self-regulating given that there are 30% of the tax agent community that are currently not members of a professional body.

3.4 To that end the simplest and most important change to the Standard for Agents would be to ensure that HMRC requires agents to be members of a professional body as a minimum requirement. This recommendation would solve myriad problems as detailed elsewhere below in this submission.

Questions about the tax advice and services market

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

3.5 AAT is uncertain why there needs to be a clear distinction between tax advice and tax services.

3.6 Instead, there does need to be a clear distinction between tax advice and tax guidance, similar to the way in which the Financial Conduct Authority (FCA) has clearly distinguished between financial guidance and financial advice for regulatory purposes[2].

3.7 Tax advice is where a recommendation is made to follow or not to follow a particular course of action. This advice should be given in line with both the individual's circumstances and relevant ethical, legal and regulatory considerations.

3.8 Tax guidance is usually given to help individuals make their own, better informed, decisions about what course of action might be best for them and why.

3.9 Broadly speaking, advice is paid-for and guidance is free.

3.10 It would therefore make sense for HMRC to regulate tax advice by ensuring that anyone giving paid-for tax advice is required to be a member of a professional body (AAT, ATT, ACCA, CIPFA, CIMA, CIOT, ICAS, ICAEW, STEP).

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[1] **PCRT, March 2019:**
https://www.aat.org.uk/prod/s3fs-public/assets/PCRT-1-March-2019.pdf
[2] **Understanding Advice & Guidance, FCA, February 2018:**
https://www.fca.org.uk/consumers/understanding-advice-guidance-investments

3.11 This wouldn't prevent individual HMRC customers from preparing and submitting their own returns, as long as it is possible for HMRC to identify that in these instances tax advisory services were not utilised.

3.12 The distinction between paid-for advice and free guidance could present challenges in relation to those instances where advice is provided pro-bono, however, as with paid for advisory services, as long as HMRC is able to identify that advisory services have been provided then the payment distinction need not be relevant.

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

3.13 Professional tax agents providing tax advisory services will do so in accordance with the needs and expectations of their clients, the consequential value to the wider tax system will depend upon:

a) The nature of the service provided;

b) The technical competence of the tax agent undertaking the service;

c) The professional standards adhered to by the tax agent in providing that service.

3.14 It is reasonable to assume that where a client has instructed a tax agent to provide a service to them it is based on their desire to be fully compliant with their tax obligations. This could be out of a concern for the consequences of getting it wrong, recognition of their own inability to negotiate the complexities of the tax system themselves or for whatever other reasons that may apply. In essence the service that they are acquiring is the assurance that by having engaged a tax professional the client will obtain the outcome of being compliant with their tax obligations.

3.15 Provided that the service delivered by the tax agent is undertaken competently and to an appropriate level of professional standards, there is a demonstrable contribution of value to the tax system in that:

a) There is an increased chance of relevant matters being properly reported to HMRC;

b) Critical filing and payment deadlines are more likely to be met;

c) There is in consequence a reduced risk of HMRC resources needing to be committed to any form of intervention;

d) Requests by HMRC customers for advice from HMRC (whether in correspondence or contact with call centres) is reduced - enabling HMRC to respond more promptly to requests from unrepresented taxpayers.

3.16 In addition to the above, further distinction can be drawn where the agent is engaged in the reporting of the tax consequences of more complex transactions. Examples here might include complicated capital allowance or Research & Development computations, a CGT computation involving unusual circumstances or the IHT reporting of a large estate which required detailed consideration of Agricultural and/or Business Property Relief. In such cases, a technically competent agent acting in accordance with relevant professional standards is likely to have put significant effort into getting it right.

3.17 Another type of service that a professional tax agent will regularly undertake is where an HMRC customer is in dispute with HMRC. This may be due to alleged non-compliance or in respect of a technical matter. As with the services referenced above, provided that the service delivered is again undertaken competently and to an appropriate level of professional standards, the value this will deliver to the tax system is:

a) The agent helps to ensure that all (but only) relevant factors are taken into account in resolving the matter;

b) The agent undertakes detailed work which would otherwise require the commitment of HMRC resources (this is particularly significant in more serious situations of non-compliance);

c) In cases where non-compliance has been found, the agent can play an important role in ensuring future compliance;

d) Parliament and the general public can be reassured that the resolution of disputes involving tax is conducted in a fair and balanced way in accordance with the rule of law.

3.18 AAT and HMRC held a joint focus group session in July 2020, with a selection of AAT licensed members, to discuss the call for evidence. During the course of the discussion the question was asked as to whether the emergence of taxation/accountancy software solutions in and of itself represented an extension to the tax advisory services. A number of AAT members engaged in the focus group shared the view that there is an increasing danger of taxpayers being entirely reliant on the services extended to them by the software solutions. In many instances these are marketed as an opportunity for taxpayers to take greater control of their tax compliance affairs, in effect removing the need for engaging the services of a qualified adviser. Based on the experiences cited by AAT members this has led to small businesses encountering various problems with their compliance, resulting in the need for qualified tax agents to subsequently intervene in order to resolve numerous issues with the taxpayers' compliance.

3.19 AAT is strongly of the view that whilst these software solutions are hugely beneficial in helping taxpayers/small businesses to retain more effective records of their business activities, they are not a replacement for qualified advice and often result in additional advice being required as information has been entered or recorded inaccurately.

Questions about good advisers

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

3.20 As the Call for Evidence document rightly acknowledges, good advisers with high standards help customers access accurate and reliable tax advice and ensure that they pay the right amount of tax at the right time. Promoting the work of good agents, primarily regulated agents, is therefore important.

3.21 However, in the context of this Call for Evidence and the problems in the market, addressing the actions of agents who fall below the standard displayed by good agents is probably a more important issue and one that needs greater attention.

3.22 AAT notes that the Call for Evidence references kitemarking as a means of promoting the good work of advisers but has some reservations as to whether this would, in isolation, be an effective solution.

3.23 By their very nature, Kitemarks are not legal requirements.

3.24 Whilst a Kitemark is likely to imbue a sense of assurance in customers that a product or service conforms to a relevant standard, Kitemarks are primarily used as a means of differentiation in competitive markets. The key differentiating factor in this market is between regulated agents and the unregulated so simply introducing a kitemark alone is going to do very little to solve the problem.

3.25 Depending on the manner in which kitemarking initiatives are designed, they can also lead to a false sense of security amongst the intended audience. Consider the Prompt Payment Code and the various signatories who, despite signing up to the scheme and using the logo, have failed to meet its minimum requirements.

3.26 There are numerous examples of poorly designed kitemarking schemes that caused more problems than they solved across myriad sectors, from pensions[3] and carbon off-setting[4] to Further Education[5] and these should be sufficient to ensure HMRC does not pursue what would be a distraction from the main objective of addressing the activities of the unregulated sector.

3.27 If HMRC is determined to introduce kitemarking then it is worth noting that the professional bodies' logos, usage of which is already very tightly controlled, already act as a kitemark of sorts.

3.28 Feedback received from AAT licensed members at the AAT/HMRC focus group session in July 2020 indicated that there was some support for kitemarking but that kitemarks should only be extended to those that are regulated members of recognised professional bodies. The suggestion was made however that whilst the general public understand the principle of kitemarking (references were made to existing kitemarking such as the ISO standards, the BSI electrical scheme and the kitemark for gas engineers – although the indication was that most thought that the Gas Safe Register was still referred to as CORGI registration despite the change having been made in 2009) there would be a need to support any such scheme with extensive, repeated and costly advertising campaigns, communications and promotional activity to educate taxpayers around the value in selecting a suitably qualified agent.

3.29 The unregulated sector is probably the largest undermining factor for good agents and the work that they undertake. So, again, AAT believes the best means of promoting the work of good advisers would therefore be to ensure that anyone offering paid-for tax and accountancy services is required to be a member of a relevant professional body.

3.30 Whilst there are probably some good unregulated agents, the majority of bad agents do fall into the unregulated sector, as demonstrated by HMRC insight which revealed two thirds of complaints about agents relate to the one third of the sector that is unregulated.

3.31 There may be a view that in light of the Loan Charge review, the Government response; HMRC action and increased public awareness, that such enabling behaviour by unregulated promoters of these illegal schemes is largely historic, but nothing could be further from the truth. As HMRC spotlight 54 published in April 2020 warned, *"…unscrupulous promoters of tax avoidance schemes are targeting workers returning to the National Health Service (NHS) to help respond to the coronavirus (COVID-19) outbreak."* [6]

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[3] **This is Money, "Pensions Kitemark a waste of time" 1999:**
https://www.thisismoney.co.uk/money/news/article-1579041/Pensions-kitemark-a-waste-of-time.html
[4] **The Telegraph, "Carbon offsetting kitemark system criticised" 2008:**
https://www.telegraph.co.uk/news/earth/earthnews/3325998/Carbon-offsetting-kitemark-system-criticised.html
[5] **FE Week, "Value of new FE quality kitemark questioned" 2013:**
https://feweek.co.uk/2013/03/15/value-of-new-fe-quality-kitemark-questioned/
[6] **HMRC Spotlight 54, 9 April 2020:**
https://www.gov.uk/guidance/tax-avoidance-promoters-targeting-returning-nhs-workers-spotlight-54

3.32 This is of course just one aspect of the problems created by the unregulated sector but adequately illustrates the scale of the challenge.

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

3.33 Whilst it might be difficult for a prospective customer/client to initially form an informed view of a tax agent when making a decision as to who to appoint, the consequences of choosing a tax agent who is not a member of a recognised professional body may only become apparent if and when the client/agent relationship breaks down or the unregulated agent makes a mistake that costs the client time and/or money. The client of an unaffiliated agent will be left with significantly fewer opportunities for redress.

3.34 Similarly, when looking at the interaction between HMRC and tax agents, in the case of an unsatisfactory unaffiliated tax agent, HMRC's courses of action are significantly restricted. By contrast, in the case of an unsatisfactory agent who is a member of a recognised professional body, HMRC can report any perceived misconduct to the agent's professional body, thereby relieving HMRC of any need to commit further resources to the matter.

3.35 For the above reasons, HMRC can take greater assurance concerning work undertaken by a professional body agent and also take assurance that the public has greater access to redress in the event of the client/agent relationship becoming problematic.

3.36 In terms of contributions to the wider economy, AAT, as with the other co-signatory bodies to PCRT, was formed with a clear public interest responsibility to promote high technical and ethical standards among members, thereby promoting public confidence in the professional work of AAT's members.

3.37 The PCRT concentrates on integrity, professional competence and professional behaviours but now stipulates the expected standards of behaviour when advising on tax planning arrangements, in order to avoid any action that discredits the profession. AAT and the other recognised professional bodies are firmly committed to the public interest, providing assurance that high professional standards are demanded of their members and take appropriate action when any departure from those standards is established. Such assurance should enable HMRC to focus scarce resources on other areas of work.

3.38 The added value detailed above could be extended further by ensuring that anyone giving paid-for tax advice is required to be a member of a professional body (AAT, ATT, ACCA, CIPFA, CIMA, CIOT, ICAS, ICAEW, STEP).

Questions on the impact of poor advisers

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

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

3.39 Obvious areas include situations like the Loan Charge that prompted Sir Amyas Morse's review and the example given above about NHS workers returning to assist with the Coronavirus outbreak.

3.40 Likewise, the activities of High Value Repayment Agencies (HVRA) leave much to be desired. For example, Slovakian based Global Blue, which enables consumers in over 40 countries (including the UK) to claim tax back on their overseas shopping but charges consumers up to 50% of the refund they are entitled to. This is despite consumers being able to do this directly themselves free of charge by simply requesting a VAT 407 form from the retailer. Despite these high charges, in the financial year to 31 March 2019, this company processed 36 million Tax Free Shopping transactions with a total value of €18.2 billion sales.[7]

3.41 As already stated above, previous HMRC insight has revealed two thirds of complaints about agents relate to the one third of the sector that is unregulated. That appears to be quite compelling evidence of the need for action.

3.42 HMRC must also already have data about errors, omissions and mistakes on tax returns completed by unregulated agents and be able to undertake a comparison with those who are regulated as well as with those who have no agent representation. Making such information publicly available would help strengthen the case for action.

3.43 In response to the request for evidence of the impacts of unqualified agents or agents that don't meet standards, AAT licensed members recently shared the below experiences. Included in the feedback received from AAT members were examples where clients have had bad advice leading to bankruptcy and losing their homes.

Example 1 Client A had previously used an unregulated tax agent firm (Company A). Company A offer a management system for contractors and a portal into which contractors can save their expenses and invoices. Client A had been advised to contact the AAT licensed member as she was unhappy with the work of Company A, specifically her CT liability and her personal tax liability. All of Client A's drawings had been allocated to DLA as opposed to dividends or bonus accrual which impacted her CT. When asked why drawings had been allocated to DLA which was overdrawn as a result, Company A said that Client A hadn't instructed them to do otherwise.
Example 2 An AAT licensed member took on a new client – Client B. The AAT member focused on VAT initially, establishing that only 3 or 4 VAT returns had been filed, the AAT member had to review these and then calculate and submit returns for a further 16 VAT quarters. The AAT member was able to reconcile the first VAT return but was unable to reconcile the figures on any other subsequent returns. Upon further investigation it transpired that the previous tax agent had 'made up' the figures in subsequent returns as they had felt sorry for Client B. The AAT member registered as the new agent, producing detailed breakdowns for each of the VAT returns and assessed the liability to be approximately £48k. The AAT member arranged for the liability to be settled in full. The AAT licensed member then worked on CT and assessed the liability to be £49k. This liability was also paid in full.
Example 3 On taking on a new client (Client C) from the previous adviser, the AAT licensed member identified that the previous adviser (Company C) had submitted annual accounts to Companies House but had not submitted the CT returns to HMRC and therefore Client C was being pursued by HMRC for assessed CT. Company C is unregulated, they did not reply to the clearance letter from the AAT member, the member pursued Company C and left phone messages but never heard back from them. Client C received a £750 fine from Companies House and late payment penalties from HMRC.
Example 4 An AAT licensed member took on two black cab taxi driver clients (Clients D and E). Both clients had used the same unregulated tax agent firm (Company D) previously. When the clients tried contacting Company D, they were unable to do so – it transpired that Company D had disappeared with client funds.
Example 5 A couple of years ago an AAT licensed member picked up a new client (Client F) who thought he had paid too much tax on the sale of a property. His tax returns had been done by someone who was a bookkeeper (Bookkeeper F) not a tax qualified practitioner. The AAT member re-did 3 years of returns and the client had a rebate of £10,000. When asked why Bookkeeper F hadn't claimed letting relief, her reply was that she had researched on HMRC website and didn't come across it. This shows the importance of engaging

[7] **Global Blue web site:**
https://www.globalblue.com/corporate/about-us/who-we-are

in relevant training and keeping up with developments through a structured approach to continuing professional development (CPD). It can be a slippery slope when a practitioner may be competent to do simple tax returns but then the client's situation becomes more complex and the practitioner cannot recognise when they are out of their depth.
Example 6 A sole trader wanted to bring his tax affairs up to date for 12 years trading, went to an unregulated adviser (Company G) who demanded £5,000 in payment and in two years had not filed a VAT return or tax return. An AAT member picked up the client and in 3 months had completed the work for around half the unregulated Company G's fees. The AAT member recommended that the sole-trader chased Company G for a refund. During the two years that Company G acted on behalf of this sole trader the agent had incurred approximately £30,000 in extra penalties, fees and interest, which had to be paid by the client, not the unregulated adviser.

3.44 Other areas of concern include the supposed role of accountants and the tax profession in relation to money laundering, which is frequently referenced by ministers as an area of concern. Indeed, it was supposedly the primary driver for the establishment of OPBAS. It would therefore be useful to consider hard evidence in this area.

3.45 According to the latest National Crime Agency (NCA) annual report[8] for the year April 2018-March 2019, accountants and tax advisers submitted 5,055 SARS - a mere 1.06% of the total, which also represents a reduction of 1.65% on the previous year.

3.46 This figure is broken down to being 4,976 SARS submitted by accountants and 79 submitted by tax advisers.

3.47 For terrorist financing just 4 SARS were submitted by accountants (0.21% of the total) and 1 by a tax adviser (0.05% of the total).

3.48 These NCA statistics suggest the regulated sector should probably not be the key area of concern for Government. The unregulated sector clearly provides a much more attractive proposition for anyone seeking to launder money.

In relation to fraud and crime more generally, Commander Karen Baxter, Head of Economic Crime, City of London Police recently said;

"Another big problem we have in the finance sector is that anyone can turn up on the high street and say they're an accountant or tax adviser. We have cases where people use this loophole as an opportunity to defraud people. We need to look at disqualifying them from setting up a business and engaging in financial advice in the first place. Strong regulations have to be part of this for prevention." [9]

How could HMRC and the professional agent community work together to identify poor practice at an early stage?

3.49 Like several other bodies, AAT has a memorandum of understanding in place with HMRC. Initially this MoU was very rarely utilised due to an apparent reluctance on the part of HMRC to share information other than where the individual concerned had undertaken the most serious of breaches. More recently the MoU has been utilised more regularly with HMRC disclosing details with AAT where members have fallen short of acceptable standards. At the time of writing there were four live cases and one recently concluded case (resulting in the member being expelled by AAT).

[8] **National Crime Agency, Annual report 2019:**
https://nationalcrimeagency.gov.uk/who-we-are/publications/390-sars-annual-report-2019/file
[9] **AAT Comment, November 2019:**
https://www.aatcomment.org.uk/audience/members/police-chief-says-accountants-turning-a-blind-eye-to-money-laundering/

3.50 As referenced above, there has been a welcome change that has seen HMRC sharing information with AAT about potential breaches and problems at a lower level. This must be built on to ensure professional bodies are better able to intervene where their members conduct is causing concern, rather than waiting until such time that a serious issue arises.

3.51 This could also be expanded upon by providing all professional bodies with a monthly update of trends and incidents and/or any areas of concern. This would not need to reveal individual details, simply the types of problems or concerns that are arising, details of the frequency, whether regulated or unregulated and so on. This would greatly help professional bodies tailor their approach.

3.52 Again, it is worth highlighting that whilst this is helpful and will further improve the already high standards expected of professional body members, it does nothing to address the behaviour of the third of the sector that remains unregulated.

Questions on interventions

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

3.53 In 2012, after 8 years of operation, the Oxford University Centre for Business Taxation was commissioned by the National Audit Office to examine the effectiveness of DOTAS and found, *"…some anecdotal evidence and some limited statistical evidence, to support the view that the DOTAS regime is having a measure of success,"* but disputed HMRC's claims that it had been highly successful[10].

3.54 More recently there have been one or two high profile success stories such as the Hyrax Resourcing case in 2019.[11]

3.55 However, it is clear that DOTAS and POTAS could be improved given the Treasury confirmed as much in Budget 2020 by setting out plans to make changes that will help HMRC obtain the information needed to bring a scheme into the DOTAS regime and empower HMRC to act faster where avoidance schemes are being promoted; to make further technical amendments to the POTAS regime, as well as promising additional changes to the General Anti-Abuse Rule (GAAR) so it can be used as intended to tackle avoidance using partnership structures[12].

3.56 With regard to HMRC's role as a supervisor in relation to AML, the Treasury Select Committee report into Economic Crime comprehensively covered this issue (p26-31, paras 88-107)[13] highlighting numerous concerns from a variety of stakeholders. AAT has nothing further to add to those observations.

[10] **Oxford University Centre for Business Taxation, December 2012:**
http://eureka.sbs.ox.ac.uk/4428/3/DOTAS_3_12_12.pdf
[11] **HMRC news release (Hyrax Resourcing Ltd) March 2019:**
https://www.gov.uk/government/news/hmrc-wins-40-million-battle-against-tax-avoidance-promoters
[12] **Budget 2020, 2.256**
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/871799/Budget_2020_Web_Accessible_Complete.pdf
[13] **Economic Crime - Anti-money laundering supervision and sanctions implementation, March 2019:**
https://publications.parliament.uk/pa/cm201719/cmselect/cmtreasy/2010/2010.pdf

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

3.57 One of the issues that was surfaced at the recent AAT/HMRC Focus Group was in relation to the concern that regulated agents taking on clients who have experienced difficulties with HMRC or are from more challenged business areas would be at risk of being penalised for having done so. The overriding view of AAT's members was that agents willing to take on more difficult clients shouldn't be penalised for doing so, mindful that the qualified agent will be working hard to establish compliance amongst these clients. Therefore, anything that can be done through HMRC's transactional services that recognises the value where agents are able to bring more challenging clients on board is something AAT members would welcome.

Questions about consumer protection

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

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

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

3.58 For a number of years, AAT has made the case for government intervention in order to protect consumers, so it is pleasing to see this Call for Evidence explicitly state that the government now believes that there is a case for intervention in the market for tax advice in order to protect consumers.

3.59 The Call for Evidence states that HMRC's insight work has shown that consumers are generally unaware that some sections of the market are self-regulating or that there is no requirement for their adviser to have specific expertise in order to provide advice. This corresponds to AAT's long held assertion of the same. It also reflects the general lack of awareness among Members of Parliament as highlighted by YouGov polling commissioned by AAT in December 2018[14].

3.60 As the Call for Evidence notes, HMRC research[15] has already found that businesses assume all advisers belong to a professional body, further strengthening the case for AAT's contention that all advisers should belong to a professional body.

3.61 The Call for Evidence also acknowledges that consumers can only access a robust complaints process if the adviser is a member of a reputable professional body but a substantial minority (around one-third of agents) are not members of such bodies and so their clients have no recourse to successful complaints resolution. The obvious solution to this problem is therefore to require all advisers to be members of such bodies.

[14] **See Appendix below**
[15] **Factors affecting Small and Mid-sized Businesses' choice of Tax Agent, July 2015: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/443794/ChoiceTaxAgents_Report373.pdf**

Furthermore, HMRC Research published in May 2019 stated that;

"Agents that were not members of a professional body – whether doing a good job or not – were of concern on two counts. First, it meant that there was an uneven playing field and agents that were not members of a professional body could undercut those that are members because they do not have the same level of expense in terms of fees for membership, CPD requirements, and professional indemnity insurance….Second, there remained a concern that non-member practitioners, despite their best efforts may not be as up to date as they should be."[16]

3.62 The call for evidence stipulates that the government is mindful that the increased protection for consumers shouldn't erode the principle that the taxpayer remains accountable for their own tax affairs. It doesn't necessarily follow that by increasing consumer protection or establishing that anyone providing tax advice having to be a member of a suitable professional body would damage this principle. This can be easily managed through clarity provided in letters of engagement, another mandatory requirement for AAT members and those members of other professional bodies. In addition, many of AAT's licensed members will provide training, support and information that helps their clients better understand what their tax obligations are. This added value support further reinforces the professionalism that members of AAT are committed to maintaining throughout their professional membership.

3.63 AAT qualifications are internationally recognised and cover practical, real-world accounting skills that individuals can put to use from day one[17].

3.64 All AAT qualifications are on the Qualification Credit Framework (QCF) which is jointly regulated by England's regulator Ofqual, Scotland's SQA, Wales' DCELLS and Northern Ireland's CCEA, providing additional reassurance that these qualifications are properly regulated and based on the most up-to-date standards.

3.65 As a result, AAT licensed accountants, who must have passed their examinations to obtain these qualifications, are suitably qualified to provide advice, which provides a considerably greater degree of consumer protection than that provided by unqualified, unregulated advisers.

3.66 That said, the provision of appropriate rigorous qualifications is merely the beginning of the process. Relevant Continuing Professional Development (CPD) is mandatory for all AAT licensed members (something which is closely monitored and for which evidence is required).

3.67 A wealth of materials are provided for this purpose; both hard copy (magazine) online - AAT Comment, Informi and Knowledge Hub - and in person via the minimum of 6 annual branch meetings that each of AAT's 40+ UK based branches hold every year, as well as conferences and AAT events.

3.68 Furthermore, it is a mandatory requirement for AAT licensed accountants to have Professional Indemnity Insurance and to have professional cover arrangements in place.

3.69 AAT is also recognised by HM Treasury as a suitable professional accountancy body to supervise its members for the purposes of Money Laundering Regulations and falls within the AML remit of OPBAS.

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[16] **HMRC Research, May 2019:**
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/802570/Role_of_professional_bodies_in_the_regulation_of_tax_agents-HMRC_research_report.pdf

[17] **AAT qualifications:**
https://www.aat.org.uk/aat-qualifications-and-courses/aat-qualifications/aat-accounting-qualifications

3.70 AAT currently undertakes practice assurance reviews of at least 5% of its 4,250 licensed accountants every year. Some of these members are selected on a risk basis, others at random and some as a result of concerns being raised.

3.71 In addition to practice assurance reviews, AAT also responds to consumer complaints about its licensed members and takes appropriate action.

3.72 AAT often provides help and advice either via telephone or email and occasionally in person, to bring a member up to an appropriate standard; sometimes it will require a reprimand which may include a requirement for additional training or CPD; sometimes it will require a fine; in other circumstances a suspension may be appropriate and the ultimate sanction is removal of membership.

3.73 AAT is wholly transparent about its disciplinary procedures and actions with all outcomes for each of the last three years published on its web site[18] as well as being published in its bi-monthly magazine which is sent to all 50,000 full AAT members. This serves both as a useful educational tool and as a useful deterrent to others.

3.74 Other professional bodies behave in much the same way. AAT believes it is therefore reasonable to expect professional bodies to take the primary role in improving consumer protection, but this will only be possible if government initially takes responsibility by introducing legislation that compels advisers to be members of a professional body - as professional bodies can only ever be responsible for those they supervise.

Questions on other market interventions

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

3.75 If the Government accepts AAT's recommendation that all advisers should be compelled to become members of a professional body, AAT believes the experience of the financial advice community and the intervention of the FCA (FSA as it then was) would provide some important lessons.

3.76 The FCA Retail Distribution Review, launched in 2006 and effective from 2012, meant that anyone providing financial advice was required to hold an appropriate qualification (a level 4 qualification from an appropriate professional body such as the CII or LIBF).

3.77 Advisers were given several years notice of the new requirements.

3.78 If compelled to join a professional body, being appropriately qualified is essential yet some unregulated agents may not be "appropriately" qualified but will hold some qualifications. It would appear reasonable that they should only be required to take the missing elements. There is a very clear precedent here with the RDR "gap-filling" process for financial advisers who were part qualified.

[18] **AAT Disciplinary Outcomes 2018, 2019, 2020:**
https://www.aat.org.uk/about-aat/professional-standards/disciplinary-processes-and-tribunals/disciplinary-outcomes

3.79 With RDR, some experienced advisers complained that they should not be required to gain qualifications by virtue of the fact they were highly experienced. This will inevitably happen if tax advisers/accountants are required to be appropriately qualified. A strong counterargument to this is that with so much experience, passing a relevant qualification should be relatively straightforward. When the RDR process commenced, a vociferous minority, including some MPs, called for an interim "grandfathering" process because of this experience argument; the FCA refused to accept these demands and the outcome ultimately proved very positive.

3.80 AAT believes that such an approach should be followed by Government if compulsory membership of a professional body is to be introduced.

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?

3.81 AAT contends that existing professional bodies have the tools, skills, experience and knowledge to deal appropriately with their members, the largest problem is those outside of their remit and this can only be solved by requiring all advisers to become members of a professional body.

Question on international models

Do you know of examples of effective law, or enforcement, from other countries or jurisdictions?

3.82 Whilst the Call for Evidence is right to state that some countries require tax advisers to register with a statutory regulator which sets qualification requirements, runs a complaints and disciplinary process and has some form of fit and proper person test, these are all requirements already met by existing professional bodies in the UK.

3.83 It is also important to remember that whilst many other countries place a heavy reliance on a University degree, thankfully the UK moved away from such outdated approaches long ago, not just in the accountancy sector but in many other areas of the economy where it recognised that doing so increases social mobility and opens professions up to a considerably wider pool of talent.

3.84 In relation to AML, the latest Basel Index rankings[19] indicate New Zealand, Finland and Estonia are the top ranked countries for tackling money laundering (the UK ranked 20th) so these countries' tax authorities would be a good starting place for HMRC to have relevant conversations about how to be more effective in combatting money laundering.

3.85 In relation to tax evasion, the latest independent Financial Secrecy Index, which is a, *"…politically neutral ranking…a tool for understanding global financial secrecy, tax havens or secrecy jurisdictions, and illicit financial flows or capital flight"*[20] ranks the UK as the 12th worst place in the world for financial secrecy although given the Cayman Island is ranked first, British Virgin Islands 9th and Guernsey 11th, if overseas territories were treated as a single entity, the UK would conceivably top the rankings. This would suggest that despite improvements being made in recent years, the UK still has a very long way to go to be internationally respected in this regard.

3.86 AAT has published the outcomes of members who have been subject to disciplinary proceedings for many years but has been aware of an apparent reluctance on HMRC's part to regularly do the same. It may therefore be worth examining the example of South Korea where their tax authority publishes a comprehensive list of every individual and company that

[19] **Basel AML Index 2019:**
https://www.baselgovernance.org/sites/default/files/2019-08/Basel%20AML%20Index%202019.pdf
[20] **Financial Secrecy Index, February 2020:**
https://fsi.taxjustice.net/en/introduction/fsi-results

has failed to pay the correct amount of tax (above $180,000) on an annual basis. This has been the case since 2006 and the approach appears to have worked very well, although it should be noted that South Korean culture is much more sensitive to naming and shaming.

Questions about the future

Questions on Option A

What other examples are there of existing powers (HMRC or other government powers) that could be used to tackle poor tax adviser behaviour? What is your view of the effectiveness of HMRC's current powers?

3.87 This question has already been addressed above at 3.54 - 3.57.

Question on Option B

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

3.88 Clients of professional body members should not experience problems due to a lack of redress given they can utilise the complaints procedures that each professional body has in place. AAT has a comprehensive complaints procedure in place[21] as do each of the other bodies. This is only a problem for the clients or unregulated agents, and this is a problem that can be solved by requiring all agents offering paid-for advice to be a member of a professional body. Examples of issues encountered by clients of unregulated agents is provided above in the table under 3.43.

Question on Option C

How could consumers be helped to make better choices?

3.89 AAT has misgivings about the idea that kitemarking advisers will lead to better consumer choices as detailed above at 3.22 – 3.27. It is worth noting that some AAT members participating in the AAT/HMRC focus group in July 2020 indicated that, as long as sufficient communications were deployed, the kitemaking approach might be welcomed.

3.90 AAT considers that compelling advisers to be members of a professional body would be a far better means of protecting consumers as it would ensure that whichever agent they choose, would be expected to meet their professional body's standards and be subject to a proportionate degree of regulation.

Question on Option D

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

3.91 Although the British tax system is designed so that accountability lies with the taxpayer, whether or not an adviser has been used, inevitably where an agent is solely at fault the taxpayer will usually seek compensation from their agent. That compensation is far more likely to be forthcoming if the agent is a member of a professional body because membership obliges the agent to hold (and evidence that they hold) Personal Indemnity Insurance.

[21] **Complaints about AAT members:**
https://www.aat.org.uk/about-aat/professional-standards/complaints-about-aat-members

3.92 Unregulated agents are not only more likely to make mistakes and be the cause of complaints, they are less likely to hold appropriate insurance.

3.93 Joint liability may be a more appropriate approach to take given this is likely to better reflect the reality of many tax advice situations.

3.94 Both the Canadian and Portuguese examples given in the Call for Evidence have merit and are worthy of further exploration. The key to acceptance of the Canadian model is clearly the high onus of proof and the success of the Portuguese approach is that whilst the agent is liable for any fines and debts, the client is still responsible for ensuring the right amount of tax is paid. That is vital as otherwise agent liability could end up meaning that some clients unduly benefit from the mistakes of their adviser.

Question on Option E

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)

3.95 The situation described under Option E in the Call for Evidence is precisely the solution that AAT favours.

3.96 The suggested criteria, which AAT already meets, appears to be comprehensive and well considered although AAT regrets the reference to professional competence being demonstrable simply through "*many years' experience*" and instead believes that sentence should end after, *"through a relevant qualification*."

3.97 Despite Option E being AAT's preferred solution for many years and being highlighted as such throughout this response to the Call for Evidence, the actual question (Q.25) is muddled and confused with Option F, an option that AAT would not support.

3.98 This is because professional bodies have not taken on a greater regulatory role as a result of the creation of OPBAS, they have continued to undertake AML supervision as they did before.

3.99 Whilst there is absolutely scope for professional bodies to take on a greater regulatory role by ensuring all agents are members, there is no scope for an OPBAS style approach to this issue, which would be strongly resisted by AAT and most likely all other professional bodies.

3.100 In relation to OPBAS;

- OPBAS was imposed on professional bodies without their support given it had no clear objectives and the supposed problem it sought to solve was not clearly identified nor what value it would add;

- OPBAS was intended to create a level playing field but did no such thing given two of the biggest AML supervisors (HMRC and the Gambling Commission) were exempted;

- OPBAS not only failed to establish funding arrangements in advance of being established, it has taken almost two years since being established for such funding arrangements to finally be agreed and for professional bodies to know what fees were due and in turn what fees they needed to pass on to their members.

- The creation of OPBAS has also helped to destabilise the regulated sector because the additional charges for professional body supervisors, passed on to each body's respective members and in turn subsequently to members' clients, has provided a further unfair advantage to unqualified, non-professionals who do not need to meet any of these additional costs. As AAT repeatedly stated when OPBAS was being considered, it is clearly not in the public interest if professional service providers leave their highly regulated membership body environments and/or their clients move to non-professional providers in order to avoid paying higher fees.

3.101 Whilst AAT does have a positive working relationship with OPBAS and continues to comply with its obligations in that regard, the experience encountered with the creation of OPBAS serves as a strong example of what not to do rather than as a template to be followed.

3.102 It is also worth stressing that the creation of another layer of bureaucracy, more costs and antagonising the professional body sector rather than working together would be counterproductive.

Questions on Option F

What would the impacts be of introducing external regulation, particularly on clients and on those agents already meeting high standards? Are there any existing bodies that might be well-placed to act as regulator?

3.103 This question is muddled with Option E, even though that was unlikely to be the intention. Introducing external regulation is precisely what has happened via OPBAS, albeit the external regulation of professional bodies rather than the external regulation of agents.

3.104 As stated above (3.103), the creation of another layer of bureaucracy, more costs and antagonising the professional body sector rather than working together would be counterproductive.

3.105 The Call for Evidence also states that, *"Before any regulator was set up, further consultation would be required to resolve questions such as how it should be funded…"* again AAT urges HMRC to consider how many consultations were required for the funding arrangements of OPBAS, most of which failed to reach a conclusion and that is before consideration of wider factors such as the extent of its powers and its status.

3.106 Option F also details a list of likely requirements that an external regulator would impose i.e. possessing relevant qualifications; having professional indemnity insurance; being registered for AML supervision and so on, all of which are already requirements for professional body membership. This begs the question as to why any policymaker would seriously consider reinventing the wheel at considerable expense to the industry (and to consumers and businesses who pay for tax and accountancy services) and simultaneously creating considerable risk, upheaval and uncertainty.

3.107 In response to the question as to whether there are existing bodies that are well-placed to act as regulator, there certainly are. Existing professional bodies who already regulate their members and have been largely successful in doing so for many decades.

General issues relating to compulsory professional body membership

3.108 By requiring all advisers providing paid for advice to be members of a professional body, AAT believes that the following benefits would follow;

- Greater consumer protection for individuals and businesses
- Significantly reduces complaints (HMRC state that two thirds of complaints about accountants relate to the one third of the sector that is unregulated) and consequently should reduce some HMRC costs
- Strengthens the credibility, image and reputation of the profession – enhancing trust
- Aligns the accountancy profession with other regulated professions
- Addresses the longstanding issue of an uneven playing field between regulated and non-regulated tax practitioners/accountants
- Likely reduces egregious tax avoidance as well as evasion – given many promoting such behaviour are currently unregulated, greatly enhancing the power of the PCRT commitment made by professional bodies
- Likely to reduce incidences of money laundering given the unregulated sector provides a more attractive proposition for anyone seeking to launder money
- Affords consistency in the way in which opportunities for recourse can be taken should there be a need given the disciplinary framework that AAT and other bodies have in place
- Removes the potential for members to consider opting out of their professional membership in order to take advantage of a lower level of compliance monitoring/assurance activities as happens at present
- Provides HMRC, and government more widely, with the benefit of being able to rely on the role of the professional bodies in providing assurance for the tax agent community and also in acting in instances where the standards of particular members falls below a suitable level
- Reinforces the value of the disclosure MOU that AAT and other bodies have in place with HMRC
- It will further strengthen the working relationship between HMRC/Treasury/Government and the representative bodies
- Satisfies the desire of MPs for long overdue reform – 83% of MPs said anyone providing tax or accountancy services to the public should be a member of a relevant professional body (YouGov/AAT December 2018[22])

3.109 Government should provide a deadline date by when unregulated agents must take up membership of one of the relevant professional bodies (AAT, ATT, ACCA, CIPFA, CIMA, CIOT, ICAS, ICAEW, STEP). Providing a sufficient notice period will be critical to success. Three years would appear sufficient and certainly no more than five years to avoid unnecessary delay and uncertainty, but Government should consult all relevant bodies before making a decision.

[22] **See Appendix below**

3.110 This may mean that some unregulated agents will have to engage in studies to become appropriately qualified if they are not already. There are very clear parallels here with the FCA (FSA as it then was) and their Retail Distribution Review (RDR) requirements for Financial Advisers, which came into force in December 2012. Those who suggest highly experienced agents with no qualifications should not be required to take appropriate qualifications ignore the obvious consumer detriment this may cause but also the fact that if an agent has many years' experience and is confident about their skills and knowledge, then passing an appropriate examination should not be too challenging.

3.111 Some unregulated agents may not be "appropriately" qualified but will hold some relevant qualifications. These agents should only be required to take the missing elements. Again, there is a very clear precedent here with the RDR "gap-filling" process.

3.112 Policymakers will need to consider that any individuals who have previously had sanctions taken against them by a relevant professional body, potentially resulting in expulsion, may not be able to be admitted back into a regulated environment. This may be a sensitive issue but given the need to protect the public, uphold standards and ensure the credibility of the profession, their loss should not necessarily be avoided, and the fact expelled members can currently continue to practice simply by going to HMRC as the regulator of last resort is far from an ideal situation anyway.

3.113 Recognising that some will not necessarily wish to re-engage with studies, a small number will inevitably call for a regulatory/assurance oversight package or something similar, possibly as a time limited interim measure to afford individuals the time to become full members in due course.

3.114 Whilst this is manageable and could provide an interim solution for those agents required to transition into professional membership with a recognised professional body, such an approach could bring additional risk, greater complexity and introduce a degree of uncertainty amongst individuals and businesses who use agents. Perhaps most importantly, this would seriously undermine the principles being adopted by the majority i.e. that qualifications are a very important part of professional competence.

3.115 Again, RDR serves as a useful example as a vociferous minority, including some MPs, called for an interim "grandfathering" process on similar grounds; the FCA stood firm and refused to accept these demands and the outcome ultimately proved very positive.

3.116 Finally, some agents will threaten to take early retirement should they be obliged to join a professional body, whether because they don't wish to gain appropriate qualifications, undertake regular CPD, pay an annual membership fee or some other reason. Such threats must not be given undue attention because

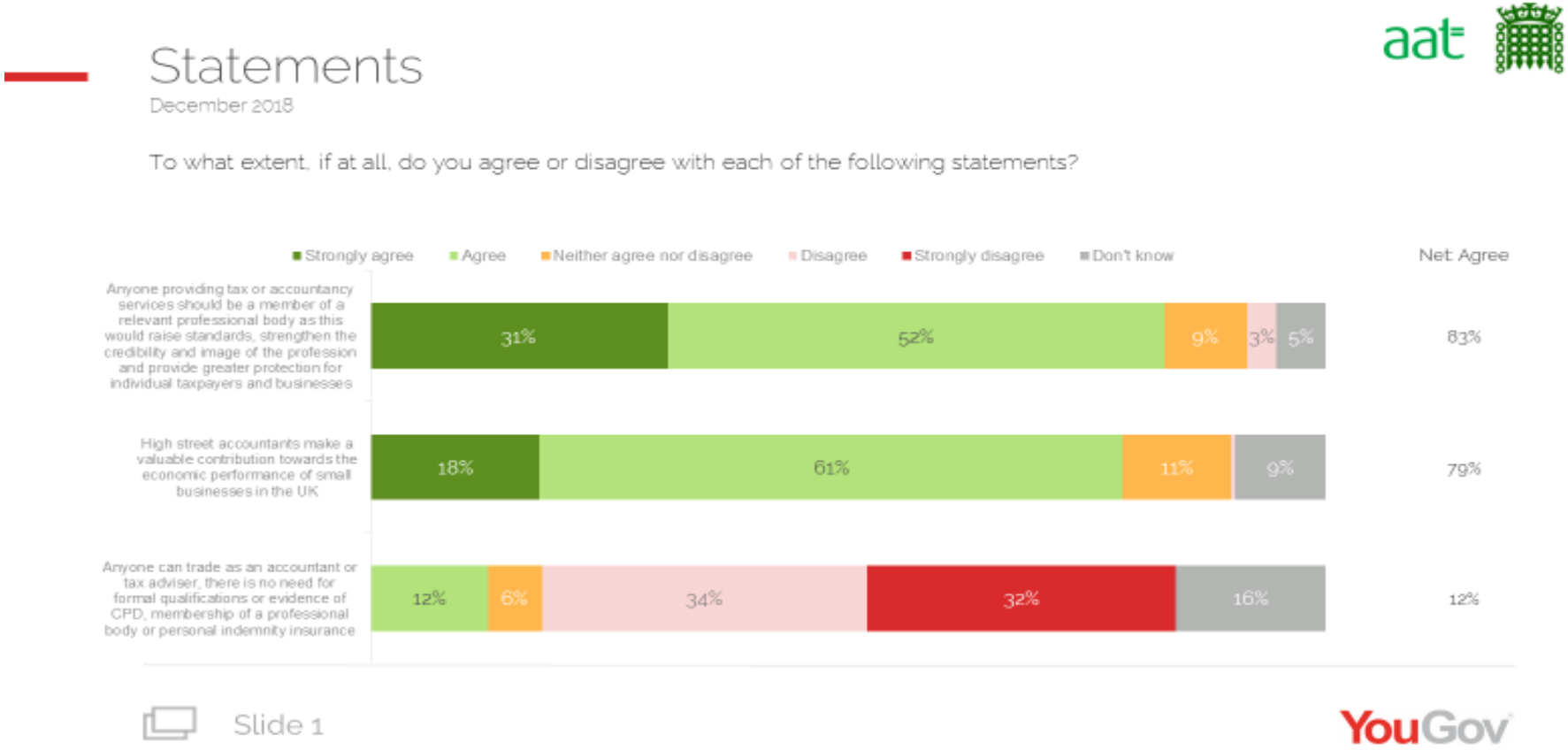
a) This was also the case with RDR and financial advisers but there was not a large exodus of advisers,

b) more recently it was also the case with the introduction of Making Tax Digital where many agents suggested they would rather retire early than embrace technology, again these threats did not materialise in any significant way

c) If becoming appropriately qualified, undertaking regular CPD, being properly insured and accepting a greater degree of regulation in the interests of consumers, is not something that an agent wants to do then they are probably not the type of agent that the profession should be supporting

4. Appendix:

AAT/YouGov polling of MPs, December 2018



5. About AAT

AAT is a professional accountancy body with approximately 50,000 full and fellow members and over 80,000 student and affiliate members worldwide. Of the full and fellow members, there are more than 4,250 licensed accountants who provide accountancy and taxation services to over 400,000 British businesses.

AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

6. Further information

If you have any queries, require any further information or would like to discuss any of the above points in more detail, please contact Phil Hall, AAT Head of Public Affairs & Public Policy:

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