



Association
of Taxation
Technicians

Practical Tax People



Chartered
Institute of
Taxation

Excellence in Taxation

**Enhancing consumer protection reducing regulatory restrictions:
will-writing, probate and estate administration activities
Cover paper and consultation document**

1 Introduction

- 1.1 The CIOT and ATT welcome the provisional report issued by the Legal Services Board on 27 September 2012.
- 1.2 In our submission of 16 July 2012, we raised particular concerns that the drive to protect consumers over poor will-writing and the risk of defalcations on estate administration would restrict the ability of those consumers to take advice from tax advisers on tax planning and receive assistance on general estate tax compliance. It seems to us that our concerns have been heeded and we are pleased to see the comments at paragraph 2 of the Executive summary:

‘We do not intend that activities, such as the provision of inheritance tax advice, will be caught within the scope of these reservations unless those activities are provided in conjunction with the core reserved legal activities of will-writing and estate administration.’

and at paragraph 25 of the Proposed recommendations:

‘We do not intend for the proposed reservation of will-writing to bring service providers that do not write wills within the scope of legal services regulation. Similarly, we do not intend for the proposed estate administration reserved activity to bring within legal services regulation service providers that do not collect, realise and distribute estate assets. For example, it is our view that no reserved activity will be performed where a consumer obtains advice about how to limit inheritance tax after their death but the provider does not write the will (or outsource the writing of the will) that would give effect to the advice. Similarly, where a consumer obtains help completing the estate accounts once an estate has been administered, but the provider does not collect, realise or distribute estate assets or prepare the papers upon to which to found the authority to do so, it is our view that this service would fall outside the scope of the new reservation. Advising an executor on legal issues related to the administration of an estate would also not be considered the performance

of a reserved activity.’

1.3 We conclude that this means that tax advisers may continue to give Inheritance Tax and estate planning advice and prepare estate tax returns and accounts without the need for regulation. The only exceptions would be if the tax adviser:

- actually wrote the will (or supplied the will without making clear it had been drafted by an outside source), which clearly would require regulation; and
- acted as executor for a fee such that the tax adviser had control of the estate assets, where we can accept the need for regulation but wish to probe the LSB’s intentions a little.

1.4 The scenarios at Appendix 1 are helpful in providing guidance as to when activities come within the scope of regulation. We have identified some additional situations where we would appreciate your confirmation that we have reached the correct conclusion as to whether the activity is potentially reserved or not.

2 Scenario 1

2.1 A client shows his tax adviser his draft will prepared by his solicitor. In order to achieve a better tax outcome, the tax adviser suggests alternative wording for the client to discuss with his solicitor. Would the tax adviser be considered to have been involved in will drafting and require regulation? The CIOT and ATT’s view is that the solicitor remains in charge of drafting the will and it is he/she who would require regulation and not the tax adviser.

3 Scenario 2

3.1 A tax adviser claims a tax refund on behalf of a deceased client and it is repaid to the tax adviser’s client money account. Would that constitute a reserved activity, namely collecting estate assets? The CIOT and ATT view is that it would not as it is merely an administrative function of dealing with a late client’s affairs and presumably a continuation of the arrangements with the late client. The refund would be passed to the executor for distribution; it is the executor who is carrying out the reserved activity.

4 Scenario 3

4.1 On occasions it may be appropriate for beneficiaries to enter in to a Deed of Variation. To what extent will that be regarded as a will writing activity and subject to regulation? Given that a Deed of Variation is intended to be a simple procedure, following HMRC rules and which will involve all affected beneficiaries, we do not see that it needs to be a reserved activity. If we are wrong in this, we assume that where a tax adviser recommends a Deed of Variation for tax planning purposes but the solicitor implements the Deed it is the solicitor who would require regulation and not the tax adviser.

5 Scenario 4

- 5.1 It is commonplace for a will to have the children of the deceased named as executors and also as beneficiaries. Point 88 Scenario 9 centres on the fact that the executor is not expecting payment for acting as executor and as such is outside the scope of regulation. If the executor is also a beneficiary does that make a difference? Is the bequest regarded as payment for acting as executor? The CIOT and ATT view is that it should not as the bequest arises out of family connection rather than a commercial transaction.

6 Scenario 5

- 6.1 Many clients will appoint their advisers as executors. This may well involve the solicitor and tax adviser/accountant as joint executors. We assume that the intention is that the tax adviser would have to decline appointment as joint executor or submit to regulation?

7 Scenario 6

- 7.1 Taking Scenario 5 a stage further, what is the position if a tax adviser has already been appointed as an executor? If the proposals are enacted will the tax adviser either have to stand down as executor or submit to regulation? Will there be grandfathering arrangements put in place to cover arrangements/appointments made prior to any new regulations?

8 Contact

- 8.1 If you would like to discuss any aspect of this letter further please do not hesitate to contact Heather Brehcist at hbrehcist@ciot.org.uk or on 0845 6003214 or 07833 259356.

9 The Chartered Institute of Taxation

- 9.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 16,500 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

10 The Association of Taxation Technicians

Founded in 1989, the Association of Taxation Technicians (ATT) is a charity and the leading professional body for those providing UK tax compliance services and related activities. Our members are qualified by examination and practical experience to assist individuals and businesses in complying with their tax obligations.

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

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