

About Sage

Sage is a UK FTSE100 company and the global market leader for software that provides small and medium businesses (SMEs) with the visibility, flexibility, and efficiency to manage finances, operations, and people. This technology includes integrated accounting, payroll and payment systems, as well as on-premise and connected cloud.

We are passionate supporters of the UK's small and medium sized business community.

Introduction

Sage welcomes the opportunity to input into HMRC's consultation into 'Raising standards in the tax advice market: professional indemnity insurance and defining tax advice'.

Having reviewed this consultation, we have chosen to focus our feedback on the specific call for views on whether tax software should be included in the definition of tax advice and/or the requirement to hold professional indemnity insurance noted in paragraph 56 of the consultation document.

As a software provider, we do not believe we are best placed to comment on a large proportion of the specific questions concerning other topics, particularly around the application and enforcement of professional indemnity insurance (PII). In order to ensure our feedback is as useful as possible to HMRC, we have declined to answer these points.

Our feedback on the question of whether tax software should be included in the definition of tax advice can be found below. When reviewing this consultation, we felt compelled to comment upon the definition of tax advice and specifically why we, as a software provider, feel we do not fall within the remit of tax advice (and therefore within the remit of PII). We have provided detail to support this view throughout our response. We would welcome further engagement if HMRC has any points they wish to raise directly with Sage or our industry partners.

Why we do not believe the activities we undertake are 'tax advice'

Specific activities

Having reviewed this consultation, we have noted that Annexe C provides a list that offers suggestions of activities and professionals who "may be providing tax advice"¹. This list includes the following – "tax software: especially software that carries out categorisation or calculations"²

In light of this suggestion put forward by the consultation document, we wanted to provide more context of the activities we undertake as a software provider, so we can explain these to HMRC in more detail and evidence why these should not be considered tax advice.

In product classification/categorisation

Below are some examples of where we carry out 'classification' and 'categorisation' within our products:

¹ Page 39 of 40,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/972427/Raising_standards_in_the_tax_advice_market_professional_indemnity_insurance_and_defining_tax_advice_-_consultation.pdf

² Ibid

- In collaboration with our partner application, AutoEntry, we provide functionality to automate data entry into our bookkeeping applications through the use of image capture technology. However, this automation relies solely on 'rules' which are determined by the user and all values are editable and within the control of the user. It contains no specific 'tax logic'.
- Our bookkeeping software may automate the posting of banking data. However, similar to above, this automation relies solely on 'rules' which are determined by the user and all values are editable and within the control of the user. It contains no specific 'tax logic'.
- Our bookkeeping software records the VAT treatment of a transaction. This is done in multiple ways depending on the solution but in all instances, the VAT treatment is determined by the user. This can be done explicitly by the user, for example through the use of 'tax codes'. Alternatively, this can be done using more intuitive solutions that look at information provided by the user in relation to location of seller and customer, the type of sale and the status of the customer and pair this with tax treatment as defined by HMRC. Again, any output is transparent to the user.
- Our tax software used for calculating income tax and corporation tax require income and expenses to be categorised. We provide categories specified by HMRC and while we may automate the population of some values based on information gained from the user, all values are editable and within the control of the user.

Our payroll software may treat pay element values as taxable, ni'able and pensionable by default which will then impact the resulting calculations. However, whether a value is set to be taxable, ni'able and pensionable is transparent and within the control of the user. We do not believe that any of the above examples constitute 'tax advice' for the following reasons:

- Our products provide the ability to record data and whilst we may provide some level of automation to assist the user in doing so, it will ultimately always be the user who is responsible for the data entered.
- We provide clearly documented solutions, the output of which is dependent on how the user interacts with that solution. For example, 'if you post to nominal X, the transaction will be categorised as Y'. The user ultimately chooses how to interact with the software.
- We are not "recommending a specific course of action based on the consumers individual circumstances and goals". Any automation follows the same rules regardless of the user's circumstances and goals.
- Any automation is transparent to the user who is usually able to edit any output. Any classification or categorisation from a tax perspective is done in accordance with categorisation and treatment that is defined by HMRC.

We would also like to point out that, going forward, many aspects of categorisation and classification are likely to become even more automated in nature. This will be driven by the availability of data and new technologies. However, regardless of 'how' data is categorised and classified, we believe that the above reasoning for why such activities do not constitute tax advice still holds true.

In product calculation

Below are some examples of where we carry out 'calculations' within our products:

- Many of our products perform 'ad hoc' calculations such as adding up values to provide a total. However, such functionality is immaterial in the wider discussion of tax advice and the risk of error is sufficiently minimised through testing procedures.

- Our tax software calculates income tax and corporation tax values based on information entered by the user and calculations specified by HMRC.
- Our payroll software will calculate payroll deductions based on the information entered by the user and calculations specified by HMRC.
- Our bookkeeping software will calculate VAT return values based on the underlying transactions and HMRC published guidance.

We do not believe that any of the above examples constitute ‘tax advice’ for the following reasons:

- We do not recommend a course of action - calculations are always a direct result of information provided by the customer and published calculations provided by HMRC.

Customer support

Below are some examples of where we carry out customer support activities:

- Blog articles – These articles are always based on published guidance and are intended to educate/inform customers in user friendly language to provide background knowledge to topical subjects.
- Customer support on the phone – This support is in relation to use of the software only and is limited to assisting the customer achieve their desired outcome using the functionality provided. Furthermore, agents are specifically trained not to provide tax advice and to only provide support in relation to the functionality.
- Product support articles – Similar to phone support, the product support articles inform users of the functionality available and how to use it to achieve a desired outcome. Sometimes support articles will touch on legislation for context but this will always be based on published HMRC guidance.
- In product customer support – Products occasionally offer on screen messaging such as information icons. These provide users with guidance on completing the areas of the software or signposts them to published guidance. Again, any such messaging is based on published HMRC guidance and is instructional in the context of functionality only.

We do not believe that any of the above examples constitute ‘tax advice’ for the following reasons:

- All forms of customer support are either instructional in nature only in relation to specific product functionality or background information that is general in nature and based on published HMRC guidance.
- Our agents are specifically trained not to provide tax advice and to provide support only in relation to product functionality.

Definitions provided in the consultation

In addition to the information above, we have also carefully considered the specific definitions discussed in the consultation document that may be used as a basis for defining ‘tax advice’. We wish to provide the following feedback on these definitions:

Definition of a tax agent as provided by Dishonest Tax Agent penalty legislation:

Under this definition (provided in Annex A of the consultation³) we do not believe we fall into the definition of a “tax agent” for the following reasons:

³ Annex A of consultation paper, p36 out of 40. Definition of a tax agent as set out in schedule 38 of Finance Act 2012

1. We have not been ‘appointed’ directly or indirectly by our customers to act in the capacity of providing tax advice. We feel, in practice, this is the purpose of an engagement letter.
2. As per the above discussion under ‘specific activities’, we do not advise customers in relation to tax, nor do we act as an agent on behalf of the client in relation to tax. There is no client advisor relationship, and we could not and would not attempt to discuss a customer’s tax affairs with HMRC. On this basis, under the definition we do not ‘assist customers with their tax affairs’.
3. The definition of assistance also includes ‘assistance with any document that is likely to be relied on by HMRC to determine a client’s tax position’. Whilst we provide many of these documents and in some instances automate the population of the documents – we do not determine or advise on the information entered in that document.

However, we acknowledge that if this definition were to be used to define tax advice, on the face of it, software providers are not clearly and definably omitted, which is of concern to Sage. This is addressed later in our response under ‘How to establish a workable definition of tax advice that excludes software providers’.

Definition of a tax agent as provided by Money Laundering Regulations:

Under this definition (provided in Annex A of the consultation⁴) we do not believe we fall into the definition of a “tax advisor” for the following reason:

1. We do not provide material aid, or assistance or advice, in connection with tax affairs. We support the recording and submission of data only.

Again, we acknowledge that if this definition were to be used to define tax advice, on the face of it, software providers are not clearly and definably omitted. This is addressed later in our response under ‘how should we be excluded from the definition’.

Financial services distinction between guidance and advice:

Under this definition (provided in Figure 4 of the consultation⁵) we do not believe we fall into the definition of “Advice” for the following reasons:

1. We do not recommend a specific course of action based on a consumer’s individual circumstances and goals. As highlighted above, any automated action is the result of how the user interacts with the software and the treatment has not been tailored to the user. We therefore do not believe any of our services meet the definition of ‘advice’ under this distinction.

Therefore, based both on our specific activities and the suggested definitions we do not feel we offer tax advice. For this reason, we do not believe we should be required to hold indemnity insurance.

⁴ “Annexe A of consultation paper, p. 36 out of 40. “Tax adviser’ means 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.”

⁵ Advice: a service which recommends a specific course of action based on consumers' individual circumstances and goals

Guidance: provides information and/or options to narrow down consumers' choices, without making an explicit recommendation

Risks to technology innovation and associated benefits to SMEs

Whilst we are of the firm belief that we do not offer 'tax advice', as outlined above, we are also concerned with the potential implications for the software industry of not being actively excluded from such a definition.

We acknowledge the support of the Government and, more specifically, HMRC in the use of software in the administration of tax. We are aware of the growing need to digitalise and automate these processes to simplify compliance processes for SMEs and individuals and provide associated productivity benefits, with Making Tax digital being a key example. HMRC are rightly looking to the software industry to provide innovative solutions to help solve the burden of tax administration and to ensure tax is 'done right'. Going forward, such solutions will undoubtedly become more automated and make increasing use of Artificial Intelligence and Machine Learning as software providers continue to improve solutions to benefit end users and HMRC.

However, by introducing a definition of tax advice and not clearly excluding tax software and specific associated capabilities and services, HMRC runs the risk of hampering technological advancement and innovative solutions through fear of unintentionally being 'caught by the rules'.

For the software industry to thrive alongside the roll out of Making Tax Digital and similar initiatives, industry needs certainty to invest in innovation without fear of unnecessary or unmerited penalty. Any definition should clearly set the boundaries for the industry and remove any ambiguity around capabilities and services carried out and methods used to achieve those capabilities and services.

We have provided our suggestion on how to achieve this in the section below.

How to establish a workable definition of tax advice that excludes software providers

We fully support the concept of a definition of tax advice, as done correctly this will allow customers, professionals and other industry partners active in the tax administration ecosystem to be completely clear on acceptable practices regarding tax advice and what is classed as in and out of scope. As outlined in the previous sections of this document, we have made clear we do not provide tax advice and have evidenced why this is the case. However, we also don't believe we are the 'target' for this definition, which the consultation document makes clear was initially driven by tax avoidance schemes.

We appreciate that the definition of tax advice cannot and should not seek to define every instance and non-instance of tax advice. As per paragraph 52 "This is because it would be easy to get around the requirement if it was drawn too narrowly and bringing in a wide range of activities provides maximum protection for taxpayers." However, we do not believe that a definition that serves the purpose intended would suitably rule out the activities of tax software providers. We therefore suggest that, instead of amending the definition, the activities carried out by software providers are included as a specified 'exemption'. This would allow both a flexible, catch all definition whilst also providing the industry with the certainty it needs in order to thrive.

As per the discussion above, we also believe that 'types' of activities carried out by software providers such as calculation, classification and customer support should be clearly called out and defined regardless of the technology used to achieve the solution in order to 'future proof' the definition.

Conclusion

We have considered both the activities we undertake, and the definitions of tax advice offered in the consultation and do not feel that, from either perspective, the capabilities, and services we offer constitute tax advice.

We provide solutions that allow users to record and submit tax data. While we may, in some circumstances, automate these workflows, the user is ultimately responsible for the data entered and how they interact with the functionality provided. The software functionality we provide is homogeneous in nature, clearly documented, editable and in all circumstances based on published HMRC guidance.

However, we also acknowledge that software providers are not the key target for a tax advice definition. As such, we suggest the software industry should be excluded by specific exemption rather than amending a broader definition of tax advice.

We also believe that any exemption should clearly define and exclude specific activities regardless of technology used to achieve them in order to 'future proof' any definition. This will allow the software industry to thrive alongside HMRC as they look to build a trusted, modern tax administration system.