

**Raising standards in tax advice: protecting customers claiming tax repayments**  
**Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 We welcome the opportunity to respond to this consultation and think it is right that HMRC put deeds of assignment and other consumer protection issues to do with tax refund companies under the spotlight. This is an area where we have been raising concerns for some time and which has had little scrutiny thus far.
- 1.2 Over the last 18 months, we have dealt with a large number of taxpayers' queries that demonstrate there are serious issues with some tax refund companies. Issues include certain companies being unresponsive when taxpayers are trying to contact them, high fees, overinflated promises, unclear or hidden terms and conditions, data protection concerns where they request significant personal information in order to process payments of refunds, people being confused into thinking they were dealing with HMRC, and deeds/letters of assignment. Often **all** of these issues are present in any one single query. Most of the queries relate to a small handful of tax refund companies.
- 1.3 In particular, we are aware of a number of issues in relation to one tax refund company – Tax Credits Ltd who operated an online fast track process for making claims. We received a significant number of queries in relation to this specific company and their process which prompted us to raise concerns with HMRC last year. Since then there have been a number of media articles about the issue<sup>1</sup>. We note some of the bold language in the consultation<sup>2</sup> as well as the serious proposal to prohibit deeds

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<sup>1</sup> For example see <https://www.moneysavingexpert.com/news/2022/07/beware-third-party-hmrc-tax-rebate-firms/> and <https://www.theguardian.com/money/2022/jun/27/customers-complain-tax-rebate-firm-has-cost-them-thousands>

<sup>2</sup> For example, 'New measures to stop *rip-off* agents taking advantage of people and pocketing their tax repayments'

of assignment and wonder how far this is being influenced by these recent cases involving Tax Credits Ltd and their fast track process.

- 1.4 While we understand the strength of feeling - given the damage done to taxpayers, the reputation of the industry and trust in the tax system - it is important for HMRC to remember that some tax refund companies will be meeting a genuine need in the market and operate according to appropriate standards. Moreover, despite the ubiquitous no win-no fee model, assistance with a tax refund claim from a good, transparent tax refund company may be more affordable and accessible for taxpayers than assistance from a traditional agent. Without these companies, some taxpayers would simply get no refund at all. HMRC's research shows that those who received a refund thought it was appropriate that the refund company charged for a service they provided in making the claim process easier<sup>3</sup>.
- 1.5 HMRC say that "We want to make sure taxpayers receive their full tax claims – putting 100% of the money they are due into their pockets..." In an ideal world (and as we think is required under the HMRC Charter), HMRC would (a) ensure people are aware of what refunds they can claim (b) are confident to claim the refunds through an easy process and (c) automate refunds as far as possible. However we are not in an ideal world. HMRC do not currently do enough to reach taxpayers, and even if they begin to do more, some taxpayers will simply never wish to interact directly with HMRC, or will be unable to navigate the HMRC processes for obtaining a refund.
- 1.6 Tax refund companies invest significant amounts of money in advertising and large scale social media campaigns to publicise tax refunds and to find customers. They also have a quick, easy application process – usually requiring someone to spend no more than a few minutes on a smartphone. Unless significant changes are made to HMRC's approach to reaching taxpayers and the refund application process, it is unrealistic for HMRC to ever think it can ever compete with tax refund companies to achieve the stated objective.
- 1.7 Our key recommendations in these areas are that HMRC use the internet to raise awareness, especially social media, more. Life is increasingly lived online, especially among the younger generations. This will increase visibility of HMRC but also help promote HMRC as accessible, modern and technologically advanced.
- 1.8 As we set out in detail, there is currently a tortuous and difficult online journey which is likely to prevent or discourage people from self-serving. HMRC should bring the online tax refund company application process out from behind the government gateway, which has very a very high level of security/multi-factor authentication etc. We appreciate that security is very important but we do not think the same level of security checks are needed for every HMRC online service function currently sat behind the government gateway: it is logical to require a very high level in order to submit a tax return, but something more basic could work for (for example) a working from home expenses claim. HMRC should also carry out user research to ensure processes and forms are user-friendly.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1029797/The\\_use\\_of\\_High\\_Volume\\_Agents\\_to\\_claim\\_tax\\_rebates\\_research.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1029797/The_use_of_High_Volume_Agents_to_claim_tax_rebates_research.pdf) (Page 5)

They should also check whether all the information requested is actually needed in order to process a claim.

- 1.8.1 In respect of some of the current known issues with tax refund companies, HMRC's Standard for Agents could be strengthened to better protect consumers. Currently the most helpful relevant principles to consumers are 2.1 Integrity, where it says 'We expect agents to be straightforward and honest with HMRC, for example, by.... not suggesting or implying that HMRC endorses or regulates their role as an agent' and 2.3 Professional behaviour, where it says 'We expect agents to ... have clear terms of engagement with their clients'. HMRC also have wide powers that can be used to deal with breaches of the principles including refusal to deal with powers. However, even as it is, it is underused.
- 1.9 HMRC have a range of other tools that derive from their core function of collection and management of tax in the UK that can and should be used to make life difficult for agents in situations where it appears there are consumer protection issues. It is important for HMRC to remember that ultimately, such issues could be reduced most effectively by requiring all those providing tax services of any kind to be subject to the level of professional standards obligations that currently apply to professional body members.
- 1.10 We definitely support HMRC taking some form of action on deeds/letters of assignment. However, unless HMRC make significant improvements to the nomination process so that tax refund companies are able to take their fee, we understand that some tax refund companies could cease to trade if a prohibition of assignments goes ahead. If this happens, as a matter of fact, many of those taxpayers will simply no longer obtain refunds at all. While prohibition might therefore be an attractive option for the government, it will be unfair to taxpayers who are eligible for tax refunds. It is essential that more work is carried out to assess the impact on taxpayers of any such changes to the tax refund company landscape.
- 1.11 In the absence of a full and proper impact assessment, we support some form of restriction rather than a prohibition at this time. Limiting an assignment to the actual refund being claimed (for example a working from home refund) would be the best solution. However, as a specific tax refund claim can trigger HMRC to reconcile the individual's whole position for the tax year, it may not be practical to extract the refund from any others in the wider P800 calculation and deal with it separately. This solution should, nevertheless, be explored further.
- 1.12 As things stand, we favour the prescription of format option with clear standardised wording around the scope/effect of the assignment. Customisation should not be allowed at all, so as to prevent any distortions creeping in. Due to the issues around electronic signatures, we think it is VITAL that an additional safeguard is implemented that requires a taxpayer to wet sign the assignment (perhaps with a witness signature as a back-up).
- 1.13 We would like HMRC's undertaking that if taxpayers contact them, making representations about the validity of any assignment under the new process, that HMRC will have a robust process in place to ensure that the taxpayer is taken seriously and not dismissed. Where assignments are not valid in accordance with the new criteria, HMRC should use their powers against the agent accordingly. In

the most egregious of cases HMRC should be prepared to use their refusal to deal with powers – and publicise this so that it can act as a deterrent.

- 1.14 We think HMRC should explore what other countries do when it comes to tax relief, repayment agents and some of the consumer protection issues that they present taxpayers. Of note is the fact that in the United States, unscrupulous tax preparers are jailed for Stolen Identity Refund Fraud. The authorities recognise this fraud stems from their ‘pay now, ask questions later’ approach and they treat the taxpayer as the victim. There are similarities here with cases we have heard of, where tax refund companies dupe people into providing their personal government gateway credentials and make incorrect Enterprise Investment Scheme (EIS) etc. claims via tax return. But in the UK, HMRC choose to treat the taxpayer as the responsible party and try to claim the money back from them.
- 1.15 In terms of the other proposals, we appreciate the desire to increase the transparency of contractual arrangements and support the introduction of a pre-contractual disclosure form to help taxpayers better navigate and protect themselves. The question is whether the requirement can be implemented on these tax refund companies that have a vested interest in keeping taxpayers in the dark. HMRC will need a way to police and enforce this requirement if it is to have any impact.
- 1.16 Requiring tax refund companies to register with HMRC via the Agent Services Account before processing any claims they submit is also essential, so that credentials to be checked. The 64-8 process does not work well at the best of times but in any case, for both practical and principled reasons, we do not think tax refund agents should be required to have a 64-8 in place - allowing access to large amounts of taxpayer information - before being allowed to submit a refund claim.
- 1.17 We are aware of certain companies using misleading advertising, advertising that makes them appear part of HMRC and issues relating to Anti-Money Laundering (AML) checks (where HMRC are the AML supervisor). These are all areas where HMRC can and should take action by using their existing powers and by working with other organisations such as the Advertising Standards Authority and the various search engines/social media platforms.
- 1.18 We are starting to hear about some tax refund agents threatening taxpayers with legal action over ‘unpaid fees’, where the individual made an enquiry say, but did not proceed to sign up to their services or tried to cancel. This is a legal/contractual issue and not a tax issue, but it is something we think HMRC should be aware of.
- 1.19 There is no doubt that whatever changes are made as a result of this consultation, the most egregious individuals/companies are likely to look for new ways to profit if existing routes are removed. For example, we may see more companies chasing for ‘unpaid fees’ or going down the route of asking for people’s personal government gateway credentials. This is something that HMRC must be aware of and which needs careful monitoring. HMRC’s response to the issues raised by us (and others) in relation to certain refund companies over the last few years has been slow which has meant more taxpayers have been affected unnecessarily. Going forward, processes need to be in place to ensure HMRC are not only doing their own robust monitoring but that action is taken at the earliest opportunity when issues are identified.

## **2 About Us**

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 Introduction**

- 3.1 We welcome the opportunity to respond to this consultation, which comes at an apt time, given LITRG have spent a good part of the last year dealing with queries from people who thought they were applying for a working from home refund but who are surprised to find there is a wider deed/letter of assignment<sup>4</sup> in place, meaning that unconnected refunds were also sent to the tax refund company.
- 3.2 The taxpayers who have written to us have mainly been affected by a particular company – Tax Credits Ltd. This is a company who are well known to HMRC<sup>5</sup>. The emails that we have been receiving are distressing to read with people telling us about the significant impact this has had on their mental health and well-being. The impact stems not just from the financial consequences of the assignments and loss of some unconnected refunds, but also their frustration at HMRC's response. As we expand on below, the key questions at the heart of these cases is whether the deeds of assignment were valid and whether HMRC should have been accepting them at face value. We think the answer to both of these questions is no.
- 3.3 If it is the case that the deeds were not valid, this is a serious and pressing situation. However, it is important to not lose sight of the fact that this is one specific company who were taking advantage of an unprecedented situation (the sudden availability of working from home allowance to millions more employees due to the widening of criteria) and were exploiting a lack of clarity, in both HMRC guidance and as a matter of law, as to whether their processes produced a valid assignment. While a robust response from HMRC to the Tax Credits Ltd situation is required, the proposal for prohibition of assignments is perhaps a knee jerk response that could hit well wide of the mark. It may be the

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<sup>4</sup> From this point, we use the term deed to also refer to letters of assignment.

<sup>5</sup> <http://news.bbc.co.uk/1/hi/business/7785813.stm>

case, looking at the tax refund company landscape in the round, that a more nuanced response to the deed of assignment question is appropriate.

- 3.4 Some tax refund companies are meeting a genuine need in the market and operate according to appropriate standards. Some people would not get any refund (even one with fees deducted) without the action of a refund company. In this regard, we think that much more work needs to be carried out to assess the impact of the proposed changes on taxpayers before any are made. Currently, the impact assessment simply states that the proposal is expected to have a positive impact on the c.500,000 taxpayers that use tax refund companies each year. That is however an overly simplistic view. If many tax refund companies cease to trade (which we understand is a possibility if a prohibition of assignments goes ahead and no changes are made to the nomination process), many of those taxpayers will simply no longer obtain refunds at all. It is unrealistic to think that HMRC will be able to plug the gap.
- 3.5 That said, undoubtedly there are issues with some tax refund companies. Our 2013 report on tax refund companies<sup>6</sup> identified a range of consumer protection issues with some of the more exploitative agents and made a number of recommendations. Whilst some of these were taken up, many were not (or were overtaken by other changes to the tax system). We acknowledge that HMRC have invested in improvements in certain areas, e.g. offering online channels to apply for refunds, and dealing with refund agents who were giving the impression they were in some way affiliated to or approved by HMRC. However, tax refund companies not operating to appropriate standards continue to proliferate and it is clear that change is needed to tackle unfair practices.
- 3.6 We are responding to this consultation from the perspective of low-paid employees who use a tax refund company to claim tax relief on employment expenses and who have been caught out by such practices. Outside of the deed of assignment issue, for many years now we have received a steady trickle of queries from this group where a tax refund company has acted in an unscrupulous manner. This inevitably includes them charging high fees (we have recently heard of a case where a taxpayer was charged a 42% fee plus a £120 admin fee, meaning he only got around £300 of an £800 refund) but also other issues, which we expand on in the body of this response.
- 3.7 Although we focus on the issues and evidence drawn from our email correspondence with this group, we recognise that other taxpayers may also have found themselves in potentially comparable situations: for example people who can claim the Marriage Allowance, and people who are due a tax refund on their PPI compensation (where the flat rate 20 per cent tax deducted on the interest element may be too much).
- 3.8 Finally, before we go on to answer the questions that are relevant for us, it is important that HMRC understand that to some extent, the issues raised in this consultation are the result of the fact that this area remains completely unregulated despite HMRC's 'Raising standards in the tax advice

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<sup>6</sup> <https://www.litrg.org.uk/latest-news/reports/131015-tax-repayment-system-and-tax-refund-organisations-call-action>

market’ work and despite calls from the profession to the contrary<sup>7</sup>. As such, in addition to immediate improvements to the landscape as a result of this consultation, we look forward to a wider consultation on “options to improve the wider regulatory framework that supports standards in tax advice<sup>8</sup>.”

#### 4 Consultation questions

##### 4.1 **Question 1: What more could HMRC do to make taxpayers aware that they may be eligible for reliefs, and that they can claim directly from HMRC?**

4.1.1 As a government department, HMRC are a trusted source of information, and could take more advantage of this position. Information about tax reliefs for employees is available on GOV.UK<sup>9</sup>, but taxpayers are expected to search out this information for themselves. If people do not know about tax reliefs in the first place, then they are not going to do this. Press releases publicising the GOV.UK pages are sometimes issued and may be picked up by specialist outlets but are likely to go largely unnoticed among the general population.

4.1.2 This passive approach is not sufficient and more specific outreach work is required to raise awareness about tax reliefs and alert people that they can make their own claims. There is no one way to do this. A wide range of actions are required by HMRC to make the idea of tax relief present in people’s daily lives – for instance by running a campaign, through radio, direct contact (via letter for example), TV, publications and the internet (including social media – more on this below).

4.1.3 We understand, and this is evidenced by the content of the queries we receive for taxpayers, that tax refund companies invest millions of pounds in advertising and raising awareness about tax reliefs with the aim of generating business. This is a much more pro-active approach, which has led to tax refund companies making successful claims on behalf of hundreds of thousands of taxpayers. HMRC will need to adopt a more pro-active approach too<sup>10</sup>, if taxpayers are to be made aware that they may be eligible for tax reliefs. Under the HMRC Charter, HMRC are not only meant to ensure that

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<https://www.litrg.org.uk/sites/default/files/200825%20Raising%20standards%20in%20the%20tax%20advice%20market%20-%20LITRG%20response%20FINAL.pdf>

<sup>8</sup> See the Foreword by the Financial Secretary to the Treasury to HMRC’s *Summary of responses and next steps* (30 November 2021) at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1037174/Raising\\_standards\\_in\\_the\\_tax\\_advice\\_market\\_-\\_professional\\_indemnity\\_insurance\\_and\\_defining\\_tax\\_advice\\_-\\_summary\\_of\\_responses.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037174/Raising_standards_in_the_tax_advice_market_-_professional_indemnity_insurance_and_defining_tax_advice_-_summary_of_responses.pdf)

<sup>9</sup> <https://www.gov.uk/tax-relief-for-employees>

<sup>10</sup> HMRC need to understand that even this may not be enough to reach specific groups of taxpayers – for example migrant workers. Sometimes, tailoring a message to the needs and interests of a specific group (for example, by translating information) may be necessary to ensure it is properly received and understood.

people meet their tax responsibilities, but they should also be making sure that people get any refunds they are eligible for<sup>11</sup>.

- 4.1.4 Such wide ranging activity is not only likely to help increase awareness of tax reliefs, but is likely to have more general spill-over effects. Making tax part of day-to-day life could help some hard-to-reach taxpayers (see Question 8) feel closer to HMRC and make officials seem more approachable and understanding.
- 4.1.5 We also think it is important that HMRC use the internet, especially social media, more. Life is increasingly lived online, especially among the younger generations. This will increase visibility of HMRC but also help promote HMRC as accessible, modern and technologically advanced. We know that the larger tax refund companies find a lot of clients by spending significant amounts on social media advertising. Many of those who have contacted us recently found the companies via Facebook advertising and we know that the same companies regularly use Google, Instagram and Tik-Tok. If HMRC could replicate this, they could reach many of the same people.
- 4.1.6 Such advertising needs to highlight the benefits of claiming directly via HMRC – no fees and (provided significant improvements to the process can be made as outlined in Question 2) how quick and easy it is to claim.
- 4.1.7 Other approaches could include HMRC working with unions and employers to spread messages about tax relief<sup>12</sup>. This work should also encompass an education piece for unions and employers that partnering with tax refund companies and referring employees to their services<sup>13</sup> (for a commission) may not be in their employees' best interests.
- 4.1.8 Within their compliance remit, HMRC make use of the data they hold to develop 'one to many' campaigns. These target specific groups of taxpayers with a view to educating them about specific issues or letting them know there might be a problem with their tax affairs in a particular area. With the data HMRC already hold through the Pay As You Earn (PAYE) system for example, they are likely to be in a position to know whether particular employees might be eligible to claim certain types of tax relief. As part of fulfilling their responsibilities under the HMRC Charter, HMRC could adopt a similar 'one to many' approach with a view to drawing certain tax reliefs to the attention of groups of employees.
- 4.1.9 Different methods of raising awareness should also not be viewed as 'once and done'. It is necessary to repeat activities regularly, whether Press Releases, advertising campaigns or mailshots. Unfortunately the PAYE system leads employees to think that their tax position is automatically correct and that they do not need to interact with HMRC. This is often not the case, particularly

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<sup>11</sup> <https://www.gov.uk/government/publications/hmrc-charter/the-hmrc-charter>

<sup>12</sup> For example: <https://www.rcn.org.uk/membership/Membership-fees/Tax-relief>

<sup>13</sup> <http://yourtaxrefund.co.uk/unite-union/>



where someone has more than one source of income. HMRC should also publicise the fact that people need to take an active interest in their tax affairs, even if they are employees.

**4.2 Question 2: What improvements to the process of claiming reliefs could HMRC make that might encourage taxpayers to claim directly**

- 4.2.1 Firstly, we would like to point out that we think there is an issue with the language here. People tend to think of claiming tax relief as claiming a tax refund, yet HMRC often only refer to claiming tax relief<sup>14</sup>. Whilst those in the tax profession understand that the two are essentially the same thing, this may not be obvious to unrepresented taxpayers. More could be done by HMRC to join up the two concepts in people's minds.
- 4.2.2 While there is a new decision tool dealing with 'tax refunds', the landing page isn't helpful<sup>15</sup>. The only employment expenses mentioned on the first page of the tool are fuel costs or work clothing for your job. There is no mention of professional subscriptions, travel expenses, telephone calls, working at home expenses etc. that are other, well-known 'tax refund' expenses. We could envisage these mixed messages causing such uncertainty that people just give up before they have even started.
- 4.2.3 HMRC then need to streamline the number of different methods available for claiming tax refunds, depending on the situation. We have long voiced concerns as to the myriad of ways and means suggested by HMRC for people to claim a refund. Intuitively, people would expect to fill out a form to claim a refund. Suggestions of alternatively telephoning (or sometimes – writing a letter) tends to put people off as they are afraid to pick the wrong route. Often it is an unnecessary step when the response to the phone call or letter is only for one of the forms to be sent out for completion anyway.
- 4.2.4 Currently, HMRC's service levels are not at an adequate level which means it can be difficult for people to contact HMRC by phone. Those that try often face lengthy delays. This may put people off claiming if they want to do so by phone or be able to ask a question first. HMRC's research into the use of High Volume Repayment Agents<sup>16</sup> found that those who used a refund company because they did not know they could claim directly would prefer to claim directly in future, but not if it proved difficult.
- 4.2.5 The new post and print form P87 is a vast improvement on the old version (although it is still lengthy and requires people to have access to a printer). However, there remain barriers in place carried over from the old form. Ostensibly, to complete the form taxpayers need their employer's details, including their name, type of business, address, and employer reference number. It is not made clear to people that if they do not have the 'employer industry' or their 'employee number', they can

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<sup>14</sup> <https://www.gov.uk/guidance/claim-income-tax-relief-for-your-employment-expenses-p87>

<sup>15</sup> <https://www.gov.uk/claim-tax-refund>

<sup>16</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1029797/The\\_use\\_of\\_High\\_Volume\\_Agents\\_to\\_claim\\_tax\\_rebates\\_research.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1029797/The_use_of_High_Volume_Agents_to_claim_tax_rebates_research.pdf)

insert 'N/A' or 'unknown'. If HMRC do not actually need this information to deal with the claim, they should not request it. Small details like this could make all the difference to a worker continuing with their claim or giving up – and potentially turning to a tax refund company.

- 4.2.6 Finally, there are big issues with the online process to claim tax relief. Taxpayers need a government gateway account to do this, with all the problems that can come with needing to remember usernames/passwords etc. It can feel like an uphill battle even before the point where you are ready to start completing your details. We also wonder if there is an issue with taxpayers feeling that an 'official' process like this will require a laptop or computer - which will be impossible for many - even though in reality a smartphone will probably suffice.
- 4.2.7 Unfortunately, some taxpayers are not even able to set up a government gateway account. In some cases they do not have the necessary documentation (UK passport or driving licence) to allow them to verify their identity. They have to answer questions based on information provided by a credit reference agency instead. However, sometimes HMRC does not have the information to identify the taxpayer, so the application fails. Since HMRC has ceased to use Verify a year earlier than scheduled, there are many taxpayers who are now excluded from interacting digitally with HMRC, including many who wish to do so and who used to do so.
- 4.2.8 Assuming taxpayers can and want to do things online, there is some confusion over whether you can or can't claim tax relief from inside your Personal Tax Account (PTA). People are told that they can check and claim a PAYE tax refund from their Personal Tax Account (although in reality this 'service' specifically refers to the ability to ask for their P800 refund to be sent to their bank account and not by cheque). So, some taxpayers may expect to find the P87 form etc. inside the PTA. Once inside the PTA, only the working from home 'micro service' appears on the home page. Although it is possible to access a P87 to claim wider expenses by clicking on this tile, albeit via a very circular process, it is all a bit random and probably doesn't instil a great deal of confidence in taxpayers that HMRC's different systems and processes are joined up properly and work.
- 4.2.9 Alternatively, people can ask for tax relief to be coded into their tax codes via the PTA: however the process to do this is extremely unclear, as is the terminology used on the PTA itself. If a taxpayer clicks on the link 'If you think your tax code is wrong, check or update your employment details' they are taken to the summary page for that particular employer. At the bottom of that page a taxpayer can 'Add a missing company benefit' or 'Add a missing company car' – but there is no mention about adding a claim for tax relief. This sits in a different part of the PTA altogether. If a taxpayer manages to find it, it is entitled 'Tell us about your tax free allowance.' Whilst we expect many taxpayers will understand 'tax free allowance' in the context of their personal allowance, it is used here to refer to the tax relief that can be claimed via their tax code, which although technically correct, is probably not very intuitive.
- 4.2.10 These points are clearly very important in the context of repayment agents. If taxpayers are unable to easily self-serve online then could be a contributing factor to them going down the repayment agent route to obtain the tax relief they are entitled to.
- 4.2.11 We noted above that some refund companies have successfully made use of social media to find customers. As well as successfully engaging with people via the social media adverts, people are

often encouraged by the ease of the application process (in many cases it only takes a few minutes and can be done on a smartphone) and the fact it can all be done without leaving the page they have clicked on. The process used by refund companies takes minutes, whereas the HMRC process (including signing up for an account) is much more time consuming and in-depth. HMRC should therefore review every step of the claims process to see what improvements can be made to make things as straightforward and accessible as possible. HMRC could carry out user research to ensure processes and forms are user-friendly. They should also check whether all the information requested is actually needed in order to process a claim.

#### 4.3 **Question 3: For taxpayers: What experiences have you had in interactions with repayment agents?**

4.3.1 We are only ever specifically told about taxpayers' negative experiences, however for the sake of balance, we think it is important to set out some positive observations that we have about the industry, based on our own understanding and experiences.

4.3.2 Good tax refund companies can be part of healthy tax system and can help improve the customer experience. In the first place, they can make employees aware that they are eligible for tax relief in relation to employment expenses, for example. In addition, good agents can help employees navigate the rules around employee expenses, which can be complicated and/or are very obscure. Without them, taxpayers may not claim relief to which they are entitled.

4.3.3 For example, fixed rates expenses (FREs) can be claimed by individuals who incur expenditure on the maintenance, repair or replacement of work equipment and specialist clothing (which can include uniforms).

4.3.4 FRE's could be of significant benefit for those on low pay. However, we think it is worth examining what taxpayers would have to grapple with in order to decide whether or not they can claim a simple 'uniform allowance'. The following bullet points look at this from the perspective of a low-paid nursery assistant (based on a real website query we have received):

- Is my uniform, a 'uniform'? To count, it must be something that is 'recognisably a uniform'. What this means is, if you were out in the street would a member of the general public recognise you as wearing a uniform? The nursery assistant is required to wear plain black trousers and a pale blue shirt with the name of the nursery and a teddy bear embroidered into the shirt. Relief would not be available for the trousers but if you are required to wear clothing branded by your employer, with logos, the company name, etc., this would be a 'uniform', so the shirt can qualify.
- Does my expenditure count? You cannot usually claim for the initial cost of buying the 'uniform' items. Instead, you can claim for their upkeep, for example, repairing, cleaning or replacing them. The nursery assistant washes her shirts frequently at home in her washing machine with the rest of her clothes. Per HMRC's guidance<sup>17</sup>, this seems to be enough to

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<sup>17</sup> <https://www.gov.uk/hmrc-internal-manuals/employment-income-manual/eim32480>

trigger a claim (although this is a bit counterintuitive given how tightly drawn the expense rules are in other areas and the fact there is likely to be little 'extra' expenditure incurred).

- What basis shall I use for my claim? HMRC have agreed that employees in a range of industries can claim tax relief on fixed amounts for the upkeep of a uniform which are not paid for by the employer. Alternatively, you can claim tax relief for the actual amounts you spend – however you need evidence of your expenses to do this. It is impossible for the nursery assistant to identify the exact cost of washing her shirts at home and in any case it is likely to be very small, so the flat rate expenses system will prove the best route here.
- Where am I on the list? Specific occupations can claim specific amounts as shown on a list kept by HMRC, for example an ambulance driver can claim £185 per year, but a nurse can only claim £125 (although may be able to claim a shoe and tights allowance...). Does the nursery assistant come under a 'nurse'? Is she a healthcare worker (entitled to £80)? The likelihood is that she is neither and because she fits no-where else on the main list, she is probably only able to claim £60.
- Even if the nursery assistant manages to reach the decision that she is entitled to a uniform allowance of £60 per year, as we explain above in question 2, she may then face difficulties in claiming the relief.

4.3.5 Some tax refund companies offer 'add on' services beyond simply processing a claim, which can sometimes be helpful to taxpayers. For instance, some tax refund companies can help unlock 'stuck' refunds<sup>18</sup> or track down missing refunds<sup>19</sup>.

4.3.6 Some tax refund companies offer translation services or correspond with migrants in their own language. For many migrants who have worked in the UK, physically cashing a UK refund cheque in a UK bank account after they have left is very difficult, if not impossible. As such, some refund companies offer taxpayers the chance to get their UK refund processed into a home country bank account.

4.4 In a nutshell, some tax refund companies can offer material benefit to taxpayers. Although they may charge a no win-no fee type fee for their work, which in percentage of refund secured terms can look quite high, no other viable ways exist for these agents to work for taxpayers who often do not have much money to pay upfront, and it may be more affordable, as well as accessible, for taxpayers than assistance from a traditional agent.

#### 4.5 **Question 4: For all respondents: Do you agree with our assessment of the issues?**

4.5.1 With regards to the issues of 'high volumes of claims where no repayment is due', this seems to be more of an issue for HMRC than for taxpayers. Many taxpayers simply do not have their pay and tax

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<sup>18</sup> For various reasons HMRC may inhibit a P800 calculation: <https://www.gov.uk/hmrc-internal-manuals/payee-manual/payee93000>

<sup>19</sup> For instance, where the cheque has been sent to an incorrect address

records and cannot get them. Agents can no longer access pay and tax details<sup>20</sup>. But in many cases, taxpayers could be due a refund so are happy for the tax refund company to make a speculative claim. HMRC insisting on a high 'hit rate' for tax refund companies (lest they will suspend them), may well limit the amount of processing that HMRC have to do, but also limits access to tax relief for probably some of the lowest paid employees. This is because tax refund companies are less likely to submit speculative claims for those on lower incomes, as they will have a lower percentage chance of being owed a repayment.

- 4.5.2 We agree that there are issues for taxpayers around misleading advertising, lack of transparency about services provided and terms and conditions and assignments.
- 4.5.3 However a few important points have been overlooked: tax refund companies can reduce public revenue (for example, in instances where they manage to get HMRC to send them a repayment but this is incorrect so HMRC also then have to pay the refund out to the taxpayer) and many of the issues of recent years – in particular around assignments – have been fuelled by HMRC's seemingly light touch approach to tax refund companies and slow response when issues have been raised.
- 4.5.4 Problems reported to LITRG in the last 18 months include:
- Taxpayers stating they applied for a specific refund – for example for a working from home refund – only to then realise later that they have inadvertently signed a wider deed of assignment
  - Deeds of assignment lodged with HMRC where the taxpayer says the signature on the form is not theirs at all.
  - Deeds of assignment lodged with HMRC where the taxpayer has not seen the deed or been told the scope of it. The signature is taken from the online process and placed on the deed of assignment form by the refund company (see below for further details).
  - Deeds of assignment lodged with HMRC where the signature on the form is the taxpayer's but has been collected by a connected company as part of a previous or different claim service and seems to have been recycled
- 4.5.5 Our subsequent work in this area uncovered a process being used by one particular tax refund company that helps explain some of these problems (although it is possible other companies may use similar processes). One of the key points of that process was that the signature that the individual provided was not specifically for the assignment/on the assignment. Instead, it was given on a general online screen with a tick box that purported to give authority to the refund company to then sign/use the person's provided signature on any document or legal contract – including an assignment.

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<sup>20</sup> <https://www.att.org.uk/technical/news/changes-agents-requesting-pay-tax-details-their-clients-hmrc>

- 4.5.6 That scenario is not covered expressly in HMRC's guidance<sup>21</sup>. But under the general law on assignments, we thought there were urgent questions over the effect of an electronic signature that is given by a taxpayer but is then taken and applied to a legal assignment without them even seeing, understanding or approving the document.
- 4.5.7 We wrote to HMRC officials for the first time in June 2021 to highlight our concerns in this area and the need for urgent action but there seemed to be little follow up. The company involved was able to continue this practice and HMRC continued to process the assignments.
- 4.5.8 HMRC have the power, indeed responsibility, to accept only valid assignments, and once a serious question was raised about this tax refund company, we believe HMRC should have checked on the validity of assignments. It was not necessary to check the validity of each and every assignment – only to look at the end-to-end process used and determine whether it could produce a valid assignment.
- 4.5.9 Whilst it is welcome that HMRC are now exploring what they can do in this area, HMRC's initially more relaxed stance allowed the situation here to deteriorate. It meant that for more than a year, serious harm was done.
- 4.5.10 The impact on taxpayers is considerable as you can see from these quotes from Trustpilot:
- 'HMRC owe a duty of care'
  - 'I am very angry and disappointed as to how HMRC have dealt with this. Clearly they know or should have done their checks before sending cheques to Tax Credits.'
  - 'So why the hell are HMRC still sending our rebates to them?! Surely a red flag would have appeared??'
  - 'I also feel let down by Government departments that you believe would prevent and protect the public from this kind of scam! ... I am more angry with HMRC being party to such an unscrupulous organisation/bunch of criminals. ... Something is very very wrong how can HMRC allow such fraudulent activity happen right under their very noses.'
- 4.5.11 What is interesting is that people are as angry with HMRC as they are with the tax refund company, which raises really worrying questions in terms of people's trust in the tax system. We very much hope that lessons have been learned from this situation in terms of how HMRC respond when issues are raised.

4.6 **Question 5: For repayment agents: Do you think our assessment of the issues is fair?**

No comment

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<sup>21</sup> HMRC's guidance for PAYE taxpayers on deeds of assignment can be found here: <https://www.gov.uk/hmrc-internal-manuals/payee-manual/payee91040>

**4.7 Question 6: For all respondents: Have you seen any other issues with repayment agents?**

- 4.7.1 There appears to be a general lack of professionalism with some repayment agents, for example not responding to taxpayers' attempts to contact them. While HMRC have sometimes intervened on individual cases sent to them by LITRG and nudge the agent to respond, it is not acceptable (under general principles but also the Standards for Agents given it includes the broad principles of integrity, professional competence and due care and professional behaviour<sup>22</sup>) for agents to ignore contact attempts from taxpayers. HMRC must do more to ensure they are upholding the required standards across the board.
- 4.7.2 There are ongoing problems with inflated or incorrect claims – particularly travel and subsistence expenses for particular sectors, e.g. the army. We continually see some tax refund companies saying that they can claim large tax refunds in respect of travel to a temporary workplace, or in respect of subsistence. We know taxpayers should be very wary of this as the rules are so strict. But the tax refund companies are very convincing because they are openly marketing these services and if what they were saying was incorrect, then HMRC would have shut them down – wouldn't they?
- 4.7.3 HMRC need to understand how the lack of counter-messaging compounds things. Taxpayers who think that large travel and subsistence claims are valid then pass this information on to their friends/colleagues etc, so that the misinformation spreads. The problem with all of this is that HMRC have a process now/check later approach and if HMRC later conclude that the resulting refund was not due, they will ask the individual for their money back not the company, as they say that individuals are responsible for their own tax affairs.
- 4.7.4 There are also issues with misrepresentation. For example, some tax refund companies deliberately use names, fonts and colours that make it appear they are HMRC. There are also tax refund agents that draw custom in through advertising by showing the amounts on which relief can be claimed, rather than the actual tax relief available, so for working from home claims, they would advertise the amount of £312, rather than the basic rate tax relief available of £62.40.
- 4.7.5 Some tax refund companies have very casual 'on boarding' processes, with very little or no engagement paperwork or checks including client ID checks for Anti-Money Laundering (AML) requirements. In other cases, it appears that ID checks are invoked but in a time and in such a way that they are designed to put people off retrieving the remnants of their refund from the tax refund company. The unclaimed funds become an additional revenue stream for the tax refund company.
- 4.7.6 These are all areas where HMRC can and should take action by using their existing powers and working with other organisations such as the Advertising Standards Authority and the various search engines/social media platforms.
- 4.7.7 We are concerned at the behind the scenes connections and relationships that seem to exist between claims management companies (for example, for Payment Protection Insurance (PPI) refunds) and tax refund companies. Companies House records shows that there are sometimes

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<sup>22</sup> <https://www.gov.uk/government/publications/hmrc-the-standard-for-agents>

shared directors. Some cases we have heard of appear to suggest that customer databases are being openly shared between the different entities in order that they can target communications promoting each other's services – whether this is with the requisite data protection authority we do not know. In other cases, a PPI claim 'a few years back' with one entity seems to result in a tax refund later being sent to the other entity – the inference being that the signature given 'a few years back' on the PPI claims management company paperwork has now been used to generate a deed of assignment with the tax refund company for tax purposes. Surely this is not acceptable?

- 4.7.8 LITRG have recently heard of taxpayers being attracted by tax refund agents offering to make legitimate expense relief claims, such as for uniforms, then being asked to register for Self Assessment and to hand over their government gateway log in details to the tax refund company. The company then uses these details to prepare and submit tax returns containing inappropriate claims for Enterprise Investment Scheme (EIS) relief. Although HMRC say that taxpayers should not give their government gateway details to others, in the cases we have seen where this has happened, the company involved made it seem like it was a normal part of the process for them to help a person claim a refund.
- 4.7.9 The taxpayers did not seem to be fully aware of what the tax refund company was doing, and also did not seem to realise the tax refund company would then channel the (often large) refund to themselves via the tax return, with only a small proportion ultimately being passed on to the taxpayers. We know that HMRC carry out security checks on certain claims, but in these cases, it appears that no checks were carried out (or they were but they passed the relevant checks).
- 4.7.10 In a recent tribunal case<sup>23</sup> where HMRC pursued the taxpayer for the money, common sense prevailed and the taxpayer was not required to repay the relief which had gone to the third party. But all of this does help illustrate that HMRC's overriding principle that 'taxpayers are responsible for their own tax affairs' is often an oversimplification.

4.8 **Question 7: How should HMRC ensure that repayment agents are adhering to existing consumer rights legislation?**

- 4.8.1 Many people may feel like they have been treated unfairly by agents but whether what has gone wrong is a breach of consumer rights legislation is another matter. People probably need to go to court to test this and to access the available remedies. However going to court requires expertise, money, time and effort which for many low paid employees results in an insurmountable barrier.
- 4.8.2 We are not aware that it is possible for HMRC to go to court on behalf of individuals, however there is some state involvement in consumer protection which HMRC could leverage. As such, if HMRC's data and intelligence gathering (e.g. from leads or complaints) suggest there is an issue, HMRC could flag it to relevant enforcement bodies so that they can undertake appropriate investigations. At the very least HMRC should be liaising with bodies such as Citizens Advice to apprise them of the issues they are aware of involving taxpayers and signposting people to information on consumer rights and who to contact for consumer protection advice. Beyond this, it is hard to see how HMRC's role can

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<sup>23</sup> <https://www.bailii.org/uk/cases/UKFTT/TC/2022/TC08459.pdf>



be expanded into consumer protection per se, unless for example, they could incorporate something like a fit and proper person test<sup>24</sup> (as per the AML rules for money service businesses or trust or company service providers) into their AML rules for accountancy providers<sup>25</sup> or into their Standards for Agents. The test could include whether the person has been convicted of or is being investigated for a consumer rights legislation breach.

- 4.8.3 The good news is that HMRC have a range of other tools that they can use, that derive from their core function of collection and management of tax in the UK. They should use these tools to make life difficult for repayment agents in situations where it appears there are consumer protection issues - indeed, HMRC should be using these tools where it looks like there are compliance/enforcement problems anyway. For example, in a recent case we have dealt with, there were questions over whether the AML checks were being done at the correct place in the process or whether the tax refund company's own tax affairs were in order given the amount of income that was declared in Companies House accounts seemed quite low in comparison to what we were expecting.
- 4.9 As something that lies more squarely in HMRC's hands to police, there is perhaps more they can do using their Standards for Agents' powers, where refund companies are presenting themselves in a way that makes taxpayers think they are dealing with HMRC<sup>26</sup> or are attempting to use HMRC agency and AML approval as evidence of official endorsement of their services. There may also be more HMRC can do with search engines and the Insolvency Service and/or Companies House to deal with some of these issues (including director conduct), in addition to revoking agent privileges until changes are made.
- 4.10 As we state in para 3.8, in reality, consumer harm could be reduced most effectively by requiring all those providing tax services of any kind to be subject to the level of professional standards obligations applying to professional body members.
- 4.11 **Question 8: Is there any more HMRC should do to help consumers make informed choices about whether to use a repayment agent?**
- 4.11.1 As set out in our answers to question 1, 2 and 3 the complexity of the rules/lack of awareness around expenses and the fact the process for claiming a refund isn't as clear and simple as it could be, are the main hurdles low paid employees face in trying to make a tax refund claim. HMRC tackling these issues, so that more taxpayers can do it themselves if they wish - and thus, have a *genuine choice* as to whether to use a tax refund company - is the key starting point.

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<sup>24</sup> <https://www.gov.uk/guidance/money-laundering-regulations-apply-for-the-fit-and-proper-test>

<sup>25</sup> We understand that currently accountancy service providers only have to go through an 'Approval' process which is different to the fit and proper test (which is broader).

<sup>26</sup> For example, using a name that is linked to HMRC activity or using a form that is made to look similar in style to GOV.UK

4.11.2 However even getting beyond this, there will always be people that will end up using a tax refund company. These people probably fall into three main groups:

- Employees who are completely ignorant of the fact that they may be able to claim a refund from HMRC for their particular circumstances. We believe this is why so many people have been attracted to refund companies because they saw a social media advert about a refund they did not know was available e.g. working from home claim.
- Employees who are confused by the rules around when a refund might be due. The work-related travel expense rules, in particular, are quite obscure (and are not explained very well on GOV.UK). A young worker or a worker with a lower level of education, with travel expenses, might certainly turn to a tax refund company for help - afraid to get things wrong.
- People who may have an inkling that they are due a refund but who lack confidence or knowledge of the tax system to initiate a claim themselves. This may include young people again, or migrants who have English as a second language or due to cultural differences do not feel comfortable approaching HMRC directly.

4.11.3 To this end it is vital that HMRC don't just focus on getting people to do things themselves, as this is simply doing a disservice to those that will just never, ever do this.

4.11.4 From a purely practical perspective, HMRC also need to produce guidance on how to ensure any tax refund company people are considering using is reputable and highlight warning signs that people should look out for of unscrupulous companies. HMRC should recognise that choosing to use a tax refund agent is legitimate but then be supporting taxpayers in relation to choice, so that they can pick good quality services that meet their needs.

4.12 **Question 9: Should HMRC consider introducing measures which would require repayment agents to display material information before a contract is considered valid, such as a pre-contractual disclosure form?**

4.12.1 We understand and appreciate the desire to increase the transparency of contractual arrangements for taxpayers and we basically support any changes that help taxpayers better navigate and protect themselves. On that basis we think the provision of some kind of pre-contractual disclosure form is a good idea, although we do have some concerns that implementing the requirement on repayment agents will be challenging.

4.12.2 If HMRC decide to go ahead, we think they should develop a standard template that must be used by tax refund companies in order to avoid the inherent risks in having each and every taxpayer provided with a different thing and to make it easier for them to compare and contrast. This will make the whole exercise administratively less burdensome and cheaper for the agent.

4.12.3 We think there is a requirement that agents should, as far as possible, ensure that the information in the form is read and understood (even if that is that they obtain a signed copy of the key facts document saying 'I confirm I understand') otherwise there is a risk that the form will just pass taxpayers by.

4.12.4 HMRC would also need to ensure they check refund company processes for compliance with the requirement. HMRC should, in any case, be checking the end-to-end process of each company to ensure it is acceptable/compliant with Standards for Agents. If a disclosure form was introduced HMRC would need to check that it was incorporated into the process correctly. HMRC could refuse to process any refunds where the company did not comply – but unless HMRC are seen to be policing the requirement and clamping down on unacceptable behaviour it may not have the desired impact.

4.12.5 Alongside this kind of form outlining the detail, there is a definite need for some clear and independent ‘central’ information from HMRC about tax refund companies more generally. This would provide taxpayers with important context and allow them to understand and ‘apply’ the information they have been given in the pre-contractual disclosure form. It should be well designed, well-publicised and written in a way that is meaningful to people. HMRC must also ensure that information is available through more than one channel. We would be happy to discuss our ideas and offer our assistance with this. It should also include appropriate consumer health warnings as per our comments previously.

4.13 **Question 10: Should HMRC legislate to restrict the use of assignments?**

4.13.1 We think HMRC should restrict the use of assignments. Whether it would need legislation, we don’t know. Until now, HMRC have relied on internal governance procedures to determine whether to accept an assignment as valid or not. It might be that HMRC can restrict the use of assignments by strengthening these internal governance procedures or making a Commissioners direction for example, as they have used recently to specify the new P87 form<sup>27</sup>.

4.14 **Question 11: Should restriction comprise prohibition of the use of assignments of tax repayments or some form of limited restriction?**

4.14.1 On balance, we do not think there should be a complete prohibition on assignments as we understand they may be used legitimately in some cases. We appreciate that complete prohibition may feel like the ‘neatest’ solution and a compelling comparison is given in the consultation document of benefits. However on reflection, we think the payment of benefits is a different scenario – there is a compelling public benefit reason to ensure it is made inalienable from the recipient, which we cannot see applies to normal personal property, including tax refunds.

4.14.2 As well as in a few trust, insolvency or probate cases, we understand that there are legitimate reasons for the use of assignments within the refund company context. For example, from having

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[https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment\\_data%2Ffile%2F1073708%2FComissioners\\_Direction\\_Final.odt&wdOrigin=BROWSELINK](https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fassets.publishing.service.gov.uk%2Fgovernment%2Fuploads%2Fsystem%2Fuploads%2Fattachment_data%2Ffile%2F1073708%2FComissioners_Direction_Final.odt&wdOrigin=BROWSELINK)

spoken with a repayment agent recently, we understand that they use assignments to help ensure they get paid for the work they do, because:

- HMRC often ignore a bare nomination and send a refund to taxpayer,
- HMRC don't ignore the nomination but make a mistake and send the cheque to the repayment agent but with the name of the taxpayer as the payee meaning the tax agent can't cash it,
- The taxpayer can cancel the nomination once they get advance notice from HMRC that they are due a refund and that it is being paid to the agent. It is not clear the extent to which this has actually happened in the past, although clearly something drove the move away from nominations to assignments in the first place. The possibility of this recurring in the future if assignments are prohibited, may be enough to discourage refund companies from operating in their current form.

4.14.3 In the latter case, the issue is that generally, HMRC send confirmation of the refund (on a P800 calculation for example) to the taxpayer two weeks before they send the cheque to the repayment agent. The following wording is included with the confirmation of refund:

*Why you have paid too much tax*

*Each year we check everyone's tax position to see if the correct amount of Income Tax was paid. We have now looked at the latest information we hold for this year and have worked out that you have paid too much tax. We provide a full calculation and explanation in this document.*

4.14.4 As a result, the taxpayer can be left with the impression that the refund is as a result of some sort of routine review by HMRC and not the work of the agent, and has time to contact HMRC and divert the repayment if there is only a bare nomination in place. It seems to us that the need for assignments might be reduced if the messaging were altered or the time delay between issuing the tax calculation and the repayment were to be eliminated.

4.14.5 The terms of most refund companies include provisions that attempt to create an obligation to pay the refund company their fee even if HMRC make a refund direct to the taxpayer. However, in all of these situations, we imagine that sending an invoice to the taxpayer for work done is fruitless. The agent has carried out their work up front, and relies on receiving the refund from HMRC to receive their payment before sending the balance to their customer. If the customer doesn't pay them directly, the outcome is that they have worked for free.

4.14.6 One risk of prohibiting assignments altogether (without improvements to the nomination process to overcome the issues above or indeed the introduction of some kind of system whereby trailing cheques aren't used), is that good tax refund companies may no longer offer their services. This means that people who use them, who would not have received a refund without the involvement of the company, will miss out. HMRC must carry out an assessment of the likelihood of this and the potential impact on taxpayers before making any final decisions.

4.15 **Question 12: If limited restriction, do you favour either option outlined, or do you think another form of limited restriction would be better?**

- 4.15.1 Initially, we thought that limiting an assignment to the actual refund being claimed (for example a working from home refund) would be the best solution. However we understand that the claiming of a specific refund sometimes triggers HMRC to reconcile the individual's overall position in line with the P800 process. The refund paid out is the amount HMRC consider they owe to the taxpayer at the time of the reconciliation, whether that was as a result of the overpaid PAYE or the claiming of expenses.
- 4.15.2 Where this happens, the working from home refund will get wrapped up in a wider P800 refund. This means that it may not be physically possible to separate or assign a part of the refund that was due to the effect of the expenses from the whole tax computation or refund due (which is based on the information HMRC have at that time). However, this should be investigated further to see if it is possible to restrict the assignments in this way.
- 4.15.3 Alternatively, a standard form assignment (which should include prescribed, clear wording about the effect of the assignment and the fact that it could mean that the agents take a substantial fee on refunds which they have not helped the taxpayer to claim) could improve the current situation, as it will reduce the scope for inaccurate, misleading, or unreliable information being given out on assignments or disadvantageous terms hidden. Half the problem currently is that 'cleverly' laid out application forms can then mean people are being misled into thinking that they are only appointing the tax refund company as their tax agent, not signing a deed of assignment (or that the company are only acting in relation to the specific refund being claimed).
- 4.15.4 We think it needs to be very clear that this is an HMRC form. Customisation should not be allowed in any way, so as to prevent any distortions creeping in. It might be preferable to add a section to the existing prescribed P87 alongside the nomination box to allow for assignment of refunds. HMRC are already quite strict about replicas but they should be on guard against any infringements whatsoever<sup>28</sup>.
- 4.15.5 Due to the issues described previously around electronic signatures, we think an additional safeguard should be implemented that requires a taxpayer to wet sign the standard form assignment. This would offer some taxpayer protection in terms of the claim before them but would also mean there is absolutely no scope for tax refund companies to recycle electronic signatures onto future claims (essentially meaning assignments can go on into perpetuity).
- 4.15.6 If HMRC wanted to go one step further, they could require a witness signature as this would help cement in people's mind that it is a formal legal process and make it more likely that people will advise themselves as to what they are signing and consider it seriously.
- 4.15.7 We would like HMRC's undertaking that if taxpayers contact HMRC making representations about the validity of any assignment under the new process, that HMRC will take the taxpayer seriously and not dismiss them. Indeed, as per our colleagues in the ATT, we think HMRC should consider the

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<sup>28</sup> <https://taxagents.blog.gov.uk/2022/05/11/mandating-the-use-of-p87-forms-frequently-asked-questions-for-agents/>

exercise of its statutory discretion<sup>29</sup> to pay the repayment funds into court in any situation where HMRC had notice that the assignment is disputed by the taxpayer.

4.15.8 Given our recent experience of HMRC and checking the validity of assignments we do not support the option that HMRC must formally agree to the assignment of tax for it to be valid. It sounds like a costly and time-consuming process to manage. It also relies too much on individual officers understanding and fulfilling their duties properly. The room for clerical or human error is too great.

4.16 **Question 13: If you are an agent and use assignments, which areas of tax do you do this in, and why?**

4.16.1 No comment

4.17 **Question 14: If you are an agent, are there any improvements to the nominations process that would make them more appealing?**

4.17.1 No comment

4.18 **Question 15: What impact would a prohibition of assignments have on your business?**

4.18.1 No comment

4.19 **Question 16: What impact would a limited restriction of assignments have on your business?**

4.19.1 No comment

4.20 **Question 17: Do you think prohibiting assignments would address the consumer protection issues cited above**

4.20.1 Prohibiting assignments will almost certainly address the consumer protection issues listed. However as stated above, we do not think assignments should be prohibited if it will lead to most refund companies withdrawing from the market and therefore mean that some taxpayers will not get any refunds. Unless HMRC carry out significant work to raise awareness, improve processes and engage with taxpayers, many will simply not claim the tax refunds that they are entitled to.

4.21 **Question 18: Do you think restricting assignments would address the consumer protection issues cited above?**

4.21.1 Restricting assignments will help, although there are a range of consumer protection issues connected to tax refund companies (not just assignment issues) that all require tackling.

4.21.2 For the standard form assignment to be effective in the way envisaged, it will require HMRC to police the system properly. There isn't any point in any of this if HMRC are simply going to let repayment agents bend or break the rules. Where assignments are not valid in accordance with the new criteria, HMRC should use their powers against the agent accordingly. In the most egregious of

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<sup>29</sup> See <https://www.legislation.gov.uk/ukpga/Geo5/15-16/20/section/136>

cases HMRC should be prepared to use their refusal to deal with powers<sup>30</sup> – and publicise this so that it can act as a deterrent.

4.21.3 HMRC also need to be aware that restricting assignments could severely curtail agents who have been treating diverted taxpayer money as an additional income stream. This could lead to some companies looking for new ways to protect their business, for example by asking people to provide government gateway credentials in order to make the claim for them (possibly via Self Assessment – see next question), with all the inherent risks that this brings. In the initial stages at least, HMRC would likely have no idea that a refund company was involved.

4.21.4 If the decision is taken to prohibit or restrict assignments, HMRC must continue to monitor things carefully for any such activity. HMRC's response to the issues raised by us (and others) in relation to certain refund companies over the last few years has been slow which has meant more taxpayers have been affected unnecessarily. Going forward, processes need to be in place to ensure HMRC are not only doing their own robust monitoring of the market but that action is taken at the earliest opportunity when issues are identified.

4.22 **Question 19: Should we require repayment agents to register with HMRC via the Agent Services Account before processing any claims they submit?**

4.22.1 Yes. HMRC should know who they are dealing with, just as tax advisers are obliged to do.

4.22.2 Based on our understanding that this would require tax refund companies to provide the following information, it would, provide HMRC with the key ability to monitor the marketplace and an additional layer of oversight:

- the Unique Taxpayer Reference (UTR) for your tax agent firm
- the postcode associated with your UTR
- your company registration number, if you have one
- your VAT registration number, if you have one
- your National Insurance number and date of birth to confirm your identity if you're a sole trader or business partnership
- your National Insurance number and date of birth to confirm your identity if you're a Limited Liability Partnership (in some cases)
- the name of your money laundering supervisory body, membership number and renewal date

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<sup>30</sup> <https://www.gov.uk/government/publications/raising-standards-in-the-tax-advice-market-hmrCs-review-of-powers-to-uphold-its-standard-for-agents/raising-standards-in-the-tax-advice-market-hmrCs-review-of-powers-to-uphold-its-standard-for-agents>

- 4.22.3 Having this information would allow HMRC to do their own due diligence on who they are dealing with and allow them to identify phoenix companies more easily and also directors who appear to be running multiple companies with different names.
- 4.22.4 We think there is a double benefit to requiring tax refund companies to register with HMRC and provide this information. We would like to highlight the ease with which they can currently set up and enter the system and the scope that this leaves for abuse of both taxpayers and the system. HMRC requiring this information up front might make them stop and think as it could mean that HMRC might scrutinise the information before registering them. This could weed out potentially problematic agents before they get a foothold in the system.
- 4.22.5 Agents may try and avoid having to register by acting silently behind the scenes – for example, by using taxpayer credentials to make claims via Self Assessment as happened in the EIS cases (mentioned in paragraph 4.7.8). HMRC would need to investigate whether it is possible to put checks in place where certain features/red flags are present such as:
- Someone coming into Self Assessment for the first time when they are, on the face of it, a PAYE taxpayer
  - The tax return being sent in via personal government gateway credentials but with a third party's details being entered into the nominee box to which the refund is to be paid
  - The IP address of the tax return submission not matching the IP address that created the account
- 4.23 **Question 20: Should we require repayment agents be authorised by their clients with HMRC before they can do so?**
- 4.23.1 A 64-8 gives HMRC the authority to correspond with a tax agent about a taxpayer's tax affairs. We agree that it feels cleaner and the optics are better where the repayment agent is formally acting on behalf of the taxpayer.
- 4.23.2 However the 64-8 process is quite traditional in that it envisages an enduring relationship where the agent is skilled and knowledgeable, and will keep tabs on what is being sent by HMRC, thus providing peace of mind and efficiency for the taxpayer.
- 4.23.3 This is not the situation here. The upshot of there being a 64-8 on file (which taxpayers usually don't take steps to remove) is that vast swathes of taxpayer information is sent to agents, typically to get filed or shredded without a second thought, which is wasteful in many ways. There are also risks for taxpayers if the correspondence is only sent to the agent, meaning something may be missed.
- 4.23.4 More generally we are not convinced that there is the need for taxpayers who use tax refund agents to complete a 'once and done' task such as claiming tax relief (where there is rarely any need for follow up), to give full authorisation to the agent.
- 4.23.5 Some kind of temporary authorisation may be appropriate instead but even this raises some concerns. There are clear security and data concerns with potentially unscrupulous actors having access to personal and sensitive information contained in HMRC correspondence, even on a temporary basis. We find it very suspicious that some tax refund agents incorporate 64-8 wording



into their bespoke packs, meaning taxpayers don't really know that they have signed one, let alone what the implications are.

- 4.23.6 If HMRC decide to implement this requirement, better and clearer guidance for taxpayers about the difference between appointing and dismissing an agent (which can be done unilaterally) and signing a deed/letter of assignment (which cannot be) is urgently required. Often we find these two processes are conflated (including by HMRC call centre staff).

**4.24 Question 21: If you are a repayment agent, what impact would a requirement for formal authorisation by your clients have on your business?**

- 4.24.1 No comment

**4.25 Question 22: Should this requirement apply only where repayments are paid directly to the agent (including via nomination), or in all cases?**

- 4.25.1 No comment

**4.26 Question 23: Do you have any other views on the issues or potential measures regarding repayment agents?**

- 4.26.1 We think HMRC should explore what other countries do when it comes to tax relief, repayment agents and some of the consumer protection issues that they present taxpayers.
- 4.26.2 We had a quick look around to see what other countries are doing when it comes to consumer protection and third parties. In terms of tax agents, there are various registration/authorisation schemes such as in Australia, Norway and Germany.
- 4.26.3 However the US is probably the most interesting example. They have a very big issue called Stolen Identity Refund Fraud.
- 4.26.4 The issue is slightly different to the deed of assignment issue because it involves people stealing the identities of others and then submitting false tax returns in their name. However, the definition of the problem used by the US Department of Justice does definitely capture what we are talking about in the UK around the EIS issue outlined in paragraph 4.7.8.

*'where a fraudulent claim for refund is in the name of a person whose personal identification information appears to have been stolen or unlawfully used to make the claim, and the claim is intended to benefit someone other than the person to whom the personal information belongs'.*

- 4.26.5 From what we have read, it seems the US have made an active choice to treat this as an attack on the US system in which the taxpayers are merely conduits. They certainly don't appear to be trying to clawback the lost money from the taxpayers whose identities have been stolen.

4.26.6 The most interesting thing is that the US Department of Justice puts people in prison<sup>31</sup> for this kind of fraud (and also for inflating client refunds by claiming false deductions on the part of their clients).

4.26.7 The Government Accountability Office (which is a bit like the NAO in that it is a public spending watchdog and has responsibility for auditing government depts) has been alive to this issue for a long time in the US, with a programme of review active between 2012 and 2022. The following quote came from their report from 2014 'IDENTITY THEFT' in which is set out some 'Additional Actions that Could Help the IRS Combat the Large, Evolving Threat of Refund Fraud'<sup>32</sup>

*'IDT refund fraud takes advantage of IRS's "look-back" compliance model. Under this model, rather than holding refunds until completing all compliance checks, IRS issues refunds after conducting selected reviews.*

*While there are no simple solutions, one option is earlier matching of employer-reported wage information to taxpayers' returns before issuing refunds. IRS currently cannot do such matching because employers' wage data (from Form W-2s) are not available until months after IRS issues most refunds.'*

4.26.8 We think it is very positive that they have recognised that there is a structural issue in the system that is encouraging these problems. The US authorities seem to have realised that the more thoroughly they can understand what is driving certain behaviours, the more effectively they and policymakers can respond.

4.27 **Question 24: Have you seen evidence of a consumer protection issues with repayment agents concerning heads of duty other than Income Tax?**

4.27.1 We have not seen any such evidence. However given our remit this is unsurprising so should not be taken as meaning that none exists. Anecdotally, we have heard of issues with the 'hard selling' of R&D tax credits and in circumstances where it is not immediately apparent to us that it is appropriate.

4.28 **Question 25: Do you think measures proposed in this consultation could, or should, apply to other areas in which repayment agents act?**

4.28.1 Yes

4.29 **Question 26: Are there other legal vehicles not mentioned that could give rise to unfair contract terms for taxpayers?**

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<sup>31</sup> <https://www.justice.gov/tax/stolen-identity-refund-fraud>

<sup>32</sup> <https://www.gao.gov/assets/gao-14-633.pdf>

- 4.30 We are starting to hear about some tax refund agents threatening taxpayers with legal action over unpaid fees, where the individual made an enquiry say, but did not proceed to sign up to their services or tried to cancel.<sup>33</sup>
- 4.30.1 This is usually linked to complex terms and conditions which taxpayers are unlikely to read and may well be unfair and therefore unenforceable. Putting aside the question of whether they are legally able to make such a demand, it is unlikely the agent will have done much, if any, substantive work on making a taxpayer claim to justify the unpaid fee demand, so this seems to be a bit of a 'shake the tree' exercise.
- 4.30.2 This is a legal/contractual issue and not a tax issue, but it is something we think HMRC should be aware of, given egregious individuals/companies are likely to look for new ways to profit if existing routes are removed.
- 4.30.3 We are also noticing an increase in emails we are receiving from marketing companies on behalf of tax refund companies inviting us to 'use our calculator' etc. We are also hearing of taxpayers being bombarded by phone calls by marketing companies working with tax refund companies, who heavily-handedly, try and get taxpayers to finalise partially completed applications.
- 4.30.4 This concerns us, as (on the assumption the marketing company will get paid for each 'lead' they generate) there are now essentially two entities in the chain with a vested interest in getting taxpayers to complete claims. This creates huge pressure on taxpayers and confusion as to exactly which entity the taxpayer/HMRC is dealing with. This inevitably increases (we would have thought) the scope for bad practice and therefore bad outcomes - not only for taxpayers, but HMRC and the tax system in general.

LITRG  
13 September 2022

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<sup>33</sup> See for example here: <https://www.hotukdeals.com/discussions/hidenda-threatening-letteremails-3857918>