

HM Revenue and Customs and the Taxpayer: Modernising Powers, Deterrents and Safeguards

Safeguards for Taxpayers

Response by the Low Incomes Tax Reform Group

Background and Executive Summary

The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation to give a voice to the unrepresented in the tax system. The Group aims to help people on low incomes to cope with their tax affairs and campaigns for a simpler and more accessible tax and benefits system.

We particularly welcome the opportunity to respond to this important consultation on taxpayer safeguards as part of the ongoing review of the powers of HMRC, to which we have made the following contributions¹:

- March 2007 – *A new approach to penalties for incorrect tax returns*
- June 2006 – *Modernising powers, deterrents and safeguards*
- June 2005 - *Modernising powers, deterrents and safeguards*

Key to this process are the following considerations:

- Safeguards must protect the rights of all types of taxpayer and cater particularly for those with special needs, encompassing a thorough review of relevant anti-discrimination legislation.
- Taxpayers should have easier access to sources of redress and compensation, which the current system fails to deliver. Litigation, where it is possible, is impracticable for most due to financial constraints and it therefore makes sense to look at alternatives providing independence is maintained.
- The safeguards HMRC aspire to in this consultation appear to be robust and comprehensive at face value. The challenge will be in bringing these to fruition.
- Better review and implementation of decisions at outset would lead to fewer complaints, whilst an improved system for recording, monitoring and review of complaints would lead to understanding of where changes are needed.

Our response is concentrated on the following themes and recommendations:

Discrimination: A thorough review of safeguards in conjunction with the Disability Discrimination Acts and HMRC's Disability Equality Scheme is necessary, resulting in positive action. For example, those with special needs must be treated well and information and assistance should be provided in a range of formats.

Independence: Safeguards must ensure that in each and every situation taxpayers have a right to *independent* review or appeal. This independence should be stressed to the taxpayer, for example through information being sent out by the appellate body itself. HMRC literature on appeals should be reviewed to present the process in a more balanced and non-threatening light. The voluntary sector should be further supported to provide independent advice to the unrepresented on low incomes.

¹ See <http://www.litrg.org.uk/reports/submissions.cfm>

Rights: Laws are in place to protect both sides in any dispute. To avoid the system being biased in favour of those 'in the know' (HMRC) against those 'in the dark' (most taxpayers), HMRC should routinely advise taxpayers of their rights. For example, taxpayers should be told they are able to make a Subject Access Request to the Data Protection Unit if frontline staff initially refuse their request for information. Customers should always be fully briefed on rights of appeal at the appropriate stage of interaction with HMRC. *Unrepresented* taxpayers and tax credit claimants should get the maximum help and guidance on their rights.

There must also be some safeguard to protect the taxpayer or tax credit claimant who conducts his tax affairs in good faith based upon advice given by HMRC even if it transpires he has been misinformed.

Clarity: HMRC internal guidance should remain in the public domain, but where it is cross-referred to in leaflets provided to taxpayers, it should be reviewed for clarity in the eyes of a non-expert reader. In publishing this guidance, the spirit of the Freedom of Information Act (FOI) should be followed to promote openness, rather than the exemptions in the FOI used as a pretext for secrecy. The penalties for getting things wrong continue to escalate and this makes it even more necessary for HMRC to get across messages in more accessible forms to the full spectrum of customers.

The complaints process: Out of date complaints guidance (for example on HMRC's website) should be reviewed and corrected. There is a general need to keep all HMRC guidance up to date. Withdrawal of guidance should be the subject of stringent review as the continued availability of information must be in the interest of both HMRC and the taxpayer. One area we are particularly concerned with is that all future versions of the complaints leaflet should reproduce ESC A19 in full as this constitutes a vital safeguard.

Complaints by email should be accepted and a single complaints helpline should be set up. Records of 'informal complaints' should be kept and how, or whether, they are resolved so that a fuller picture can be built up of customers' reactions.

The role of the Adjudicator should be reviewed and, as a minimum, we recommend that any 'streamlining' of cases is carried out by persons independent to HMRC. A statutory right of appeal for tax credit claimants against overpayment recovery is called for.

Effective use of internal and external systems and information: Where information is available to HMRC through legal gateways with other Government departments, this should be put to best use to provide an effective service. Automated systems should be monitored better to avoid 'blame it on the IT' errors.

General points

Chapter 1 describes a possible definition of the term 'safeguard'. Surely a safeguard for the citizen is a counter to the exercise of a power by the state, a mechanism by which citizens/taxpayers are protected within the law against the wrongful, excessive or inappropriate use of a power, or against the action of an organ of state above and beyond the power given it by law. Safeguards can also be seen as necessary restrictions on the use of powers to protect fundamental rights.

Regarding paragraph 2.3, we do not agree that a taxpayer's entitlement to claim reliefs, allowances or tax repayments should be regarded as a safeguard. What is it a safeguard against? Rather than safeguards, these are rights enshrined in the law and should remain as such. Indeed there is a case for HMRC to be required to match data in their possession if there is a likelihood of a taxpayer repayment.

At paragraph 3.2, the fifth bullet point mentions that safeguards should be 'HRA compliant'. This should be expanded to include 'compliant with the Disability Discrimination Acts and with the rules of natural justice'.

Under the heading of such compliance, LITRG has consistently pointed out the gradual erosion over the last few years of printed guidance, particularly codes of practice, thereby removing one of the important safeguards mentioned in these introductory chapters. Also, there has been a trend towards internet-only guidance, which excludes those with no, or insufficient, technological capability or access to the internet. The National Audit Office report *Government on the internet: progress in delivering information and services online* published on 13 July 2007 notes:

'A large proportion (two fifths) of the population do not have internet access at home and there is a risk that many may not benefit from the advantages of using online services, particularly the elderly or people who lack the skills necessary to use the internet effectively. (For example 51 per cent of adults earning less than £10,400 a year have never used the internet and four fifths of people receiving means-tested benefits lack practical ICT skills.)'

The needs of such individuals must be safeguarded, as a minimum by preserving traditional means of interaction with HMRC, for example through home visits and availability of face-to-face enquiries at local offices (which are dwindling due to continuing closures).

Paragraph 3.4 highlights excellent *aspirational* objectives, but at present HMRC is not achieving them. The comment 'that taxpayers should know or perceive that they have been given the appropriate level of protection' ought not to refer to perception at all. That taxpayers **should** be given adequate protection is an irrefutable question of fact not of perception.

At point 3.6, the first bullet should delete 'generally' and substitute 'always'. No system of safeguards can be comprehensive without *invariably* including a right of *independent* review or appeal. Regarding the third bullet, compensation is, in reality, very rarely proportionate. It is impracticable to sue HMRC for negligence through the courts, therefore virtually impossible to get appropriate redress. Yet HMRC inadequacies can have serious financial consequences for taxpayers. If the objective is to match compensation with actual financial loss, the current system fails.

Point 3.7 refers to HMRC acting 'reasonably'. By whose criteria is this to be judged? Theirs, the taxpayer's or some independent body? Our comments on the use of the term 'reasonable' were set out at length in our response to the penalties consultative document in March 2007¹. Without specifically repeating them here, these previous comments should be taken as reiterated in this paper.

¹ See [http://www.litrg.org.uk/uploadedfiles/document/1_424_TRGresponse-anewapproachtopenaltiesetcDec06\(0307\)\(final\).pdf](http://www.litrg.org.uk/uploadedfiles/document/1_424_TRGresponse-anewapproachtopenaltiesetcDec06(0307)(final).pdf)

In response to the request for views at 3.8, after taking into account the above points, our view is that the objectives as they stand are robust and comprehensive, but equally that HMRC needs to do a lot of work before they can become realistic.

Safeguards within non-tax legislation and non-UK legislation

Focusing on paragraph 4.5, in practice, taxpayers have little option but to rely on HMRC to apply these safeguards rigorously against themselves, as enforcement is generally too remote and expensive to be practicable.

The question at 4.11 is the more remarkable for what it excludes from consideration. In particular, HMRC were among the few public bodies to fulfil their new duties under the Disability Discrimination Act 2005 (DDA) by consulting upon their draft Disability Equality Scheme and publishing a final version by the deadline required by the Act. Yet, apart from a passing reference in Annex 1, HMRC's duties under the DDA receive barely a mention in this consultation paper. It is particularly surprising that HMRC's Disability Equality Scheme, which has been published on HMRC's website since December 2006, does not even feature in the short paragraph on the DDA.

In addition, the fundamental rules of natural justice which pervade our legal systems, and which can be protected by judicial review, must not be ignored. They come into play especially where administrative decisions are made which can affect the lives of citizens. For example, HMRC is arguably in breach of one of the most basic rules of natural justice, that no person may be judge and jury in their own cause, in both the way in which decisions on recovery of tax credit overpayments are made, and in the denial of a right of appeal against such decisions. We are prepared to expand further on this point if required.

Data Protection Act

In doing our representative work we have always found the Data Protection Unit (DPU) to be committed to providing a good service for taxpayers and others who require to see records held by HMRC concerning them. Their open approach to sharing such information contrasts with the occasional reluctance of front-line staff to part with so much as a copy of a previous year's tax return to the taxpayer who made it. The problem is how an unrepresented taxpayer, who is most likely to be unaware of the existence of the DPU, finds out about his or her right to make a Subject Access Request. All too often, we fear, the taxpayer will accept the word of front-line staff and leave the matter there.

In formal complaints, HMRC is usually assiduous about informing dissatisfied taxpayers of their right to refer the matter to the Adjudicator or Ombudsman. **Similarly, we recommend that any member of front-line staff who feels the need to turn down a request by a taxpayer to see records concerning them should at the same time inform them of their right to make a Subject Access Request.** Only then will that particular safeguard be fully effective as a protection for taxpayers against wrongful denial of their right to information.

Freedom of Information Act

This is a valuable safeguard and in our experience much valuable information can be obtained through use of it. That said, an over-zealous interpretation of the exemptions it gives can diminish its value unnecessarily.

A recent example is the ending, without warning, of HMRC's practice of 'notional offsetting' of overpayments arising when claimants fail to declare a change of household, against the tax credits they would have been entitled to if they had claimed again under their new household status (New Tax Credits Claimant Compliance Manual 15500ff). When this practice (which was favourable to claimants) was withdrawn, nothing was put in its place except a note to the effect that the text had been withheld under exemptions in the FOI. Representatives – and doubtless those claimants who were in the habit of using the manual – were at a loss whether the previous practice had been withdrawn, suspended, or what, and if so what HMRC was now doing.

Care should be taken that the spirit of the FOI should be followed to promote openness and freedom of information, not the exemptions in the FOI used as a pretext for secrecy.

Human Rights Act

The primary purpose of the European Convention on Human Rights was passed in order to outlaw, on an international plane and in the wake of the Nuremberg trials, crimes against humanity such as unfair trials, imprisonment without trial, extra-judicial executions, acts of torture and genocide, etc. The Human Rights Act 1998, while absolutely vital in safeguarding such fundamental rights and liberties, is probably of lesser application in tax matters given in particular the nature of the proviso in article 6. Nevertheless it has proved useful in certain areas, such as countering discrimination (for example in the various cases taken by widowers on availability of Widows Bereavement Allowance), and in adducing the safeguards in article 6 of the Convention to certain types of civil penalty (King v Walden, Han & Yau v Comms of C&E, etc).

That apart, tax disputes involving the Human Rights Act generally have to be litigated, sometimes as far as the European Court of Human Rights (cf Hobbs & Others), which puts them beyond the reach of unrepresented taxpayers without financial backing, and if they win the pecuniary recompense that they receive is scant recognition of what they have been through. Therefore it makes sense to look at alternative remedies where possible.

Disability Discrimination Acts and HMRC's Disability Equality Scheme

We have expressed above our disappointment at the scant reference to these two bodies of law and practice from the consultation papers.

First, some statistics. According to the website of the Disability Rights Commission, there are over 10 million people in Britain who have rights under the Disability Discrimination Acts¹. About 2 million are blind or partially sighted (see RNIB website²) and 9 million have impaired hearing (RNID website³). Some 5.2 million have low levels of literacy or numeracy (see Social Exclusion Unit report Improving Services, Improving Lives October 2005⁴), and there are 1.5 million with some form of learning disability (according to the website of Mencap⁵). Those figures show that there are very substantial numbers of people who have special needs of some kind.

¹ www.drc-gb.org/newsroom/key_drc_facts_and_glossary/number_of_disabled_people_in.aspx

² www.rnib.org.uk/xpedio/groups/public/documents/PublicWebsite/public_researchstats.hcsp

³ www.rnid.org.uk/information_resources/factsheets/deaf_awareness/factsheets_leaflets/?ciid=290313

⁴ <http://archive.cabinetoffice.gov.uk/seu/downloaddoc2706.pdf?id=752>

⁵ http://www.mencap.org.uk/html/about_learning_disability/learning_disability_facts.asp

Official HMRC guidance and literature is generally aimed at such a level of comprehension, and drafted in such a way, as to exclude the 5.2 million with low levels of literacy and numeracy, and the 1.5 million with learning difficulties. Yet those customers have to shoulder the blame for any errors made by HMRC which result in their underpaying tax, because it is generally considered that, for the purposes of extra-statutory concession A19, they could not reasonably have thought their affairs were in order. No allowance is made for any difficulties they might have in accessing the information which might, or might not, have told them that their tax affairs were not right. Blind or partially sighted people who may have to wait weeks for a large print copy of a particular guidance document, if they ever find out that one is available, must fend for themselves as best they can.

We have more than once suggested that guidance material for taxpayers should contain the following statement, or something equally comprehensive, for those with special needs:

Additional help from HMRC

For visually impaired customers

- Copies are available in large print, Braille and audio.
- Copies are available in electronic format and can be distributed to you on disk or via e-mail
- You can receive responses in audio format, by e-mail, letter, fax, telephone or Braille
- A fully accessible website, meeting the RNIB's quality standards, is available

For hearing impaired customers

- Access, by appointment, to a sign language interpreter
- A loop system in all Enquiry Centres
- Textphone numbers for every Helpline
- RNID Typetalk facilities

For those with learning difficulties

- A home visit service
- Personalised assistance at an Enquiry Centre

For those with mobility problems

- Enquiry Centres with wheelchair access and normal disabled facilities
- A home visit service for those with disability issues or caring responsibilities

For those whose first language is not English

- A full translation service in Welsh
- Translation services by telephone in a range of languages
- Access, by appointment, to an interpreter at an Enquiry Centre

For access to ANY of these services you may ring us on the following freephone number 0800 xxxxxx textphone xxxxxxxxx

It is disappointing that, eight months after the publication of the Disability Equality Scheme, guidance materials are being published with little recognition of the sheer size and scope of HMRC's customer base for whom the above text (with supporting services), or something like it, would be appropriate.

We recommend that HMRC take urgent steps to comply with its own stated policies regarding its disabled customers or others with special needs, so that the Disability Equality Scheme does not simply pay lip service to an ideal, but results in positive action.

Complaints and the complaint handling process

The question at 5.7 states that 'HRMC recognises that the organisational changes after the merger may have obscured the routes to complain effectively'. It then asks whether taxpayers are sufficiently aware of how to make a complaint about HMRC and who to complain to.

Certainly, changes after the merger may have obscured the routes to complain effectively, but we do not believe those changes are because of the merger. Specifically, the complaint routes have been obscured by the withdrawal of a code of practice (COP1) which, for all its deficiencies, was reasonably clear about the process and about what claimants could expect, and its replacement by a 2-side factsheet from which most of the detailed information in previous versions of COP1 is absent.

For example, successive versions of COP1 have given progressively less information about extra-statutory concession A19, which describes HMRC's practice in writing off arrears of tax due to official error, while the new factsheet does not even mention it. ESC A19 is a vital safeguard, especially for taxpayers on low incomes who generally cannot afford to pay in a lump sum arrears of tax that have accrued over several years. To say nothing about its existence is to deny the protection it affords to the more vulnerable taxpayers, and to undermine one of the more significant safeguards in the system.

We therefore recommend that all future versions of the complaints leaflet reproduce A19 in full.

Current internet guidance on complaints (and access to it) is extremely muddled. Areas of HMRC's website continue to refer to COP1 and Notice 1000 (for example, leaflet IR160¹). Under the 'I want to...' area of the website, links to the complaints process are inexplicably only found under the headings of PAYE Taxpayers and Pensioners². **We therefore recommend a review and update of electronic and other sources of information on the complaints process.**

Our other recommendations are geared to making the complaints process more accessible to the majority of taxpayers.

¹ <http://www.hmrc.gov.uk/pdfs/ir160.pdf>

² <http://www.hmrc.gov.uk/individuals/moreiwt.shtml#individuals>

- **Complaints by e-mail should be accepted** (as Customs & Excise used to do).
- **A single complaints helpline should be set up** to assist the customer to get their complaint to the right place (this has now become even more complex with the advent of HMRC).
- **Those with special needs must be treated well.** In particular, written descriptions of the complaints procedure must give textphone numbers for those with impaired hearing; for those who are blind or partially sighted the procedure should reflect the recommendations of the RNIB as to best practice; and where websites are referred to they should be geared to the needs of disabled people. There should always be an alternative source of information to the Internet for those without access to online services.
- **Unrepresented taxpayers and tax credit claimants should get the maximum help and guidance on their rights.**

Adequacy of escalation routes

The question posed at para 5.12 is whether the current escalation route to resolve complaints is perceived as adequate. The escalation routes mentioned are:

- a review by the Adjudicator;
- referral to the complainant's MP;
- referral by the complainant's MP to the Parliamentary Ombudsman;
- an application for judicial review by the High Court.

Of those four routes, judicial review by the High Court can effectively be discounted for the majority of taxpayers who quite simply lack the means to incur the costs of a High Court action, unless of course they are financially supported by a charity, their trade union, or the like.

The other three routes – Adjudicator, Ombudsman, complainant's MP – are valuable safeguards against persistent error, delay, and other forms of maladministration. However, where the official exercise of a power or discretion has impinged materially on the complainant's legal rights or material well-being, the only really satisfactory recourse is to an independent judicial, or quasi-judicial, body. We say more about this when we come to discuss appeals.

Effectiveness of current system

Para 5.18 invites views on whether:

- HMRC's understanding of taxpayers' priorities is correct;
- there is evidence that some complaints are not followed through to satisfactory resolution;
- the supervision of HMRC's handling of complaints is effective;
- redress is adequate; and
- there is sufficient awareness of and accessibility to the external escalation routes described.

We would like to focus here on redress. Where an error by HMRC adversely affects a taxpayer financially, it is practically impossible for the taxpayer to obtain adequate

redress through the courts because of the difficulty in suing Government departments for negligence¹.

Particular observations

We endorse the statement in para 5.4 about the importance of getting things right first time, and the recognition that doing so will lead to fewer complaints. The record number of complaints arising from decisions of the Overpayments Disputes Team in the Tax Credit Office, culminating in the necessity for the Adjudicator to adopt special procedures in order to cope with the increase in referrals to her office, is an object lesson in the need for better decision-making in the first instance.

At para 5.14 you say that no record is kept of 'informal' complaints (ie expressions of dissatisfaction) because such complaints are generally resolved at first point of contact. The inverted logic of this statement has echoes of the White Queen about it. How do you know that such complaints are resolved at first point of contact if you have no records of them? This attitude is a far cry from the clear statement that used, seven or eight years ago, to be in the Redress Manual, that defined a complaint as 'any expression of dissatisfaction' and decreed that every such expression should be treated seriously and dealt with as a complaint.

We recommend that HMRC should be more sensitive to the many different ways in which complaints can be expressed, and begin to keep records of 'informal complaints' and how, or whether, they are resolved so that a fuller picture can be built up of customers' reactions.

Evidence that some complaints are not followed through to satisfactory resolution.

Complaints about decisions on recovery of tax credit overpayments are legion, and have increased massively in the last year or two. This has caused the Adjudicator and the Tax Credit Office (TCO) to introduce a 'streamlined' way of dealing with them, whereby the TCO flag particular complex cases for the Adjudicator's close attention, while dealing with those considered straightforward by providing the Adjudicator's office with a report summarising the facts and the TCO's decision, and inviting the Adjudicator's review based on their report. As a result, the Adjudicator's decision is based on a second-hand summary of what the TCO think the facts and issues are, which in our view diminishes significantly her role.

Therefore, while the sifting of cases by the TCO is done in accordance with guidelines provided by the Adjudicator's office, the Adjudicator does not have the opportunity to assess the facts at first hand. It would be the reasonable expectation of an HMRC customer that the independent arbitrator would go back to the source documents in order to reach a conclusion as to HMRC performance.

As a minimum, we therefore recommend that any 'streamlining' of cases to the Adjudicator is carried out by persons independent to HMRC. Given the proliferation of tax credits complaints in recent years which have swamped the Adjudicator, a separate system for handling tax credit issues should be considered, ideally leading to the claimant having a statutory right of appeal against recovery of overpayments.

¹ See *Neil Martin Ltd v Revenue and Customs Commissioners*. [2007] BTC 3

Right to appeal

There must always be right of appeal against any decision that affects taxpayers' lives or that can adversely affect a taxpayer's financial situation. At present, there are notable gaps in the system, such as the inexplicable absence of appeal rights against recovery of tax credit overpayments already referred to, which currently leaves the very families which tax credits are designed to help in financial hardship and without means of redress.

Turning to the question at 5.26, it is agreed that guidance is available to appellants, but it doesn't necessarily reach them. **We therefore recommend that taxpayers are always fully briefed on their rights of appeal at the appropriate stage of interaction with HMRC, in a format which they can readily understand.**

Regarding changes to the tribunal structure, LITRG prepared a report on this in September 2006¹. From this, we highlight the following:

- there is a need for case management prior to hearings, saving costs in long run if cases can be disposed of at that stage
- there is a need for an independent administrative review facility
- the appellant must be advised that they can go to the Tribunal Service at any time if HMRC drags its feet over s 56 settlement process (delays are not unknown, especially in tax credits where few ever get to appeal)

To answer 5.38, we again refer to our September 2006 report. In this, we carried out a survey of the present system and suggested improvements. Some of the key changes suggested were:

- Firstly there is **a need for more comprehensive recording and monitoring of complaints** so that HMRC can identify problem areas and make changes which avoid problems at outset.
- There is a general perception that the appeals process is not independent of HMRC so **we recommend that at the outset of an appeal information is sent out by the appellate body itself** to reinforce its independent status.
- For the unrepresented appellant, there is a key need for independent advice and **we stress the importance of government support for the voluntary sector in providing this.**
- HMRC correspondence can sometimes be viewed as threatening when taxpayers engage in an appeal process. **We recommend that HMRC should review its standard correspondence to present the appeals process in a more balanced light.**

In any informal dispute resolution process, **it is important to include a wholly independent review system** and right of further appeal if the matter is not resolved to taxpayers' satisfaction. In the example given above concerning tax credit complaints being 'streamlined' by HMRC in their handling, the adjudication cannot be seen to be fully independent. Financial constraints should not be used as an excuse for restriction of this basic right to independent review.

6.16 refers to the external publication of HMRC guidance. We see this as a vital means of understanding HMRC's processes, giving an insight into how the system works. **It is therefore important to maintain its public availability.** However, on

¹ See http://www.litrg.org.uk/uploadedfiles/document/1_384_TaxAppealspdfsforproof.pdf

its own, this guidance is incomprehensible to most taxpayers and should not be referred to in communications with taxpayers without further clarification and explanation. **We therefore recommend that HMRC guidance is reviewed for its clarity in the eyes of the individual taxpayer where it is cross-referred to in other material and leaflets.**

Annex 1 – Summary of Safeguards

As noted above, the implications of the Disability Discrimination Act and HMRC's Disability Equality Scheme need to be fully considered in safeguarding the interests of relevant taxpayers.

Point 14 mentions Legal Gateways with other Government departments. **We recommend that better use is made of these links, where sharing of information is key to providing an efficient service to the taxpayer.** For example, LITRG recently highlighted¹ the need for better interaction between HMRC and the Department for Work and Pensions (DWP) when taxpayers reach state pension age.

Where powers are exercised by, or functions are moved to, automated systems (paragraph 39), there is a need for better monitoring. The consultation document cites the example that 'a computer will issue a return to those who have notified HMRC of their chargeability'. It will of course also continue to issue returns to taxpayers who no longer need one unless the system is monitored and updated. There is a danger that too much reliance is placed upon automated systems and, if there is no facility to monitor and override this, taxpayers can find themselves with an unnecessary administrative burden.

Statutory clearances are noted as being administered by a "one-stop shop" (51.2), whereas there is no such system for Extra Statutory Concessions (ESCs). We are therefore aware that there can be marked differences in the application of ESCs, resulting in inconsistency and unfairness. **This should therefore be the subject of review where ESCs have been introduced to overcome anomalies in the system and thereby safeguard taxpayers.** There is also a need for HMRC to make unrepresented taxpayers more aware of the possibility of obtaining a ruling or clearance in certain circumstances, of which they would otherwise be ignorant. Greater efforts should also be made to convert remaining ESCs into statutory rights.

Under the heading of factsheets (55), it is unfortunate that the cited example is WTC1, which was last updated in October 2004. With the stated aim of making 'these booklets as easy to understand and accurate as possible', at the very least **publications should be kept up-to-date.** Referring to a leaflet which gives information for the 2004-05 tax year in 2007-08 can only add to taxpayers' confusion.

To expand on this point, when dealing with tax credit 'error' cases HMRC expect claimants to have carefully read guidance notes. Out of date guidance may for example be at odds with the claim form they have received. We also know that where advice has been obtained from the tax credits helpline, HMRC expect the claimant to identify where this conflicts with published guidance notes to identify if they have been misinformed. **There must therefore be some safeguard to ensure that the taxpayer (particularly those who are unrepresented) can rely on advice given by HMRC even if it proves to be wrong.**

¹ See <http://www.litrg.org.uk/reports/reports.cfm?id=437>

Mention of the Lands Tribunal (65) should not only be restricted to chargeable gains. We have recently seen the Antrobus case on Inheritance Tax directed to the Lands Tribunal and more cases could arise in the wake of Pre-owned Asset Tax.

LITRG
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