

Finance (No. 2) Bill (2022-23) Report Stage

Clause 332: Right to repayment of income tax to be inalienable Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

- 1.1 As noted in our Public Bill Committee briefing dated 20 April 2023, we broadly welcome that clause 332 introduces a new provision, effective 15 March 2023, which renders void assignments of income tax repayments.¹
- 1.2 We propose an amendment that would extend the scope of the legislation to apply to assignments of capital gains tax repayments.
- 1.3 We propose an additional amendment that will require HMRC to monitor whether assignments are being used with non-income tax repayments, so that they are in a position to take swift and appropriate action should unscrupulous agents turn to other types of repayment where assignments can still be used.

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

¹ <https://publications.parliament.uk/pa/bills/cbill/58-03/0276/220276v2.pdf>

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 Comments

3.1 *Extending the scope of the legislation*

- 3.1.1 We think it would be prudent to extend the scope of the legislation to encompass the assignment of capital gains tax repayments. Although we do not have any evidence that tax refund companies are currently making use of assignments in relation to capital gains tax repayments, some tax refund companies have shown that they are able to adapt to changes in the market and devise marketing campaigns to target taxpayers in relation to certain reliefs. Thus, if clause 332 were to apply only to income tax, it is conceivable that tax refund companies would look at other opportunities to exploit the use of assignments in conjunction with tax refunds – this naturally would lead them to look at other taxes. We believe that one of the most likely candidates is capital gains tax.
- 3.1.2 Capital gains tax repayments can now arise as a consequence of relatively new laws that require individuals to report certain disposals of UK property to HMRC within 60 days of completion, and pay the estimated capital gains tax due at the same time.² Given it is usually only an estimate at the time of payment,³ the individual could have over- or underpaid capital gains tax. An individual seeking assistance to claim any repayment they are due provides an opportunity for an unscrupulous agent to obtain a signature for an assignment covering all such refunds for a particular tax year. While only a small number of individuals (property developers, for instance) are likely to be the target market, there does not appear to be a downside to extending the scope of the legislation in this way.
- 3.1.3 A capital gains tax refund may also arise in the case where an individual has reported and paid capital gains tax on a disposal but then later reduces the amount of other income which is charged to income tax (for example, by claiming expenses against employment income). As well as triggering an income tax refund, this may also trigger a capital gains tax refund if the claim increases the proportion of a gain which is (or gains which are) charged at the lower rate of capital gains tax (10% or 18%, as the case may be).

² The rules also extend to disposals of UK land, in the case of a non-resident individual.

³ An individual's capital gains tax liability, like their income tax liability, is calculated on an annual basis. Because the amount of capital gains tax due can depend on an individual's available basic rate band, the final liability may not be known until the end of the tax year. Furthermore, capital losses can arise after the date of disposal which may reduce the amount of capital gains tax due from that which has been calculated in-year.

- 3.1.4 Capital gains tax refunds may also be generated by an amendment to a Self Assessment tax return (or property disposal refund) which directly reduces the amount of the gain charged, by claiming additional reliefs (such as main residence relief, or relief for capital expenditure). Such a claim may be legitimate, or it may not.
- 3.1.5 It is also possible that refunds of other liabilities may be engineered somehow. These might include Class 2 or 4 National Insurance, or student loan repayments. However, owing to time constraints we have not been able to explore the scope for this in more detail.
- 3.1.6 We are aware that some assignments which have been considered legitimate by HMRC contain wording to the effect of “any tax repayment” being assigned. It is not clear how clause 332 might be applied in the case of a repayment via Self Assessment which contains a mix of liabilities, perhaps both income tax and capital gains tax. Although we understand that assignments should be more specific in order to be legally valid, HMRC may take a different view. In that case, would the assignment only be void to the extent it related to refunds of income tax, or would it be void entirely? If the former, how would HMRC split the refund on a practical level?
- 3.1.7 For the above reasons, we propose an amendment to clause 332 to insert references to capital gains tax as follows (insertions shown in square brackets):

332 Right to repayment of income tax [*and / or capital gains tax*] to be inalienable

(1) A right of an individual to a repayment of income tax [*and / or capital gains tax*] from HMRC may not be assigned.

(2) Every assignment of a right of an individual to a repayment of income tax [*and / or capital gains tax*] from HMRC, and every agreement to assign any such right, is void.

Explanatory statement: this amendment removes the ability of a taxpayer to legally assign their capital gains tax repayment to a third party, or their right to a capital gains tax repayment. The effect is that assignments of capital gains tax repayments will have no legal effect and the repayment will remain the property of the taxpayer.

3.2 *Monitoring the response of tax refund companies to the legislation*

- 3.2.1 As noted above, the introduction of clause 332 could drive some tax refund companies to look at other opportunities where they might be able to make use of assignments. The amendment to extend the scope now to include capital gains tax will pre-empt this to some extent. However, we think it is also important to monitor the effect of the legislation on the tax refund market, and in particular whether some tax refund companies start to look to other taxes where repayments might arise, for example National Insurance contributions.
- 3.2.2 We propose an amendment to clause 332 that will require HMRC to carefully monitor whether assignments are being used with non-income tax repayments. This should include metrics such as the number of refund claims made for each tax and the total number made via third party companies. This should help ensure that HMRC are in a position to take swift and appropriate action should unscrupulous agents turn to other types of repayment where assignments can still be used.

3.2.3 We proposed the insertion of a new sub-clause 6 in our previous briefing.⁴ We therefore number this new sub-clause 7:

(7) A review under section (6) must also consider— (a) the impact of this section on levels of tax refund claims relating to taxes other than income tax and capital gains tax in total, (b) the impact of this section on levels of tax refund claims relating to taxes other than income tax and capital gains tax made by agents.

Explanatory statement: This amendment requires HMRC to review the impact of the removal of the right to assign an income tax repayment and / or a capital gains tax repayment⁵ to a third party on levels of tax refund claims relating to taxes other than income tax and capital gains tax.

LITRG
12 June 2023

⁴ <https://bills.parliament.uk/publications/51145/documents/3414>

⁵ The references to capital gains tax are included on the basis that the scope of clause 332 is extended to encompass repayments of capital gains tax.