Low Incomes Tax Reform Group.
A voice for the unrepresented

Autum Statement 2023 representation
Paper tax refund forms - suggestion for a new HMRC commissioners' direction setting out what an 'approved' electronic/digital signature is
Letter from the Low Incomes Tax Reform Group (LITRG)

Dear Sir or Madam

Introduction

LITRG is pleased to have the opportunity to make representations in relation to the 2023 Autumn Statement.

Electronic and digital signatures[1] are currently accepted on paper tax refund forms by HMRC. In our experience, these types of claims are mainly made by tax refund companies. HMRC accepting these types of signatures may be convenient however they also carry risks, particularly electronic signatures which can include a typed name or a copy and pasted image of a signature. HMRC, as yet, have no controls or policies in place around the use of electronic and digital signatures on paper forms.

LITRG considers that HMRC's current approach to the acceptance of electronic/digital signatures on paper tax refund forms is:

- Encouraging unscrupulous practices by certain tax refund companies
- Causing taxpayer harm and damage to trust in the tax system
- Risking public money

Where HMRC accept electronic/digital signatures on paper tax refund forms, we think they should be undertaking basic checks on the agent's processes to understand more about whether the signature is the taxpayer's and how the signature ended up on the form.

[1] Electronic signatures are the electronic equivalent of a handwritten signature and simply verify a document whereas digital signatures have additional layers of security such as encryption methods to ensure the document is tamper proof.

However, currently, HMRC do not appear to be undertaking checks like this (or at least not sufficiently), which means that they are accepting electronic or digital signatures on tax refund forms which may be[2]:

- Harvested from an opaque online sign-up process and used without the taxpayer's full authority – meaning the taxpayer does not see or sign the completed form that is submitted to HMRC. This method also makes the terms and conditions, and the fees, less transparent.
- Recycled from other applications taxpayers may have made with a connected entity – which not only means the taxpayer has not seen the completed form, but they may not be aware a claim is being made at all (or the scope of any such claim)
- In some cases potentially forged

The fact that paper tax refund forms contain 'nominations', means HMRC will pay the refund to the tax refund company in the first instance to allow them to deduct their fee. There is a strong incentive for companies to turn to methods like this to generate claims.

We therefore propose that a formal framework is put in place to inform how HMRC deal with electronic/digital signatures. This proposed change would not just benefit taxpayers but also ultimately the Exchequer as public money is exposed where HMRC pay out money to tax refund companies that they should not do. Taxpayer issues relating to claims from certain tax refund companies generate contact with HMRC. This is unhelpful at a time when HMRC's customer service levels are poor. These changes may also help reduce demand on HMRC.

Our recommendations

HMRC should provide new compulsory rules on what constitutes an 'approved' electronic or digital signature for the purpose of paper tax refund forms. This would put it beyond doubt that HMRC will not accept forms containing electronic/digital signatures generated as a result of practices like those set out above.

HMRC have issued a direction in respect of paper tax refund forms in the past (albeit about a different issue)[3]. We think HMRC should issue a further direction in respect of paper tax refund forms P85, R40 and Marriage Allowance and – borrowing concepts from Self Assessment[4] and recent case law[5] - state that:

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[2] Based on the evidence available to us, as explained later in the submission

[3] https://www.gov.uk/guidance/send-an-income-tax-relief-claim-for-job-expenses-by-post#hmrc-commissioners-direction

[4] Under regulations 3 and 10 of the Income and Corporation Taxes (Electronic Communications) Regulations 2003 (S.I. 2003/282), HMRC have made directions for agents filing returns electronically using the Self Assessment Online service, setting out (amongst other things) the method approved by them for authenticating the relevant information: https://www.gov.uk/government/publications/directions-under-regulation-3-of-the-income-and-corporation-tax-electronic-communications-regulations-2003-si-2003282-and-prescribing-of-electr

[5] This approach has recently been taken in the recent Robson case (https://www.casemine.com/judgement/uk/6407887a2d876a6bff2952e9) where a tax return was prepared

- Paper tax return forms can only be submitted to HMRC by agents in an approved manner.
- An approved manner means that where an electronic or digital signature is used on a paper form submitted by an agent, it has been placed on the *completed* form by the taxpayer themselves; or where it is collected separately, it is used with the full (documented) authorisation of the taxpayer and they have seen, understood and approved the contents of the paper tax refund form (including their signature) prior to submission.
- Where paper tax refund forms are not supplied with an approved signature (as set out above), they should be taken not to have been submitted. This means that if agent submitted forms are incorrectly processed by HMRC, this should not prevent the taxpayer being able to make a claim in their own right at a later date.
- To the extent that HMRC pay out a claim incorrectly to an agent and then have to pay that same claim out to a taxpayer, to prevent loss to the Exchequer, HMRC will try and claw back the money from the agent. (In practice this may prove quite difficult.)

Combining these elements into a new direction and approach targeted at tax refund companies who submit paper forms, would lead to a vastly improved eco-system, where there is certainty and consistency for taxpayers, where HMRC are careful to ensure they are only accepting approved signatures (by checking an agent's end-to-end process) and where unscrupulous agents can no longer thrive.

Background to our recommendation

Our concerns around HMRC's approach to electronic and digital signatures have been largely driven by the practices of Tax Credits Ltd[6].

In the case of many customers of this firm, an electronic signature collected as part of the sign-up process was applied to a wide assignment document that the taxpayer had not understood, seen or approved. As the relevant legal authority had not been given by taxpayers, this meant the assignments were not valid, and HMRC should not have followed them.

Initially at least, HMRC said that the agent's sign up processes were acceptable and continued to process the assignments. However in September 2022, HMRC said they would take action in relation to Tax Credits Ltd by issuing tax refunds directly to 60,000 affected taxpayers[7]. More recently, HMRC

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and submitted that the taxpayer has not seen, conformed or authorised, the judge said '"I concluded that CLAC was not the authorised agent of Mr Robson. That being so, the return cannot be deemed to have been submitted on behalf of Mr Robson. As s29 TMA requires the filing of a return the statutory requirements are not satisfied."

[6] Tax Credits Ltd operated an online process for making tax refund claims for taxpayers, including a 'fast track' option which collected an electronic rather than a 'wet' signature. LITRG received a number of distressed contacts from people who thought they were simply applying for a working from home refund via the company, only to find that as a result of the online sign up processes used, they had unwittingly entered into an assignment for an entire tax year (or tax years), meaning other unconnected tax refunds were also paid directly to the company, allowing them to take a significant slice of these extra refunds too

[7] https://www.gov.uk/government/publications/information-for-customers-of-tax-credits-ltd

have said that Tax Credits Ltd can no longer trade as a repayment agent after they found the company had committed serious anti-money laundering breaches.

Following this case, HMRC committed to reviewing the processes and documentation of other tax refund companies to ensure they led to valid assignments. HMRC then legislated to remove the ability to use assignments for tax refunds. However, tax refund companies can still use the nominations process to direct the specific refund be paid to them in the first instance, and so the same underlying issues remain.

We continue to receive contact via our own website, and see queries posted on HMRC's online channels or in consumer internet forums which lead us to conclude that certain tax refund companies continue to abuse electronic and digital signatures[8].

We have shared our concerns with HMRC, but still the queries keep coming[9]. Based on the recent evidence we have seen, it is hard to see how the practices being reported are any different to the situation that led to the refunds in the Tax Credits Ltd case. We are therefore extremely worried that HMRC's interrogation of the processes of other tax refund companies is still not sufficiently rigorous.

There is also a potential tax loss if the underlying claims that are being submitted by agents are incorrect (the less interaction an agent has with a taxpayer, the higher the chances of this). If it turns out that the claim is incorrect, typically the taxpayer will be asked to repay the full amount to HMRC (including the amount deducted by the refund company as their fee, which can be a significant percentage – 40-50%). It can be challenging for HMRC to collect money in this manner. Even where underlying claims are correct, there is still a potential tax loss to the Exchequer if HMRC need to undertake repair work like they did with Tax Credits Ltd.

There are also concerns that the industrial scale by which certain tax refund companies are sending in claims now appears to be having serious knock on effects on HMRC operations (in some recent commentary we have seen, HMRC appear to have justified closing the Self Assessment helpline on the basis that this has allowed them to process an additional 250,000 repayment claims)[10].

HMRC have various tools at their disposal to deal with agents that are not acting in good faith, for example their Standards for Agents, however this relies on HMRC *identifying* agents not acting in

[8] You can read about some of our detailed concerns, in our recent news article: https://www.litrg.org.uk/latest-news/news/230905-why-my-tax-refund-being-sent-third-party-i%E2%80%99ve-never-heard

[9] See for example https://uk.trustpilot.com/review/nationwideppiadvice.co.uk and https://tinyurl.com/j7p7wwyw

[10] As reported here: https://www.accountingweb.co.uk/tax/hmrc-policy/self-assessment-helpline-jammed-after-long-awaited-reopening

good faith in the first place and then *enforcing* their Standards for Agents[11]. This does not sadly, offer a solution at the moment.

It is high time for HMRC to take firmer action on the tax refund company situation, which must now include essentially mandating them to properly check agents' end-to-end sign-up processes via this recommended direction.

About Us

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.

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.

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

Contact details

We would be pleased to provide further detail or join in any discussion relating to this representation. Should you wish to discuss any aspect of this submission, please contact Victoria Todd at vtodd@litrg.org.uk.

Kind regards

Victoria Todd
Head of LITRG

[11] In general, there appears some reluctance to use powers against agents. If HMRC *are* using them in relation to refund company practices, it would be helpful for that to be publicised to act as a deterrent and to raise standards more generally in the sector.