



Low Incomes
Tax Reform
Group

A voice for the unrepresented

The Tax Repayment System and Tax Refund Organisations

– *A call for action*

A research report by the
Low Incomes Tax Reform Group of
The Chartered Institute of Taxation

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Foreword

This report specifically highlights areas in which the tax profession, HMRC and others, for example the Office of Tax Simplification (OTS), need to work together to ease the tax repayment system for the low-income and unrepresented taxpayer. We emphasise the need to protect consumers by helping them to make informed and carefully considered choices about whether or not to use a tax agent and if so, to whom they should entrust their confidential and personal data.

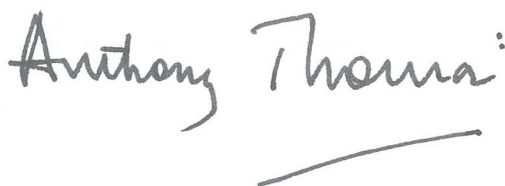
There is a market for certain (mostly unaffiliated) organisations who specialise in making bulk claims for repayment of tax ('refund organisations'). This market has grown partly because individuals whose tax affairs are comparatively straightforward are unaware how simple it can be to claim their own tax repayment. A combination of relatively poor service from HMRC in recent years and the perception of tax services being difficult for individuals to access unaided has almost certainly resulted in a gap for such tax refund organisations to exploit. Although HMRC are currently investing in improvements, the problem is that people's attitudes may be hard to reverse in the short term.

Taxpayers may be drawn in by tax refund organisations' over-inflated promises, scant information as to costs and attempts to use HMRC agency and money laundering approval as evidence of official endorsement of their services.

It seems that now is the time to act, especially as Real Time Information has the potential for much more to be done in the next few years to minimise overpayments of tax through PAYE. Furthermore the HMRC digital strategy will lead to greater online access to taxpayers' records, for both individuals and agents, than ever before.

These factors bring with them an urgent need for taxpayer education about changes to the tax and benefits system and improved awareness of how to make informed choices about the organisations from which they seek help. HMRC should take the lead in this work, supported by others in the tax profession. The incentives are clear – minimising costs and the risk of fraud.

Signed

A handwritten signature in black ink that reads "Anthony Thomas". The signature is written in a cursive style and is positioned above a horizontal line.

Anthony Thomas

Chairman, The Low Incomes Tax Reform Group

1. Executive summary and recommendations

- 1.1. This report follows on from previous work the Low Incomes Tax Reform Group (LITRG) has conducted in the area of overpayments of tax. Although that work was not published in the past, discussions about it were held with HM Revenue & Customs (HMRC) in an attempt to press for improvements. Given the range of consumer protection issues we have identified, the time has come to publish this detailed report.
- 1.2. Complexity of the tax rules and HMRC administration (forms and processes) allow high-volume agents, commonly known as 'refund organisations', to flourish. We particularly wish to draw attention to the practices of these mostly unaffiliated agents and their impacts on those, often low-income and/or vulnerable, taxpayers who are persuaded to use them. We wish to share experiences with HMRC and work together towards solutions to the problems we have identified. This report highlights the costs of using such refund organisations, not only in monetary terms but also by illustrating how some of them appear to encourage less-than-accurate or even blatantly over-stated claims. Clearly we are not concerned in this report with those bona fide agents, usually affiliated to a professional body, who offer their clients help with securing tax repayments as part of an overall tax advice service, and in doing so work to a high standard for a modest fee, or even adopt the approach of helping their clients make refund claims for themselves. Our concern is rather more directed towards those organisations the bulk of whose work is in securing tax repayments for clients, whose standards of accuracy are lower, and rates of charge higher, than one would expect of a reputable professionally affiliated firm.
- 1.3. In previous consultation, HMRC have recognised the problems created by some refund organisations¹. HMRC say they have developed an operational response to addressing the tax risk they pose, but there seems to be little evidence that this has curtailed the activities of refund organisations.
- 1.4. Refund organisations exploit the gap in the system which exists because tax overpayments are either not prevented in the first place, or not identified or not straightforward to claim. This gap need not exist if HMRC procedures and guidance were to be improved so that taxpayers could self-serve more easily.
- 1.5. We therefore hope that the following actions will flow from this report, with HMRC working in close liaison with ourselves and other interested voluntary sector organisations (and where relevant, the professional bodies, employers and trade unions):

1 HMRC Modernising Powers, Deterrents and Safeguards: 'Working with Tax Agents: Responses to Consultation', 14 July 2011 http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_ConsultationDocuments&propertyType=document&columns=1&id=HMCE_PROD1_031461

1.5.1. First¹, action from HMRC is needed to prevent overpayments of tax by:

1.5.1.1. educating taxpayers to keep a check of their own tax affairs and to claim what is due to them. As part of this, it is essential that printed and online guidance is as clear and easy to navigate as possible – a matter for ongoing review as HMRC’s website content migrates to GOV.UK.

[Para 3.4.5]

1.5.1.2. educating taxpayers about the importance of forms P45 and P46 (and in due course the changes to those starter and leaver processes under Real Time Information (RTI)) within the PAYE system. Taxpayers need to understand what information they must provide to their employer when they start an employment, and what they should expect from their former employer when an employment ends. **[Para 3.3.3]**

1.5.1.3. ensuring that such education begins at an early stage, by working with other Government and external bodies to ensure that tax is included on the school curriculum. Proactive education is necessary as mere provision of information (for example on the web) is unlikely to be sufficient to improve future generations’ understanding of the tax system. **[Para 3.3.3]**

1.5.1.4. making their claims processes as simple as possible (that is, both the up-front processes for claiming allowances and reliefs when they are due and processes for claiming refunds after the event). For example, online guidance could include the provision of annotated example forms and pro forma letters, lists of required information and step-by-step guides to making a claim. **[Para 6.10.6]**

1.5.1.5. identifying ways (through working with employers and Trade Unions) of ensuring that allowances and reliefs (such as uniform cleaning, allowances for tools, mileage allowances) are given as early as possible, via adjustment to employees’ PAYE codes. **[Para 6.6.5]** We also recommend that the Office of Tax Simplification’s (OTS’s) ‘Review of employee benefits and expenses’² looks at this area in detail and produces recommendations. **[Para 6.10.5]**

1.5.1.6. using the move to RTI and HMRC’s Digital Strategy as a catalyst for improving communications to taxpayers. This could include working in co-operation with employers, for example to distribute

1 We recognise that taxpayers have a responsibility to check their own tax position. Unfortunately, people often do not appreciate that nor might they have ready access to information which might help them to do so – there is a general misconception amongst employees that the system does it all for them. There is also a lack of education concerning the tax system in schools. Our suggestions aim to ensure that taxpayers not only become aware of their responsibilities but also receive assistance to enable them to self-serve. It should also be noted that our concerns centre particularly around those taxpayers who are most vulnerable and require most assistance from HMRC.

2 The OTS’s review of this area was announced during the 2012 Autumn Statement and is outlined at: <https://www.gov.uk/government/publications/employee-benefits-and-expenses-review>

further information on claiming employment expenses. **[Paras 3.3.3 and 7.4.4]**

1.5.1.7. harnessing the capability of RTI and making best use of the increased and earlier data flow to ensure that employees pay the right tax in-year rather than having to wait for annual reconciliation. This means that data must not be allowed to languish in the RTI database – it must be reconciled back on a regular basis to the National Insurance and PAYE Service (NPS) system and thereby used to update individuals' PAYE codes as soon as possible¹. **[Para 7.3.3]**

1.5.2. Addressing the above issues would in turn leave little or no room for refund organisations of the type with which this report is concerned to operate. But these changes will take time to develop and processes may never be fully automated and still require some taxpayer intervention. As a result, people might continue to fall into the hands of such refund organisations when they need not do so. Therefore, HMRC should:

1.5.2.1. ensure that taxpayers prefer to contact them direct to claim a refund by making it simple for them to do so. HMRC could improve the current system by having a dedicated repayments helpline, or if this is not possible, Contact Centres should be able to escalate cases to advisers who are specifically and better trained to advise on repayment claims. **[Para 3.2.3]**

1.5.2.2. review, align and simplify the myriad different forms that people might have to use to claim a refund and offer downloadable template letters for people to use where a refund request needs to be made in writing. **[Para 3.2.4]**

1.5.2.3. offer online channels to calculate and apply for refunds². If HMRC are concerned that this might open up opportunities for fraud, there should be ways of minimising this, for example by initially requiring identification of the taxpayer via the Government Gateway. **[Para 3.2.5]**

1.5.2.4. hold campaigns which reach out to people who are not claiming reliefs or allowances because they do not know of them. These should be conducted with the same vigour, publicity and profile as other campaigns, such as that around the 31 January Self Assessment deadline. **[Para 6.10.3]**

1.5.2.5. help taxpayers to make an informed choice of tax agent, providing some consumer protection

1 Again, we note that individuals have a certain degree of responsibility for checking their own PAYE codes, but this could in turn be helped by better information being provided by HMRC to enable them to do so – for example, a single reconciled PAYE coding notice as opposed to the current system of different notices for different sources of income. These can be particularly difficult for people with multiple sources of PAYE income to understand (as highlighted, for example, in the OTS's Review of Pensioner Taxation and consequent recommendation of a composite notice of coding). See <https://www.gov.uk/government/publications/taxation-of-pensioners-review>

2 We understand in this regard that HMRC are currently investigating the possibility of allowing repayment claim forms R40 (used mainly to reclaim overpaid tax on savings income) to be filed online. We hope this process will be successful and rolled out further to include other types of repayment in due course.

information such as warnings about how some refund organisations misrepresent themselves by implying an official relationship with HMRC. **[Para 5.1.3]**

1.5.2.6. help taxpayers to understand, by providing guidance, what it means for an agent to be registered with HMRC for the purposes of Money Laundering regulations and that this does not imply any endorsement by HMRC of that organisation's services. **[Para 5.4.2]**

1.5.2.7. consider how awareness of unclaimed allowances can be increased, for example by sending out simple 'help sheets' at key life events. Although the availability of age related personal allowances has been restricted from 6 April 2013, pensioners are one example of where a change in circumstances might trigger the need for a tax review, such as whether they can register for gross interest on taxable savings accounts, or to claim the benefit of the 10% savings rate if they are not in Self Assessment. HMRC could harness the reach of the voluntary and charitable sector to assist with this, for example through the Grant in Aid programme¹. Cost-effective use of the Press and social media (for example, HMRC's Twitter account) would be another possibility. **[Paras 6.6.5 and 6.7.5]**

1.5.2.8. consider how Construction Industry Scheme (CIS) sub-contractors' awareness of potential tax overpayments could be improved by working with main contractors to disseminate information. Indeed, identifying the complexities within (and in turn proposed improvements to) the CIS scheme is a subject for a separate report and something which a body such as the OTS might consider, for example. **[Para 6.9.3]**

1.5.3. Finally, we believe that HMRC must be more proactive in monitoring and supervising refund organisations operating on the internet in order to curtail the activities of the less reputable of them, and ensure that this activity is publicised. Specifically, HMRC should:

1.5.3.1. police use of the term 'HMRC registered agent' and the HMRC logo, litigate against their improper use and publicise widely such actions: HMRC have a duty to tackle what are in effect abuses. **[Para 5.3.3]**

1.5.3.2. as part of the developing tax agent strategy², HMRC could publish pointers as to the qualities a taxpayer should look for in an agent, for example, qualifications and membership of a professional body and being bound by a code of professional ethics. **[Para 5.4.3]**

1 The LITRG is itself the recipient of Grant in Aid funding. Through our 'Disability Tax Guide', 'Tax Guide for Migrants' and 'Tax Guide for Students' initiatives in particular, we aim to increase the knowledge of those with disabilities, migrants to the UK and students about their tax affairs and how to prevent incorrect tax payments, and to claim refunds in the event of an overpayment. Part of these projects also aims to aid consumer protection by increasing awareness of tax refund organisations and their operations.

2 See <http://www.hmrc.gov.uk/agents/strategy/overview.htm>

1.5.3.3. review the process for granting authority to agents (currently form 64-8) so that taxpayers are made aware of the implications of granting such an authority and can access procedures for ending it in appropriate circumstances. **[Para 5.7.6]**

1.6. The incentive for HMRC to take these actions is clear - getting people paying the 'right amount of tax' in the first place¹ is more cost effective than administering refund claims after the event and reduces the risk of fraud. The LITRG is more than willing to work with HMRC to ensure that these things happen.

1 Where benefits, such as Universal Credit, are based on net-of-tax income, this is likely to become an increasingly important issue, particularly if the system recognises only data transmitted to DWP via employers' RTI PAYE returns and does not recognise differences uncovered in any later 'P800' reconciliations process.

2. About the Low Incomes Tax Reform Group

- 2.1. The LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 the 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. The LITRG works extensively with 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 – scope and background to this report

3.1. **Scope**

- 3.1.1. This report examines how people are being served by HMRC in relation to the tax repayment system. It provides an analysis of the current situation as seen from the LITRG perspective.
- 3.1.2. We focus on the role of ‘refund organisations’ within the tax repayment field and the risks to taxpayers who might use them.¹ It is based on our research of these organisations conducted in summer 2012.
- 3.1.3. In the main, we explore the issues from the perspective of unrepresented taxpayers, a large number of whom are on low incomes. They might also be vulnerable in some way or otherwise in need of help with their tax affairs. We consider why they use, or consider using, refund organisations in preference to going direct to HMRC.

3.2. **Background**

Tax repayments system

- 3.2.1. A fundamental part of any developed tax system is the effective management of refunds, repayments and credits. Such a system should ensure that taxpayers receive legitimate repayments quickly, accurately and in a cost effective way, with the minimum amount of bureaucracy or procedures for them to follow. This is subject to the need to apply security checks to prevent fraud and abuse.
- 3.2.2. The LITRG has long held concerns about the difficulties for unrepresented taxpayers in their interaction with the taxes repayment system and over the last few years we have encouraged HMRC to make the repayment process for unrepresented customers as transparent and as simple as possible.
- 3.2.3. A common theme of many of the queries we receive through our LITRG website² is customers’ inability to

1 The same refund organisations we consider in this report may also be involved in claims for underpayments of tax credits. Our report focuses on tax refunds only, as refund activities for tax credit underpayments could fill a separate report.

2 Members of the public submit comments and enquiries to us via: <http://www.litrg.org.uk/ContactUs>

reach HMRC's helpline in order to seek guidance about a tax refund or to initiate a claim¹. **We recommend that HMRC have a dedicated repayments helpline or if this is not possible, Contact Centres should be able to escalate cases to advisers who are specifically and better trained to advise on repayment claims.**

3.2.4. Many enquirers to the LITRG website are seeking advice or a form online but are unable to find anything appropriate to their particular circumstances. This is not surprising given the range of forms and different means of making claims. For example, some business can be done with HMRC by telephone², other things are done on a prescribed form³ and some repayments can be claimed by writing a letter (such as a refund of overpaid PAYE). **We therefore recommend that HMRC review, align and simplify the myriad different forms that people might have to use to claim a refund and offer downloadable template letters for people to use where a refund request needs to be made in writing.**

3.2.5. Although there are still many digitally-excluded low-income taxpayers, individuals with the relevant technological ability have a clear expectation that it ought to be possible to make claims online. This is evidenced by enquiries received to the LITRG website containing personal details in the mistaken belief that we are HMRC and can process a claim or request for them. **We recommend that HMRC offer online channels to calculate and apply for refunds.** If HMRC are concerned that this might open up opportunities for fraud, there should be ways of minimising this, for example by initially requiring identification of the taxpayer via the Government Gateway.

3.3. *The unrepresented taxpayer*

3.3.1. Overall, the unrepresented taxpayer is much more likely than someone with professional representation to overpay his or her taxes and to find it more difficult to claim back overpaid tax – for example, because they are outside of the Self Assessment system.

3.3.2. Whilst universal Self Assessment is unlikely to be a favourable solution and not one we recommend (as it would be high cost for HMRC and impose a significant burden on taxpayers), filing a tax return each year does have the advantage of forcing individuals to think about their tax and what they can claim. In addition, things like the 10% savings rate are given automatically if a person is in Self Assessment, via the

1 While HMRC's performance at answering the telephone has improved in the last two years, there is some way to go before call-handling rates by HMRC attain the industry standard of 90%. See 'HM Revenue & Customs: Customer service performance', Comptroller and Auditor General, National Audit Office (December 2012), pp. 4, 6-8, 15-27. We welcome HMRC's performance between October and December 2012 (see <http://www.hmrc.gov.uk/about/briefings/issue-briefing-feb13.pdf> - the latest figures located at the time of writing), when they handled more than 90% of call attempts, and hope that measures will be put in place to ensure this performance is sustained and improved upon.

2 HMRC Statement of Practice 1/10, 'Business by telephone – HMRC Taxes Contact Centres'. See www.hmrc.gov.uk/agents/sop.pdf

3 Repayment forms include, inter alia: P50 – Claim for repayment of tax when you have stopped working; P53 – Claim for repayment of tax on a trivial commutation lump sum; R40 – Claim for repayment of tax deducted from savings and investment income; P85 – Leaving the UK, Getting your tax right; P87 – Tax relief for expenses of employment and R27 – Reclaiming tax or paying tax when someone dies.

tax calculation, without them having to go through the complexity of understanding whether or not they are entitled to it and then claiming the tax refund.

3.3.3. Many incidences of overpaid tax are attributable to how the PAYE system works. Inevitably, the system cannot always deduct the right tax at the right time as it relies on the underlying information being correct. Nevertheless, many taxpayers assume that the PAYE system is always accurate. There is a need for education concerning the limitations of the PAYE system and the importance of forms P45 and P46 (and in turn any changes to the starter and leaver processes under RTI). In this regard, the Government's ideas about tax transparency and statements for taxpayers are to be welcomed and encouraged¹. Providing taxpayers with more transparency may encourage them to take an interest in their tax position, as well as make it easier for them to understand. **We therefore recommend that education of the existing taxpayer population as to the importance of getting their tax right on starting or changing jobs (or starting to receive another source of PAYE income such as a pension) is given high priority with the work on transparency. Further, this should be supplemented by HMRC working with other Government bodies and external stakeholders to ensure that tax forms part of the school curriculum, thus improving future generations' understanding of the system and their responsibilities relating to tax.** This should lead to fewer overpayments of tax occurring in the future, and therefore a reduced demand for refund companies' services.

3.3.4. Factors such as moving jobs frequently or having multiple concurrent jobs can lead to PAYE tax being overpaid. This often impacts more on lower-paid workers, for example agency workers. Generally, the lower-paid will need help in identifying whether they have overpaid tax, whether they can claim deductions for work expenses and how they can claim tax back. The reasons for this are explored later in this report. Fundamentally, many taxpayers may miss out on tax being repaid to them and money which is rightfully theirs. The amounts at stake are often significant to people on lower incomes.

3.4. ***Tax Refund Organisations***

3.4.1. One of the indicators of how well HMRC are doing in relation to their management of the tax repayments system is the existence (or otherwise) of high volume agents which operate principally via the internet, commonly known as 'refund organisations'. This report is concerned with organisations the bulk of whose work is in securing tax repayments and who are often not affiliated to a professional body.

3.4.2. There is a spectrum of organisations operating in the tax repayment field, many of which charge disproportionate sums of money in the context of the amount of the tax claim, or significant sums relative to the complexity of the claim. Often claims are very straightforward and could be made by the taxpayer themselves, at little or no cost, if only they knew how. Most of the organisations charge a minimum fee which can wipe out the benefit of making the claim where smaller amounts of tax are involved. We explore

¹ In order to be successful, however, we would note that taxpayer statements must be clear (written in easy language and presented in a clear format) and comprehensive (that is, they should include all taxable income, not just PAYE sources).

the practices of refund organisations in more detail in the next section of this report.

- 3.4.3. Ignorance of their entitlements might lead to people using refund organisations which ‘sell’ the prospect of an easy tax refund, with little or no effort on the part of the individual.
- 3.4.4. Poor HMRC customer service might also contribute to taxpayers seeking other avenues of claiming refunds and push them into the hands of refund organisations. Some others find their way to us (the LITRG website), to the tax charities TaxAid¹ and Tax Help for Older People² and to money advice websites.
- 3.4.5. Inadequate online repayment guidance might also result in taxpayers finding their way to refund organisations instead of using the official channels. Currently, when a customer looks for information on how to claim a repayment of tax, either via the HMRC website³ or the GOV.UK website⁴, they are directed to the HMRC helpline. This channel of communication can, and does, deter many customers from pursuing a claim direct with HMRC, or perhaps from pursuing a claim at all. **We recommend that HMRC guidance is a matter for ongoing review, particularly in the migration of material from the HMRC website to GOV.UK.** We are willing to assist with reviewing guidance.
- 3.4.6. Of further concern to us is the slick advertising employed by some less reputable refund organisations with headline promises of tax refunds amounting to thousands of pounds, coupled with ‘no win, no fee’ terms. This potentially preys on people on low incomes or who may be vulnerable. People’s ignorance of the tax system means that they are not always capable of making ‘too good to be true’ judgments in terms of the promises offered. Indeed, those promises could give them false expectations, and even if they have a legitimate claim, the fees are likely to deprive them of a significant proportion of a much-needed refund.
- 3.4.7. Moreover, in doing business with some of these organisations, individuals may well risk more than their refund – for example, they might later fall victim to HMRC compliance activity and discover that their claim has been falsified or over-inflated. The less-than-scrupulous operators in the refund field have a vested interest in maximising the value of the claim, since they often work on a percentage fee basis.
- 3.4.8. Whilst we raise a number of concerns in this report, we recognise that some refund organisations are meeting a need in the market (albeit a need which HMRC could do more to minimise, as we explore later). Also, the amounts those organisations charge are not necessarily more than those which might have been paid to a tax adviser operating in the normal course of business. To the extent that we refer to the individual organisations, it is to help inform HMRC about the ‘refund’ industry. It should also be noted that

1 See www.taxaid.org.uk

2 See www.taxvol.org.uk

3 See <http://www.hmrc.gov.uk/incometax/refund-reclaim.htm>

4 See <https://www.gov.uk/claim-tax-refund/overview>

in the ordinary course of business, many bona fide agents, usually affiliated to a professional body, offer clients help with securing tax repayments. They work to a high standard and often charge only a modest fee, or simply help clients to make refund claims for themselves. This report is not concerned with them.

4. About tax refund organisations

4.1. This section of the report explores the key features of a range of refund organisations. It is based on our research and analysis of their services, the way they present themselves and market their products, the quality of the information they provide and the customer groups they target. In this report, we do not concern ourselves with bona fide agents, often affiliated to a professional body, who offer their clients help with claiming tax repayments as part of an overall tax advice service, and who often work to a high standard for only a modest fee. Some agents will even show a client how to make a tax repayment claim themselves. Our concern is with refund organisations, whose work mainly consists in obtaining tax repayments for clients, and whose standards of accuracy are lower and rates of charge higher, than one would expect of a reputable tax agent affiliated to a professional body.

4.2. **Overview**

4.2.1. There are a number of firms operating in this field. In the summer of 2012, we reviewed some 35 websites to gain a greater insight into their work. We found these websites through internet search engines, using common search terms that an individual might use.¹

4.2.2. We believe that this selection of websites represented a significant proportion of those targeting UK taxpayers for refund services.

4.3. **Marketing**

4.3.1. All of the websites we reviewed employed slick advertising with headlines, such as:

- ‘Turn your taxes into cash’
- ‘£800 is the average refund’
- ‘1 in 3 taxpayers on PAYE are owed a tax refund!’
- ‘We have helped over 2 million taxpayers find out if they were due a refund’

4.3.2. A significant proportion of the websites we reviewed were marketing themselves as ‘HMRC approved agents’ and a small number of them displayed the HMRC logo. On one site, we even found the claim that ‘HMRC recommends us we are that good!!!’ In a few cases, ‘HMRC approved agent’ appeared prominently

1 Search criteria used included: ‘Tax refund’; ‘Tax rebate’; ‘Tax repayment’; ‘Claiming a tax refund/rebate/repayment’; ‘Tax back’; ‘PAYE refund’; and ‘Tax relief on employee expenses’.

in all windows.

4.3.3. One of the websites was found to display logos of the various firms it works with, including trade unions, staff bodies and commercial organisations. From voluntary and charitable sector representatives with which we are regularly in contact, we know that some refund organisations of the type with which this report is concerned market their services through employers and trade unions or staff associations. This might in turn, albeit perhaps unintentionally, give them an element of credibility as being promoted by a trusted source.

4.3.4. Another of the websites we researched might easily have been construed by unsuspecting customers as being an 'official' site, possibly connected to government, given its branding and the name of its URL.

4.4. ***Which customers are they targeting?***

4.4.1. To explore the issues from the perspective of the people using such repayment agents, we firstly looked at whether there were any specific groups that refund organisations of the type with which this report is concerned sought to target. We found that their target groups fell into the following categories:

- PAYE workers (including specified occupations, such as doctors, nurses, health professionals, care workers, teachers and mechanics)
- Migrant workers (including those who have recently moved to the UK or left the UK, and specific nationalities such as Australian and Irish)
- Self-employed (including tradesmen)
- CIS workers
- Students
- Pensioners

4.4.2. The most commonly targeted subject areas are:

- Emergency code
- CIS deductions
- Worked only part of tax year
- Paid for business mileage, tools, cost of cleaning uniform or other expenses

- Entering or leaving the UK.

4.4.3. We found that the majority of refund company websites we reviewed were trying to attract individuals who are within the PAYE system and who have a limited knowledge of tax rules and procedures. The vast majority will be either non-taxpayers or basic rate taxpayers. Some, pensioners in particular, might be eligible for the 10% savings rate.

4.5. ***Why are these groups being targeted?***

4.5.1. The LITRG's experience shows that the above groups are at greater risk of overpaying tax. For example, HMRC error (or misleading information or advice) might have contributed to the tax overpayment, or an employer error may have contributed to an incorrect PAYE code. This may be compounded by the individual's own ignorance of the tax system or insufficient numerical ability to work out their own tax liability.

4.5.2. Refund organisations of the type with which this report is concerned exploit areas where HMRC systems and processes will not automatically identify and repay individuals who have overpaid tax or who have not claimed tax reliefs they are entitled to, for example tax relief on employment expenses.

4.5.3. We found that PAYE workers are the biggest target group, for many different reasons:

4.5.3.1. The majority of people in the PAYE system assume that all tax that is due is either correctly deducted at source during the tax year or will be reconciled after the end of the tax year by HMRC. If any tax is due back, it is assumed that this will be repaid automatically.

4.5.3.2. It is commonly assumed that HMRC have all the information required to get a complete picture of an individual's tax affairs, so often the taxpayer will not realise that there is 'missing' information which HMRC might need to reconcile the position.

4.5.3.3. The majority of PAYE taxpayers do not know how to carry out an end of year calculation to determine what, if any, tax they have overpaid. They do not necessarily understand how their PAYE code is made up, whether what is included within the code is correct or how different elements such as benefits or expenses are respectively taxed or relieved. A contributing factor in the case of itinerant workers, often those on low-incomes, is that paperwork such as PAYE coding notices might not keep up with them due to frequent changes of address.

4.5.3.4. Most PAYE taxpayers are not sufficiently knowledgeable to be aware of situations which trigger overpayments of tax, for example where tax has been deducted on an emergency basis by a succession of short term employers (such as agency employment) but over the course of the whole year they might well have overpaid when looking at the cumulative position.

- 4.5.3.5. Lower-paid employees are often more vulnerable to situations where employers do not meet their PAYE obligations, or where their employer might make mistakes such that unnecessary overpayments of PAYE tax arise. Agency workers are often vulnerable to problems with their PAYE codes because some agencies are slow in producing a P45 or fail to provide one at all¹.
- 4.5.3.6. PAYE taxpayers are likely to need a ‘trigger’ to alert them to a potential overpayment situation, for example where they could claim relief on employment expenses, such as business mileage expenses which have not been reimbursed (or paid below the HMRC authorised rate) or for the costs of cleaning their uniform or providing tools.
- 4.5.3.7. Many lower-paid workers may not be willing to engage in the process of claiming a tax repayment, especially if the tax at stake is relatively insignificant. They may be deterred by a perception that the claims process is very onerous and the work involved outweighs the benefits, or by the need to keep records, for example in relation to business mileage. Or indeed, they might fear opening themselves up to the scrutiny of officials.²

4.6. ***The cost of refund organisations’ services***

4.6.1. The vast majority of the organisations we reviewed make headline claims regarding the amount of refund they could typically secure on behalf of their clients:

- ‘Our average refund is £1,220’
- ‘One in three are due a Tax Refund with an average refund of £1,510’
- ‘£800 is the current average refund’
- ‘The average refund for this service (the overseas service) is £17,789.23!!!’

4.6.2. If these figures genuinely reflect the claims from customers targeted, the question arises: how effective HMRC are in communicating with these groups as to what is the right amount of tax they should pay?

4.6.3. To highlight the costs involved in using such a tax refund organisation to handle a claim, we looked in more detail at the fees and charges levied by a range of such companies. We found that there is a significant variation in the type and amounts charged for the services on offer. Those who are not alert to the extent

1 This point may, however, be of diminishing relevance with employers operating RTI, given revisions to the new starter process and what happens when an employee supplies a P45 after the first Full Payment Submission for their new employment.

2 This is confirmed in the case of pensioners, for example, in the OTS’s final report on Pensioner Taxation, January 2013, see para 3.9 in particular: www.hm-treasury.gov.uk/d/ots_final_review_pensioner_taxation_230113.pdf

of these charges or their proportionality may be caught unawares when the bill is finally known.

- 4.6.4. The refund organisations of the type with which this report is concerned usually get the claimant to nominate that the refund is paid first to them, from which their charges are deducted before transmitting the balance to the claimant. Because of this, the claimant might not be alert to the impact of the fee, by which time it is too late.
- 4.6.5. The claimant might also find themselves 'locked in' to the services of such a refund organisation. Anecdotal evidence indicates that this happens when claimants have given the organisation an indefinite authority to act (using form 64-8) and by the organisation instructing HMRC not to include expenses claimed for earlier years in the PAYE codes of later years – effectively forcing the individual to continue overpaying tax, and consequently continue using their refund services year on year.
- 4.6.6. Usually, there is a basic charge calculated as a percentage of the eventual refund secured. We found examples of charges ranging from 8% up to 40% of the overall repayment due.
- 4.6.7. A minimum charge was also likely to be levied if it was greater than the percentage charge. We found examples of minimum charges ranging from £30 to £99 (on top of which there might be VAT) and we found one which charged a 'small claims' supplement - for a refund under £200, the supplement was £40.
- 4.6.8. For many small refunds (say, under £150) a minimum charge might amount to as much as 100% of the repayment, or even more. All of the organisations we reviewed charged a fee only if a refund was secured but they did not stipulate a minimum figure for the refund. So, if a refund of only £50 was obtained, this could well have been outweighed by the minimum fee. From our research (conducted without actually being able to apply for a refund by using these companies' services), it was difficult to tell whether or not this means that the company would then send the claimant a bill for the difference, but it appears that this could happen. For example, one website we looked at provided a calculator for the claimant to estimate their refund. It then apparently allowed the claimant to proceed with using the service even though the calculator showed a refund of only £71 to be due – less than the minimum fee of £89.99 quoted in a different part of the website. There was no warning at that point that the company's charges could outweigh the value of the refund.
- 4.6.9. All of the above illustrates that many people could see a significant percentage of their tax refund eaten up by fees if they make a claim using the services of this type of refund organisation.
- 4.6.10. A common scenario might be where a taxpayer (for example, a nurse) is due a flat-rate expense deduction for the cleaning of his or her uniform¹. Assuming a backdated claim (over the last four years), the total tax refund (assuming basic rate (BR) relief) would be only £100 x 4 @ 20%. This would equate to a total refund

1 See HMRC's Employment Income Manual 32712 – the flat-rate allowance for a nurse has been £100 per annum since 2008/09: <http://www.hmrc.gov.uk/manuals/eimanual/eim32712.htm>

of around £80, most of which would be eaten up by the minimum fee (this could be over 50% of the refund, assuming a £50 minimum charge, and more if VAT is added to this amount).

- 4.6.11. But even the above charges can escalate, for example when taking into account additional fees which are often levied for bank transfers (we found costs quoted of up to £45 for this service), obtaining missing documentation and payment by cheque. A number of these mostly unaffiliated agents were found only to supply details of these charges 'on application'.
- 4.6.12. Finally, VAT is often added to the cost of the services and we found that many websites did not state whether the fees were inclusive or exclusive of VAT¹.

1 There is case law which says that if a contract is silent as to VAT then the price stated is always inclusive of VAT. This was said in the leading case of *Lancaster v Bird [1998] EWCA Civ 1973* –

“... So if the builder fails to make it plain to the employer that he is stipulating for payment of VAT in addition to the contract price, he will be left to account to the Revenue for the VAT out of what he receives.”

5. Issues for individuals when using refund organisations

5.1. Potential dangers

- 5.1.1. Protection for low-income and vulnerable customer groups should be of paramount importance to HMRC¹. The issues detailed below help to build a picture and explain why consideration ought to be given to ‘consumer protection’ issues in the context of refund organisations of the type with which this report is concerned, where appropriate.
- 5.1.2. HMRC already take on a consumer protection role, and have done for some time, in relation to the use of avoidance schemes². This takes the form of articles posted on HMRC’s website, direct contact with users of avoidance schemes, and so forth, pointing out the consequences of the use of such schemes (in particular that users’ tax returns will be subject to enquiry) and issuing warnings about schemes which HMRC believe do not work. This type of information can be a useful safeguard for the unwary, but of course tax avoidance guidance is likely to be of benefit to an entirely different group – those of much higher net worth than those who are generally targeted by refund organisations. **We recommend that HMRC assume a similar consumer protection role in relation to the customers of refund organisations of the type with which this report is concerned.**
- 5.1.3. From our research of tax refund organisations’ websites, we identified a number of dangers – important factors the individual ought to be aware of before entering into a contract with them. The issue of fees explored above is just one of these; other consumer protection issues are outlined below. One of the most worrying is the possibility that less reputable refund organisations may induce over-inflated, fraudulent claims as a means of in turn maximising their ‘cut’ by charging a percentage fee.

5.2. Personal information

- 5.2.1. The security of individuals’ personal data is of significant concern to us³, not least given the possibility of information and documents going missing in the post or the risk of internet security issues.

1 It is worth noting here HMRC’s Charter commitments, for example helping people to get things right and keeping the costs of dealing with HMRC as low as possible. If delivering on these commitments allowed people to self-serve, their costs and risks in using refund organisations would naturally decline. See: <http://www.hmrc.gov.uk/charter/>

2 See HMRC website, ‘Tackling Tax Avoidance: Spotlights’ <http://www.hmrc.gov.uk/avoidance/spotlights.htm>

3 Data protection is also of importance to HMRC, again illustrated by the Charter (Your rights, number 7). See <http://www.hmrc.gov.uk/charter/>

5.2.2. Much of the documentation used in the refund process gives a feeling of authority using, as it does, HMRC forms and procedures. Vulnerable individuals may therefore feel quite assured in providing the following information early in the process:

- Full name
- Date of birth
- National Insurance number
- Address
- Bank account details (many agents charge additional fees for sending out a cheque therefore a bank transfer provides a cheaper and quicker alternative).

5.2.3. We also found five examples where copy passports¹ were also requested as part of the claim process.

5.2.4. Whilst we are not suggesting that any of the organisations we reviewed do anything untoward with the information they gather, it is self-evident that in the hands of unscrupulous people such information could pose a danger to the individual concerned.

5.2.5. The majority of websites we researched prominently displayed one or more of the following:

- HMRC ‘registered agent’ status, plus reference number (a small number of sites also displayed the HMRC logo)
- Bonded by the Association of Tax Agents (ATA – discussed further below)²
- Registration with HMRC Money Laundering Regulations
- Regulated by the Ministry of Justice
- Data Protection Registration number.

5.2.6. On the whole, the websites we researched did not provide any explanation of what the registrations

1 We note that this might be an attempt by the refund organisations to identify the claimant for the purposes of Money Laundering Regulations (see for example the following guidance on HMRC’s website: <http://www.hmrc.gov.uk/mlr/your-role/responsibilities.htm#1>), but it would be helpful if HMRC could explain in their guidance to individuals what agents’ obligations are under those regulations and how they might judge whom to trust with this information.

2 <http://www.associationoftaxagents.co.uk/>

or regulations they displayed meant. At face value, they could certainly be seen to imply an ‘official’ relationship with government, including HMRC, and regulation by a professional body.

5.3. ***‘HMRC registered agents’ and use of the HMRC logo***

5.3.1. Most of the websites we reviewed indicated prominently that they were HMRC ‘registered agents’, but they did not explain what this registration meant. It might well be assumed by the customer that there is a formal approval process by HMRC whereas, in fact, the only authorisation given by HMRC is the authority for the agent to act on behalf of the client. The process of obtaining a reference number from HMRC is simply a matter of providing basic business details, such as the firm’s name, contact details, address etc.¹

5.3.2. It is easy to imagine that a vulnerable individual might well think that an organisation displaying a ‘registration’ must be trustworthy, is an agent acting on behalf of HMRC, that it might be part of HMRC, or that HMRC have outsourced the operation. Organisations suggested, for example, that registration enabled them to ‘deal swiftly and accurately in pursuing a claimant’s repayment’.

5.3.3. We also found that a small number of sites went further than displaying an HMRC registration number and also displayed HMRC’s official logo. Again, this might well lead to unsuspecting customers assuming an official relationship between the agent and HMRC. **We therefore recommend that HMRC police use of the term ‘HMRC registered agent’ and the HMRC logo, litigate against their improper use and publicise widely such actions: HMRC have a duty to tackle what are in effect abuses.**

5.4. ***Money Laundering***

5.4.1. A number of websites displayed registration with HMRC for Money Laundering purposes. This is merely a requirement for all agents not already supervised by the Financial Services Authority (FSA) or a designated professional body (who are not required to register separately with HMRC)². This was not explained further on any of the websites we reviewed.

5.4.2. It does not appear from HMRC’s website that they have, in their Money Laundering supervisory capacity, issued instructions to those whom they supervise as to how this supervision is to be described, and there is very little information for the public either on Money Laundering procedures or how to find and assess agents. **We recommend that HMRC enhance consumer protection for individuals using refund organisations of the type with which this report is concerned by hosting an explanation on HMRC’s website or on GOV.UK of what it means for an organisation to be supervised by HMRC for Money Laundering purposes.**

1 <http://www.hmrc.gov.uk/agents/authorisation/setup.htm#2>

2 See <http://www.hmrc.gov.uk/agents/mlr/laundrying.htm>

5.4.3. **We further recommend that HMRC's website or GOV.UK should display information describing how to authorise an accountant or tax agent to act on an individual's behalf.** This would explain that the agent will first need to have conducted anti-Money Laundering procedures with the individual, and what those procedures entail. There would also be pointers as to how to judge who might be a 'good' accountant or tax adviser, such as looking out for appropriate qualifications or membership of professional bodies¹.

5.5. ***Association of Tax Agents ('ATA')***

5.5.1. A selective group of the organisations we researched stated that they are 'bonded' by the ATA² and prominently display its logo. According to the limited information we found, this bonding purports to give their clients financial protection should the agent cease trading or go into insolvency. Many customers might make the assumption that membership of this association would mean similar protection to any other professional taxation body.

5.5.2. We note that the ATA is not a professional tax body; its membership is limited to six members, all of which are tax refund organisations. The extent of the protection it might provide is questionable, given it would only take over a claim where HMRC had not already paid out the rebate. Where a claim had already been paid out to the member facing closure, then the ATA would not take over the claim.

5.5.3. The ATA has a UK Company Registration number, 03617288, but a superficial search of Companies House records³ indicates that the company was dissolved on 26 March 2013. Yet, at the time of writing, its website remains live on the internet and we have noted that several of the members quoted on the ATA website still cite membership of the organisation on their own websites; for example saying that this means 'that we guarantee the protection of your tax refund and your claim is 100% safe'⁴.

5.6. ***Data protection***

5.6.1. We question the extent to which client data is kept confidential by such refund organisations and whether all of them are fully compliant with Data Protection Act rules. A number of the sites we reviewed did not display Data Protection Act registration numbers. Several privacy statements we reviewed stated that client information may be passed to their service providers, agents, advisors, program coordinators but that the clients themselves were responsible for reviewing the privacy policies of each site.

1 See <http://www.hmrc.gov.uk/dealingwith/authorising-accountant.htm>

2 See <http://www.associationoftaxagents.co.uk/>

3 The search was carried out on 14 June 2013.

4 See <http://www.taxrefunds.co.uk/about-us.aspx>

5.7. ***The implications of giving a 64-8 authority***

- 5.7.1. The longer term implications of giving such a refund organisation a 64-8 authority are of concern.
- 5.7.2. Around 20% of agents we researched provided a 64-8 authority for completion. It is highly unlikely that the individual would understand the implications of completing this outside of the immediate claim process.
- 5.7.3. Unless the subsequent cancellation of the 64-8 authority is part of the service provided by the refund organisation, there is a strong probability that the authority will remain in force. As noted earlier, it may even be in the organisation's interest to retain that authority as a means of securing further business from that individual.
- 5.7.4. We noted above that refund organisations of the type with which this report is concerned might instruct HMRC not to code out via PAYE employment expenses for future years, thus forcing the individual to continue overpaying tax and making refund claims year-on-year (probably via the refund organisation, and consequently incurring its fees). Similarly, we are aware of cases where such refund agents have prevented underpayments being collected automatically via Self Assessment taxpayers' PAYE codes thereby generating further work for them in future.
- 5.7.5. We are concerned as to what HMRC procedure, if any, would protect the individual from subsequent misuse of the 64-8 authority? Some clients may have already left the UK and English may not be their first language. What information could be passed on by HMRC which could be exploited by a less than scrupulous agent? And in view of HMRC's wider Digital Strategy¹ which includes introducing an 'Agent Online Self-Serve' system, what information might such refund organisations have access to in future?
- 5.7.6. **We recommend a full review of the process for granting authority to agents, for example making much clearer to the taxpayer the implications of granting an authority. There should also be a possibility of the taxpayer accessing procedures for time-limiting the authority or ending it in appropriate circumstances.**

5.8. ***Repayments reaching the client***

- 5.8.1. Almost without exception, the refund organisations we reviewed requested authority from claimants for repayments to be made first to the organisation, for them to deduct their fees before passing the balance to the claimant.
- 5.8.2. With such arrangements there is always a risk that repayments may never reach the claimant. We are aware of cases where the claimant has not understood that the repayment would be made to the refund

1 See HMRC's Digital Strategy, published December 2012. See <http://www.hmrc.gov.uk/about/2012-digital-strategy.pdf>

agent; or where the nomination has remained in place and a repayment of tax has again been made to the refund agent for a later year, even where the claimant has corresponded directly with HMRC.

5.9. ***Are agents who they claim to be?***

5.9.1. Clearly, we are concerned that some of these mostly unaffiliated agents may not be what they claim to be. In some cases we found:

- Inaccuracies in the information they provided, such as stating:
 - PAYE customers must be registered for Self Assessment to pursue a claim
 - A claim can be back-dated six years
- A general lack of professionalism in the way that the information was presented
- Poor use of English
- Limited contact details
- No company address
- The way in which the website was presented suggested a location in the UK, but in reality the company was based overseas.

5.10. ***Accuracy of claims***

5.10.1. A repayment can be due for a variety of reasons, as explained earlier in this report.

5.10.2. Some claims rely upon the claimant having kept adequate records and incurred appropriate expenses, and if a claim is to be backdated, those records must have been kept over a period of up to four years.

5.10.3. Although the refund organisations we reviewed stated that it is the responsibility of the claimant to ensure the factual accuracy of information provided in a claim, we believe that the way in which some organisations' processes were structured were such that it would be easy for someone not to think about it too much and consequently be misled into making an incorrect claim. Travel expenses claims might fall under that heading. For example, some organisations appeared to review clients' claimants by telephone, without seeking substantiating paperwork, which could lead to inaccurate claims.

5.10.4. Without actually using the companies' services, it was difficult for us to determine the extent to which

their processes could lead to inaccurate or perhaps even fraudulent claims. But we found numerous inaccurate and out-of-date explanations of the rules concerning when a refund was due, and wording which could be read, particularly by those with little knowledge, as potentially encouraging excessive claims.

- 5.10.5. An increased claim automatically inflates the fee for this type of refund organisation. Some such organisations boast of over a million pounds recovered annually from HMRC.
- 5.10.6. There is a serious risk in this for the taxpayer of later enquiry by HMRC and a request for justification of the claim (production of receipts, mileage records or so forth). If the taxpayer is not able to provide this evidence to HMRC's satisfaction, they risk being asked to pay back the refund and possibly penalties.
- 5.10.7. Even if there is no penalty, by virtue of the fact that most refund organisations of the type with which this report is concerned ask for the repayment to be made first to them, then deduct their fees before transmitting the balance to the individual, the individual could still be faced with having to pay back more than they have in their pocket.
- 5.10.8. All of the above leads us to conclude that HMRC should be pro-active in monitoring and supervising these mostly unaffiliated refund agents and their internet operations. We would like to understand what, if any, activity HMRC already undertake in this respect and to get involved with how it might be increased or made more effective. We believe that there must be a role for HMRC in policing use of the term 'registered agent' and the HMRC logo and litigating against their improper use. We would reiterate at this point, that we are not concerned with bona fide agents, usually affiliated to a professional body, who may also operate on the internet.
- 5.10.9. HMRC can of course only use their existing powers to 'name and shame' particular organisations operating in this field to the extent permitted under the dishonest tax agents regime. HMRC should therefore make the most of their ability to do so and also offer general 'consumer protection' messages in this area.
- 5.10.10. In this regard, it would be helpful if HMRC could publish formal communications and guidance about the use of the term 'registered agent'. It is clearly wrong for organisations to imply that they are in some way regulated or approved by HMRC.

6. The tax repayment system and how to improve it

- 6.1. As well as the extensive research we have undertaken of refund organisations of the type with which this report is concerned operating on the internet, our report is based also on our involvement with unrepresented taxpayers through queries we receive to our website and the other tax charities¹ with which we are in regular contact.
- 6.2. We have found that there is a wide range of issues which might make it difficult for unrepresented taxpayers to claim or secure repayments of tax. These issues might well lead them to seek out, or be targeted by, such a refund organisation to sort out the claim on their behalf.
- 6.3. Many of the taxpayers impacted are likely to be on low incomes and could also be potentially vulnerable in some other way (for example, we noted above that migrants, who might well have a poor command of the English language, are a target group for this type of refund company).
- 6.4. The following are likely to apply to low-income taxpayers overpaying tax:
 - 6.4.1. The majority of such taxpayers are outside of the Self Assessment regime.
 - 6.4.2. The amounts of tax at stake are often significant in the context of their overall income.
 - 6.4.3. There is a serious cash-flow disadvantage for many in terms of having to wait until well after the end of the tax year (or even longer) to secure a refund. This might especially be the case where the individual's income has been below the personal allowance for the tax year, but where tax was nonetheless deducted due to use of emergency or BR codes. These often apply to low-income workers who engage in agency work, temporary contracts or concurrent part time jobs.
 - 6.4.4. Often, there are multiple tax years involved in a refund claim. Although earlier tax years may well have been mostly resolved following HMRC's introduction of the National Insurance and PAYE Service and subsequent reconciliation exercise, many taxpayers may still have lost out on tax overpaid because they are now too late to claim for items that HMRC may not have known about in the reconciliation process (such as employment expenses). The possibility of making backdated refund claims is also of course now foreshortened by the time limit for claiming a refund having gone down from nearly six to four years from

1 Tax Aid, see <http://taxaid.org.uk/> and Tax Help for Older People, see <http://www.taxvol.org.uk/>

the end of the relevant tax year¹.

- 6.4.5. In the case of self-employed CIS subcontractors, there are often associated problems with the tax overpayment, such as outstanding Self Assessment returns which might need to be submitted in order to fully reconcile the overall position and determine any tax overpaid.
- 6.4.6. In cases of unclaimed employment expenses, the taxpayer will already have had to bear the cost of genuine employment expenses out of their net income then wait until the following tax year (or longer) to claim relief at the basic rate of tax.

6.5. **Groups at risk**

- 6.5.1. The unrepresented (likely to be those on low to moderate incomes) are broadly much more at risk of overpaying tax. This is mainly because they are unaware of preventative measures which could avoid or limit them doing so, or are insufficiently confident or knowledgeable about the tax system to pursue a claim.
- 6.5.2. As noted previously, we found that refund organisations of the type with which this report is concerned target their customers by:
- **Specific customer group** (such as employees or PAYE workers, subcontractors within the Construction Industry Scheme, students, pensioners and migrants)
 - **Occupation** (such as medical professionals, care workers or mechanics)
 - **Subject** (such as PAYE issues, including unclaimed business expenses – for example, tax relief on work tools or uniforms).
- 6.5.3. If HMRC were to work to reduce the incidence of overpayments of tax in the first place, these target groups would naturally shrink. There is no single solution, as the reasons for overpayments occurring are varied, so we outline below our suggestions to make improvements in various different areas.

6.6. **PAYE**

- 6.6.1. PAYE customers are particularly at risk when it comes to identifying and preventing overpaid tax as the majority are outside of the Self Assessment regime and therefore often have little or no contact with HMRC. They tend to be provided with scant (if any) training or information on how to assess whether they

1 As introduced by Schedule 39 of the Finance Act 2008 – see the HMRC website for an explanation: <http://www.hmrc.gov.uk/about/deadlines-taxpayers.htm>

are paying the right amount of tax.

- 6.6.2. The majority of people in the PAYE system are ignorant of its limitations, both basic rate and higher rate taxpayers, and often wrongly assume that all tax due has been correctly deducted at source or that their affairs will be reviewed by an experienced set of HMRC eyes soon after the tax year end to assess whether there is further tax to be paid or whether a refund is due. Indisputable evidence of the limitations of PAYE is provided by the major PAYE reconciliation exercise started by HMRC in 2010 from which it emerged that £1.8 billion in PAYE tax had been overpaid by 4.3 million taxpayers¹. Many of the overpayments had accumulated over more than one tax year.
- 6.6.3. Where HMRC have all relevant information, overpayments of tax can now be picked up automatically through the NPS reconciliation process. But it is not always that simple.
- 6.6.4. Many overpayments of tax are 'hidden' and might rely on the taxpayer realising that there is (or might be) a problem or to initiate a claim; for example, where an individual has not been given or has not claimed the correct tax relief on contributions to a pension scheme or where an employee has not claimed deductible employment expenses. This would apply in instances where the employee has been reimbursed by his or her employer for business mileage below the authorised rate and not understood that tax relief is due on the difference between the authorised rate and the rate reimbursed by the employer. This is a fairly common scenario.
- 6.6.5. Many employees might be under the false impression that more detailed records than already in their possession are required to substantiate a refund claim, so they choose not to take the matter any further. **We therefore recommend that HMRC consider how they can provide better education in relation to certain subject areas – a key one is unclaimed employment expenses. This seems an obvious area for improvement in terms of employee education. The distribution channels for better information to those in relevant trades could include via employers, trade unions and working with the voluntary sector – for example through Grant in Aid projects.**

6.7. Older people

- 6.7.1. In its 'Review of pensioners' taxation'², the OTS identified a number of areas of the tax system that cause difficulties for the pensioner population. These included areas likely to give rise to overpayments of tax. Many of the areas of complexity arise as a result of the special reliefs and allowances available to older

1 It should be noted that many, and significant, underpayments of tax were also identified as part of this reconciliations process. In addition, the overpayments (and underpayments) arose through a combination of the limitations of the PAYE system and a lack of human resources to carry out manual reconciliations at the end of each tax year.

2 See http://www.hm-treasury.gov.uk/ots_pensionerstaxreview.htm

people. There are also other common problem areas, such as taxation of savings and funds from small pension pots.

- 6.7.2. The calculations involved for a pensioner in calculating what tax they should pay can be tortuous, although some of the complexities will be reduced in future given that from 6 April 2013 entitlement to age allowances is limited to those born before 6 April 1948 and so will eventually be phased out. Unfortunately until such time as this phasing out is complete, this transitional measure in itself creates additional complexity.
- 6.7.3. Other problems may or may not be reduced depending on the Government's reaction to other recommendations contained in the OTS's final pensioner report, such as simplifying the married couple's allowance and removing the 10% savings rate in favour of an increase to the Individual Savings Account subscription limit.
- 6.7.4. Nonetheless, older people still ought to be alerted to the fact that a change in their circumstances on retirement might mean a change in their tax position. One key area is whether they might be entitled to register for gross interest on savings accounts using form R85. Our recent report 'Banks, building societies, HMRC and their non-taxpaying customers - A plea for better service' highlights the problems in more detail¹.
- 6.7.5. **We recommend that HMRC harness the reach of the voluntary and charitable sector to enhance awareness of tax impacts at key life events such as retirement, bereavement and so forth. The Grant in Aid programme could assist with this. Particularly for those older people who are not digitally enabled, offline distributions of leaflets are helpful. Cost-effective use of the Press and – for those who are online – social media such as HMRC's Twitter account would be another possibility.**

6.8. Tax credits

- 6.8.1. Tax credits underpayments – that is where a claimant has received less Working Tax Credit or Child Tax Credit than they are entitled to – can be caused by many reasons, mostly because claimants do not understand the system or what they are entitled to (often because of changing circumstances) or have acted on ambiguous or wrong advice to their detriment. Some people may not realise they are entitled to claim additional tax credits whilst some may not have recognised that they can claim anything at all. We have not considered the area of tax credits underpayments within the scope of this report, as it is a broad subject which could be the subject of a separate study in itself.

1 See http://www.litr.org.uk/reports/2013/R85_report_Jan2013

6.9. Construction Industry Scheme (CIS)

- 6.9.1. Problems in relation to the taxes repayment system for subcontractors within the CIS are common. From our contact with TaxAid, we know that claiming tax back is consistently a reason for CIS subcontractors to contact them.
- 6.9.2. Due to a wide range of factors, often CIS subcontractors do not complete their Self Assessment tax returns, wrongly assuming that nothing more is required from them because they have paid tax at basic rate on their income. It is only when the situation becomes more serious, for example when late filing penalties accumulate, that they try to sort out their tax affairs. They often approach a voluntary organisation, such as TaxAid, to help them. We understand that the changes to Self Assessment late filing penalties taking effect for 2010/11 returns onwards have flushed out a number of such former non-filers.
- 6.9.3. Most do not realise that they might have overpaid tax considerably and by the time their affairs have been sorted out, much of the tax overpaid may have been wiped out by late-filing penalties. **The question is therefore how communications to sub-contractors can be improved and we recommend that HMRC investigate whether they could use main contractors as a possible channel.**

6.10. Circumstances where repayments can arise

- 6.10.1. Repayments can arise under a variety of circumstances; the most frequent can be classified under the following headings:
- Single short-term employments (where emergency codes have been used)
 - Multiple employments/pensions (where BR or emergency codes have over-deducted tax)
 - Claims for mileage allowances (where employers have not reimbursed legitimate mileage costs or have reimbursed them but at less than the HMRC authorised rates)
 - Claims for flat rate allowances for tools or clothing (where standard union or other agreements are in place and approved by HMRC)¹
 - Specific allowances or reliefs which are poorly publicised or understood and so go unclaimed (for

1 See HMRC's Employment Income Manual 32712 – <http://www.hmrc.gov.uk/manuals/eimanual/eim32712.htm>

example, the Blind Person's Allowance¹)

- Travelling expenses for various types of temporary (site-based) or itinerant workers
- CIS deductions (where those involved have not registered as self-employed or not submitted returns)
- Basic rate tax, 20%, has been deducted at source on savings interest, where the investor is a non-taxpayer or is only liable to tax on that income at the savings rate of 10%
- Tax is deducted under PAYE on pension trivial commutation payments which may be excessive, though this situation will be improved to some extent by changes taking effect from 6 April 2013 which will apply a BR code to many such payments instead of the emergency code².

6.10.2. Whilst HMRC have a programme of 'campaigns'³ targeted at taxpayers who have not complied with their taxes and are thought to have underpaid, there does not appear to be any similar activity for those who have overpaid tax for any of the above reasons.

6.10.3. **We recommend that some HMRC resources should be dedicated to campaigns relating to overpayments.** Making people aware of what they can claim and then making it easy to do so, preventing overpayments in the first place, would produce savings and reduce fraud (for example from over-inflated claims as described above). We would be very keen to work with HMRC in this regard.

6.10.4. We appreciate that encouraging reclaims for earlier years by means of an HMRC campaign might open up myriad practical difficulties, not least because HMRC are now finishing the process of reconciling and clearing individuals' PAYE records for the last few years. And whilst people might still be able to claim repayments for earlier years, it is also harder for them to substantiate claims – for example, to produce supporting paperwork.

6.10.5. The preferred approach might therefore be to concentrate on claims moving forward and to focus efforts on how employees, for example those who are entitled to tools and uniform allowances, can be given the benefit of those allowances automatically via PAYE. A review of the amounts of the allowances might also

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- 1 Note that for these very reasons, the OTS has recommended removal of this allowance in favour of an alternative form of support, perhaps by way of a grant system; or in the alternative, a means of automatically granting the allowance by communication direct from health authorities to HMRC – see their final report on Pensioner Taxation, January 2013: http://www.hm-treasury.gov.uk/d/ots_final_review_pensioner_taxation_230113.pdf
 - 2 Note, however, that we believe there are still certain circumstances where overpayments could arise and we have submitted representations regarding proposed PAYE Regulations changes. See section 6 of the following response document: http://www.litr.org.uk/Resources/LITRG/Documents/2013/01/130111_LITRG_Legislative_changes_RTI_response_final.pdf
 - 3 HMRC's campaigns website page provides links to the current campaigns and a page providing updates on the performance of each: <http://www.hmrc.gov.uk/campaigns/index.htm>

be considered at the same time, as we understand they have been fixed since 2008/09 and are therefore unlikely to be reflective of current costs after taking into account inflation. **We recommend that the OTS's 'Review of employee benefits and expenses'¹ looks at and produces recommendations as to how employee expenses and flat-rate allowances can be given or claimed more easily.**

6.10.6. We note earlier in this report that inadequate online repayment guidance might also result in taxpayers finding their way to one of the unaffiliated and less reputable refund organisations instead of using the official channels; equally it might deter some taxpayers from making any kind of claim for repayment. Currently, when a customer looks for information on how to claim a repayment of tax, they are directed to the HMRC helpline by online guidance. **We recommend that one alternative might be for the HMRC and GOV.UK websites to illustrate for the customer how to claim a repayment. This could include facilities to download the appropriate form, and annotated example form or a pro forma letter, as well as step-by-step instructions and a list of required information and documents.** This would essentially provide the customer with better information and demonstrate that they can make a claim without the assistance of a refund organisation.

6.10.7. We go on to consider below how RTI might be used to reduce the incidence of PAYE overpayments in future.

1 The OTS's review of this area was announced during the 2012 Autumn Statement and is outlined at: http://www.hm-treasury.gov.uk/ots_employee_benefits_expenses.htm

7. The impact of Real Time Information (RTI)

- 7.1. From April 2013, under RTI nearly all employers are now required to report tax and National Insurance deductions on or before the date on which payments are made to their employees¹.
- 7.2. It is hoped that RTI will, in due course, ensure that the correct deductions are made from pay, and result in more employees paying the right amount of tax and National Insurance during the tax year.
- 7.3. **Accuracy of PAYE deductions under RTI**
- 7.3.1. It is anticipated that many of the issues or problems which commonly give rise to overpayments under the PAYE system should be preventable under RTI. This will depend on HMRC having a sufficiently robust system to cope with the data being submitted by employers and the timely and fruitful use of such data. We understand that on the initial introduction of RTI and for some time afterwards, RTI data will not be reconciled immediately to individuals' tax records. It is therefore anticipated that individuals will still have to await reconciliations and PAYE repayments after the end of the tax year.
- 7.3.2. In theory, there ought to be much more accuracy in relation to the deduction of tax under RTI than there is under PAYE currently. Certainly, many under or overpayments of tax which have arisen in the past should be preventable under RTI, particularly cumulative problems, by prompt use of data and adjustment of PAYE codes.
- 7.3.3. Nonetheless, at least for the foreseeable future, there are likely to be continued problems in collecting the right amount of tax in-year from many of the low-income workers we have described earlier in this report. **We therefore recommend that HMRC work as quickly as possible to move to a position where RTI data can be used to its maximum potential, thereby making PAYE coding as accurate as possible in-year and prevent overpayments arising.**
- 7.4. **What issues will RTI not address?**
- 7.4.1. Many issues potentially giving rise to repayment situations under PAYE will not be addressed by RTI. One significant such area is in relation to unclaimed business expenses.

1 Subject to limited relaxation of the 'on or before' requirement. See: <http://www.hmrc.gov.uk/payerti/on-or-before.pdf>

- 7.4.2. Identifying the possibility of claiming tax relief in the first place depends on the employee, or on someone else bringing this to the employee's attention. In fact, we foresee that unclaimed tax on employment expenses deductible under the 'wholly, exclusively and necessarily' test will continue to be an area exploited by some of the less reputable refund organisations - unless HMRC can devise some means of ensuring that these items are coded automatically for eligible employees. **As noted above (para 6.10.5), we recommend the OTS review of employee benefits and expenses should consider this in detail.**
- 7.4.3. It may be that the employer will be in the best position to assist the employee, both in terms of bringing the deductibility of certain expenses to the employee's attention and pointing the employee in the right direction as to how to ensure they claim the appropriate allowances and expenses. The employer may also be in a position to explain to the employee how to check whether or not their PAYE code has been adjusted for these amounts.
- 7.4.4. HMRC may be able to assist employers in this, by providing them with a short leaflet that they can use as a starting point when explaining this area to employees. **We therefore recommend that HMRC consider production of such guidance – the leaflet could explain briefly about employment expenses, and the employer could point out to the employee the types of expense that would be relevant to them. It would also be helpful if the leaflet provided step-by-step information on how to make a claim for repayment.**

8. Conclusion

- 8.5. This report has shown that the proliferation of refund organisations of the type with which this report is concerned, some (though not all) of whom are cavalier in how they present themselves and in the accuracy of the work they do, can pose a serious threat to the unrepresented taxpayer. There is much that can and should be done to protect not only individuals, but the tax system as a whole from abuse and fraud. HMRC must necessarily take the lead but there is also scope for others to assist.
- 8.6. The main lesson to be derived from this report is that the more individuals are able to manage their own tax affairs, the easier HMRC's processes become; and the more accessible HMRC helplines and other channels (such as future development of online services for those who are capable of using them), the less room there will be for such refund organisations. It is crucial therefore that HMRC follow up the recommendations we have made for educating taxpayers, providing better and clearer information and streamlining processes.
- 8.7. The future, too, holds many opportunities. Under RTI, for instance, it should be possible to spot mistakes early on – at least where taxpayers are dealt with under the PAYE system. We hope HMRC will make good use of such opportunities to bring about greater accuracy and help taxpayers help themselves. The reward will be greater cost savings by reducing the need for subsequent re-working and correction, and minimising opportunities for fraud.
- 8.8. We repeat our readiness to do what we can to assist HMRC realise these aims.

9. Appendix

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