

## LOW INCOMES TAX REFORM GROUP

### RESPONSE TO HMRC CONSULTATION DOCUMENT 'WORKING WITH AGENTS'

- 1.1 We are pleased to respond to the HMRC's April 2009 consultation document *Working with Agents* in the series Modernising Powers, Deterrents and Safeguards.
- 1.2 This response is submitted on behalf of The Low Incomes Tax Reform Group and TaxHelp for Older People.
- 1.3 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 credit and associated welfare systems for the benefit of all those on low incomes.
- 1.4 The CIOT is a charity and the leading professional body in the UK concerned solely with taxation. The CIOT's primary purpose is to promote education and the 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.
- 1.5 TaxHelp for Older People (TOP) is a charity which provides free and independent professional tax advice to older people on low incomes who would not otherwise be able to afford to pay for such advice. The service is delivered by advisers from the tax profession, either members of the various tax and accounting institutes or ex-HMRC officials, through advice surgeries held in Age Concerns, Citizens Advice Bureaux or similar premises or by home visits for those unable to attend surgeries through disability or transport difficulties.
- 1.6 Our sole interest in this consultation is in the position of those who interact with HMRC but who give help and advice as volunteers, or through a not for profit activity, and we make our comments from that perspective.

### Key points

- 2.1 The bodies under whose auspices most volunteer tax agents act (such as TOP or TaxAid) use systems to manage risk, and know when and how to intervene. The risk to HMRC is small and residual.
- 2.2 Where agents act pro bono for no fee, and not in the course of a profit-making business activity, we would recommend that they be excluded from any registration scheme, or similar system of control, that might result from this consultation. The consultation document cites one international comparator, and in this response we cite one precedent in the UK – the money laundering regulations – where a similar approach is taken.

- 2.3 As for those non-professionals who assist family and friends, or carers helping vulnerable taxpayers, help and support before the fact is more effective in countering any risk than compliance activity afterwards. It is also a less expensive use of public funds, and less likely to deter people from giving their time to help their family or community. Any toolkits that are made available to paid agents should also be available to unpaid agents. HMRC could also discuss risk sharing with the relevant voluntary sector bodies, in a similar manner to discussions with paid agents.
- 2.4 We would like to see further consideration of the definitions of “tax” and “agents”. These terms should be absolutely clear before we move to any next stage of consultation.

### **How should volunteer tax advisers be regarded?**

- 3.1 Whatever system emerges from this consultation, it should not stand in the way of good tax agents advising and acting for their clients. Rather, it should make it easier for HMRC and the professional bodies to identify and deal with agents who are fraudulent or who persistently carry out shoddy work. As the consultation document states: ‘in its interactions with tax agents HMRC needs to ensure that it has minimal impact on those doing a competent job . . .’ (para 2.4). HMRC also ‘recognises the importance of working with [professional] bodies to achieve common goals’ (para 2.7).
- 3.2 Volunteer tax advisers who prepare tax returns for clients or assist in their preparation, and who are authorised to communicate with HMRC about their clients’ tax affairs, prima facie fall within the scope of the consultation. The question then arises whether to treat them in the same way as other professionals, or differently. This is essentially the question asked at the end of Chapter 5 (question 3):

‘Would there be a benefit in defining ‘tax agent’ in legislation? Should such a definition distinguish: those who do not offer their services for reward, or those that are members of a professional body, and should different provisions apply to them?’

- 3.3 In this submission we argue that ‘those who do not offer their services for reward’ should be treated differently from other agents. In fact they should be excluded from the scope of any registration scheme or other system that may emerge from the consultation.

### **Tax advice in the voluntary sector**

- 3.4 Before discussing the merits of distinguishing volunteer tax advisers from mainstream tax agents, we first analyse how tax help is generally given in the voluntary sector or by professionals acting pro bono. There are a variety of different models.
- 3.5 First, there are the tax specialists – accountants, lawyers, members of one or more professional bodies, former Inland Revenue or HMRC officials – who act for taxpayers in their daily work, usually through firms. From time to time they may place their own and their firm’s resources at the disposal of a client for no fee or for a reduced fee. Where their motive is to help a client who cannot afford to pay full professional fees – rather than (say) in the hope of securing further lucrative

business from them – they are acting pro bono, as a service to the individual client or to the wider community. They apply the same professional standards, and in all respects act as they would for any other client – except that they charge no fee.

- 3.6 Secondly, there are agents whose relationships with their clients are more ad hoc, in that the client seeks help on a particular matter, and when the agent has brought things to a conclusion the relationship ends. The same client may return at a later date for advice on some other matter, but that would be the start of a new relationship. Such advisers do not generally use form 64-8, but a more informal form of authorisation – a simple letter of authority signed by the client, or a form TC689 for tax credits cases. Such ‘intermediaries’ – as they are sometimes called to distinguish them from ‘agents’ with ongoing client relationships – generally operate within the voluntary sector, for example in a Citizens Advice Bureau (CAB), a local authority welfare rights unit, or an independent charity such as TaxAid or TOP. Such intermediaries will normally have some kind of professional qualification or experience, usually as accountants, lawyers, chartered tax advisers, former HMRC officers or welfare rights advisers. Or, for example in a CAB, they may be a trained generalist adviser working in a supervised setting.
- 3.7 Thirdly, there are the lay people who help others in various capacities. This category of ‘informal agents’, as we may call them, is very diverse. It includes family members who help other family members, the latter perhaps being less capable through age or infirmity of handling financial matters; carers for people with an impairment that renders them incapable of looking after their financial affairs, eg mental health issues or learning difficulties; holders of powers of attorney; ‘appointed persons’ who manage direct payments and individual budgets for disabled or elderly people and as part of their task carry out PAYE and NIC responsibilities; and many others.

### **A possible registration scheme**

- 3.8 Para 5.3 of the consultation document states: ‘Where tax authorities are involved in regulation . . . it typically involves a registration process that allocates unique numbers.’
- 3.9 Question 2 at the end of Chapter 5 asks what benefits for tax agents and taxpayers could a registration system deliver? In our view, it could not deliver any benefits to volunteer tax advisers that do not already exist. Far greater benefit would be derived by ensuring that HMRC gave wider recognition to the systems already in use by the voluntary sector.
- 3.10 To explain: when TOP volunteers contact HMRC on behalf of a client, they quote a PIN reference to a particular named person within the local HMRC office. This enables them to be recognised as a professional volunteer. The system works well with the HMRC offices that use it, where there is a good relationship between the TOP advisers in a locality and the local tax office. Otherwise TOP volunteers often find themselves obstructed when they wish to speak to officers about clients, even if the client is in the room with them.
- 3.11 Where the PIN system is effective, it costs little or nothing to put in place, but benefits both the client because their tax affairs are sorted out quickly, and HMRC because a task which an HMRC officer would otherwise have had to do (assuming the availability of time and resources) is carried out by a volunteer supported by an independent charity. Why dismantle a system that works well at practically no cost only to replace it with an untried system that would be costly to both parties,

probably more cumbersome and bureaucratic, and would work no better than the existing scheme – probably less well?

- 3.12 Surely the answer is rather to retain the existing system developed by the tax charities and encourage its consistent recognition throughout HMRC's local offices. That should not only give HMRC what it wants in terms of controlling who it deals with, but also resolve the present difficulties with agent recognition that TOP advisers face where HMRC do not recognise the PIN system.
- 3.13 For dealing with non-professional or informal representatives, the DWP guidance at <http://www.dwp.gov.uk/docs/repsguide.pdf> provides an excellent model. The DWP adopt a commonsense approach of instructing staff to 'use their experience and judgement to satisfy themselves that the caller has consent to act on behalf of the customer' by asking questions to which any bona fide representative would know the answer. This method of 'implicit consent' is tried and tested, and HMRC would do well to link up with the DWP in applying a similar approach to family and friends, carers, and other informal representatives.
- 3.14 Para 5.4 of the consultation document cites as a drawback of a system of registration that it 'could be costly in terms of the tax authority's time and resources and would impose some costs on tax agents which may be passed on to clients'. This raises the question of how volunteer tax advisers would fund any registration fees, given that they could not pass on the cost to their clients for whom they are acting free of charge. Imposing fees where there is no fee income out of which to pay them will result in volunteer tax advisers paying out of their own pockets, or out of scarce charitable resources. That cannot be right, and will undoubtedly reduce the numbers prepared to give their time and skills in this way. That would be to the detriment of HMRC as well as the people who need the advice.
- 3.15 It is also unclear how any policing and sanctions that might be developed for the paid agent sector would apply to (or be adapted for) the voluntary sector. This is something we would wish to discuss further.
- 3.16 In short, we believe that a system of registration would confer no additional benefit; that whatever benefit such a system is designed to achieve is already being delivered, at little or no cost, by the systems currently operated within the voluntary sector; and it would be to the greater advantage of users and agents alike if those existing schemes were extended in order to ease agent recognition by HMRC and enable the volunteers to carry out their task more freely.

### **Comparators and precedents**

- 3.17 As the consultation document points out (para 5.10), there is at least one international comparator to support our view that volunteer tax advisers should be exempt from any requirement to register.
- 3.18 The definition of tax preparer in the USA explicitly excludes persons who prepare returns or refund claims not for compensation, and if a similar definition were applied to any registration scheme in the UK, agents who act for a handful of friends and family or supporting the not for profit community would fall outside the definition.

3.19 There is also a precedent in the UK, where the money laundering regulations exclude those who do not act in the course of a business.

### **The question of risk**

#### *Professional agents acting as volunteers*

3.20 Another consideration is whether professional tax advisers pose a greater risk to HMRC when acting as volunteers than they do when paid. This should be balanced with an assessment of the extent to which volunteers help HMRC in its work.

3.21 The first question to address is how should one assess the risk posed by professional agents or intermediaries operating as volunteers? Is there risk to HMRC sufficient to justify the inclusion of such agents in whatever system emerges from the consultation?

3.22 The sort of person who is prepared to offer their time and expertise for nothing when they could be offering it for reward is probably not the sort of person to engage in any of the deliberate behaviours which a registration scheme might be intended to police. Maybe they run the same risk of being incompetent as paid agents, in which case the body overseeing their activities (TOP, TaxAid, Citizens Advice, etc) has structures in place to detect bad work and in appropriate cases terminate the volunteer's engagement with the charity.

3.23 For example, the majority of TOP volunteers belong to a professional body. Where they do not, they are required to adhere to the CIOT's professional standards of conduct. There are also strict quality control procedures; volunteers must keep records of their interviews with clients and of any action taken or advised. Those records are scrutinised first by TOP Head Office, next by an independent firm of accountants. There are also complaints procedures and similar controls.

3.24 In short, the charity manages the risk and because of its system of vetting and monitoring etc will generally weed out the poor performers. The risk to HMRC is residual and very small. The benefits to HMRC are, however, considerable. Professional tax advisers are carrying out for no fee the work which HMRC officers, because of strained resources, are rarely able to do so effectively; and the result, in the vast majority of cases, is that taxpayers' affairs are checked and, where anything has gone wrong, it is put right.

#### *Informal agents*

3.25 The second question concerns the risk posed by informal agents such as family members or friends, carers, donees or powers of attorney, and the like – in short, the third category mentioned at para 3.7 above. Are they a sufficient risk to HMRC to justify the type of intervention contemplated by the consultation document? If so, is a registration scheme an appropriate way of managing that risk, or is there a better way?

3.26 Possible risk factors include:

- lack of knowledge of the tax system,
- lack of professional controls,
- not reporting to an independent entity such as a charity.

3.27 All of those risks are, arguably, better averted by help and support from HMRC before the fact than by compliance activity after mistakes have been made. An agent whose knowledge of the tax system is limited, and has no professional help to turn to, can only rely on HMRC. This places a responsibility on HMRC to support the agent in whatever way possible. The alternative to supporting them is investigating and correcting what are likely to be, in most cases, innocent errors, an experience that will certainly worry the agent and may put some off acting altogether. It could also be a source of anxiety for the taxpayer, and expensive – also counter-productive – for HMRC.

### *Help and support*

3.28 There are various ways in which we think HMRC could assist. We highlight two in particular.

1. Whatever the merits of HMRC's developing toolkits to make available to professional agents, we see merit in similar toolkits being made available to lay representatives for straightforward processes such as completing a tax return or checking a PAYE coding notice.
2. HMRC have recently been sharing aspects of their risk analysis with representatives from professional bodies. Similarly they could regularly feed back to bodies in the voluntary sector information about common errors they have found in returns and other tax work by volunteer agents. This is done to good effect in the USA, where the error rate among tax volunteers is already low because of the quality of their training.

In the same way, HMRC could disseminate information about common mistakes to a wider audience, to help and guide those who are preparing returns for themselves or for friends, relatives etc.

### **Conclusion**

4.1 To conclude, we believe that professional tax advisers who use their time and skills pro bono should be exempt from any requirement to register, or whatever else may emerge from the consultation. A formulation that excluded those who act for no fee, and in the course of a not for profit business activity, should achieve that end.

4.2 We also consider that increased help and support to informal agents – such as family and friends, carers, attorneys, etc – would be more effective at preventing mistakes from happening in the first place, rather than using a system of registration to detect mistakes once they have occurred.

4.3 We also recommend that an early step in the next stage of this consultation is for HMRC to clarify:

- Whether tax for the purpose of these proposals is to exclude taxes not within the responsibility of HMRC.
- Whether a person acting as an agent for someone else in their dealings with HMRC is a “tax” agent merely through interaction with HMRC. This has to be considered across the full range of activities covered by HMRC (taxes, benefits, credits, national insurance contributions, national minimum wage, etc.). We note

that despite reference to tax credit fraud in the document there is no subsequent consideration of the position of most agents operating in the tax credits field.

LITRG – August 3 2009