



Incapacitated Persons: A Modern Approach

Response by the Low Incomes Tax Reform Group to the consultation response document and draft clauses for inclusion in Finance Bill 2012 published by HM Treasury and HM Revenue and Customs on 6 December 2011

1. Executive summary and recommendations

- 1.1. LITRG welcomes the proposed repeal of the definition of 'incapacitated persons' within the Taxes Acts and the operative provisions which rely upon it.
- 1.2. However, we stress that further work must be done within HMRC as a matter of priority to ensure that those who are incapacitated in various ways can obtain help from representatives in meeting their tax obligations.
- 1.3. We recommend:
 - 1.3.1. HMRC must identify and contact all those taxpayers and their representatives where the existing law is in operation, advising them of the change and how it impacts on them. This must be explained in simple terms.
 - 1.3.2. HMRC engage with ourselves and other interested parties to conduct a thorough review of their existing policy, systems and guidance as to how they recognise both formal and informal representatives. The object of this must be to ensure that there is a clear and consistent policy of which staff at the frontline are fully aware and have guidance on, and which is communicated to the public.
 - 1.3.3. Guidance on how to deal with HMRC on behalf of someone else from other public information sources such as Directgov and Businesslink (or any new Government

information site which may supplant them in due course) must also be reviewed to ensure consistency.

- 1.3.4. HMRC's updated reasonable excuse guidance should provide further reassurance that penalties are unlikely to be in circumstances where someone has become incapacitated. HMRC should be flexible in their interpretation of reasonable excuse in view of the fact that it is not easy for a representative to step in and help someone else to comply with their tax obligations, particularly in circumstances where that person has been taken ill suddenly.

- 1.4. We have reiterated below some of our concerns over existing guidance and gaps we have identified therein, although these are only initial examples and a much more thorough review is required.

2. Introduction

- 2.1. LITRG welcomes the publication of draft clauses for inclusion in Finance Bill 2012 to repeal the various provisions which transfer the rights and obligations of 'incapacitated persons' to their representatives.
- 2.2. However, this cannot be done in isolation from HMRC reviewing and updating all their systems and guidance (both internally for staff and externally for the public) to reflect the changes. Furthermore, those helping others who are incapacitated, either physically or mentally, to manage their tax affairs must have a ready route in to HMRC.
- 2.3. We therefore welcome the acknowledgement in the summary of responses to the original consultation that HMRC's strategy in respect of agents needs to dovetail with the proposed repeals. We set out below some ideas on what further work we feel needs to be done, to which we are happy to contribute through continued consultation with HMRC.

3. Contacting those affected by the change

- 3.1. There will of course be an impact on those who are already acting for incapacitated persons, ie those for whom Section 72 TMA 1970 (and other provisions identified in the consultation) is in operation.
- 3.2. The Summary of Impacts notes:

'This measure will remove a separate tax framework applying to incapacitated people but will continue to allow their representatives to act on their behalf. This should impose negligible new burdens or costs other than the cost of reading and understanding the changes.'¹

- 3.3. In terms of 'reading and understanding the changes', we do however wonder how those affected will be made aware of the change. We recommend that HMRC identify on their systems all those taxpayers for whom the existing Taxes Management Act provisions are in operation and contact them to advise of the change and explain, in plain language, what it means for them.

¹ See page 3 http://www.hm-treasury.gov.uk/d/incapacitated_persons.pdf

4. Reviewing and updating existing guidance

- 4.1. Our response¹ to the summer 2011 consultation highlighted various instances where HMRC's guidance is out of step with the current law in the different parts of the UK on the various types of attorney or other authorised representative who might be able to act on behalf of another person.
- 4.2. For example, the latest (December 2010) version of self assessment tax return guidance notes refers to signing on behalf of someone else in the following terms:

'Box 23 to box 26 If you have signed on behalf of someone else

These will be exceptional circumstances.

The law allows an executor to sign a return for the period from 6 April up to the date of the deceased's death.

The following persons are authorised to complete a return on behalf of someone who is not mentally capable of understanding it:

- a Receiver appointed by the Court of Protection (England and Wales)
- a Curator Bonis appointed by the Office of the Accountant of Court (Scotland)
- a Controller appointed by the Office of Care and Protection (Northern Ireland)
- an Attorney appointed under an Enduring Power, registered in the appropriate court, or
- any person so authorised by any of the above courts.

If you have not previously supplied evidence of your appointment please enclose documentation with this return'²

- 4.3. It does not, however, refer to Lasting Powers of Attorney which were introduced in England and Wales in 2007 and makes no mention of the Office of the Public Guardian; nor does it advise what one is to do if signing on behalf of someone who is perfectly capable of understanding the tax return themselves but is unable to sign for themselves due to physical incapacity.
- 4.4. In the latter context, we noted in our response to the original consultation that HMRC's policies needed to be reviewed across the board, taking into account the existing Statement of Practice A13, how successful this is in practice and how in fact people find out how to deal with HMRC on behalf of someone else.
- 4.5. Whilst some recent steps appear to have been taken towards improved guidance for the public, this is still lacking in some areas. For example, the HMRC website now says:

¹ See <http://www.litrg.org.uk/submissions/2011/incapacitated-person>

² See <http://www.hmrc.gov.uk/worksheets/sa150.pdf>

‘Acting for someone on a long-term basis

If you want to act for someone on a long-term basis they or you on their behalf will need to write to their Tax Office and explain the situation. The letter will need to include:

- their name and address
- their tax reference or claim number
- confirmation that they want you to deal with their affairs
- your name and address
- signature of the person you are acting for

Once approved, you'll receive all future correspondence from HMRC, except letters for payment of any tax due and refunds. These will still be sent directly to the person you're representing.¹

- 4.6. However, the above does not explain what the representative does if the person is physically incapable of signing the letter granting them authority.
- 4.7. The above are only examples of the current inconsistencies and inadequacies of HMRC's guidance. We therefore recommend that HMRC engage with ourselves and other interested parties to conduct a thorough review and ensure that there is a clear and consistent policy of which staff at the frontline are fully aware and have guidance on, and which is communicated to the public.
- 4.8. Furthermore, guidance on how to deal with HMRC on behalf of someone else must be clear and consistent, not only in HMRC publications, but also from other public information sources such as Directgov and Businesslink (or any new Government information site which may supplant them in due course).

5. Reasonable excuse

- 5.1. Finally, whilst we acknowledge that progress is now being made in reviewing HMRC's guidance on reasonable excuse and that improvements have been made in relation to disability, we return to points that we made in our response last summer.
- 5.2. Again, coming back to guidance, HMRC should provide reassurance for those who are trying to help someone else to deal with their tax affairs but are struggling. For example, one family member might be trying to help another with their tax affairs where that person has been taken ill on a short or long term basis. They might experience a delay in tracing and piecing together records with which to complete a tax return, and/or find they are delayed in obtaining authority to act from the Office of the Public Guardian if such a step is necessary.

¹ See <http://www.hmrc.gov.uk/dealingwith/dealing-with.htm>

5.3. At present, the representative does not seem to be able to obtain reassurance from HMRC that any penalties will be foregone under the reasonable excuse provisions or readily get HMRC to stop chasing for payments overdue while they organise themselves.

5.4. We recommend that HMRC's updated reasonable excuse guidance should provide further reassurance that penalties are unlikely to be due in such circumstances. This should allow some flexibility in interpretation of reasonable excuse to allow for the fact that it is not easy for a representative to step in and help someone else to comply with their tax obligations, particularly in circumstances where that person has been taken ill suddenly.

6. **About LITRG**

6.1. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.

6.2. 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.

LITRG

8 February 2012