

Consultation: Raising standards in tax advice: protecting customers claiming tax repayments

Response by the Chartered Institute of Taxation

1 Introduction

- 1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification. Our charitable objectives are primarily educational, to promote education in and study of the administration and practice of taxation. We also have a crime-fighting objective and are a UK AML supervisory body for approximately 830 firms of tax advisers.
- 1.2 The CIOT is pleased to have the opportunity to respond to the HMRC consultation document [Raising standards in tax advice : protecting customers claiming tax repayments](https://www.gov.uk/government/consultations/raising-standards-in-tax-advice-protecting-customers-claiming-tax-repayments)¹ ('the consultation') issued on 22 June 2022. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.
- 1.3 We welcome measures which ensure taxpayers pay the correct amount of tax and are able to benefit from the reliefs available to them.
- 1.4 We encourage the introduction of measures to raise standards amongst all tax agents. We note that HMRC have focused in this consultation on raising standards amongst repayment agents. Whilst we understand the concerns in this area, we consider that raising standards must be looked at in the context of the wider tax advice market. At present anyone can set themselves up as a tax adviser without any qualifications or regulation (other than AML supervision). Whilst the current system persists, people will look to exploit opportunities to earn income in areas where money can be claimed from HMRC for large numbers of clients using (relatively low cost) routine processes, sometimes with minimal consumer protection safeguards. We therefore look forward to the issue of the consultation on 'options for improving the regulatory framework in the tax advice market': our clear preference is that those providing tax services should be required to

¹ <https://www.gov.uk/government/consultations/raising-standards-in-tax-advice-protecting-customers-claiming-tax-repayments/raising-standards-in-tax-advice-protecting-customers-claiming-tax-repayments>

adhere to the rules and discipline of a professional body and that the government should challenge the professional bodies to address areas where there is evidence of lack of quality.

- 1.5 Whilst there are undoubtedly areas of concern in relation to High Volume Repayment agents (HVRA), some operate with high standards and provide a service where there would otherwise be a gap in the market. We have not seen much involvement with the repayment claims companies amongst our membership. The great majority of our members have no access to client money or ability to deduct fees from it: indeed there is evidence of strong feeling among many of them that this should not be allowed. However we are concerned that in areas of the market where there are potentially large numbers of sometimes very low value reclaims, it will not always be cost effective to act for clients at all. Members of the public are not always aware of the claims they could make and some struggle with how to make claims, notwithstanding all the efforts made by HMRC to make it easy for them, efforts which seem to a tax specialist's eye as if they ought to be successful. Repayment agents fill this gap in the market and assist many people who would not otherwise obtain any tax refund at all because they would not feel able to deal with it for themselves. Allowing such businesses to operate acts as a real-life check on the success (or otherwise) of efforts to encourage members of the public to claim the reliefs due: outlawing these businesses would remove a healthy pressure to redouble such efforts until they do indeed succeed. To be clear, we have no brief to protect any adviser's business model per se: our concern is to enable taxpayers to have the option of using agents, acting on an economic basis, to assist clients with reclaims. Whilst there are many problems associated with many of these agents, they are a symptom of several underlying issues which need to be addressed:

- How can the tax system ensure that people pay the right amount of tax with minimal refunds then due?
- Where refunds or claims are needed, how can people be made aware of these on a timely basis and how can the system for claims be made easier?
- Where people cannot do the claims themselves and want to use an adviser what improvements are needed in relation to those advisers to protect the public?
- What improvements are needed in HMRC practices?

Our consultation response provides more comment in relation to these underlying problems. We also believe, in particular, that there need to be customer protection safeguards around the high volume repayment business model; and in particular that the current scope of what is entailed in a so-called 'deed of assignment' is excessive.

- 1.6 We have had the benefit of seeing the responses to the consultation prepared by both the Association of Taxation Technicians and the Low Incomes Tax Reform Group. We fully endorse the content of both those responses.
- 1.7 We have set out below our response to each question.

2 Question 1: What more could HMRC do to make taxpayers aware that they may be eligible for reliefs, and that they can claim directly from HMRC?

- 2.1 The majority of individual taxpayers within the UK are within the PAYE system. They have no need to understand the details of how this operates and have no other need to interact with the tax system. It is a reasonable – though as we know from a number of contexts, unfortunately a false – assumption for those in

these circumstances to make that HMRC will have a system in place which will ensure they pay sufficient tax and get all the reliefs to which they are entitled so they pay the 'right amount' of tax. Many people remain unaware of claims until they come across advertisements on social media. There are echoes here of the difficulties that arise for customers who unknowingly, or through a weak labour market position, were put into 'loan charge' arrangements, or to those who are unaware that they were liable to the High Income Child Benefit Charge.

- 2.2 Providing or introducing a relief is often viewed as achieving a policy aim when in fact success is the rate of take up of that relief among the intended population. There should, for all reliefs, be much greater thought given to this aspect, both when considering whether to introduce a relief and in relation to publicising it and facilitating legitimate claims once it is enacted. For example, the marriage allowance was introduced in April 2015. The [TIIN](#)² envisaged '4.2 million non-taxpayer/basic-rate taxpayer married couples stand to gain an average £197 between them'. [The tax relief statistics](#)³ section 7.2 indicate that the number of claimants for 2019-20 was only 2,020,000. For 2018/19 the relief was supposed to be worth £780m, yet only cost £490m. Even now, take up seems far lower than the original announcement (2021-22 cost £580m, and latest stats show a circa 50% take up). Whilst there may be some other explanations for the differentials, the figures do suggest that not even everyone who was expected to make a claim – probably already a subset of the target population – has actually done so. If it is too difficult to make them reach the target population as the norm, consideration should be given to abolishing reliefs (see the reference in 2.4 below to the report by the Office of Tax Simplification).
- 2.3 In order to prevent further problems we would encourage the careful design of any new reliefs introduced. The administration of the relief should be clearly thought through and tested as to how it will be claimed and pass a test that ordinary taxpayers can access the relief without help.
- 2.4 Until people in general are claiming what they are entitled to (or the tax system deals better with these reliefs up front through PAYE for example by making some claims automatic) then agents potentially perform a useful role in enabling people to get at least some of their entitlement. Fees are deducted partly because the system facilitates this – arguably excessively so, as we shall come to below, but also because agents will not generally operate on a systematically uncommercial basis. The taxpayer choosing to use an agent may otherwise have walked away from making a claim and, even after the fees charged, is better off than not using an agent at all (sometimes even if it is a 'rogue' agent).
- 2.5 It is now widely accepted that more needs to be done to regularly review the purpose, effectiveness and operation of tax reliefs. Reliefs in place must be reviewed to consider whether they are still appropriate (as long ago as March 2011 the [Office of Tax Simplification reported](#)⁴ on various tax reliefs and recommended the abolition of 47 reliefs: where this was not accepted these could be reviewed again, as could many others). In

2

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/293790/TIIN_2518_transferrable_tax_allowance_for_married_couples_and_civil_partners.pdf

³ <https://www.gov.uk/government/statistics/minor-tax-expenditures-and-structural-reliefs/estimated-cost-of-tax-reliefs-statistics>

⁴

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/198570/ots_review_tax_reliefs_final_report.pdf

particular we would recommend the review of all reliefs which are the main areas of practice for HVRA. Where reliefs are retained, HMRC could do the following to make taxpayers aware that they may be eligible for reliefs:

- ensuring government content appears first on any Google searches (sometimes repayment agent webpages appear first when a search is undertaken)
- messaging on personal tax accounts, tax codes etc
- banners and prominent messaging on gov.uk
- liaising with trade unions, trade bodies and relevant third parties to ensure they issue literature with links to gov.uk guidance on making repayment claims (we are aware that some of these bodies currently promote the use of repayment agents)
- HMRC holds and can access considerable volumes of data which it uses to identify mistakes for further checking. HMRC should give consideration to using data analysis to identify taxpayers eligible for reliefs and contacting them directly to highlight the availability of the relief and how to claim it
- HMRC could bring in bodies such as the Citizen's Advice Bureau to provide assistance to the public.
- a simple one page form should be on the HMRC website which could be used to make a claim. For those unable to deal with the website then a one page paper form is needed
- continuing to liaise with the Advertising Standards Authority so action is taken on misleading advertisements such as
 - references to the amount on which a claim can be made rather than money received which gives the public unrealistic expectations.
 - the presentation of material in similar colours to gov.uk literature leading members of the public to think they are interacting with HMRC.

3 Question 2: What improvements to the process of claiming reliefs could HMRC make that might encourage taxpayers to claim directly?

- 3.1 As covered in 2.1 and 2.2 above we consider that the tax system should ensure that in the majority of cases people pay the correct amount of tax after any reliefs due to them. Where reliefs are retained, consideration must be given to the effective take up of the reliefs and how they can be claimed.
- 3.2 A change of legislation to allow employers to process tax relief claims would make the claim process itself easier as suggested by us in our response to the [Taxation of employee expenses: call for evidence](#)⁵ see paragraph 2.7. We have also suggested previously that employers should be able to notify small changes to tax codes direct to HMRC. For example, where a fixed rate deduction applies to the role. Alternatively messaging by employers could ensure employees were aware of the claims which they could make.
- 3.3 HMRC could make their claims process easier by:
- Permitting claims through personal tax accounts
 - For those who do not have an account making a much easier and more prominent portal for making a claim
 - Making it easier for someone to prove their ID and get through the gateway process.

⁵ <https://www.tax.org.uk/ref299>

- 3.4 Where repayment agents are used HMRC should consider a change in the law governing the relevant process, especially in relation to the assigning of refunds. Firms have used 'deeds of assignment' partly because simple nominations of refunds by a taxpayer can be revoked and the firm then runs a commercial risk of not being paid. We think there is a case that exposing the agent to this risk would not be sufficient to make operating in the area unviable. In any case, firms can also receive repayments direct if taxpayers nominate them to do so eg via tax return boxes. Allowing taxpayers to direct where their repayments can be made, commercially enables agents to be able to cover their fees. In any event it seems wrong that 'deeds of assignment' operate open-endedly. A common sense approach is needed in relation to refund nominations to ensure that the current advantages of this in other circumstances are not lost. It should also be remembered that taxpayers remain responsible for their tax affairs and can be penalised if they allow incorrect repayment claims to be submitted on their behalf or submit them themselves. Thus it appears better to have a process which requires a taxpayer to agree to a claim being made and this ought to be consistent with any provisions as to where the repayment is to be directed being on a refund-specific basis (see 12.1 below).

4 Question 3: For taxpayers: What experiences have you had in interactions with repayment agents?

- 4.1 From feedback we have received from our members, experiences include:

- misleading advertising and lack of transparency about services provided and terms and conditions,
- high fees as a % of the claims' value, particularly where the taxpayer could claim direct from HMRC for free,
- repayments being made to third parties rather than the taxpayer and particular problems with the use of deeds of assignment (with refunds for multiple years going to the repayment agent rather than the refund for one year (or one claim) only),
- delays in receiving the refund from the repayment agent because they ask for client due diligence at this point in the process before releasing the refund (perhaps taking it if due diligence is not completed – in passing, this approach appears questionable in terms of AML legislation – see para 7.1 below – as well as in customer service and protection terms)
- 'filing only' agents who can submit claims without a taxpayer's authorisation
- high volumes of speculative claims where no repayment is due, resulting in delays processing genuine claims more quickly

- 4.2 Whilst we have covered negative aspects here, we would refer you to the more detailed comments in the response by our LITRG colleagues who point out that good tax refund companies can assist members of the public to claim amounts due to them which otherwise would go unclaimed.

5 Question 4: For all respondents: Do you agree with our assessment of the issues?

- 5.1 The three main areas of concern referred to in the introduction are:

- that taxpayers do not always know what they are signing up to, as a result of repayment agents not making this information clear
- the use of assignments, whereby the right to the repayment legally transfers from the taxpayer to the agent.

- high volumes of claims where no repayment is due, resulting in delays processing genuine claims more quickly.

We agree that these issues do need tackling.

5.2 Raising standards in the tax advice market is fundamentally about customer protection and improving the standards of repayment agents should be considered in the context of overall regulation of the tax profession. Repayment agents do not in general appear to be members of accountancy professional bodies and therefore are not required to uphold professional standards, and there is no disciplinary mechanism for clients to complain about poor standards. If all repayment agents providing taxation services were supervised as professional body members, they would be required to meet the fundamental principles set out in [Professional Conduct in Relation to Taxation](#)⁶ and [Professional Rules and Practice guidelines](#)⁷ which include the requirement to have professional indemnity insurance, and strong encouragement to have engagement letters etc. In trying to tackle such issues largely alone, HMRC have an inevitable conflict of interest in relation to the protection of revenue alongside protection of the consumer. These issues are explored further in our [response to Raising standards in the tax advice market: professional indemnity insurance and defining tax advice](#)⁸

5.3 The three main areas of concern set out in section 4 of the document are:

- misleading advertising and lack of transparency about services provided and terms and conditions.
- repayments being made to third parties rather than the taxpayer, in particular the use of assignments
- high volume of speculative claims where no repayment is due, resulting in delays processing genuine claims more quickly

Again, we agree that these do need tackling and have set out below our comments in relation to each of these areas.

5.4 **Misleading advertising etc.** The section on action HMRC is taking (section 4) refers to the HMRC Standard for Agents. One problem with that standard is that broadly speaking, it just covers revenue protection not consumer protection, as compared with [Professional Conduct in Relation to Taxation](#)⁹ (for further comment on this refer to our [response to the call for evidence on raising standards in the tax advice market](#)¹⁰). A second issue is the lack of enforcement where there are problems in this area. We acknowledge HMRC seem to be exploring addressing that but we note that hardly anything has been done to date.

5.5 **Assignments.** It needs to be clear that the use of assignments, though uncommon in the profession in general, may be understandable in some circumstances – for example where the agent is dealing with low value claims and wants to ensure its fees are paid. As stated above, we think there needs to be research to illuminate further whether nominations are, or could be, a commercially sufficient substitute. Assignments, as distinct from nominations, are open to abuse unless tightly controlled. Open ended assignments seem hard to justify in any event. In general it is doubtful that irrevocability is necessary or appropriate.

⁶ <https://ciotmktgprodeun.azureedge.net/professional-conduct-in-relation-to-taxation-pcrt>

⁷ <https://ciotmktgprodeun.azureedge.net/professional-rules-and-practice-guidelines>

⁸ <https://www.tax.org.uk/ref774>

⁹ <https://ciotmktgprodeun.azureedge.net/professional-conduct-in-relation-to-taxation-pcrt>

¹⁰ <https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/915e398c-2c2c-4f29-a11f-b530c81a7db3/200825%20Raising%20standards%20in%20the%20tax%20advice%20market%20-%20CIOT%20response.pdf>

A standard form enabling the nomination of a refund for a particular tax year, or reclaim, seems likely to be the way forward. Such forms (such as a tax return or amended return) should be signed by the taxpayer prior to submission. It should not be possible for an agent to submit a claim without a taxpayer's prior authorisation (although it does happen – see 4.1 above), not least because HMRC will seek repayment of invalid claims from the taxpayer and can charge tax-gear penalties to the taxpayer for incorrect claims (Sch 24 FA 2007) – see 12.1 below.

In our experience, a tax agent whose business does not involve high volumes of tax repayments would not usually direct tax repayments to themselves (either via a 'nomination' or a deed of assignment). Instead the client will receive their tax repayment directly from HMRC and the agent will invoice the client for their work. In the event of non-payment of their fee, the agent must seek to recover the fee from their client which might in a small proportion of cases ultimately mean taking legal action, as would be the case for anyone in business providing a service for a fee.

There might be occasional instances where a (non high volume repayment) agent might direct the tax repayment to themselves, for example if the agent perceives there is a real risk that the client will not pay their fee. We have heard that this arrangement is routinely used by agents who prepare and file tax returns for sub-contractors in the construction industry. Subcontractors, for example, are a group with potentially low levels of compliance without assistance from a tax adviser but also a poor payment history. In other words, being able to direct the tax refund to the tax agent protects the agent from non-payment of their fee but also means the client complies with their tax obligations. On the other hand, there will be many agents acting for sub-contractors who do not direct their clients' tax refunds to themselves and who invoice for their work in the normal way without issue.

Outside of the HVRA sector, we do not know how often a deed of assignment might be used in preference to a simple 'nomination', but our sense is that they are rarely used.

We would also add that where a CIOT member directs a client's tax repayment to themselves, they must refer to and comply with our [Professional Rules and Practice Guidelines](https://ciotmktgprodeun.azureedge.net/professional-rules-and-practice-guidelines)¹¹ (PRPG) – see below:

8.6.5 A member should not settle the fees owed from money held, or received by a member on behalf of the client (eg a tax repayment), unless prior approval for such action has been obtained from the client. Any such arrangement should be in writing and have regard to the guidance on client money in paragraph 7.6.

Paragraph 7.6.2 states that 'Due to the risks, controls and processes that need to be observed, a member should give very careful consideration before agreeing to hold client money' and section 7.6 in general sets out the conditions which must apply to ensure client money is dealt with appropriately. Our members are also subject to requirements in paragraphs 8.6 and 8.7 in relation to clients who are slow to pay and in relation to fee disputes. The key issues being to provide clear details of fees at the outset and to seek to reach agreement with the clients where fees are disputed. In relation to repayment agents we do need to understand that they are providing a service in relation to often small claims and therefore in many cases it would not be commercial for them to have prolonged negotiations with their clients in relation to fees.

- 5.6 **High fees.** Despite the acknowledged misinformation by some agents, if fees are high it also reflects the perceived difficulty of individuals dealing with the claims themselves, and if percentage fees are high it may reflect their low value, compared to the commercial costs of operating. But to be clear, we do not think high

¹¹ <https://ciotmktgprodeun.azureedge.net/professional-rules-and-practice-guidelines>

fees should be protected: HMRC should increase its efforts (as suggested above) to make people aware of the possibility of making claims prior to their being contacted by agents: and elements of the nomination and/or assignment systems should only be preserved to the extent they are necessary to protect the viability of offering an agent service, not to the extent necessary to protect such agents from all business risk.

6 Question 5: For repayment agents: Do you think our assessment of the issues is fair?

6.1 No further comment

7 Question 6: For all respondents: Have you seen any other issues with repayment agents?

7.1 As AML supervisors we have some concerns that repayment agents are not meeting their AML requirements. We are aware that in some circumstances they are not undertaking client due diligence until after a tax refund has been received rather than before entering into a business relationship with their clients. Whilst this may be aimed at reducing costs we consider this should be looked at further in relation to these companies.

8 Question 7: How should HMRC ensure that repayment agents are adhering to existing consumer rights legislation?

Question 8: Is there any more HMRC should do to help consumers make informed choices about whether to use a repayment agent?

Question 9: Should HMRC consider introducing measures which would require repayment agents to display material information before a contract is considered valid, such as a pre-contractual disclosure form?

8.1 Questions 7 to 9 all relate to customers understanding their rights and making informed choices and therefore our answer covers all three.

8.2 Advisers who are members of professional bodies such as CIOT already issue engagement letters before starting work, which set out their terms of business and the basis of fees. Consequently, the proposal to require agents to set out terms is unlikely to make a material difference where an agent is a member of a professional body. However, we agree that all tax advisers should provide this information whether they are repayment agents or other advisers operating in the tax advice market.

8.3 Whilst agreeing that clear engagement terms should be presented, requiring a significant amount of information at the point of the initial contract may also act as a bar to people signing up to obtain a refund even though they need help to do so.

8.4 Our concern here is that these questions envisage HMRC becoming a quasi-consumer protection regulator, but without explicit recognition of obligations to act for the benefit of the consumer/taxpayer having to be balanced against its obligation to raise revenue. There is arguably a conflict of interest here in which, in practice, consumer protection will lose out. The solution to this lies in reinvigorating the 'raising standards' agenda and to ensure that consumer protection issues are given proper priority in the direction of travel determined upon.

9 Question 10: Should HMRC legislate to restrict the use of assignments?

- 9.1 Yes, to the extent necessary to ensure that there is adequate protection around them – notably to prevent them from being open-ended in terms of reclaims and years. We consider a ban on deeds of assignment should be strongly considered. We think it unlikely that this would make acting as a repayment agent unviable if agents could still have refunds nominated to them; and this would better ensure the protection of consumers. However, before this step is taken HMRC must undertake further research to try to ensure that any ban on deeds of assignment will not of itself result in a significantly reduced number of people making tax refund claims to which they are entitled.
- 9.2 HMRC also need to ensure that their internal procedures ensure repayments are only made to agents where deeds of assignment are valid. We understand the current practical difficulties relating to this and would welcome further consideration by HMRC of how the documentation used by repayment agents could be changed to ensure HMRC can easily check the validity of claims, ensure consumer protection and ensure members of the public can secure the tax refunds due to them. We support the idea of changes in the law to increase protection, but also believe that there is more that can be done if necessary within the current framework.

10 Question 11: Should restriction comprise prohibition of the use of assignments of tax repayments or some form of limited restriction?

Question 12: If limited restriction, do you favour either option outlined, or do you think another form of limited restriction would be better?

Question 13: If you are an agent and use assignments, which areas of tax do you do this in, and why?

Question 14: If you are an agent, are there any improvements to the nominations process that would make them more appealing?

Question 15: What impact would a prohibition of assignments have on your business?

Question 16: What impact would a limited restriction of assignments have on your business?

Question 17: Do you think prohibiting assignments would address the consumer protection issues cited above

Question 18: Do you think restricting assignments would address the consumer protection issues cited above?

- 10.1 Answers to questions 11 to 18 have been covered below.
- 10.2 We understand that use of assignments in other areas is limited and (whilst we have not been able to ‘prove the negative’ to a social science standard) the CIOT is not currently aware of any agents using deeds of assignment on any scale other than repayment agents.
- 10.3 We would suggest caution in prohibiting them outright without further research into the impact that would be likely to have on levels of claims. The risk of banning them altogether is that people who currently get at

least the percentage of their repayment not taken by the agent would get nothing, if it put companies off offering the service. However, nominations provide an alternative as set out above.

We understand that the main problem with the use of the deeds of assignment is that they can result in all other refunds due to the taxpayer being paid to the refund company, not just the refund for the one year (or one claim) the client has 'signed up' to. The refund company then take a percentage of that refund even though they have undertaken no work on obtaining the refund. However we understand HMRC have already addressed this through changes brought in since April 2022.

10.4 Nominations for an agent to receive refunds continue to be a useful tool. Whilst nominations can be rescinded between notification of a refund and the issue of the repayment we think that this would happen in only a small number of cases and, if it happens, this would be manageable for the claims companies in terms of follow up to obtain payment of their fees. We consider the provision of a standard form to be the most practical option.

10.5 Other options have been suggested in feedback received by us including:

- Refunds only being issued to agents who are professional body members, to ensure that agents with appropriate professional standards would be handling tax refund claims for clients (ultimately we believe that tax services should only be offered by those subject to the standards applying to professional body members, but we do believe that steps in this direction need to be assessed against their likely impact on the supply of tax services to those who need them); or
- Refunds being sent directly to a client only (though we would not wish to see this adopted for the reasons given earlier).

It should also be noted that a number of clients are used to the 'no win/no fee' model in relation to some legal services (albeit that there are also issues with this model) and it gives some consumers reassurance that they will not suddenly be presented with a large fee for work undertaken when no refund is due.

In relation to the options set out in section 5:

- We note that there are plans to refresh the HMRC Standard for Agents and cover transparency on contingent fees. On a review of [Raising standards in the tax advice market - HMRC's review of powers to uphold its Standard for Agents](https://www.gov.uk/government/publications/raising-standards-in-the-tax-advice-market-hmrCs-review-of-powers-to-uphold-its-standard-for-agents)¹² we note that in its plan to update and promote the agent standard HMRC will include 'specific amendments to address problematic issues and trends that HMRC sees, such as transparency around contingent fees and inappropriate use of HMRC's online services'. Whilst steps to move towards more consumer protection are to be welcomed, we have some concerns about the Standard being extended on an ad hoc basis rather than based on a series of principles. We consider it would be a better approach to require all tax agents to meet the requirements of [Professional Conduct in Relation to Taxation](https://ciotmktgprodeun.azureedge.net/professional-conduct-in-relation-to-taxation-pcrt).¹³
- As noted, most repayment agents do not appear to belong to professional bodies (legal, accountancy or tax). As a result the repayment agents are not bound by the professional requirements on for example CIOT members. Our members are strongly encouraged to put engagement letters in place making their terms clear to their clients. We also require appropriate standards of advertising as set out in Professional Rules and Practice Guidelines:

¹² <https://www.gov.uk/government/publications/raising-standards-in-the-tax-advice-market-hmrCs-review-of-powers-to-uphold-its-standard-for-agents>

¹³ <https://ciotmktgprodeun.azureedge.net/professional-conduct-in-relation-to-taxation-pcrt>

‘12.1.3 Advertisements and promotional material or activity prepared or produced by a member or firm must not (either in content or presentation):

- Reflect adversely on the CIOT/ATT, a member, a firm or other members of the tax profession;
- Discredit the services offered by others, for example, by claiming superiority for a member or firm;
- Be misleading, either directly or by implication;
- Fail to comply with any regulatory or legislative requirements, such as the standards and requirements of the Advertising Standards Authority's Code, notably as to legality, decency, clarity, honesty and truthfulness;
- Breach client confidentiality; or
- Amount to harassment.’

We would question whether simply adding additional ad hoc issues to the HMRC Standard for Agents will be effective without clear regulation of all tax advisers so action can be taken by their professional bodies where standards are breached.

11 Question 19: Should we require repayment agents to register with HMRC via the Agent Services Account before processing any claims the submit?

11.1 Although all tax advisers should already be registered for AML supervision, we consider it is appropriate that repayment agents should also be required to have an agent service account. Repayment agents should be subject to the same requirements as other agents and if the agent service account requirements facilitate this then we would encourage this development. Having said this there are dangers if HMRC are slow in providing agent approval (we note the current delays in getting agent codes). Any delays which meant fewer people received their repayments would not be welcome.

12 Question 20: Should we require repayment agents be authorised by their clients with HMRC before they can do so?

12.1 Repayment agents should be authorised by their clients with HMRC before any repayment claims can be submitted but whether the 64-8 is the appropriate mechanism should be reviewed. The downside of a 64-8 is that it allows the agent to access considerable information about the taxpayer's finances in general, which may not be appropriate if they are only processing a small/discrete claim. Instead, consideration should be given to using a separate authorisation – so they are only authorised in relation to the particular claim for a specific year (much as a tax adviser is only authorised to deal with a particular compliance check via the COMP1 form).

For standalone claims (ie submitted outside the tax return) which are not signed by the client, the claim's submission should be accompanied by a statement from the agent saying they showed the claim to the client and got their approval to submit it, having told them that it is their responsibility to check the claim is correct and tax-gear penalties may be charged if it is excessive. For agents who had not obtained client approval there should be consequences for failing to do so. This is part of the wider debate on how agent standards could be enforced for those not currently affiliated to professional bodies.

13 Question 21: If you are a repayment agent, what impact would a requirement for formal authorisation by your clients have on your business?

13.1 Not applicable

14 Question 22: Should this requirement apply only where repayments are paid directly to the agent (including via nomination), or in all cases?

14.1 As above we believe this should be explored.

15 Question 23: Do you have any other views on the issues or potential measures regarding repayment agents?

15.1 We note that the Kantar research project was very small and further more detailed research and impact assessments are required before the introduction of new measures (other than reviewing HMRC processes to ensure that invalid 'deeds of assignment' are not actioned). This research should seek to determine whether there are groups who are exposed particularly to repayment agents and the reasons for that. Whilst supporting the raising of standards throughout the tax advice market as a whole we are anxious that no steps should be taken in relation to repayment agents which would effectively deny people repayments where they find it too hard to deal with the claims themselves.

16 Question 24: Have you seen evidence of a consumer protection issues with repayment agents concerning heads of duty other than Income Tax?

16.1 The only other area where we have seen evidence of consumer protection issues with repayment agents relates to R&D claims.

17 Question 25: Do you think measures proposed in this consultation could, or should, apply to other areas in which repayment agents act?

17.1 We consider that measures to raise standards should be applied to all tax agents. As we stated at the outset we note that HMRC have focused in this consultation on raising standards amongst repayment agents. We consider that raising standards must be looked at in the context of the wider tax advice market. At present anyone can set themselves up as a tax adviser without any qualifications or regulation (other than AML supervision). This has to be addressed in order to ensure that tax advisers provide their services to a high standard for the protection of consumers and the tax system.

18 Question 26: Are there other legal vehicles not mentioned that could give rise to unfair contract terms for taxpayers?

18.1 No answer.

19 Acknowledgement of submission

- 19.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

14 September 2022