



# RAISING STANDARDS IN THE TAX PROFESSION: PROTECTING CUSTOMERS CLAIMING TAX REPAYMENTS

Issued 6 September 2022

ICAEW welcomes the opportunity to comment on the Raising standards in the tax profession: protecting customers claiming tax repayments published by HMRC on 22 June 2022, a copy of which is available from this [link](#).

For questions on this response, please contact the ICAEW Tax Faculty at [taxfac@icaew.com](mailto:taxfac@icaew.com) quoting REP 71/22

The consultation seeks views on measures intended to protect individuals who use repayment agents to claim a tax refund, in particular of income tax. ICAEW shares many of the concerns expressed in the document, particularly in relation to the use of assignments. We would support measures to prohibit the use of assignments.

We are, however, concerned that the impact of the suggested changes might be to completely close down the repayment agent market, or effectively restrict it to higher value claims, rather than to improve practices in that market and stamp out abuse. If closing down the repayment agent model were to be the outcome and HMRC does not promote claims by taxpayers and make it easier to claim, a significant amount of tax relief to which taxpayers are entitled might go unclaimed.

This response of 6 September 2022 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 165,000 chartered accountant members in over 147 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

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## KEY POINTS

1. The consultation seeks views on measures intended to protect individuals who use repayment agents to claim a tax refund, in particular of income tax. ICAEW shares many of the concerns expressed in the document, particularly in relation to the use of assignments.
2. We are, however, concerned that the impact of the suggested changes might be to completely close down the repayment agent market, or effectively restrict it to higher value claims, rather than to improve practices in that market and stamping out abuse. If closing down the repayment agent model were to be the outcome and HMRC does not promote claims by taxpayers and make it easier to claim, a significant amount of tax relief to which taxpayers are entitled might go unclaimed.
3. The repayment agent market is, we understand, concentrated in a small number of firms and the model depends on industrialising the process and processing high volumes. That is not a model which is operated by the vast majority of professional firms. Most chartered accountancy practices registered with ICAEW provide a full range of tax and related services and have few income tax clients who are not in self assessment. Given the extensive regulatory and professional requirements which need to be met, both when member firms take on new clients and in continuing obligations, the fee they would need to charge (whether as a flat fee or time-costed) could be disproportionate to the potential benefit for most income taxpayers who are not already in self assessment; while some such taxpayers do seek advice it is not likely to be many.
4. It is apparent from HMRC's research that, although many taxpayers were very dissatisfied with the service they received from a repayment agent, some were not and indicated that they would use such a service in the future, in full awareness of the charges and the alternative of claiming directly from HMRC. Although the fees look high in percentage terms and when compared with the free option of claiming directly from HMRC, it is possible they may not necessarily be unreasonable when compared to any fee charged if the service were provided by a professional firm, not least in order to cover the onboarding costs mentioned above. However, we do not have any data to make any comparisons.
5. Given that this sector of taxpayers will often find it difficult to access help and support at a reasonable price, HMRC has a responsibility to make its processes for claiming tax relief and related refunds as straightforward and accessible as possible. The online service for claiming tax relief on employment expenses has been improved considerably but more could be done. HMRC could do far more to raise awareness of the tax reliefs that are available to PAYE taxpayers. All the routine communications to such taxpayers, including PAYE coding notices and P800 and PA302 tax calculations are designed with a view to minimising unnecessary contact rather than actively prompting taxpayers to check their tax position. The letters do suggest contacting HMRC if any of the information is incorrect but do not prompt taxpayers to actively consider reliefs to which they may be entitled (or indeed income which they might need to report). If a PAYE record balances HMRC does not even issue a calculation. Most taxpayers learn of the possibility of claiming from sources other than HMRC, sometimes from advertising by repayment agents even if they then go on to claim directly from HMRC.
6. Some of the proposals, such as in relation to improving transparency and requiring repayment agents to be registered with HMRC, are uncontroversial. We would support measures to prohibit the use of assignments but the need for assignments might be reduced if the time delay between issuing the tax calculation and the repayment were to be eliminated.

## ANSWERS TO SPECIFIC QUESTIONS

### **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?**

7. ICAEW would encourage HMRC to use every possible communication channel to make taxpayers aware that they may be eligible to claim reliefs. This could include communicating via employers, unions, social and mainstream media, messages on HMRC letters such as notices of tax codes and PAYE tax calculations and prompts in personal tax accounts. HMRC could also consider advertising on radio and television.

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

8. Consideration should be given to simplifying the underlying rules for relief for employment expenses to allow the processes to be simplified. HMRC might also consider whether the £2,000 limit for claims outside self assessment is still set at the right level and whether it might be possible for more claims to be made by phone.
9. Many taxpayers frame the question as claiming a tax refund or repayment (or even return) rather than claiming a relief. GOV.UK guidance for [claiming a tax refund](#) mentions only fuel and work clothing rather than linking to [Claim Income Tax relief for your employment expenses \(P87\)](#). These two pieces of guidance need to be better linked.
10. The microservice that allows taxpayers to submit an online claim for tax relief on employment expenses has been improved significantly and reports from those that are able to access it are generally positive. There is possibly a lack of awareness amongst the public of the recent improvements to the service. The main difficulties experienced by taxpayers are (a) finding the relevant guidance and service on GOV.UK as explained above and (b) difficulties in setting up a government gateway account because of the limited identity options available. The microservice is available in personal tax accounts but is not easy to find.
11. The paper P87 form for claiming tax relief on employment expenses, which is now mandatory for paper claims, is complex, lengthy and difficult to complete. The previous iform provided an experience which was closer to the microservice but the new mandated pdf form is likely to push more of those who cannot access the digital service towards using a repayment agent. This form needs to be redesigned, probably using a better technology than pdf.

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

12. n/a.

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

13. We agree that the assessment of the issues is fair.

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

14. n/a.

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

15. No, we have not.

### **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?***

16. ICAEW members are advised to have clear terms of engagement in place with their client. We would support a similar requirement for all agents but would be concerned if any new requirement were to be added to the already detailed processes that ICAEW members should adopt when taking on a new client.

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

17. We support the restriction of the use of assignments.

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

18. We have not identified a need for assignments and would support prohibition of their use. We understand that they are used by repayment agents instead of nominations, to prevent taxpayers from revoking nominations, particularly in the period between the repayment being calculated by HMRC and being paid out. We do not think that deeds of assignment have a place in the relationship between professional agents and their clients. However, prohibiting their use might close down the market and, without further efforts by HMRC to assist taxpayers to claim reliefs, could lead to an increase in unclaimed reliefs.

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

19. We favour prohibition of assignments rather than a more limited restriction.

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

20. We have not identified any use of assignments outside the tax repayment agent market.

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

21. Nominations would be more appealing if the repayment were to be issued at the same time as the tax calculation. Currently there is a delay of 14 days and taxpayers are often prompted to withdraw the nomination when they receive the calculation.
22. Client money regulations already serve to regulate the use of nominations.

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

23. n/a.

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

24. n/a.

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

25. Prohibition would go a long way towards addressing the customer protection issues, particularly if accompanied by a requirement for greater transparency over fees.

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

26. We favour prohibition of assignments rather than a more limited restriction.

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

27. We support a requirement for repayment agents to be registered agents. In any event, all repayment agents would need to comply with the anti-money laundering regulations (and associated obligations) which would include registering with a supervisor which would, in most cases, be HMRC.
28. We would not support having a separate class of repayment agent and assume that it would be a case of applying the current registration processes to agents submitting repayment claims using paper forms.
29. It is not completely clear how HMRC would enforce the requirement given that the claims are made on paper forms (agents cannot access the online microservice for claiming tax relief on employment expenses). HMRC might require agents to quote their reference number on forms they submit but it is not clear how HMRC would distinguish claims made by agents from claims made by individuals or unpaid friends/family or voluntary organisation (other than from an associated assignment or nomination).

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

30. In principle we would support a requirement for repayment agents to be authorised by their client to act on their behalf with HMRC. In practice this would be onerous for HMRC, agents and taxpayers because HMRC's authorisation processes are unsatisfactory and therefore cause delays and increase burdens.
31. If authorisation were to be a requirement for repayment agents, it would be reasonable to expect HMRC to also introduce a better system for authorisation and allow agents to make the claims online.

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

32. n/a.

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

33. Few, if any, claims made by repayment agents are paid directly to the taxpayer, so the distinction is probably irrelevant. However, cases where payment is made to the taxpayer are lower risk and could be subject to less stringent requirements.

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

34. n/a.

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

35. We have seen some issues in relation to claims for SDLT multiple dwellings relief and research and development.

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

36. These are on a much smaller scale and different in nature and so probably require different solutions.

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

37. We are not aware of any other legal vehicles.

## APPENDIX 1

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).