

Raising standards in tax advice: protecting customers claiming tax repayments

The IFA welcomes the opportunity to comment on the [consultation](#) published on 22 June 2022.

We would be happy to discuss any aspect of our response and to take part in any further consultations in this area.

Established in 1916, the Institute of Financial Accountants (IFA) is an internationally recognised professional accountancy membership body. Our members work within micro and small to medium-sized enterprises or in micro and small to medium-sized accounting practices advising micro and SME clients. We are part of the Institute of Public Accountants (IPA) of Australia Group, the world's largest SME-focused accountancy group, with more than 49,000 members and students in 100 countries.

The IFA is a full member of the International Federation of Accountants (IFAC) the global accounting standard-setter. We are recognised by HM Treasury to supervise our members for the purposes of compliance with the Money Laundering Regulations, and by the Financial Services Authority in the Isle of Man.

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General comments

1. The Institute of Financial Accountants (IFA) is pleased to have the opportunity to respond to this formal consultation. We are grateful to HMRC for the opportunities already given to us to participate in various roundtable discussions concerning the use of repayment agents and the wider project that seeks to raise standards in tax advice.
2. We note that the current consultation seeks views in three areas:
 - a. the possible restriction of the use of assignments,
 - b. possible measures to ensure taxpayers receive information about an agent's services before entering into an agreement with that agent, and
 - c. a possible requirement that repayment agents formally register with HMRC.

It is hoped that another outcome of this project will be greater clarity for taxpayers regarding the availability of repayments and the technical and ethical standards taxpayers may expect when engaging an accountant who is a member of a respected professional body.

3. It is important to note that external accountants (those who 'by way of business [provide] accountancy services to other persons') are required to be supervised for anti-money laundering compliance, according to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 ('the Money Laundering Regulations'). Those external accountants who are not members of a professional body listed in Schedule 1 to the Money Laundering Regulations are supervised by the Commissioners for HMRC.
4. It is also relevant to consider the professional standards required of members of most professional accountancy bodies. For the purposes of this consultation response, we can only cite the Bye-laws and Regulations of the IFA, and we have already been pleased to have engaged directly with HMRC to explain how a professional body's regulatory framework provides a public safeguard. Other professional body supervisors (PBSs) also require high standards of their members and most – like the IFA – are members of the International Federation of Accountants (IFAC).
5. In May 2022, the government published its response to the consultation on *Restoring trust in audit and corporate governance*. The government intends that the Audit, Reporting and Governance Authority (ARGA - the successor to the Financial Reporting Council) will be provided with new statutory powers in relation to the accountancy profession, including statutory oversight of the professional accountancy bodies.
6. In the future, proportionate and effective oversight of the IFA, and other professional accountancy bodies, by ARGA will recognise the high professional standards to which members of professional bodies are held, and the public will benefit from the recognition of those high standards and the greater clarity to which we refer in paragraph 2 above.
7. The proposal (in 2b above) - that there should be measures to ensure taxpayers receive information about an agent's services before entering into an agreement with that agent - would surely be regarded as reasonable by members of any professional body that requires its member firms to issue engagement letters to clients. In the case of the IFA, for example, engagement letters are required to set out the services to be performed, the scope of the firm's responsibilities, and the terms under which the firm is agreeing to be engaged by the client. The engagement letter must be agreed with the client before any professional work is undertaken by the firm or, if this is not possible, as soon as practicable. If all tax advisers, including repayment agents, were required to be members of a professional body with sufficiently robust professional and ethical standards, they would be required to issue clear and comprehensive engagement letters to their clients, as part of the client engagement process.
8. Additionally, if all tax advisers, including repayment agents, were required to be members of an approved professional body, they would be required to comply with a suitable Code of Ethics. In the case of the IFA, all members, students, affiliates, member firms and contracted firms agree to be bound by the IFA's Bye-laws and Regulations, and to comply with the IFA's Code of Ethics, which is

founded on the IESBA *International Code of Ethics for Professional Accountants (including International Independence Standards)*.¹

9. The consultation refers to the 'growth in businesses that specialise in helping taxpayers and businesses to make claims to HMRC that result in a tax repayment as their main service', and that repayment agents tend to operate on a no-win no-fee commission-based structure. While the provision of a no-win no-fee service is important to those who cannot otherwise afford to appoint an agent who charges on the basis of time, a commission-based fee structure presents an unacceptable threat to the agent's objectivity.
10. Moreover, this consultation begs the question of why taxpayers perceive it as so difficult to recover a repayment that is due to them. Fundamentally, we believe that the ethical obligation of HMRC to reasonably assist taxpayers in claiming and receiving amounts due to them is equally as important as its obligation to reduce the tax gap.
11. We recognise the administrative burden on HMRC arising out of a high volume of 'relatively low value claims'. However, it is difficult to argue that this is a *disproportionately* heavy burden, given that most of the claims are legitimate and the relative significance of each claim can only be assessed with reference to a taxpayer's unique circumstances. Therefore, we would urge caution before suggesting that fewer claims through repayment agents should translate into fewer repayment claims overall.
12. Nevertheless, to the extent that repayment agents are operating on a commission-based structure, it creates a conflict of interest which is likely to result in some ill-founded repayment claims being made. Here too it is worthy of note that the ethical codes of most professional accountancy bodies would effectively address such a conflict of interest.

Questions raised in the consultation

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?

13. We believe this question is fundamental, as a successful outcome will empower taxpayers to choose whether to make a claim themselves and help them to identify when to seek appropriate advice.
14. While considering how to minimise the challenges of making a repayment claim, it would be remiss not to highlight the importance of processing and delivering legitimate repayments in a timely manner. The UK – like elsewhere – has moved from the crisis of a pandemic (still having an impact) to an energy and cost of living crisis in which some taxpayers will expect to receive relief through tax repayments, including business losses being carried back. A government that is slow to deliver legitimate tax repayments at a time when we are looking to the government to relieve economic pressures is leaving itself open to stark criticism.
15. We are pleased to note the opening statement in the Ministerial foreword to the consultation, which expresses the keenness of the government 'to ensure that taxpayers pay the right amount of tax, and, where they are entitled to a refund, can access this easily'.
16. We note that 'HMRC wants to make it as simple as possible for taxpayers to claim reliefs and repayments' and that it has introduced 'digital services that enable taxpayers to claim online directly for simple expenses'. However, the '[Claim a tax refund](#)' page of the gov.uk website lists those areas in which a taxpayer might like to make a repayment claim as follows:
 - pay from your current or previous job
 - pension payments
 - income from a life or pension annuity
 - a redundancy payment
 - a Self Assessment tax return
 - interest from savings or PPI
 - foreign income

¹ The IESBA is the International Ethics Standards Board for Accountants, which is a standard-setting Board of IFAC.

- UK income if you live abroad
 - fuel costs or work clothing for your job
17. Unfortunately, many taxpayers would not understand most of these areas and are very unlikely to be referring to this page of the website. So, without the advice of a professional accountant (or perhaps an employer), the awareness problem remains.
18. There remains doubt that the communication campaigns run by HMRC and referred to in the consultation are reaching and influencing enough people. Given the diversity of taxpayers, we believe the strongest message to taxpayers must be that they should seek advice in respect of their tax affairs that is tailored to their circumstances. We would also encourage HMRC to take every opportunity to remind taxpayers that 'accountancy' is not a protected term and that not all accountants are members of a professional body.

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

19. It is HMRC's ethical obligation to make it reasonably easy for taxpayers to claim appropriate reliefs. When this obligation is met, the use of assignments will naturally reduce. However, we acknowledge that the concerns relating to the use of assignments would not completely disappear.
20. As suggested in our response to Question 1, while the process of making claims can probably be simplified, the more important question is how to make taxpayers aware of the reliefs available to them. It is right that taxpayers pay the correct amount of tax and no more. Therefore, we regard taxpayer awareness as an ethical obligation of HMRC.

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

21. We have discussed this consultation response with IFA members and received the following case study:

An IFA member had completed the self-assessment tax returns for a married couple, which indicated that a tax refund was due. It involved claiming the marriage allowance, which had also been claimed in respect of the previous tax year.

HMRC paid the tax refund due to a repayment agent. It transpired that, some time previously, the clients had signed up with the repayment agent to claim the marriage allowance and, in doing so, had signed to indicate that *any* tax refunds should be paid to the agent. This occurred because the clients had simply followed a link on social media.

Consequently, the repayment agent received money that was not due to them, and it took a great deal of time and effort to remedy the situation. The clients were of the opinion that it was HMRC's responsibility to recover from the repayment agent the refunded tax that was unrelated to the marriage allowance that had been claimed by the agent.

The clients were under the false impression that HMRC, in the absence of clear instructions to the contrary, would always make tax repayments to the taxpayer, and that it is the repayment agent's responsibility to recover their agreed fee from the client. Moreover, they considered that any refund to a third party agent, at the request of the client, should only be in relation to work performed by the agent.

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

22. Among the four typologies identified by Kantar are the 'opportunists'. We believe this category requires further analysis. Some will have been persuaded to engage with a repayment agent even though they have no basis for a claim. However, others will have a legitimate claim, and the question arises of why they were previously unaware of that fact. Such taxpayers would benefit from a trusted relationship with a competent tax adviser, who could act as an authorised agent for more than

repayment claims alone. We would advocate consumer choice based on clear information – provided by both HMRC and the professional accountancy bodies.

23. We understand the typology of the taxpayer who faces a language barrier to making a repayment claim themselves. It is right that such persons are supported in making appropriate repayment claims. However, there can be no assumption that a repayment agent will provide the necessary language support when seeking accurate and relevant information from the taxpayer on which to base a repayment claim. Moreover, it is the responsibility of HMRC to support taxpayers and ensure that neither language nor any other factor (such as disability or access to the internet) acts as a barrier to paying only the right amount of tax.
24. It is difficult to comment further on this question without the clear perspective of the taxpayer who has used a repayment agent. We are in favour of providing informed choice to the taxpayer, and so any lack of clarity around the service being provided by a repayment agent and the cost of that service is our greatest concern. Having said that, specific measures to safeguard the public, such as prohibiting the use of assignments, would seem appropriate.

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

25. It is not appropriate that we respond to this question.

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

26. We have nothing to add, at this stage, in respect of issues with repayment agents discussed in the consultation.

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

27. The consultation notes: 'Repayment agents can submit claims to HMRC without being formally authorised by their client in HMRC's systems. This is known as a 'filing only' agent. In these cases, taxpayers can have no visibility that the claim has been made until, and if [sic], they are informed they are due a repayment.' This situation raises questions about the care with which HMRC is processing taxpayers' personal data. In our opinion, HMRC has an obligation to determine whether the agent is filing the claim on the instructions of the taxpayer and, in any event, inform the taxpayer of the amount of the claim, the basis of the claim and how the repayment may be achieved.
28. It is concerning to read that HMRC is aware of misleading advertising by repayment agents, and we understand that HMRC has been working with the Advertising Standards Authority to address this. We understand that most individuals who act solely as repayment agents are not members of a professional accountancy body. However, if HMRC were to become aware of misleading advertising, a lack of transparency, or unfair practices by an agent who was, in fact, an IFA member, we would wish to be informed (according to section 4.2 of the HMRC standard for agents) so that we would be able to investigate the member's conduct and consider their liability to disciplinary action under the IFA Bye-laws.
29. We note that section 5 of the consultation includes the statement: 'HMRC will make operational improvements to ensure we refer any repayment agents who we believe are breaching advertising standards or consumer rights rules to the relevant bodies'. We assume this means that HMRC will ensure such matters are referred to the agent's professional body (where there is one) or to the Advertising Standards Authority. It must be made clear to all agents that suspected misconduct will be referred to a body that is in a position to take efficient and robust enforcement action.
30. As noted in the HMRC report 'Raising standards in the tax advice market - HMRC's review of powers to uphold its Standard for Agents', published in March 2022, HMRC has statutory powers under section 20(3) of the Commissioners for Revenue and Customs Act 2005. Section 20(3) allows disclosure of misconduct, in the public interest, to an agent's professional body. The March 2022 report states: 'Professional accreditation is a valuable asset to tax agents, and the possibility of tarnish or loss to that status carries weight.' This is a sweeping statement which, while true for many

professionals, is less likely to apply to a repayment agent who is more interested in financial gain than professional standing.

31. Even a member of a professional accountancy body may continue as a tax agent if their membership is taken away from them following that body's disciplinary process. However, as the government appears to recognise in its proposed changes to the role of the Financial Reporting Council (as ARGA), membership of a reputable professional body carries some weight. A consistent approach by HMRC and ARGA will provide greater clarity and protection for consumers.
32. Further, as recognised in the March 2022 report, 'S.20(3) applies only to tax agents who are members of professional bodies with responsibility for regulation of their members. Unaffiliated tax agents, by definition, have no professional body to whom a disclosure can be made.'

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

33. We have responded to this question in our comments above. However, while accountancy remains a profession that is unregulated in statute, we would emphasise the responsibility of the government to make this clear to the general public.
34. But this question is linked to the government's intention to provide ARGA, as the successor to the Financial Reporting Council (FRC), with statutory powers that include the oversight of professional accountancy bodies. In the future, statutory oversight of certain professional bodies by ARGA will help consumers to make informed choices through the recognition of the high professional standards to which members of those professional bodies are held. We anticipate that, in time, the scope of ARGA oversight will expand to include other professional bodies that meet the recognition requirements of ARGA. It would appear reasonable for HMRC to place value on that oversight role of ARGA.

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?

35. We have set out above how professional accountancy bodies require the use of engagement letters. Most professional bodies rely on a principles-based approach that seeks to ensure, above all, that the terms of the engagement are clear. Those professional accountancy bodies that will fall within the scope of ARGA oversight (and which are already recognised as supervisors for anti-money laundering compliance) all have robust disciplinary arrangements to enforce the requirement for clear engagement letters and compliance more widely.
36. We would not oppose a requirement for repayment agents to provide a pre-contractual disclosure form to a client for a contract to be considered valid. However, we assert that a more principles-based approach is preferable.

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

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?

37. It is not unusual for a professional accountant to receive funds into a client account from which the firm's fees are taken before the balance is sent to the client. Members of most professional accountancy bodies will be required to comply with strict Regulations concerning the holding of clients' monies, including receiving written authority from the client before using their funds to settle their outstanding fees. Therefore, we generally regard the use of assignments to be unnecessary.
38. However, we recognise that an agent may wish to use an assignment for legitimate reasons of risk management, especially where the cost of recovering relatively low fees from a client would be

disproportionately high. Nevertheless, other means of managing the risk of bad debts are available to agents, including requiring a reasonable proportion of the estimated fee in advance.

39. The processing of assignments received by HMRC is time-consuming, as is responding to the questions and complaints from taxpayers who do not understand why their repayments have been sent to someone else. Therefore, we believe it is both reasonable and desirable to prohibit the use of assignments by refusing to process applications where assignments are in place. Ethically, HMRC would be required to engage directly with the taxpayer at that point.
40. We believe there is a strong argument for the prohibition of the use of assignments, given the extent to which their use appears to be abused. It would be complicated to draft regulations that clearly set out the limited circumstances in which an assignment might be appropriate. While we recognise that unscrupulous taxpayers may resist paying fees reasonably due to a repayment agent, the use of a prescribed format for an assignment would be administratively burdensome for HMRC to monitor and enforce.

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

41. It is not appropriate that we respond to this question, as we have not been made aware of any IFA firms that use assignments.

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?

42. It is not appropriate that we respond to these questions.

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?

43. We do not believe that prohibiting or restricting the use of assignments alone would adequately address the consumer protection issues discussed in the consultation. We have already set out the need to ensure taxpayers benefit from greater transparency, including in respect of fees, services to be provided, reliefs and claims available, and the regulation of accountants.

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

44. As made clear in the consultation, repayment agents are required to be supervised for anti-money laundering compliance. We assume that most repayment agents are not members of professional accountancy bodies (or another supervisory authority), and so they would be in breach of the Money Laundering Regulations if they were not supervised by HMRC. We consider this a serious matter, and so the need for a repayment agent to register with HMRC as a tax agent serves a dual purpose – making it easier for HMRC to identify its supervised population and providing a means of enforcing compliance (through the available sanction of removing agent status).

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

45. As stated above, we consider it wrong that a taxpayer might be unaware that a claim has been made (and is being processed) on their behalf. HMRC owes the taxpayer a duty of care when it processes the taxpayer's personal data, and it has an obligation to determine the basis on which it is processing

that data. HMRC must be clear that the agent has filed the claim on the instructions of the taxpayer and ensure it has the taxpayer's consent before processing the claim.

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

46. It is not appropriate that we respond to this question.

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

47. For reasons set out above, a requirement for formal authorisation by the client must apply in all cases. We do not believe that the consequential administrative burden placed on agents and clients would be unreasonable.

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

48. We have nothing further to add.

Conclusion

49. It is the ethical obligation of HMRC to reasonably assist taxpayers in claiming and receiving amounts due to them. This is equally as important as HMRC's obligation to reduce the tax gap. While the process of making repayment claims can probably be simplified, the more important question is how to make taxpayers aware of the reliefs available to them. It is right that taxpayers pay the correct amount of tax and no more, and we welcome the statement in the Ministerial foreword to the consultation that expresses the keenness of the government 'to ensure that taxpayers pay the right amount of tax, and, where they are entitled to a refund, can access this easily'.
50. The IFA is keen to support HMRC in achieving greater clarity for taxpayers regarding the technical and ethical standards taxpayers may expect when engaging an accountant who is a member of a respected professional body.
51. It is important to note that external accountants (as defined by the Money laundering Regulations) are required to be supervised for anti-money laundering compliance. In addition, those who are members of a professional accountancy body are likely, in future, to be subject to statutory oversight by ARGAs. This will assist consumers in making informed choices through their understanding of the high professional standards to which members of those professional bodies are already held. In the interests of clarity and consumer protection, HMRC may also recognise such professional bodies as meeting the appropriate standards of member regulation.
52. Nevertheless, there is a clear role for HMRC to play in providing sufficient information to empower taxpayers to choose whether to make a repayment claim themselves or to seek appropriate advice. While accountancy remains a profession that is unregulated in statute, we would highlight the responsibility of the government to make this clear to the general public and to take every opportunity to remind taxpayers that 'accountancy' is not a protected term and that not all accountants are members of a professional body.
53. Professional accountancy bodies can support HMRC in the challenges it faces in the following ways:
- a. Taxpayers are entitled to receive clear information about an agent's services before entering into an agreement with that agent. Most professional accountancy bodies require their members in practice to issue engagement letters as part of their client onboarding process.
 - b. Professional accountancy bodies require their members to comply with a Code of Ethics.
 - c. Most members of professional accountancy bodies agree to be bound by that body's Byelaws and Regulations. Those professional bodies also provide guidance to promote high standards of compliance among their members.

- d. A member of a professional accountancy body will usually be required to comply with strict Regulations concerning the holding of clients' monies, including the need for written authority from the client before using their funds to settle outstanding fees.
 - e. Most professional accountancy bodies have robust disciplinary frameworks and would expect to be informed (according to section 4.2 of the HMRC standard for agents) should HMRC become aware of misleading advertising, a lack of transparency, or unfair practices by one of their members.
54. Whatever measures are introduced seeking to protect customers claiming tax repayments, noncompliance with those measures must be the subject of robust and transparent enforcement action.

Contact details

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