Deeds or letters of assignment: tax refund companies

General Features | Personal tax

30 July 2021

LITRG are increasingly hearing from people who have used a tax refund company in the past, for example to get a payment protection insurance or working from home tax refund, and who are now discovering that unconnected tax refunds are also going to the tax refund company, with further fees being deducted.

This is because the person has signed a deed or letter of assignment. A deed or letter of assignment assures the person named as the assignee that the repayment will definitely be paid to them as opposed to a nomination (like that made via an R38 form, the form from HMRC which enables a reclaim of an overpayment of tax on which it is possible to nominate another person to receive this payment) that can be withdrawn unilaterally by the taxpayer at any time. Sometimes the taxpayer (the assignor) will not know that they have signed it – or may have thought they were signing it in respect of a specific tax refund only and not for past years.

In particular, you should be aware that if a taxpayer has signed a deed or letter of assignment, even inadvertently, it could mean that any 2020/21 P800 refunds (a tax calculation from HMRC indicating that a refund of tax is due) due to them over the next few months, could be diverted.

The word ‘deed’ makes people think of a formal legal document but often the inclusion of a few words on an application pack seems to be enough to be seen as a letter of assignment, even if not a deed. (Note that HMRC’s guidance (see tinyurl.com/4nm4pkm7) suggests that a ‘deed’ needs a witness signature, although it is interesting to note that a different page of HMRC guidance (see tinyurl.com/yh3nbds7) on the same topic does not mention this.)

For example, if a person signs an application pack, they may think they are just giving permission for the tax refund company to act on their behalf. But there may also be some small print saying something such as: ‘I unconditionally assign my repayment of tax (for tax years ending 2017/18, 2018/19, 2019/20 and 2020/21) to…. [tax refund company].’

A deed or letter of assignment is different from appointing an agent via form 64-8. Indeed, it is possible, for a 64-8 to be lodged on someone’s record appointing one agent, but the deed of assignment to be in respect of another.

If it is valid (and this is something that may be subject to challenge), the deed or letter of assignment is legally binding and HMRC say they have no option but to issue the refund to the person (or company) to whom it has been assigned. In particular, note HMRC’s requirements that to be valid:

- it has to be clear, unambiguous and unconditional;
- the wording of the assignment must be provided before the customer’s signature, and cannot appear in small print or after the customer’s signature; and
- no particular form of words is required for the deed or the letter, but the assignment must specifically identify the repayment that is being assigned. For example, ‘Income tax overpaid by me for the two years ended 5 April 2009’ is acceptable, but ‘any repayment of tax due to me’ is not.

Where a refund has been sent to a tax refund company in accordance with a deed or letter of assignment, but there are questions over whether it is valid, a formal complaint should be made to HMRC, because it may be possible to argue that it should not have been accepted by HMRC in these circumstances.

There is further guidance available on LITRG’s website (see www.litrg.org.uk/ref108) to help people understand whether a deed or letter is valid and what to do next.
A valid assignment can only be revoked if both the taxpayer who made the assignment and the person to whom they assigned the refund agree to it being revoked. This is different to simply removing the tax refund company as their ‘agent’, which is a fairly simple process and can be done unilaterally. Some tax refund companies may charge a fee to remove the deed (in addition to collecting the fee on any refunds diverted to them).

It is of course entirely legitimate for people to exercise freedom of choice and use a tax refund company if they so wish, as long as they understand what they are signing up to, the fees they will pay and the scope of any associated deed or letter of assignment. However, this was not the case for those who have written in to us. This is an extremely pressing consumer protection matter that we have urged HMRC to intervene in (see www.litrg.org. uk/ref2508). If you have any thoughts, comments or relevant experiences with tax refund companies and deeds or letters of assignment that we could feed into our discussions with HMRC, please write in and let us know.