Repayment agents and raising standards in tax advice

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LITRG, the CIOT and ATT have submitted responses to HMRC's consultation on 'Raising standards in tax advice: protecting customers claiming tax repayments'.

The consultation was presented as part of the government's agenda to raise standards in the tax advice market. It sought views on targeted action to address consumer protection issues including:

- restricting the use of deeds of assignment where contracts legally transfer the right to a repayment from a taxpayer to an agent;
- ensuring that taxpayers see the information they need to make an informed decision about the use of repayment agents; and
- registration requirements for repayment agents.

LITRG welcomed the consultation, having spent much of this year dealing with queries from taxpayers who had used one particular tax refund company to apply for a working from home refund, only to find out that an assignment – purportedly with their signature on it – had been submitted to HMRC, meaning that unconnected refunds were also sent to the tax refund company.

LITRG noted some of the bold language in the consultation, as well as the serious proposal to prohibit deeds of assignment, and wondered how far this was influenced by experience with that tax refund company. LITRG said that it understood the strength of feeling, given the damage done to taxpayers and trust in the tax system. However, it felt that the whole situation could have been avoided by HMRC simply checking whether the company's processes created legally valid assignments. (HMRC have now published a statement on GOV.UK (tinyurl.com/yyd6yxrn) about cases involving that tax refund company and what action they will be taking.)

HMRC do not currently do enough to alert taxpayers to potential repayment claims. Even if they begin to do more, some taxpayers will not wish to interact directly with HMRC, or will be unable to navigate the HMRC processes for obtaining a refund. LITRG therefore reiterated that some tax refund companies will be meeting a genuine need in the market and operate according to appropriate standards. Assignments can be used legitimately by these tax refund companies because of issues with the bare nomination process. LITRG pointed out that a complete prohibition of assignments (without a reliable alternative way to guarantee that fees can be collected) would severely restrict the ability of good tax refund companies to offer a commercially viable service. LITRG wanted more work to be carried out to assess the impact on taxpayers of any such changes to the tax refund company landscape.

The CIOT laid down some interesting statistics about the take up of tax relief. These highlighted that the need for more people to claim what they are entitled to or the tax system to deal better with these reliefs upfront (through PAYE by making some claims automatic, for example). Until then, repayment agents potentially enable people to get at least some of their entitlement. Making large numbers of sometimes very low value reclaims means that it is not cost effective for traditional agents to act in this space.

In its response, the ATT said it was disinclined to support the complete prohibition of assignments, suggesting that a prescribed format for assignments could address some of the issues raised. It also put forward an alternative ‘twin-track’ process which could be at least as effective as a legally prescribed format at meeting the objectives, and which would include HMRC considering the exercise of its statutory discretion. Under the 1925 Law of Property Act, any debtor – HMRC in this context – who has received notice that an assignment is disputed may opt to pay the amount into a court of law, for that court to hold pending resolution of the dispute, rather than paying it to the assignee.

On the consumer protection aspect, the CIOT and ATT reminded HMRC of the wider debate around raising standards in the tax advice market, saying that 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 and Professional Rules and Practice Guidelines (or equivalent codes).

All three bodies set out several things which HMRC could do to make taxpayers aware that they may be eligible for reliefs and that they could claim directly from HMRC. We also said that we looked forward to the promised publication of HMRC's wider consultation on 'options to improve the wider regulatory framework that supports standards in tax advice in consultation with stakeholders and in a way that fulfils the three criteria of clarity, transparency and enforcement'.

The full LITRG response can be found here: www.litrg.org.uk/ref2679

The full CIOT response can be found here: www.tax.org.uk/ref993

The full ATT response can be found here: www.att.org.uk/ref401

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