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# RAISING STANDARDS IN TAX ADVICE: PROTECTING CUSTOMERS CLAIMING TAX REPAYMENTS

Response by Association of Taxation Technicians

## 1. Introduction

- 1.1 The Association of Taxation Technicians ('ATT') is pleased to have the opportunity to respond to the HMRC consultation document *Raising standards in tax advice: protecting customers claiming tax repayments* ('the Consultation') issued on 22 June 2022<sup>1</sup>.
- 1.2 The Consultation proposes measures to address consumer protection issues for taxpayers who claim tax repayments via agents whose business model typically involves submitting a high volume of tax repayment claims (which individually are often modest in amount) and then accounting to their clients for any resulting repayment only after deduction of their commission (success fee).
- 1.3 Chapter 4 of the Consultation acknowledges that: "Not all repayment agents display insufficient information about their terms and conditions, exploit the use of assignments, or submit high volumes of ineligible claims." For that reason, our references throughout this response, to High Volume Repayment Agents (HVRAs) should be read as applying to those agents whose business methods do involve such (or similar) practices.
- 1.4 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.5 We have had the benefit of seeing the responses to the Consultation prepared by both the Chartered Institute of Taxation and the Low Incomes Tax Reform Group. We fully endorse the content of both those responses.

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<sup>1</sup> <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>

## 2. General Comments and Context

- 2.1 The concerns identified<sup>2</sup> in Chapter 4 of the Consultation are important and topical as media interest demonstrates<sup>3</sup>. The various measures proposed in the Consultation require serious consideration in order to ensure that the most appropriate solutions to the specific issues are identified and implemented.
- 2.2 It is, however, essential to see the Consultation in the wider context of the Government's commitment to raise standards in the tax advice market. The consumer protection issues identified in the Consultation would not arise (or at the very least could be countered more swiftly and effectively) if the provision of all tax services in the United Kingdom was subject to a common system of professional regulation. As long as activities relating to taxation can be undertaken by anyone who chooses to do so and can be undertaken without any kind of effective regulation, there will be the opportunity for those engaged in those activities to do so with scant regard for consumer protection.
- 2.3 Accordingly, we look 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."<sup>4</sup>
- 2.4 In the meantime, we respond to those questions posed by the immediate Consultation on which we can usefully comment. Where we offer no answer to a question, that is because it is directed specifically to others or because we do not have the evidence base or specific knowledge from which to respond.

## 3. The Consultation Questions

### ***Q.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?***

1. To the maximum extent possible, HMRC should use the same methods and media (particularly social media) to raise awareness of eligibility for reliefs and the opportunity to make direct cost-free repayments claims as HVRAs use to market their business to taxpayers. Examples for consideration are given below.
2. Review all existing HMRC YouTube videos which relate to tax repayments, employment expenses, etc to ensure that they have immediate visual appeal, look up to date (some are quite old now) and that they cover all the expenses, reliefs and allowances in connection with which HVRAs promote their services. Then ensure that all the videos can be accessed from a single generic *Think you might be due a tax refund?* (working title only) location with clear links/signposting to the individual videos so that the user can quickly get to what is relevant to them.

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<sup>2</sup> Chapter 4 identifies:

- 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 (in) processing genuine claims more quickly.

<sup>3</sup> See for example: <https://www.theguardian.com/money/2022/jun/27/customers-complain-tax-rebate-firm-has-cost-them-thousands>

<sup>4</sup> See the Foreword by the Financial Secretary to the Treasury to HMRC's *Summary of responses and next steps* (30 November 2021) at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1037174/Raising\\_standards\\_in\\_the\\_tax\\_advice\\_market\\_-\\_professional\\_indemnity\\_insurance\\_and\\_defining\\_tax\\_advice\\_-\\_summary\\_of\\_responses.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1037174/Raising_standards_in_the_tax_advice_market_-_professional_indemnity_insurance_and_defining_tax_advice_-_summary_of_responses.pdf)

3. If not already available, prepare and promote a YouTube video on the process for claiming a tax refund with clear signposting to relevant GOV.UK pages which enable claims to be made.
4. Provide employers and trade bodies with printed and electronic versions of brief explanatory flyers for inclusion with employees' payslips or P60s. The flyers could refer to the online [Claim a tax refund](#) process, typical allowable deductions and sources of GOV.UK information on these and possibly the Personal Tax Account.
5. Provide construction industry contractors and trade bodies with (appropriately varied) explanatory flyers for inclusion with subcontractors' statements of deduction.
6. In both cases (4 and 5 above):
  - (a) a brief note could be included on how to recognise a genuine HMRC website and on 'things to watch out for' if approached by someone offering to obtain a tax repayment;
  - (b) attention could be drawn to alternative non-digital routes to repayment for digitally excluded taxpayers and to the availability of relevant guidance in other languages.
7. Consider the publication of *Getting a tax refund* success stories which demonstrate the ease of the DIY process, emphasise its no-cost nature and explain how to recognise genuine HMRC webpages. These could similarly be supplied to employers, trade unions, trade bodies, etc for use in their publications and/or for distribution. The format used in HMRC's [Tax avoidance - don't get caught out](#) campaign material<sup>5</sup> could provide a useful model.

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

1. Review and adapt the online [Claim a tax refund](#) process to make the process as user-friendly and intuitive as possible. This might (as examples only) involve:
  - (a) Emphasising that online claims usually result in refunds quicker than paper R40s;
  - (b) Using a landing page that avoids complex terms ('life or pension annuity') and unexplained abbreviations ('PPI') and prioritises the types of repayments claims most commonly submitted by HVRAs [see the [current landing page](#)<sup>6</sup>];
  - (c) Avoiding the presentation of an array of questions which are not necessarily mutually exclusive where only a single answer can be selected [see [current second page](#)<sup>7</sup>];
  - (d) Recognising that a taxpayer cannot rely on the subsequent receipt of a P800 if for example they haven't provided HMRC with the information necessary to calculate the tax for a year correctly [see [Have you got a P800 letter from HMRC?](#)<sup>8</sup>];
  - (e) Making no assumption about the taxpayer's ability to know whether they have paid the right amount of tax for a previous year [see [Claim online](#)<sup>9</sup>];
  - (f) Avoiding what appear to be circular references [see the 'claim a refund' link on [Estimate your Income Tax for a previous tax year](#)<sup>10</sup> back to the initial landing page];
  - (g) Comparing the current approach through GOV.UK with alternatives presented by HVRAs.

<sup>5</sup> <https://taxavoidanceexplained.campaign.gov.uk/>

<sup>6</sup> <https://www.gov.uk/claim-tax-refund>

<sup>7</sup> <https://www.gov.uk/claim-tax-refund/y>

<sup>8</sup> <https://www.gov.uk/claim-tax-refund/y/pay-from-your-current-job/between-6-april-2021-and-5-april-2022>

<sup>9</sup> <https://www.gov.uk/claim-tax-refund/y/pay-from-your-current-job/between-6-april-2018-and-5-april-2021>

<sup>10</sup> <https://www.gov.uk/check-income-tax>

2. Review the content, questions and formatting of the landing page [Claim tax relief for your job expenses](#)<sup>11</sup> and all the follow-through pages relating to specific expenses from the perspective of a taxpayer who has never previously claimed a repayment to ensure that they are all as helpful and straightforward as possible.
3. Consider how the Personal Tax Account (or the forthcoming Single Customer Account) could be best used and promoted in connection with the process of claiming reliefs directly.
4. Ensure, so far as possible, that the process for applying directly to HMRC for a repayment is at least as simple as (and no more daunting than) applying through an HVRA.

We do not underestimate the challenges involved (including the need to provide alternative routes for the digitally excluded) but the above points might be summarised as *Making Tax Repayments Digital for Taxpayers*. It is as if the HVRA's have capitalised on digitalisation to fill a gap left in the process of modernising the tax system.

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

*No answer.*

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

1. The three main areas of concern identified in the opening paragraph of Chapter 4 of the Consultation appear appropriate.
2. In addition, in relation to assignments, we think that there is an urgent need to establish clarity as a matter of law on:
  - (a) What (if any) obligations a debtor (HMRC in the particular context) has before acting in accordance with the wording of an assignment of which they have received written notice;
  - (b) What (if any) obligations a debtor has if:
    - (i) they become aware that the assignor is disputing either the validity of the assignment or its interpretation, or
    - (ii) independently of any such indication by the assignor, they form the view that the assignment might not be valid or that the assignor might not have expected it to operate as its wording required;
  - (c) What action a debtor is entitled (as distinct from obliged) to take if, for any reason, they form the opinion that the assignment is the subject of dispute or is legally invalid or does not properly reflect the intentions of the assignor;
  - (d) Whether the bullet-point tests (as set out in HMRC guidance [PAYE91040](#)<sup>12</sup> and identically in [SAM110130](#)<sup>13</sup>) are sufficient to determine both:
    - (i) the validity of an assignment; and
    - (ii) whether it is a legal or an equitable assignment;
  - (e) Whether the construction of the whole documentation package used by an HVRA resulted in an *absolute assignment* (within the meaning of s.136 Law of Property Act 1925) of the whole

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<sup>11</sup> <https://www.gov.uk/tax-relief-for-employees>

<sup>12</sup> <https://www.gov.uk/hmrc-internal-manuals/payee-manual/payee91040#IDAEIM1H>

<sup>13</sup> <https://www.gov.uk/hmrc-internal-manuals/self-assessment-manual/sam110130>

of any repayment and the implications for the taxpayer, HVRA and HMRC if that was not the case.

3. It is outside the scope of the Consultation to explore the above questions in this response but we consider that they are fundamental in determining what HMRC could or should do to address the issues identified in the Consultation. We think, for example, that the answers to the questions could assist identification of:
  - (a) The extent, if any, to which HMRC would be entitled to contact the taxpayer to check the taxpayer's understanding of the implications of their transactions with the HVRA;
  - (b) The action which might be open to HMRC upon becoming aware that the taxpayer disputed any aspect of an assignment;
  - (c) Any risk to the Exchequer of payment being made by HMRC to an HVRA under an assignment which did not stipulate in clear, unambiguous and precise terms the nature of the claim(s) by reference to which the assigned repayment was calculated (such that the taxpayer might assert that some or all of a particular repayment was not subject to the assignment and should accordingly have been made directly to the taxpayer);
  - (d) Ways in which HMRC's processing of assignment-linked repayment claims might be adapted in order to provide greater consumer protection.

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

*No answer.*

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

*No answer.*

**Q.7** *How should HMRC ensure that repayment agents are adhering to existing consumer rights legislation?*

1. The Consultation indicates that "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".
2. We understand that complaints *from both the public and the industry* are accepted by the Advertising Standards Authority ('ASA')<sup>14</sup>. The Consultation's mention of HMRC's previous work with the ASA (in a different context) appears to confirm that HMRC will be able to refer potential breaches of advertising standards to the ASA. It would appear to be wholly appropriate for HMRC to do so.
3. The position in relation to consumer rights may be less clear cut as the rights involved are (by definition) those of the consumer. It would be very helpful to know whether complaints in respect of the activities of HVRA's could be initiated by HMRC. On a point of detail, it would be important to know whether the use assignments which were formally prepared as deeds might circumvent the

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<sup>14</sup> See: <https://www.asa.org.uk/about-asa-and-cap/the-work-we-do/how-we-handle-complaints.html> (Third paragraph of ASA webpage.)

application of consumer protection provisions where (we understand) rights of redress generally presuppose the existence of a contract.

4. If referral by HMRC of potential breaches of consumer rights is not possible, it might be appropriate for HMRC to draw the attention of HMRC's customer (the assignor in relevant cases) to the [consumer protection guidance](#) which is available on GOV.UK<sup>15</sup>.

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

1. This question ties in very much with our comments in section 2 above on the tax advice market and the need for a uniform regulatory framework. The benefit of helping consumers to make informed choices applies to all tax services. The significance of those choices would we believe be much reduced if the provision of all tax services in the United Kingdom was subject to a common system of professional regulation.
2. Our comments above in response to Q.1 and Q.2 are also relevant to this question. If taxpayers were aware that they could make repayment claims themselves and if the process for doing so was as user-friendly as possible, they might be less likely to think that they needed to make any choice (informed or otherwise).

**Q.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?*

1. The answer to this question depends in part on whether the use of assignments circumvents contract law (see paragraph 3 in Q.7 above).
2. In the context of claims for relatively modest repayments, it is difficult to imagine that taxpayers would give more than a cursory glance at standard wordings. Existing levels of engagement by taxpayers with HVRAs suggest that they are not likely to exercise much scrutiny of documentation and its implications. If pre-contractual disclosure forms were introduced, the response by HVRAs might simply be to include a tick box confirmation by the taxpayer that they had read the wording. For these reasons, we doubt whether pre-contractual disclosure forms would add any significant consumer protection.
3. As a separate matter, it is difficult to see why (as a matter of principle) disclosure measures should apply only to a specific type of tax service. There would, however, be strong and understandable resistance to any external requirement for additional disclosure across all tax services – largely on the basis that such transparency is already required by the professional bodies. This tension could make the introduction of any form of pre-contract disclosure problematic.

**Q.10** *Should HMRC legislate to restrict the use of assignments?*

1. There would appear to be a strong case for some restriction (or standardisation) of the use of assignments in the particular context of repayments agents.
2. Whether achieving that restriction/standardisation necessarily requires legislative change may depend upon what obligations and rights HMRC already have (as a matter of law) in terms of

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<sup>15</sup> See for example: <https://www.gov.uk/government/publications/consumer-rights-and-protection-network/consumer-rights-and-protection-network>

establishing the validity of an assignment of which they have received written notice. We have referred briefly to this in sections 2 and 3 of our response to Q.4 above.

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

1. Some form of restriction in order to address the concerns identified in Chapter 4 of the Consultation is definitely required.
2. As a matter of principle, we would prefer a limited restriction. Prohibition by law in the single context of tax repayments of a form of transaction to which HMRC are not a party and which is generally available for use by persons in the UK should only be used if no alternative effective solution can be found. That said, we can see that prohibition has the attraction of apparent simplicity and effectiveness.
3. We are not wholly convinced that the legislation which prohibits the assignment of certain state benefits provides a relevant precedent for prohibiting the assignment of tax repayments. We contrast the two:
  - (a) State benefits are paid from the Exchequer in accordance with specific rules as to how they are paid and the frequency of payment. As they are granted to relieve hardship, it is wholly appropriate that s.187 Social Security Administration Act 1992 makes them inalienable. That in relevant circumstances can ensure that the payment is applied for the intended purpose rather than being applied to meet the recipient's debts to creditors such as a bank.
  - (b) The Exchequer in the context of benefits is a more like a donor than a debtor and can therefore reasonably impose constraints on the donation. The benefit is made inalienable to protect it from possible predators who could prevent it from being fully used for the intended benefit of the donee. Without such a prohibition of assignments and charges, the whole purpose of the benefits could be put at risk. There is accordingly a compelling public benefit reason for prohibiting assignment.
  - (c) By contrast, in relation to a tax overpayment, HMRC is in the same position as any debtor. Any repayment due is part of the taxpayer's personal property. They are free to do with it what they like. In this situation, it is significantly less obvious what influence HMRC and the state (as debtor rather than donor) should have in respect of how the taxpayer deals with their personal property.
4. At point 3 in our response below to Q.12 below, we suggest a process which might address the concerns identified in Chapter 4 without the need for legislative change.

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

1. We think that the design of some form of limited restriction upon assignments should focus on:
  - (a) Providing clarity to the assignor on the implications of their assignment;
  - (b) Reducing HMRC's functions in respect of assignments to the minimum possible;
  - (c) Enabling repayment to be made as promptly as possible.

2. Of the two restricting options, the first (prescription of format) would appear to have greater prospect of achieving the above three objectives than the second (the involvement of HMRC almost as a third party to the assignment) which sounds odd in legal terms and, as the Consultation notes, would be challenging to implement.
3. We would, however, suggest a variation to the concept of a prescribed format. We assume that such prescription would require legislation, given that HMRC is not a party to the assignment. We also anticipate that settling a specific wording and designing a mechanism to enable its subsequent variation (to meet changing circumstances) would be difficult. As an alternative but with the same objective, we think it might be helpful to consider the following:

HMRC announce a twin-track processing for assignment-linked repayment claims from a future date which would involve the following changes;

- (a) Repayment claims made using assignments which adopt a standard format and wording (designed by HMRC but not mandated by law) together with standard format repayment claims (the currently required [form P87](#)<sup>16</sup>) will be prioritised over assignments which use any other format or wording – but still be subject to appropriate scrutiny in order to enable identification and challenge of unsubstantiated claims;
  - (b) Repayment claims made using assignments which adopt any other wording will be subjected to a greater level of scrutiny - which (in order to protect the Exchequer from fraudulent claims) would extend to obtaining direct confirmation from the assignor in respect of each and every repayment under the terms of the assignment that the whole of such amount should be paid to the assignee;
  - (c) HMRC will consider the exercise of its statutory discretion to pay the repayment funds into court<sup>17</sup> (whether or not the standard format and wording has been used for the assignment) in any situation when HMRC had notice that the assignment was disputed by the assignor (or of any conflicting claim in relation to the debt).
4. We believe that the implementation of such a process could be at least as effective as a legally prescribed wording for the assignment in meeting the objectives identified above but have the advantages of flexibility (scope for HMRC to adapt the standard format wording) and not requiring new legislation.
  5. We recognise that the implementation of the suggested twin-track processing would be resource-heavy we but think that would similarly be the case with a legally prescribed form of wording. Prohibition of assignment-linked repayment claims, would, by contrast, reduce demand on HMRC's processing resources but would require new legislation which might be controversial and subject to challenge.

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1077935/P87\\_2022\\_online.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1077935/P87_2022_online.pdf)

<sup>17</sup> This discretion is specifically provided in [s.136 LPA 1925](#) and [s.87\(2\), Judicature \(Northern Ireland\) Act 1978](#). It is possible that the debtor has a similar discretion under general Scottish law but we have not researched that point..



6. Even if a form of wording for assignments was to be mandated or assignments were to be prohibited, our suggestion of twin-track processing could be useful as an interim measure pending the necessary legislation to introduce prescription or prohibition.

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

No answer.

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

No answer.

**Q.15** *What impact would a prohibition of assignments have on your business?*

No answer.

**Q.16** *What impact would a limited restriction of assignments have on your business?*

No answer.

**Q.17** *Do you think prohibiting assignments would address the consumer protection issues cited above?*

1. Prohibition of assignments could curtail HVRA's profiting from work they have not been involved in as the alternative use of nominations could (but might not) make it more obvious to the taxpayer which repayments they were authorising HMRC to pay to the HVRA. That would, however, depend on the wording of the nomination. The same result could, however, be achieved by requiring the use of a prescribed (or favoured<sup>18</sup>) wording.
2. Prohibition might for the same reason help taxpayers to have a better understanding of what they were agreeing to. However, in relation to tax generally, many clients have less than a full understanding of what their agent is doing. That is particularly likely to be the case with vulnerable clients (including those with limited literacy and/or command of English) so consumer protection issues are unlikely to be fully addressed simply by switching to a different form of documentation or wording.
3. Prohibition would overcome the issue of authorisation being irrevocable. We think, however, that the mischief of widely worded assignments could to some extent be countered by HMRC exercising its statutory discretion<sup>19</sup> to pay the repayment into court if an assignor gave notice to HMRC that they were disputing the assignment (see part 3(c) in our response to Q.12 above).
4. Whilst prohibition would reduce some elements of the demands on HMRC resources (checking the validity of assignments), we are doubtful whether it would reduce the demand on resources related to checking the validity of the repayment *claim* (as distinct from the validity of the assignment). In our response to Q.12 above, we suggest an alternative approach which might similarly reduce the commitment of HMRC resources to the checking of validity of assignments.

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<sup>18</sup> See part 3 of our response to Q.12

<sup>19</sup> S.136 LPA and the Northern Irish equivalent legislation provide this discretion. It is possible that the debtor has a similar discretion under general Scottish law.

5. We think that the commitment of HMRC resources to checking the validity of repayment *claims* (as distinct from the validity of the assignment) could be reduced most effectively by requiring all those providing tax services of any kind to be subject to a common system of professional regulation. Please see our opening *General Comments and Context* on improving the wider regulatory framework.

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

1. Prescribing the format for assignments to be used in respect of tax repayments could address the issue of HVRAs profiting from work which they had not been involved - provided an appropriate wording was required. In our response to Q.12, we suggest a variation on the concept.
2. With the same proviso, it might similarly help to address the lack of understanding – but see our comment in part 2 of our response to Q.17.
3. The inability of taxpayers to withdraw unilaterally from an assignment would not (in fact, we think, could not) be addressed by prescribing any form of wording. That inability (subject to the comment in part 3 of our response to Q.17 above) is inherent in the nature of legal assignments.
4. Requiring the use of a standard format for assignments should reduce the commitment of HMRC resources to checking the validity of assignment but, as with prohibition (see Q.17 above), it would do nothing to lessen the burden on HMRC of identifying and countering inflated and ineligible claims. Our responses to Q.19 and Q.20 below have significantly more potential in the latter context.

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

1. We think that HVRAs should be subject to the same obligations and be required to operate to the same professional standards as any other agents undertaking the provision of tax service for their clients. Some form of obligatory registration with HMRC should apply to HVRAs so that HMRC are able to check their compliance with the Money Laundering Regulations. We think that HVRAs should also be required to confirm that (as a minimum) they operate in accordance with HMRC's [Standard for Agents](#)<sup>20</sup>. If registration via the Agent Services Account assisted HMRC's enforcement of those obligations and standards, such registration should be required.
2. In the absence of evidence to the contrary, it seems that the particular business models adopted by HVRAs might be based on the assumption that anything which reduces HMRC's opportunity to identify risk (and therefore increases the chance of a repayment claim being accepted) is worth doing (or not doing, as the case may be). It should not be possible for anyone to engage in the provision of tax services for profit without adhering to the obligations and standards that are required of other agents.
3. Bringing HVRAs within the ambit of HMRC's Standard for Agents could provide HMRC with a much needed sanction against the recurrent submission of unsubstantiated claims. Item 2.2 within the Standards for Agents includes the expectation that agents "work to prevent errors in their clients' tax calculations or claims, taking particular care not to include figures in returns or claims which are not sustainable". Any agent – whether or not an HVRA – who repeatedly submits unsubstantiated

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<sup>20</sup> <https://www.gov.uk/government/publications/hmrc-the-standard-for-agents/hmrc-the-standard-for-agents>

claims is unlikely to be living up to that expectation and is therefore subject to the powers available to HMRC. Those powers include refusal to deal with the agent.

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

1. Yes. Please see our reply to Q.19 above.
2. Our slight hesitation on this point is whether, as a matter of law, a debtor (HMRC in this case) can stipulate the basis on which it complies with the requirements made upon it by an assignment (assuming that assignments are not prohibited). That is a matter on which we cannot comment.

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

No answer.

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

1. No. We think that the requirement (for authorisation of the HVRA by their client) should apply in all cases. The risk of a repayment claim overstating a taxpayer's entitlement to a repayment applies equally even if the repayment is direct to the taxpayer rather than direct to the agent.
2. We also think that imposing the requirement only in situations where the repayment was to be made directly to the HVRA who had submitted the repayment claim could be circumvented – for example by the use of onward assignments in favour of a third party.

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

1. We think that action to address the concerns identified in the Consultation is long overdue. The business model adopted by HVRAs has disrupted normal business for HMRC and exploited the under-resourcing of HMRC. The need for corrective action is urgent. If the government's conclusion following the consultation process is that assignments should either be prohibited or only acceptable if written in accordance with a legally prescribed wording, we anticipate that there will be a delay between that conclusion and the introduction of the prohibition or legislatively prescribed wording. We also anticipate that the announcement of either such conclusion will accelerate efforts by HVRAs to attract new customers in advance of any such legislative change.
2. We accordingly recommend that HMRC should give early consideration to the possibility of:
  - (a) Innovative publicity on relevant social media concerning both entitlement to repayments and the ease of the process for obtaining them;
  - (b) The creation of a dedicated website on the lines of the [Don't get caught out](#) model;
  - (c) Some form of anti-forestalling provision;
  - (d) Interim tightening of the scrutiny of assignment-linked repayment claims;
  - (e) Introduction as an interim measure of some processing change such as the twin-track process suggested in part 3 of our response to Q.12 above;
  - (f) Early introduction of requirements on HVRAs to bring them within the same professional standards as are required of other agents; and
  - (g) Refusing to deal with agents who systematically submit claims where no repayment is due – the possibility of such refusal is already indicated in HMRC's [Standard for Agents](#).

3. One of our members has reported a situation where an HVRA used a 64-8 to register a new client but incorrectly used the UTR of one of the clients of the firm in which our member works (perhaps mistakenly mis-keying a digit). As a result, our member's firm was displaced as agent for their own client and the HVRA was made a repayment of the payments on account which had properly been made by our member's client. It proved very difficult to get the situation rectified. Whilst this may have been an exceptional situation, we think that there may be a case for introducing additional security checks whenever a regular agent would be displaced as a result of the arrival on the scene of an HVRA.

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

1. We are aware of hard-sell tactics in the marketing of services by those offering the opportunity to identify possible tax repayments related to R&D expenditure and capital expenditure. These involve similar issues in respect of professional standards (notably objectivity and integrity) but they do not necessarily present quite the same consumer protection issues. The targets of such marketing are businesses (which often have access to professional or peer advice) rather than the vulnerable and unrepresented taxpayers who are targeted by HVRA's.
2. One of our members has drawn our attention to a situation where their clients were persuaded by a Capital Allowances claim business to claim capital allowances on expenditure in a partnership B&B business. In calculating the potential tax saving, the claim business completely ignored the need to make any private use adjustment and wrongly assumed that both partners were higher-rate tax payers. No consideration was given to the terms of the partnership agreement or the implications of the claim in the event of the sale of the business.

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

1. We think that it is important to distinguish between the activities of HVRA's (see our definition in section 1.3 above) and other agents who make repayment claims on behalf of their clients. Making repayment claims has always been an integral part of the activities of many agents who act in accordance with good professional standards. There is, for example, no inconsistency between maintaining high standards and requiring authorisation for repayment to be made to an agent provided that appropriate safeguards are in place – for example the operation of a separate client account.
2. Subject to the preceding comment and confirmation that there would be consultation in advance of any extension in their application, we think that the measures proposed in the Consultation could be considered for application in any context where there was a perceived abuse of systems especially where that involved the exploitation of vulnerable customers.

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

1. This question is too widely worded to permit an easy answer.
2. In principle, we do not think that tackling unfair contract terms which had been agreed between a taxpayer and any third party should be a function of HMRC. However, to the extent permitted by law and consistent with taxpayer confidentiality, it may in exceptional situations be appropriate for HMRC to alert other agencies to arrangements which appear to be unfair. To the extent that any such contract involved an agent, there could be scope for intervention by the agent's professional

body. To be effective, that would require every agent to belong to and be regulated by a professional body. We anticipate that this will feature as an option in the consultation later this year on how to improve the wider regulatory framework that supports standards in tax advice (as referred to in our opening *General Comments and Context*).

## 5 Contact details

- 5.1 We would be pleased to join in any discussion relating to this consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Will Silsby on 07970 655813 email [wsilsby@att.org.uk](mailto:wsilsby@att.org.uk).

## The Association of Taxation Technicians

8 September 2022

## 6 Note

- 6.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 9,000 members and Fellows together with over 6,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.