

# ***Consultation: Raising standards in tax advice - protecting customers claiming tax repayments***

A public consultation issued by HMRC

Comments from ACCA to HMRC

Ref: TECH-CDR-2007

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## **About ACCA:**

ACCA (the Association of Chartered Certified Accountants) is the global body for professional accountants.

We're a thriving global community of **233,000** professional accountants and **536,000** future professional accountants based in **178** countries and regions, who work across a wide range of sectors and industries. We uphold the highest professional and ethical values.

ACCA is required to work within its public interest remit, to pursue policy that will promote wider good rather than solely representing the interests of our members. We also set and maintain the standards of members operating within and advising private sector businesses on all issues, including those relating to tax reporting and compliance.

We offer everyone everywhere the opportunity to experience a rewarding career in accountancy, finance and management. Our qualifications and learning opportunities develop strategic business leaders, forward-thinking professionals with the financial, business and digital expertise essential for the creation of sustainable organisations and flourishing societies.

Since 1904, being a force for public good has been embedded in our purpose. We believe that accountancy is a cornerstone profession of society and is vital in helping economies, organisations and individuals to grow and prosper. It does this by creating robust trusted financial and business management, combating corruption, ensuring organisations are managed ethically, driving sustainability, and providing rewarding career opportunities.

And through our cutting-edge research, we lead the profession by answering today's questions and preparing for the future. We're a not-for-profit organisation. Find out more at [accaglobal.com](https://accaglobal.com)

Further information about ACCA's comments on the matters discussed here can be requested from:

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### **Raising standards in the tax advice market**

Ethical behaviour in the tax profession is fundamental to the maintenance of trust in the tax system. The work carried out by professional advisers and the bodies they belong to, need to be trusted by society at large as well as by clients and other stakeholders. What a professional accountant does reflects not just on themselves but on the profession as a whole.

ACCA's 2019 report 'G20 Public Trust in Tax' showed People continue to have the highest level of trust in professional tax accountants (55% trusted or highly trusted). Although accountants remain the most trusted group in the debate around tax policy and ethics, there are inevitably conclusions drawn that advisers must at the very least be complicit in the minimisation of corporate tax contributions.

ACCA is supportive of measures to improve transparency for consumers, reduce the volume of speculative claims (should this help sustain or improve SLA times for valid claims and repayments) and prevent abuse of assignments. We know delays in the system present a genuine concern; professional accountants have reported instances where businesses opt to suspend R&D activity rather than file valid claims due to processing delays.

However, these measures must come alongside improved taxpayer education about the distinction and benefits of relevant qualifications for advisers, the services they are qualified to provide and better understanding of baseline standards, terms of engagement as well as the additional protections and oversight professional bodies offer. When conducting discussions with professional accountants ahead of the 2021 consultation on PII cover, a focus group of 35 accountants collectively advising 4,700 businesses reported that in their experience they believed around 44% of taxpayers 'rarely' conducted checks on an adviser before engaging them, a further 6% 'never' conducted checks.

Additionally, in discussions on public trust in the quality of tax advice, professional accountants highlighted that taxpayer trust in tax administration and advice is greatly affected by appointed agents' ability to interact effectively with HMRC and resolve queries in a timely manner. Alongside these reforms it is important that HMRC seeks to improve channels of communication and response time with agents, particularly where they are seeking HMRC support to report or remedy the impacts of poor advice.

With regard to making taxpayers aware of the of the reliefs that they can claim, it is important that taxpayers and appointed/ authorised agents receive the same messages so that advisers can help them to take appropriate action. It is unlikely to that many taxpayers will be prompted by nudge messages due to the lack of general understanding in this area and the expectation that advisers will handle tax affairs.

### **Enforcing a baseline standard for agents**

Agents who are being paid to act for taxpayers will have a legal duty of care to their client and the contractual terms governing the relationship with their clients will be set out in an engagement letter. Relationships between the three parties - HMRC, agent and taxpayer - may vary depending upon the precise circumstances. Some taxpayers use an agent only occasionally to deal with particular transactions, while others will want an agent to handle all their tax affairs and to deal with HMRC on their behalf. A report from HMRC's Wealthy Team in 2021 demonstrated that taxpayers that had engaged agents generally expected them to communicate and manage their relationship with HMRC on their behalf<sup>1</sup>.

However, it is very difficult to enforce standards when anyone is permitted to act as a tax agent. While HMRC expects all tax agents, including unqualified agents, to comply with HMRC's 'Standard for Agents', the scope of this does not fully replicate professional body standards, for example ACCA's [Rulebook](#) and the agreed [Professional Conduct in Relation to Taxation](#). Further, even where an agent may breach the Standard for Agents, there is no obvious remedy or sanction that can be applied, which limits the practical use of this statement to help address poor standards. For example, in the worst cases HMRC should, rightly, seek to exclude agents from access to HMRC systems, but its powers to do so are not clear in respect of systems which are currently accessible on an unrestricted basis. This would also be a draconian power which it may be disproportionate to use in cases of poor, but not criminal, performance or behaviour. These cases might be better addressed through targeted interventions and support to improve performance.

### **Requiring agents to formally register with HMRC**

ACCA is supportive of the proposed requirement for repayment agents to register with HMRC. Members are already subject to registration requirements for AML and practising certificates. As such the proposed measure is preferable as a temporarily measure to tackle abuse among repayment agents that do not hold body membership, while broader options for improving trust

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<sup>1</sup> **Co-operation with the wealthy and their agents-** <https://www.gov.uk/government/publications/co-operation-with-the-wealthy-and-their-agents> (p18)

in the market are explored. This is likely to improve enforcement of the Baseline Standards for Agents, Money Laundering Regulations and assist HMRC in identifying agents submitting high volumes of erroneous claims. HMRC will be best placed to initiate this information gathering and will be in possession of much of the relevant evidence to identify repeat offenders responsible for frequent submission of invalid or erroneous claims and those receiving authorisations which result in a high proportion of customer disputes. However, HMRC must set out what thresholds or criteria will be set for identifying agents that speculatively file high volumes of claims and what action will be taken against them.

Professional accountants have fed back previously that where they see instances of poor tax advice in the marketplace, advisers often manipulate their activities and advertisements to fit different activities and evade additional regulation/ requirements. It would be advisable that registration is a requirement for all repayment agents ahead of submission via the Agent Services Account, regardless of whether the claim is successful.

With regards to the use of 64-8 forms, this process has been cited as particularly slow and complex which may exacerbate delays already present in the system for repayment. As HMRC brings online single customer accounts, it is vital that customers understand what level of access the agent will have to their tax affairs and the process for removing an agent's access.

### **Proposed measures on disclosure**

ACCA supports the view that consumer choice can be improved through better understanding the terms and conditions, fee schedules and authorisations under which repayment agents operate. It is also crucial that taxpayers understand when they are dealing with a third party, rather than HMRC. Letters of engagement provide a clear record to ensure consumers can clearly understand and refer back to the terms on which they engaged an adviser.

Taxpayers should also be encouraged to understand their responsibilities as a taxpayer and the range of credentials and professional qualifications they might look for when choosing an adviser. Guidance can include simple messaging on the 'red flags' taxpayers should be aware of, including the risk of erroneous claims. HMRC should promote general approaches customers take to can decide who is a suitable adviser. If this is successful, guidance might also highlight the additional responsibilities, and level of protection offered by requirements such as professional indemnity insurance and formal complaints procedures that professional accountants of a professional body are subject to, including their duty to advise on risks and ethical considerations, including technical and reputational issues, associated with all available options.

Many repayment agents do not belong to professional bodies and therefore taxpayers should understand that the same standards or codes of conduct may not exist across the board. Additionally, taxpayers do not have transparency on promoters that have previously been suspended, leaving them unable to identify before engaging. ACCA invites further discussion with HMRC on 'kitemarking' or similar and improving assurance for customers and the standards of tax advice offered by qualified advisers.

It is right that HMRC continues to refer repayment agents it believes to be breaching advertising standards or consumer rights to the relevant bodies. Routes must be provided for taxpayers and agents (who are often better placed to identify misleading information) to share details of advisers or advertisements they feel are in breach of such regulations. In April 2022, a poll found that around a third of ACCA practitioners had seen unethical or aggressive tax schemes openly promoted within the marketplace in the last 6 months. HMRC must make routes available to professional advisors to highlight instances of unethical or misleading information they encounter in the marketplace.

HMRC may wish to build this into customer guidance strategies to ensure how taxpayers can communicate effectively with HMRC to tackle instances of poor advice. HMRC should also continue to optimise the impact of its existing powers by publicising verified examples of poor tax advice.

### **Restricting the use of assignments**

ACCA is broadly supportive of this measure, to prevent abuse of assignments. Of the options, it would be preferable to introduce a prescribed template or format for assignments with a clearly worded customer protection message. As stated, the second option proposing a requirement for HMRC to formally agree and tailor assignments would not provide customers with a clear, expected format and may prove onerous for the Department to manage.

ACCA would welcome an opportunity to work further with HMRC on this guidance, utilising our agent community where necessary and by extension, their client base, to identify areas that lack clarity for customers.