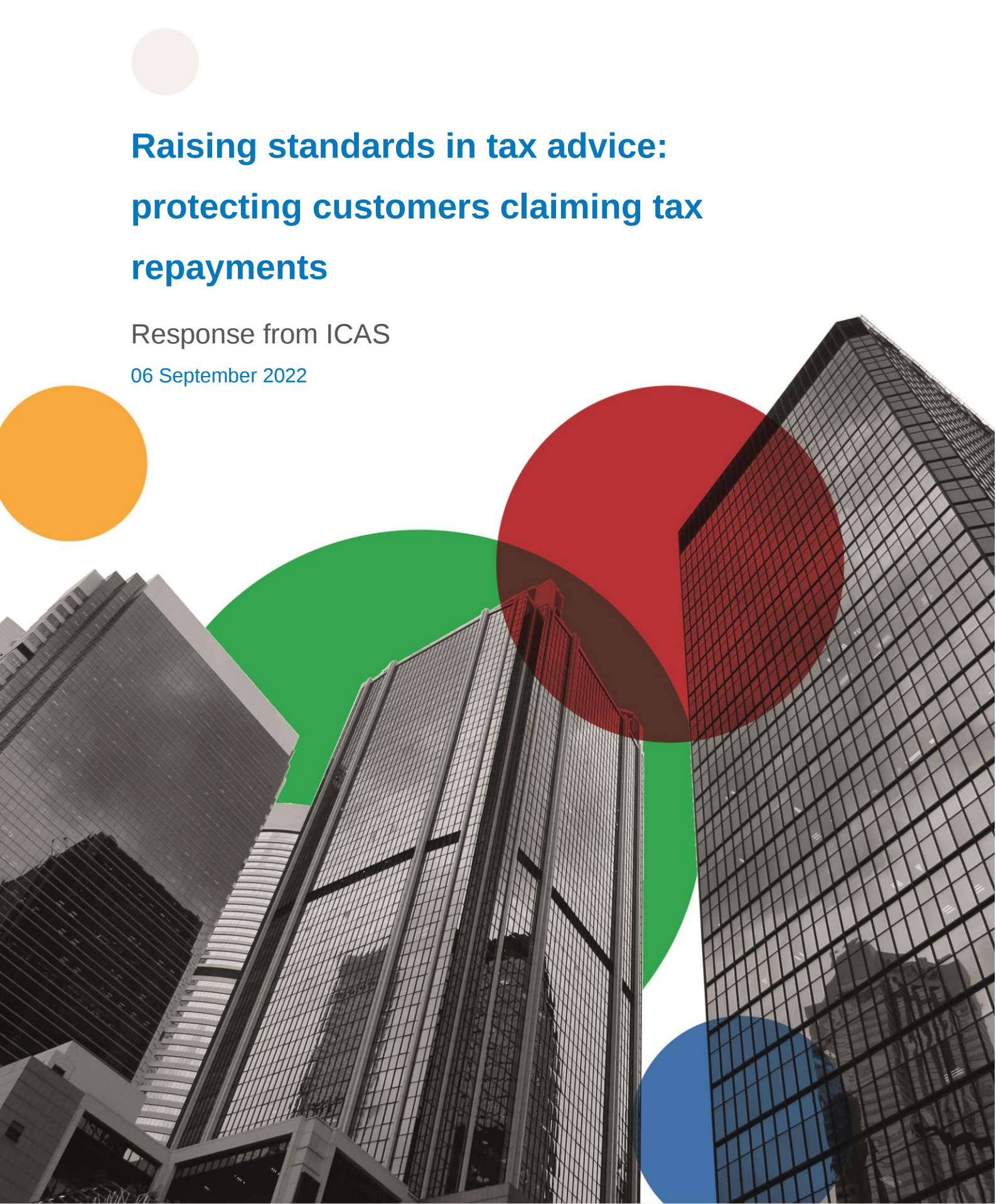




Raising standards in tax advice: protecting customers claiming tax repayments

Response from ICAS

06 September 2022

About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent 23,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 10,000 of our members are based in Scotland and 10,000 in England.
2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.
3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. ICAS welcomes the opportunity to contribute to the consultation, [Raising standards in tax advice: protecting customers claiming tax repayments](#) issued by HMRC on 22 June 2022. We appreciated the constructive discussions with HMRC at the stakeholder meetings on 21 and 29 July 2022.
5. ICAS will continue to contribute to other areas of work within the 'Raising Standards' package; in particular, we will continue to work with HMRC to explain the role we undertake to maintain and promote tax regulatory and professional standards.
6. We also continue to call for simplification of the tax system. There are many reasons why simplification is hard to achieve; one key factor is the lack of transparency about tax. Governments need money to pay for public services but are reluctant to introduce straightforward increases to the main revenue-raising taxes, VAT, income tax and NIC. Resorting to less obvious ways of increasing tax revenues usually means more complexity. Many individuals cannot understand their basic tax obligations and entitlements. This, combined with complex tax administration processes (reflecting the complex underlying rules), deters individuals from interacting directly with HMRC, including making their own claims for repayment.
7. In the absence of significant tax simplification, repayment agents can provide a useful service to taxpayers supporting them to make claims for repayment of tax – as noted in the consultation. However, as the consultation also notes, many repayment agents do not appear to belong to professional bodies. Agents who do belong to the main professional bodies, those that subscribe to, and enforce, Professional Conduct in Relation to Taxation (PCRT), are required to maintain their technical competence and to adhere to high professional standards. This precludes the types of poor behaviour that produce the problems set out in the consultation.
8. Very few ICAS members now receive repayments on behalf of their clients; this used to be common in the pre-self-assessment era but has ceased to be the case. [Clients' money regulations](#) govern how ICAS members must deal with any money they hold or receive on behalf of clients. Other professional bodies have similar regulations.
9. In our view, the only fully effective way to assist consumers, would be to introduce a requirement that everyone acting as a tax agent should be qualified, and should belong to one of the main professional bodies that subscribe to, and enforce, PCRT.
10. This could take some time to implement in full, but it is difficult to envisage any other way to ensure that all tax agents comply with minimum standards of behaviour. In the meantime, we support HMRC's plan to expand its 'standard for agents', so that it more closely matches the standards professional body members are already required to meet; it should also enforce the standard rigorously by imposing sanctions on those failing to comply.

11. Our responses to the specific consultation questions are set out below (excluding the questions aimed at repayment agents). We would be happy to discuss any of these further with HMRC.
12. On the key questions posed by the consultation, our responses can be summarised as:
- HMRC's standard for agents should be expanded, so that it more closely matches the standards professional body members are already required to meet. It should also be rigorously enforced.
 - The use of assignments should be prohibited for tax repayments.
 - Repayment agents should be required to register with HMRC and to be authorised by their clients; they should be treated in the same way as other agents.
 - Additional burdens and requirements should not be imposed on members of the main professional bodies (those that subscribe to, and enforce, PCRT) who are already required to adhere to high professional standards.

Specific questions

Why individuals use repayment agents and how HMRC is making it easy to claim directly

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. As set out in our general comments, the increasing complexity of the tax system means that many individuals cannot understand their basic tax obligations and entitlements. Making taxpayers aware of their eligibility for reliefs is difficult.
14. However, HMRC should consider a high-profile publicity campaign to raise awareness of the most common reliefs and of the ability to make claims directly to HMRC. There is already some useful information on GOV.UK – for example, [Check what financial help you can get from HMRC](#), [Claim a tax refund](#) and [Claim tax relief for your job expenses](#). Making this information more accessible, through a multi-channel publicity campaign, would be useful.
15. The consultation notes that many repayment agents advertise on social media, so it is important that HMRC uses its social media presence, to highlight that claims can be made directly and explaining why it might be beneficial to do so. Wherever repayment agents are seeking business, HMRC should ensure that they are publicising the direct claims route.
16. HMRC should also investigate the possibility of including information/signposting about making direct claims (and about the most common reliefs) on other communications it sends to taxpayers – such as notices of coding, notices to file, confirmations of registration etc. Whilst the information would not be immediately relevant in many cases, it would help to raise general awareness – so that taxpayers might remember that the option exists, at the point when they might make a claim.
17. We understand that HMRC is also talking to employers and trade unions about raising awareness of the ability to make direct claims; we assume this would include highlighting reliefs of relevance to the sectors involved.
18. HMRC could also place articles in the trade press and provide input/case studies to consumer websites (like 'Money Saving Expert') or radio/TV programmes (like 'Money Box'), timed to coincide with the busiest times of year for repayment claims. Local libraries often provide internet and computer access for individuals – so having information available there about some basic tax processes, including common reliefs and repayment claims might also assist.

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

19. As noted above, ICAS supports simplification of the tax system and of administrative processes, wherever possible. One deterrent to individuals claiming for themselves is the complexity of the

underlying tax system which is reflected in complex administrative processes that are difficult to use. This is likely to lead some individuals to turn to repayment agents to make claims – as suggested by the research cited in the consultation. For example, the P87 process is relatively simple, compared to the processes involved in some other tax claims, but anecdotally we understand that some individuals are still deterred from doing it themselves.

20. The consultation notes that HMRC has introduced new digital services to help individuals claim quickly and easily, but this will not help digitally excluded individuals – or those who feel uncomfortable using digital options and do not want to be forced down that route. Even those comfortable with using online services may not find it straightforward to set up a Government Gateway account.
21. Some of those using repayment agents may have struggled with the Government Gateway process and failed to complete it – we have reports of problems with providing the two items required for proof of identity. The addition of the UK driving licence to the list of acceptable evidence may assist with this; it might be worth publicising this in communications about making claims directly.
22. The availability of a postal option for P87 claims, for those who do not want to claim online, is helpful but again might benefit from publicity. HMRC needs to ensure that individuals have a choice about the claims mechanism they use, for all common claims.
23. We also understand that difficulties getting through to the right person via HMRC helplines, when they need help or information, deters individuals from trying to deal with HMRC themselves – and pushes taxpayers towards using agents, including repayment agents. This has almost certainly been made worse by poor HMRC service levels in the last two years.
24. The research cited in the consultation indicates that the reasons for using repayment agents include the opportunity to receive some money without needing to put in much effort, wanting a hassle-free claim process and lack of confidence in the ability to claim themselves. Unless HMRC offers processes individuals feel comfortable using (not exclusively digital) and individuals know that they can access HMRC help and support quickly and easily, usage of repayment agents is unlikely to disappear.

Issues in the repayment agent market and action HMRC is taking

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

25. We have no comments on this question.

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

26. Yes – we agree with the HMRC assessment of the issues. We are not aware of ICAS members acting purely as repayment/filing agents, but we have received reports of members coming across poor practice, when they take on a client who has previously used a repayment agent. Even if concerns are raised with HMRC, it may not be possible to prevent a repayment being made to the previous agent, for the reasons noted in the consultation.

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

27. We have no comments on this question.

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

28. We have received numerous reports of problems with R&D claims being filed by third party 'specialist' agents. See our response to Question 24.

29. Problems are compounded by HMRC initially processing claims and making repayments – encouraging taxpayers to think that the claim submitted on their behalf was sound and probably leading to recommendations to others (generating more work for the ‘specialist’). They are then shocked when the claims are either rejected or investigated, sometimes years later.

Options for going further

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

30. The consultation mentions that HMRC has previously worked with the Advertising Standards Authority (ASA) in tackling promoters of tax avoidance, through a joint enforcement notice. It goes on to say that HMRC will make operational adjustments to ensure it refers any repayment agents it believes are breaching advertising standards or consumer rights to the relevant bodies. We support this proposed HMRC approach, although we do have concerns about whether HMRC has the necessary resources to carry it out, without having a detrimental effect on other work.
31. It would also be useful for HMRC to work with the ASA to produce another joint enforcement notice, this time designed to tackle repayment agents whose advertising is misleading, including misleading by omitting material information.

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

32. Many taxpayers are unaware that some sections of the tax market are not regulated, or that there is no requirement for an adviser to have specific expertise to provide tax advice. As a result of widespread taxpayer misunderstanding about the regulation (or lack of it) of the provision of tax services, it can be difficult for some taxpayers to identify a suitable tax agent. As the consultation illustrates, there is little consumer protection in place if a taxpayer inadvertently chooses an agent who does not belong to one of the main professional bodies.
33. The main professional bodies have standards with which members must comply (including having adequate professional indemnity insurance, compliance with PCRT and undertaking continuous professional development). Members are also strongly recommended to have engagement letters clearly setting out the basis upon which fees are charged and the scope and nature of the assignment. Clients can complain to the relevant body if regulated agents fall short. Whilst unqualified agents should comply with HMRC’s ‘standard for agents’, this does not fully replicate professional body standards – and would only be effective if consistently enforced.
34. The consultation notes that many repayment agents do not appear to belong to professional bodies. In our view, the only fully effective way to assist consumers, would be to introduce a requirement that everyone acting as a tax agent should be qualified, and should belong to one of the main professional bodies that subscribe to, and enforce, PCRT.
35. We appreciate that this could take some time to implement in full, probably requiring a transitional period, but it is difficult to envisage any other way to ensure that all tax agents comply with certain minimum standards for technical knowledge and professional conduct.
36. In the meantime, HMRC should expand its ‘standard for agents’, so that it more closely matches the standards professional body members are already required to meet; it should also enforce the standard rigorously by imposing sanctions on those failing to comply.

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?

37. It would not be appropriate to introduce any measures which would impose additional burdens and costs on agents who belong to the main professional bodies – who are required to adhere to

high professional standards and would usually have in place engagement letters, setting out their terms of engagement, including the basis on which fees are charged.

38. It is difficult to see how any requirement for a specified pre-contractual disclosure form could only be applied to repayment agents, given the absence of any precise definition of such agents. We understand that HMRC is considering using the presence of a contingent fee as an indicator which would trigger HMRC to require the use of a standard pre-contractual form. It seems unlikely that this would be adequate. The use of contingency fees should be discouraged.
39. As set out in our response to Question 8, it would be preferable for HMRC to expand the 'standard for agents', so that it more closely matches the standards professional body members are already required to meet. We cannot see any justification for having two sets of rules for agents; they should all be expected to work to the same minimum standards. It is also essential that HMRC polices and enforces its standard, or the practical impact will be limited.

Proposed measures to restrict the use of assignments

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

40. Yes – see our response to Question 11.

Question 11: Should restriction comprise prohibition of the use of assignments of tax repayments or some form of limited restriction?

41. We support a prohibition on the use of assignments for tax repayments. As set out in our general comments, very few ICAS members now receive repayments on behalf of their clients. This used to be common in the pre-self-assessment era but has ceased to be the case. [Clients' money regulations](#) govern how ICAS members must deal with any money they hold or receive on behalf of clients. Other professional bodies have similar regulations.
42. The use of an assignment is now only likely to be contemplated in exceptional circumstances – and in most cases the use of a nomination should be possible, rather than an assignment.

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

43. See our response to Question 11.

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

44. Feedback from members indicates that assignments are only likely to be used very rarely, in circumstances where a considerable amount of work was involved (for example, on an R&D claim) and some uncertainty existed about payment of fees. As set out in our general comments and our response to Question 11, very few ICAS members now receive payments on behalf of clients.

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

45. We have no comments on this question.

Question 15: What impact would a prohibition of assignments have on your business?

46. See our response to Question 13 and our general comments.

Question 16: What impact would a limited restriction of assignments have on your business?

47. See our response to Question 13 and our general comments.

Question 17: Do you think prohibiting assignments would address the consumer protection issues cited above

48. We believe it would be very helpful. However, as set out in our response to Question 8, the only fully effective way to maximise consumer protection, would be to introduce a requirement that everyone acting as a tax agent should be qualified, and should belong to one of the main professional bodies that subscribe to, and enforce, PCRT.

Question 18: Do you think restricting assignments would address the consumer protection issues cited above?

49. See our responses to Question 11 and Question 17.

Proposed measures to require repayment agents to formally register with HMRC and strengthen evidence of authorisation by customers

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

50. Yes. We cannot see any reason why repayment agents should not be obliged to register with HMRC. It is important that there should be a level playing field, with all agents having to comply with the same minimum requirements. Currently, other agents have to register with HMRC (including demonstrating that they have AML supervision) and obtain authorisation from their clients; repayment agents should be required to do the same.

51. Where repayment agents operate solely by submitting paper forms by post, they should still be required to register via the Agent Services Account. They should also be required to include their agent reference number on the paper forms, so that HMRC would be able to match an agent to their registration.

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

52. Yes. However, the authorisation process should not include a mandatory digital handshake, as this would be likely to cause difficulties for some of those who choose to use repayment agents. We already receive many reports from members of clients unable to complete digital handshakes for the Trust Registration Service or the CGT property reporting service, without assistance. The submission of a 64-8 should be an acceptable alternative route for authorising a repayment agent.

53. It would also be helpful to have a more granular authorisation process, so that taxpayers could authorise an agent only to deal with one specific matter – without giving the agent access to extensive information and correspondence on an ongoing basis.

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

42. We have no comments on this question.

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

54. It should apply in all cases. See our responses to Question 9 and Question 19.

Closing questions

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

55. We have no comments on this question.

Question 24: Have you seen evidence of a consumer protection issues with repayment agents concerning heads of duty other than Income Tax?

56. We have extensive feedback from members about the problems caused by some agents offering R&D claims services – generally, these agents are not members of professional bodies. In many cases, the claims do not appear to have any sound basis. This causes difficulties for members of professional bodies, whose clients are approached by such agents. It can often also cause difficulties for the businesses making the claim, where the agent has disappeared by the time HMRC challenges the claim.

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

57. See our responses to Question 8 and Question 17. Rather than applying measures on a piecemeal basis to different areas of tax, we believe that the only fully effective way to maximise consumer protection would be to introduce a requirement that everyone acting as a tax agent should be qualified and should belong to one of the main professional bodies that subscribe to, and enforce, PCRT.

Question 26: Are there other legal vehicles not mentioned that could give rise to unfair contract terms for taxpayers?

58. We have no comments on this question.

##



Contact us

CA House, 21 Haymarket Yards, Edinburgh, UK, EH12 5BH

+44 (0) 131 347 0100

connect@icas.com | [icas.com](https://www.icas.com)

 @ICASaccounting

 ICAS – The Professional Body of CAs