ICAS Briefing paper – Digital authorisation

Purpose
The aim of this paper is:

- To provide ICAS staff with agreed positions and a list of identified issues and concerns to raise with HMRC, and
- To inform to committee members and ICAS members more widely, in order to make sure that ICAS properly represents all aspects of this topic as it affects tax practitioners.

Introduction
As part of the wider Making Tax Digital agenda, HMRC is expected to create an end-to-end digital authorisation process for taxpayers to appoint an agent. This will result replace the paper 64-8 form used to appoint an agent.

Digital authorisation is necessary in a digital tax system
Implicit in the concept of digital tax, is the need for an effective digital means of appointing a tax agent. But digital brings new challenges and appropriate delivery is essential. Going digital is far more than digitising existing delivery, it requires a rethink. It brings new pinch points and bottlenecks. New digital procedures need to be designed with awareness of their digital context.

Assumed approval
Digital authorisation may be seen by some taxpayers as evidence that HMRC has approved a particular agent. Yet HMRC currently carries out only basic background checks, for example, to ensure an agent is registered for Anti Money Laundering purposes.

Care is needed to ensure that taxpayers do not assume that simply because an agent is recognised by HMRC’s online system that they are therefore competent to undertake the work in view. This aspect of authorisation is part of a wider canvas including the need for recognition of professionally qualified agents.

Overall objectives
To design a system which addresses the needs of all parties as far as is practicable, given finite resources.

- the system must enable all taxpayers to appoint a tax agent in a manner which best suits their personal needs and aspirations. This must embrace both choice and disability. Taxpayers should not be forced to jump through digital hoops in order to achieve their desired objective. This approach mirrors the ‘Your Charter’ commitment that HMRC will ‘accept that someone else can represent you’
- the system must be secure. There need to be adequate safeguards to protect taxpayers, agents and HMRC from criminal use of the system
- the impact on taxpayer behaviour and compliance must be, as far as possible, be positive. Standardisation needs to be evaluated in the context of behaviour-driven motivation. If a system is inflexible, some individuals will engage in undesired, unregulated and potentially invisible patterns of behaviour. These may bypass approved controls. For example, family, friends and others accessing another individual’s digital tax account directly.

Key considerations
Digital will not simply replicate paper. How is the 64-8 process to be transposed into digital format? Here are some key consideration:

- taxpayers must be enabled to appoint multiple agents simultaneously and seamlessly
- taxpayers may wish to appoint different agents for different taxes, specific assignments or multiple agents for the same tax
- change comes with a price tag. Roll out of digital-only authorisation which is incompletely tested will impact costs for HMRC, taxpayers and agents
- the needs of user groups differ and must be balanced. There may be a trade-offs and challenging choices. For example, balancing the demands of security, simplicity and convenience
- the system must be inclusive. There are basic minimum requirements to facilitate inclusion, including the right to delegate digital contact
- it must enable the tax system to work efficiently and effectively for all parties.
Key benefits that should flow from a good authorisation process

Digital authorisation has the potential to speed up authorisation and reduce costs by:

- streamlining access to tax digital processes
- creating an easy to use, efficient process
- putting taxpayers in charge of the authorisation process.

Key overall concerns for the agent

- is authorisation of the agent for all taxes or separately for different specified taxes?
- is it a standard process? Feedback so far suggests different HMRC teams are working on different processes for access to client Digital Tax Account data. For example, PAYE information; CGT 30 day filing; and TRS
- how is agent access and authorisation designed into the digital process from the outset?
- Where is the road map for how the process will be rolled out?
- how will the process impact on the agent/client relationship – especially if the client needs to follow up initial authorisation and via a digital channel?
- is the balance between security of access and ease of use correct?
- how will authorisation be restricted and managed between individuals within a firm?
- should the authorisation process differ for paid and pro-bono advisers?

Key overall concerns for HMRC

- How is taxpayer consent evidenced and is the agent suitable to act for the taxpayer?
  - authorisation – has the taxpayer confirmed their agreement (consent) successfully?
  - is the agent suitably qualified for the work in hand? (Is it the responsibility of HMRC to assure/check the agent?)
- security considerations:
  - is the agent who they say they are?
  - is the system safe from those who might want to hack into it?
  - has safety and ease of use been balanced effectively? I.e. will it be a ‘want to use’ system?
- MTD is premised on ‘digital by default’. How and when can alternative non-digital routes be provided?
- what are the constraints improved by GDPR. Can ‘wet’ signatures be factored in?
- how visible to HMRC are trusted helper and pro-bono advisers?

Key overall concerns for a taxpayer authorising an agent

- The taxpayer will usually want the agent to take responsibility for all contact with HMRC; and to be able to see to everything relevant to the taxpayer client. This may include dealing with digital processes. The client may not want to follow up digitally on authorisation procedures
- They will be looking for a system which is simple, easy and efficient
- Taxpayers will want to be confident that the systems are secure
- Taxpayers are likely to assume that any agent with digital access to HMRC’s systems is proficient and that HMRC has carried out basic checks on the agent. They may even assume that HMRC has ‘authorised’ the agent
Further discussion

One-stop process
The goal for most clients and agents is a ‘one-stop’ process. This is particularly evident with a new client. A single meeting to cover all administrative aspects, from engagement letter to authorisation to act on a client’s behalf with HMRC. This is both efficient and effective.

The paper 64-8 has historically been a suitable way of achieving this one-stop result. As this option is withdrawn, the replacement system must be fit for the same purpose. Unfortunately, digital authorisation in its emerging form, may require the client to create a Government Gateway account and / or access their digital tax account in order to confirm appointment of an agent.

Following an initial meeting, the client will normally need to consider the detail of the engagement letter. Once the engagement letter is adopted, from the client’s perspective the appointment has already been made, and all tax related tasks effectively delegated.

Yet if HMRC processes require a separate and additional ‘digital handshake’ from the client following the initial meeting, the appointment process may be interrupted, and digital delegation is not achieved. From the agent’s perspective, clients may not make timely engagement with the HMRC system to complete authorisation online and the agent is left stranded – appointed in form only, but unable to act.

Consideration should be given to creating an authorisation route which can be done ‘on the spot’, without the requirement for a client to take action outside the meeting with their adviser. This could be achieved via a digital signature or digital verification or by a ‘wet signature’.

For example, identity data such a driving licence or passport details could be used to confirm that it is actually the taxpayer who is authorising the appointment. A firm's practice software could be enabled to ‘verify’ clients and confirm this to HMRC.

HMRC should set out the basis on which it would permit ‘wet signatures’ and ‘authorisation via software’.

Rogue agents
HMRC should address the issue of ‘rogue’ agents through the registration process for agents, not via the digital authorisation process for taxpayers appointing an agent.

Digital exclusion, delegation and challenge
HMRC’s approach to digital is essentially binary. Either someone is ‘digitally excluded’ or they are required to join on the same terms as other taxpayers. There is no room in this view for the nuanced requirements of client and agent.

The definition of digitally excluded is very restricted (see for example on MTDfVAT notice 700/22 para 3.1 https://www.gov.uk/government/publications/vat-notice-70022-making-tax-digital-for-vat/vat-notice-70022-making-tax-digital-for-vat#para-3 ).

Many taxpayers appoint an agent in order to delegate all contact with HMRC. This can be viewed as a form of ‘digital delegation’. The taxpayer is willing for their tax affairs to be dealt with digitally, but they do not wish to be personally involved in the digital process.

For other taxpayers, the matter is more than consumer choice, they are challenged by certain digital transactions. For example, they may be at ease sharing photographs with friends on social media, but would not manage structured tasks, such as completion of forms, setting up accounts, submission of returns or dealing with ‘technical’ matters by emails or online.

Trusted Helpers and pro bono advisers
While the main focus here is on paid-for tax advice, authorisation in its wider context includes representation by friends, family and pro bono advisers.
HMRC rightly would like to formalise procedures here. Formalisation brings visibility and accountability. It also facilitates targeted help.

The boundary between paid-for and pro bono advice is significant for a number of reasons. From a professional point of view, regulatory bodies will normally permit their members to undertake pro bono work without the requirement of holding Professional Indemnity Insurance or a practicing certificate, though for ICAS members, adherence to ICAS ethical standard and Professional Conduct in Relation to Taxation still apply.

By contrast, a formally appointment tax agent will need to show HMRC compliance with AML regulation before they are allowed to act. They will also be subject to regulation and monitoring by their Professional Body.

A trusted helper or family member does not need AML registration to register with HMRC, but currently, the range of tasks which a trusted helper is permitted by HMRC to undertake is limited (https://www.gov.uk/help-friends-family-tax). Critically, the list does not include submission of a self assessment tax return – often the very task a taxpayer would ask a friend, family member, or pro bono adviser to assist with.

From a practical point of view, friends, family member, and pro bono advisers have a positive and beneficial role within the tax system. HMRC’s authorisation process for them is something of a half-way house. It excludes trusted helpers from an activity which they are likely to be asked to undertake for a taxpayer.

This could lead to trusted helpers accessing a taxpayer’s digital tax account directly. An outcome which reduces visibility and accountability.

**HMRC legacy systems and multiple authorisation**

HMRC is in the process of moving its business to the new Enterprise Tax Management Platform (ETMP). Until this is complete, some services will be provided via legacy systems.

HMRC does not expect to access legacy systems to provide information for any service provided via ETMP. This means that existing agent authorisations on legacy systems may not be visible to new services such as CGT 30-day reporting and the Trust Return Service.

While some duplication and disruption is to be expected as part of such a large IT project, it is unfortunate that authorisations for new services are not standardised: each service seems to be developing its own process.

There is significant conflict here as agents are being require in some cases to register a new authority where an existing valid authority is in place. Confusion is also being caused to taxpayer clients through the multiplicity of channels.

**Authorising multiple agents**

Taxpayers may wish to appoint different agents for different taxes, for specific assignments or to appoint multiple agents for the same tax.

For example, a business may retain a bookkeeper to submit MTD/VAT returns each quarter, with a tax agent requiring access for review and year-end finalisation.

Other taxpayers may wish to engage an agent for a specific assignments or project, while retaining their existing agent for annual filing responsibilities. Multinational companies often want to use different agents for particular projects.

This is a potentially complex mix of authorisations and the digital systems needs the functionality to cope with such requirements.
Authorisation via agent’s software

Authorisation via a firm’s existing software is a technically feasible solution. This could incorporate the results of new client AML checks. Any such process would need to give HMRC sufficient confidence that client taxpayer consent had actually been obtained.

Removing an agent

HMRC’s outline journey provides for taxpayers to manage agent authorisation via their Digital Tax Account. A taxpayer who wished to remove authorisation for a specific firm would, on this model, be able to remove authorisation at any stage and potentially without contacting the agent directly.

It is as yet unclear how individuals who do not wish to access HMRC digital services or a digital tax account would remove an agent authorisation under this model. HMRC needs to outline an alternative, non-digital route for removing an authorisation.

In many cases, a previous agent’s authorisation would cease when a new agent is appointed. While this could be done via the agent’s software, there is still the need for a standalone system for removing authorisation, without the need to appoint a replacement agent.

The way ahead

HMRC rightly has a concern to prevent ‘rogue’ agents entering the system, but this must not impede simple routes of agent authorisation. As envisaged at the outset of MTD, a ‘layered’, risk-based approach would be appropriate. This could involve regulated agents obtained simplified procedures.

Combating fraud is best achieved through other procedures. For example effective identification of unusual activity, such as multiple refund claims paid into the same bank account. Taken together with effective agent verification by HMRC, this will be the most effective means to combat fraud.

Current issues

There are a number of concerns about the emerging design of HMRC online agent authorisation:

- different procedures for different taxes – there needs to be a single process applicable to all taxes. The need to authorise an agent separately for different taxes, for example VAT and for the new in-year CGT returns is confusing and inefficient
- while it is recognised that HMRC may need time to move onto the Enterprise Tax Management Platform (ETMP), transparency is needed to avoid undue wasting of practitioner time as legacy systems are phased out
- authorisation procedure needs to take account of the practicalities of how taxpayers are likely to behave. This is has become particularly apparent in the Trust Registration Service
- taxpayer who choose to pay an agent, should not be required to set up Government Gateway accounts to authorise the agent
- the system should operate efficiently where taxpayers or agents are based overseas. Expiry of codes within 30 days is particularly challenging for non-business clients and non-residents
- in multinational scenarios HMRC may have a registered office address – which isn’t the right address for the person needing the code
- elderly clients and clients who are not good at administration may prefer to sign paper copies
- HMRC is acting a gatekeeper to non-digital procedures. There is a danger of it being both judge and jury. There is a risk that the emphasis is on helping taxpayers jumps through existing hoops, as against designing an inclusive system which meets the aspirations of taxpayers and encourages voluntary compliance.
The ICAS role

ICAS (The Institute of Chartered Accountants of Scotland) is the oldest professional body of accountants. We represent over 22,000 members who advise and lead businesses. Around half our members are based in Scotland, the other half work in the rest of the UK or in almost 100 countries around the world.

ICAS regulates over 1,000 practices providing tax, accountancy and businesses services across the UK and beyond.

ICAS has a public interest remit – a duty to act not only for its members but for the wider public good. Our technical experts work in a positive and constructive manner to advise policy makers on legislation and to raise issues of importance to our members, individual taxpayers and business alike.

Taxation is one such area of importance and ICAS has contributed, and will continue to contribute, to tax policy in Scotland, the UK and beyond.

The Tax Board’s objectives in establishing its policy positions are to:

- act in the public interest
- provide constructive input to the authorities, and
- represent ICAS members, affiliates and students’ interests.