



HM Revenue  
& Customs

# Direct Recovery of Debts

## **Consultation document**

Publication date: 6 May 2014

Closing date for comments: 29 July 2014

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| <b>Subject of this consultation:</b>                      | This consultation describes a new power which will allow HMRC to recover debts from the accounts of debtors who are able to pay what they owe but have chosen not to do so, and have not responded to HMRC's attempts to contact them and collect these sums.  |
| <b>Scope of this consultation:</b>                        | This document explains how this measure will work and consults on how best to implement this policy, including which safeguards would be proportionate and balanced to ensure that debtors do not suffer undue hardship as a result of this policy.  |
| <b>Who should read this:</b>                              | This consultation is seeking views from anyone who could be affected by these changes to debt enforcement powers. This includes institutions that take deposits, such as banks and building societies. It is also seeking views from groups representing vulnerable debtors, to ensure the proposed safeguards are balanced and appropriate.   |
| <b>Duration:</b>  | The consultation will commence on 6 May and close on 29 July.  |
| <b>Lead official:</b>                                     | Andrew Willis, HM Revenue & Customs  |
| <b>How to respond or enquire about this consultation:</b> | <p>Responses and queries about the consultation should be sent to:<br/> Andrew Willis<br/> HM Revenue &amp; Customs<br/> Debt Management and Banking<br/> Room 3/46, 100 Parliament Street<br/> London SW1A 2BQ</p> <p>Email: <a href="mailto:andrew.willis@hmrc.gsi.gov.uk">andrew.willis@hmrc.gsi.gov.uk</a></p>   |
| <b>Additional ways to be involved:</b>                    | HMRC welcomes meetings with interested parties to discuss these proposals.   |
| <b>After the consultation:</b>                            | The aim is that a response document to this consultation will be published in Autumn 2014, and draft legislation will be published for consultation at Autumn Statement 2014. The legislation is expected to be taken forward as part of the 2015 Finance Bill.  |
| <b>Getting to this stage:</b>                             | HMRC's analysis shows that some taxpayers and tax credits claimants who owe debts to HMRC have sufficient funds held in accounts to clear their debt. However, they choose not to pay, despite HMRC having attempted to arrange payment on a number of occasions. The current processes for recovering debts from these accounts can be costly, both for HMRC and for the debtor. This policy will modernise HMRC's methods for recovering debt, bringing the UK in line with other countries that already use similar powers. |
| <b>Previous engagement:</b>                               | HMRC has not consulted on this measure before but has previously considered similar proposals in this area. This includes the "Direct attachment of taxpayers' assets", which HMRC consulted on between 25 June and 17 September 2007 (the consultation document can be found <a href="#">here</a> and a summary of the responses can be found <a href="#">here</a> ). Direct Recovery of Debts builds on this principle by including detail on the process and additional safeguards.   |

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**On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats**


# 1. Foreword

The Direct Recovery of Debts, announced at Budget 2014, will modernise and strengthen HMRC's ability to recover tax and tax credit debts from those who are refusing to pay what they owe. It will help to level the playing field between those who pay what they owe, when they owe it, and those who do not. And it will help ensure that compliant businesses do not face unfair competition from others who try to gain an undeserved financial advantage by dodging or delaying their tax payments.

Tax authorities in many advanced economies already use similar powers routinely and responsibly. In these countries, it provides a crucial lever for ensuring the Government is paid what it is owed. Introducing this policy in the UK will bring us in line with many of our peers and form an important part of HMRC's toolkit.

The Government recognises that there are concerns about the impact of this change on vulnerable members of society. We must ensure that there are strong safeguards in place so that this is only targeted at the truly non-compliant. That is why we are proposing to only use this power against a small core of taxpayers who owe significant debts of over £1,000 and have sufficient funds in their accounts to pay. Furthermore, we are proposing to leave a minimum of £5,000 after the debt has been recovered, ensuring that this does not create unnecessary financial trouble for those affected. We are also proposing additional checks and procedures.

This consultation seeks views on the proposed implementation of the change. It is an opportunity for stakeholders to comment on the operational aspects of the policy, including the process and safeguards. This will help us to make sure we are striking a sensible balance between ensuring the Government is paid what it is owed and protecting those who are facing genuine hardship. The Government welcomes responses and engagement in the consultation process from all interested parties.

A handwritten signature in black ink, appearing to read 'David Gauke', written in a cursive style.

**David Gauke**  
**Exchequer Secretary to the Treasury**

## 2. Introduction

### Policy aim

- 2.1 The majority of people pay their taxes in full and on time, and HMRC aims to make it as easy as possible for them to do so. It is then only fair that the minority who do not pay on time are pursued promptly for what they owe, so that the non-compliant do not gain an advantage over the compliant. Equally, HMRC provides a flexible range of support for those who would like to pay on time, but find it hard to do so.
- 2.2 Around 90% of taxpayers in self-assessment file and pay on time but 10% file late or do not file at all, which can create a debt owed to HMRC. Other examples of debts include:
- taxes and duties that have not been paid to HMRC;
  - tax credits that have been overpaid and have not been paid back to HMRC;
  - unpaid National Insurance Contributions; and
  - interest and penalties owed by those who have not paid on time.
- 2.3 One of HMRC's objectives is to reduce the debt owed to it in the most effective way possible. This means:
- ensuring money owed to the Government is paid in full, to fund vital UK public services;
  - contributing towards a fairer tax system, by ensuring the minority of individuals and businesses who do not pay their taxes on time do not gain an unfair advantage over the majority who do pay on time; and
  - providing better value for money for the majority of people who are compliant, by recovering debts in the most cost-effective manner.
- 2.4 This measure will modernise HMRC's ability to recover tax and tax credit debt<sup>1</sup> from those who have been contacted by HMRC repeatedly to pay what they owe and have sufficient funds in their accounts. This will also bring the UK in line with other countries whose tax authorities already use similar powers. HMRC estimates that only a very small proportion of taxpayers (for example, fewer than 0.2% of those in self-assessment) will be affected by this measure.
- 2.5 There are several reasons a taxpayer may build up a debt with HMRC. Examples of taxpayers in this situation include:

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<sup>1</sup> For the purposes of this document, the term 'tax and tax credit debt' also includes unpaid duties and National Insurance Contributions.

- those who would pay if they could but have short term financial difficulties;
- those with serious financial problems who may never be able to pay;
- those who are in a position to pay but choose not to, or delay payment for as long as they can; and
- those who deliberately avoid engaging with HMRC.

This consultation relates to those debtors in the final two of these categories. It covers those who have the means to pay but have ignored multiple requests to do so.

## This consultation

- 2.11 This consultation seeks views on the implementation of the safeguards and other operational aspects of Direct Recovery of Debts (DRD). This is a new means for HMRC to recover debts in the most cost-effective manner and ensure monies owed to the Government are received and can be used to fund public services. It is an administrative measure which will allow HMRC to recover tax and tax credit debts directly from debtors' bank and building society accounts, including Individual Savings Accounts (ISAs), without the need to apply to a court.
- 2.12 HMRC estimates that:
- DRD will apply to around 17,000 cases a year;
  - the debtors affected by this policy have an average of £5,800 in tax and tax credit debts; and
  - around half of the debtors affected by this policy have more than £20,000 in their bank and building society accounts and ISAs.
- 2.13 This will complement HMRC's existing debt enforcement options. It supports the Government's objective of promoting fairness in the tax system by ensuring that those who have the means to pay what they owe to HMRC cannot avoid their obligations. Chapter 2 sets out the design principles underlying DRD.
- 2.14 A similar policy is already used by the Department for Work and Pensions' Child Maintenance Group and other international jurisdictions, where it plays a key part in debt management. Annex A provides some international comparisons.
- 2.15 It is important that there are proportionate and balanced safeguards for this measure and that HMRC minimises the burdens on banks and other financial institutions who will be involved in administering it. Chapter 3 sets out the process through which DRD will be used. Chapter 4 summarises the proposed safeguards.

- 2.16 This consultation is seeking views from anyone who could be affected by these changes to debt enforcement powers. This includes, but is not limited to:
- institutions that take deposits, such as banks, building societies and other financial institutions, who may have to make administrative changes.
  - groups representing vulnerable taxpayers and those on low incomes, to ensure the proposed safeguards are balanced and appropriate.
- 2.17 HMRC will be working with the relevant business groups and sector bodies to get views from those who may be affected. Those who wish to contact us directly can do so using the contact details in Chapter 7.
- 2.18 The Government intends to publish a response document and consult later this year on draft legislation for Finance Bill 2015.

## Principles underlying the change

- 2.18 HMRC collected £475.6 billion in revenue in the year ended 31 March 2013<sup>2</sup> to fund public services. Although the majority of people pay what they owe in a timely fashion, approximately 10% is not paid when it should be and has to be pursued as debt.
- 2.19 Those who have tax debts or have been overpaid tax credits have a responsibility to pay what they owe to HMRC on time. HMRC has a corresponding obligation to make it as easy as possible for people to pay their taxes on time and repay their tax credits overpayments, while providing support for those who are finding it difficult.
- 2.20 Where people realise that they are not going to be able to pay on time, HMRC encourages customers to contact us as soon as possible. Support and guidance is readily available and in the second half of 2012-13 HMRC received 27 million calls from customers with tax queries.
- 2.21 Customers who are unable to pay what they owe by the due date can contact HMRC to request a Time to Pay arrangement, which may include paying the tax owed in instalments. As at February 2014, £2.4 billion of debt was being collected via Time to Pay arrangements. HMRC is committed to providing a flexible range of support for its customers: Budget 2014 announced that 'Self Serve Time to Pay' will be introduced, allowing eligible customers to request a Time to Pay arrangement online.
- 2.22 Having supported compliant taxpayers and provided help to those who find it difficult to comply, it is only fair that the minority who choose not to pay on time are pursued promptly for what they owe.

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<sup>2</sup> HM Revenue and Customs Annual Accounts 2012-13

- 2.23 Feedback from businesses and individual taxpayers has consistently shown that they see a prime function of the tax authority as ensuring that people pay the right amount of tax at the right time. Businesses are particularly concerned about the ability of the non-compliant to undercut their compliant competitors by not paying tax and thereby creating an unfair advantage.
- 2.24 HMRC's preference is for individuals or businesses with debt to get in contact as soon as possible to pay what is owed immediately or, if appropriate, set up an arrangement to pay over a longer period of time. HMRC does not have an interest in putting viable businesses into insolvency to recover the debt it is owed. The returns from doing so are often far lower than supporting a viable business through a Time to Pay arrangement, where appropriate.
- 2.25 In recent years, HMRC has made significant progress in reducing the amount of debt it is owed. This has been achieved by using existing resources and powers more effectively, such as investing in improved analytic capability and adopting more sophisticated collection strategies. However, HMRC is committed to building on its success to reduce the debt it is owed and help ensure the non-compliant do not gain an advantage over the compliant.
- 2.26 HMRC's research shows that many of the businesses and individuals who owe HMRC money but refuse to pay have considerable funds available in bank and building society accounts and ISAs. For example, HMRC estimates that, of those who owe the Government more than £1,000 in tax and tax credit debt:
- 73% have over £10,000 in their bank and building society accounts and ISAs;
  - 48% have over £20,000; and
  - 21% have over £50,000.
- 2.27 These debtors will have been contacted several times by HMRC – and will have had multiple opportunities to pay – before getting to the stage where HMRC needs to take action to recover the debt. They will have refused to co-operate or failed to answer letters, telephone calls or other attempts by HMRC to make contact and agree a payment arrangement.
- 2.28 HMRC has a unique role as a tax collector, acting as a statutory creditor on behalf of the Exchequer. To reflect this role, Parliament has given HMRC powers beyond those available to other creditors. HMRC currently has the legal power in England and Wales and Northern Ireland to take control of certain types of goods without first needing to apply to the courts, as other creditors must. This can be a very useful means to enforce payment where the debtor has sufficient assets that can be sold. HMRC has wide experience of administering this policy fairly, and only exercises its powers after multiple requests for payment and other warnings have gone unheeded.



- 2.29 However, valuable goods in a debtor's possession may not necessarily be legally owned by the debtor. It is increasingly common for businesses to lease or hire plant and machinery, making it impossible for HMRC to recover debts by taking control of those assets. This process is also costly for the debtor, who has to pay levy, removal, valuation and auctioneer's costs. Proceeds from the sale of auctioned goods can often be low. This means that the value to the debtor of the property that is sold is much greater than the amount that actually goes towards paying their debt.
- 2.30 In cases where the debtor does not have sufficient physical assets but does have cash, HMRC has no comparable power to recover cash directly from bank, building society accounts and ISA accounts without first obtaining judgment for the debt in court. This gives debtors plenty of notice before enforcement can be taken, providing an opportunity for the debtor to move or dissipate their assets and make debt recovery more difficult.
- 2.31 For the debtor, a county court judgment brings the indebtedness to public notice and can create greater associated costs for them. For HMRC, while it is an effective method of enforcement in appropriate cases, it can be a slow and expensive process. Consequently, HMRC only takes county court action in a small number of cases each year.
- 2.32 DRD will provide a remedy that is quicker, lower cost and less invasive. Taking control of goods requires entry into a business or private property to assess the goods that could be taken to satisfy the debt and, if the debt is not paid, to remove those goods. DRD will enable HMRC to recover debts directly from a debtor's bank and building society accounts, when they have the ability to pay. It will also be easily reversible, allowing HMRC to swiftly remove the hold on funds once the debtor has arranged to pay what they owe, or return funds to a debtor's account where necessary.
- 2.33 Experience from other jurisdictions (Annex A) shows that a significant number of tax authorities around the world already use similar policies. In many of these cases, the tax authority can instruct a third party holding funds on behalf of a debtor (such as a bank) to put a hold on these funds and transfer the money owed, without the use of a court order. In countries where these powers are employed, experience suggests they are used routinely and effectively.
- 2.34 The Government does not see any good reason why debtors who have funds available should be allowed to delay paying HMRC what is due. Prompt payment should be secured from those who are not meeting their obligations, in order to help level the playing field and ensure that non-compliant individuals and businesses do not gain an advantage over those who are compliant. However, it is important that this is done in a proportionate way. Chapter 4 discusses the safeguards that HMRC is proposing to accompany this policy.

## 3. The Process

### The Proposed Process

- 3.1 HMRC wants to ensure that the operation of this policy:
- avoids creating unnecessary hardship for debtors who are in genuine financial difficulty;
  - minimises the administrative burden on the deposit takers (such as banks and building societies) who HMRC will require to administer it; and
  - minimises HMRC's information requirements, balancing the debtor's privacy with the need to accurately assess the risk of hardship.

### Initial identification of suitable cases

- 3.2 Debts will only be suitable for DRD where there is a tax or tax credit debt of £1,000 or more due to HMRC. This £1,000 debt could be owed against just one tax or could be made up from smaller debts owed across a range of taxes. It will also include National Insurance Contributions that are due to HMRC.
- 3.3 Examples of the types of debt that will be covered by DRD include, but are not limited to:
- tax debt owed by individuals (for examples, income tax or VAT owed by taxpayers in self-assessment);
  - tax credit debt owed by individuals who have received overpayments of tax credits (for example, Child Tax Credit or Working Tax Credit) and need to repay them to the Government; and
  - taxes owed by businesses and partnerships (for example, unpaid corporation tax and Pay As You Earn (PAYE) tax).
- 3.4 Before getting to the stage where DRD is applied, a debtor in self-assessment who has a good history of compliance will typically have been contacted by HMRC around nine times in total (including by letter and telephone). At a minimum, they will have been contacted four times. As part of the contact HMRC uses:
- before a debt is due, the taxpayer will be contacted several times (for example, letters reminding that they are due to file a tax return and pay);
  - if the taxpayer does not pay or contact HMRC to arrange payment of what is owed by the due date, a debt is established. Before any action is taken, debtors will receive further contact from HMRC. This may include letters and phone calls, including from specialist collectors. If the debtor has always been compliant in the past, they are likely to be contacted more times before enforcement is used (compared to a debtor with a history of non-compliance).

Case Study 1, below, illustrates a 'typical' timeline this contact could follow, though this will differ for different debtors.

### **Case Study 1 – Example timeline of HMRC's contact with a debtor before DRD is used**

HMRC uses a targeted response to recover debt from different types of debtor. This is more effective than a 'one size fits all' approach and takes into account the debtor's situation. However, this case study shows an indicative timeline for a 'typical' debtor in self-assessment with a good history of compliance.

Mr. A is self-employed and is registered to pay tax through self-assessment. This means that every year he must report his income and capital gains and claim any tax allowances or reliefs he is entitled to.

- Mr. A receives a letter from HMRC in April 2015, notifying him that he is due to file a tax return for the previous tax year (which ended on April 5th, 2015) and explaining when to do it. Mr. A is registered to file online and therefore has a deadline of January 31st 2016 to provide his tax return.
- As January 31st 2016 approaches, Mr. A receives a letter from HMRC reminding him he is due to file a tax return by this deadline.
- The January deadline is passed and HMRC does not receive a response from Mr. A. HMRC sends Mr. A further reminders, informing him that he has missed the deadline and should immediately file and pay. He is also notified that he has incurred a penalty and that this penalty will continue to increase the longer he delays.
- As Mr. A has not filed a return and provided his information for the 2014-15 tax year, HMRC has to estimate the tax he owes for this period. This figure, combined with the penalty he owes for missing the tax return deadline, establishes a debt for Mr. A. The total debt owed by Mr. A is £25,000.
- Mr. A receives further letters and phone calls from HMRC. These letters and phone calls inform him that he has an overdue Self Assessment tax payment and provide him again with details of how to get in touch with HMRC to arrange this payment. Mr. A also receives warning that he may face more serious action if he does not pay.
- HMRC attempts to recover the money the Government is owed through Mr. A's Pay As You Earn (PAYE) tax code, as he has earned some of his income within the PAYE system in the past. However, this attempt is unsuccessful as Mr. A remains fully self-employed.
- Mr. A still does not respond to HMRC's letters or phone calls. He receives a final warning that if he does not pay what he owes, HMRC may be forced to use stronger enforcement. This may include the use of debt collection agencies, or visiting his premises and arranging for his possessions to be sold at public auction.
- At this stage, HMRC may consider the use of Direct Recovery of Debts to recover what it is owed.

3.5 At any stage in this process, the debtor can contact HMRC to pay in full, agree a Time to Pay arrangement, or query the amount they owe. If the debtor does not agree with the amount of tax that is due, they have a right to appeal to a Tribunal.

- 3.6 As stated in Chapter 2, the vast majority of taxpayers will not be affected by this measure. In self-assessment, for example around 90% of taxpayers pay on time, while 10% file late or do not file at all. DRD will only apply to around 0.2% of taxpayers in the self assessment taxpayer population.
- 3.7 Once a debt is suitable for DRD action to be used, HMRC will match this debt against the bank, building society and ISA account information it already holds. Banks and building societies and other deposit takers are already required to share information with HMRC about interest paid or credited to accounts they hold for their customers. DRD will therefore only be considered in specific cases where a clear match is found, based on HMRC's existing data.
- 3.8 HMRC will review each case before authorising DRD action. Rigorous internal checks will be undertaken to ensure that HMRC has up to date information from banks about a debtor's account and that the debt is still due. HMRC will also check that it is applying the safeguards appropriately (see Chapter 4) which will require cooperation from deposit takers, as described in the next section.

### **Case Study 1 (continued) – Outline of the DRD process**

In Case Study 1 (above), Mr. A owes HMRC £25,000 in unpaid tax and has not responded to HMRC's letters and phone calls, despite multiple attempts to contact him. HMRC now uses DRD to recover the money owed to the Government:

- HMRC sees from its records that Mr. A has £20,000 in his bank account and contacts Mr. A's bank to verify this information.
- HMRC confirms that Mr. A has £20,000 in his account and his account history does not suggest the use of DRD will cause hardship.
- HMRC will leave a minimum of £5,000 in a debtor's account after the debt has been recovered. HMRC therefore instructs the bank to put a hold on £15,000 of the funds in Mr. A's account. Mr. A is able to freely withdraw the remaining £5,000 for use on essential day-to-day expenses.
- HMRC writes to Mr. A, informing him that a hold has been placed on £15,000 in his bank account. The letter urges him to immediately get in touch with HMRC to pay in full or, where appropriate, arrange to pay in instalments. At this stage, Mr. A calls HMRC through its dedicated helpline. He discusses his situation with HMRC and a Time to Pay arrangement is deemed to be appropriate for him. Mr. A arranges to pay his debt in instalments over 8 months.
- If Mr A. had been in touch and provided evidence to HMRC's satisfaction that removing the funds would cause him hardship, HMRC would have instructed his bank to immediately release the held funds back to him and negotiated an alternative means of payment.
- If Mr. A had still not contacted HMRC within 14 days, the bank would have transferred the funds held (£15,000) to HMRC. In this example, Mr. A would still owe £10,000. HMRC would attempt to recover this using alternative methods of enforcement.

The rest of this chapter provides more detail on the steps used in the DRD process while Chapter 4 describes the safeguards that will be in place.

## Contacting the debtor's bank or building society

- 3.9 Once HMRC has established that the debtor has funds in their accounts, it will contact the relevant institution: for example, the debtor's bank or building society ("deposit taker"). HMRC will request information about all the debtor's accounts, including current and savings accounts and ISAs, along with current balances and details of transactions within a specified period. This will supplement the data HMRC already holds on interest-bearing accounts.
- 3.10 This information is required so that HMRC can determine how much money should be held, and ensures that HMRC does not put a hold on money that will be required by the debtor to pay upcoming wages, mortgages or other essential business or household expenses.
- 3.11 HMRC is proposing to ask the deposit taker for 12 months of past account information on the debtor. This will allow HMRC to see any patterns in the debtor's account history, including any seasonality (such as monthly or annual bill payments). This will ensure that HMRC does not inadvertently cause hardship for the debtor when applying DRD to those accounts. HMRC believes that 12 months of information strikes a sensible balance between ensuring HMRC has accurate information while maintaining the debtor's privacy.

**Question 1:** Is 12 months' worth of account information appropriate for HMRC to establish how much the debtor needs to pay upcoming regular expenses?

- 3.12 HMRC is proposing that the deposit taker should be required to supply this information within five working days. This balances the need to ensure HMRC has up to date information on the debtor with the administration this will require from the deposit taker.

**Question 2:** Is five working days sufficient time for deposit takers to comply with account information requests?

## Deciding how much to recover

- 3.13 HMRC will not use DRD if the information shows that the combined credit balances of the accounts concerned are less than £5,000. In cases where the debtor has accounts at more than one institution, HMRC will draw upon information from all relevant deposit takers. HMRC would only seek access to positive balances and will not create or increase overdrafts.
- 3.14 Where the balance is over £5,000, HMRC will analyse the account information supplied by the deposit taker in order to estimate the minimum level of funds that need to be left in the accounts to enable the taxpayer to meet necessary day-to-day domestic expenses. HMRC would exercise the same judgement in doing this as it currently uses when deciding whether to seek a third party debt order in England and Wales.

- 3.15 Where there is evidence that a business account is being used for trading – for example, the payment of regular costs such as employee wages – HMRC will take this into consideration. In most cases, HMRC will look to prioritise recovering debt from accounts that appear to be used primarily for savings over those that appear to be used for day-to-day expenses.
- 3.16 HMRC will protect sufficient funds within the account to cover those expenses. In all cases, HMRC will ensure that a minimum credit balance of £5,000 is available to the debtor across all accounts after the debt has been recovered.
- 3.17 As described in Annex A, a minimum balance of £5,000 goes far beyond the international norm, in countries where the tax authorities have similar powers to DRD. While most authorities take into account an individual's ability to pay their debt before removing funds from their accounts, only some guarantee to leave a minimum amount behind. Those that do leave a minimum level of funds tend to leave far less than £5,000.

**Question 3:** By leaving a minimum balance in a debtor's account, HMRC needs to strike a sensible balance between avoiding putting taxpayers into hardship and collecting money owed to the Government in an efficient manner. Is £5,000 a proportionate and appropriate sum to meet these objectives?

#### Instructing the bank or building society to hold funds

- 3.18 Where HMRC identify that there is a suitable account (and that sufficient funds are available after considering upcoming essential expenses) the deposit taker will be instructed to hold funds up to the value of the debt.
- 3.19 HMRC will usually seek to collect the debt in a single lump sum. Where there are insufficient funds in the account(s) to immediately meet the full value of the debt (but analysis of account information suggests that regular deductions could be made), HMRC will seek payment by instalments.
- 3.20 HMRC appreciates that there will be a cost to deposit takers of providing the required information, holding sums in accounts and transferring funds to HMRC. Some deposit takers may need to make changes to their systems in order to administer this.

**Question 4:** What changes will deposit takers need to make to their systems to administer this policy and will this impose any administrative burdens?

#### Notifying the debtor

- 3.21 Once the deposit taker has placed a hold on the debtor's funds, HMRC will write to the debtor to inform them of the action it has taken. If the debt is to be recovered by instalments, the letter will include full details of all the payments that will be taken from their account. The deposit taker will also be asked to contact the debtor, repeating the details of how to get in touch with HMRC.

- 3.22 Debtors will have 14 calendar days from the date of the letter notifying them of the held funds to either pay by other means (e.g. full settlement of the debt or, in appropriate circumstances, via a Time to Pay arrangement) or to object or provide evidence of hardship. During this period, no funds will be transferred to HMRC.
- 3.23 HMRC believes that 14 calendar days is a suitable period of time for the debtor to arrange payment once the funds have been held. Before reaching this stage, the debtor will have been contacted multiple times by HMRC and will have had ample opportunity to get in touch to arrange payment.

**Question 5:** Is 14 days an appropriate length of time for the debtor to object to HMRC or pay by other means?

### Helpline

- 3.24 A dedicated telephone line will be available for debtors to contact the DRD team and arrange alternative payment or to object. This phone number will be included in the notification letter sent to debtors when DRD action is taken. It will also be provided to the deposit taker who is holding the funds for HMRC, in case the debtor attempts to query the decision through their bank or building society.
- 3.25 If debtors believe they have been incorrectly targeted, the funds are not theirs or they believe the use of DRD will cause hardship, they will be able to contact HMRC via this helpline and discuss their individual case. HMRC already has considerable operational experience in considering hardship applications through Time to Pay, using criteria very similar to those the courts use for hardship payment orders.

### Debtor objections and right of appeal

- 3.26 The debtor will have several means of contesting the use of DRD:
- Before DRD is applied, the debtor will usually have the option of appealing to the independent First-Tier Tax Tribunal on the amount of tax due or on the legal basis of the liability.
  - Once DRD has been applied, if the debtor objects and provides evidence to HMRC's satisfaction that DRD action will cause undue hardship or that the debt is no longer due, HMRC will instruct the deposit taker to immediately release the held funds back to the account holder.
  - If the debtor objects and HMRC does not uphold the debtor's objection, they will continue to have the right to judicial appeal on the use of DRD.

### Recovery action

- 3.27 If during the 14 day period the debtor pays by other means or agrees a Time to Pay arrangement with HMRC, the deposit taker will be notified to release the held funds back to the account holder.

- 3.28 If at the end of the 14 calendar days the debtor has not paid by other means or contacted HMRC to make an objection which is later upheld, the deposit taker will be instructed to transfer the held amount to clear all or part of the debt. In the case of instalments, the bank will be instructed to transfer the first instalment to HMRC and make further transfers until the debt is cleared.

**Question 6:** What would be a suitable time limit for the deposit taker to comply with an order to release funds, either to the debtor or to HMRC?

**Question 7:** What sort of sanction should fall on deposit takers who do not comply either with the initial notice to supply account information or the instruction to release the held amount to HMRC?

### Joint Accounts

- 3.29 HMRC believes it is important to strike a balance between recovering money from debtors while protecting the rights of other account holders. Where a debtor holds a joint account, HMRC proposes that a pro-rata proportion of the credit balance will be subject to DRD. For example, where the debtor holds an account with another person, 50% of the credit balance could be used to pay the debt.
- 3.30 HMRC also proposes that joint account holders who do not owe money to HMRC should have the right to object to the recovery of debts from their joint account on the grounds of hardship or misidentification. Where a hold is placed on a joint account, all the account holders will be notified that this action has been taken and will have the opportunity to object to the DRD notice, to the same timeframes as described above.
- 3.31 If HMRC did not apply DRD action to joint accounts, this would provide an obvious opportunity for debtors to circumvent paying what they owe. This would require HMRC to take harder-edged enforcement action to recover monies owed to the Exchequer.

**Question 8:** Is protecting a proportion of the credit balances of joint accounts the best way to protect non-debtor account holders?



## 4. Safeguards

4.1 Although HMRC will use this power to recover debts from those who have chosen not to pay, HMRC realises that the consequences of mistakes and errors could be serious for debtors. HMRC is therefore proposing to put into place robust safeguards to ensure that:

- it does not target the wrong person's account;
- it does not cause undue hardship by removing funds from accounts that are required to meet immediate and essential day to day business and/or living expenses; and
- any mistakes are rectified quickly and compensation is paid as appropriate

### The principles of the safeguards being proposed

4.2 Before getting to the stage where DRD is applied, a debtor in self-assessment who has a good history of compliance will typically have been contacted by HMRC around nine times in total (including by letter and telephone). At a minimum, they will have been contacted four times. As part of this contact:

- before a debt is due, the taxpayer will have been contacted several times (for example, letters reminding them that they are due to file a tax return and to pay); and
- if the taxpayer does not pay or contact HMRC to arrange payment of what is owed by the due date, a debt is established. Before any action is taken, debtors will receive further contact from HMRC. This may include letters and phone calls, including from specialist collectors. If the debtor has always been compliant in the past, they are likely to be contacted more times before enforcement is used (compared to a debtor with a history of non-compliance).

4.3 In addition, the following safeguards will be built into the DRD process:

- a specialist team within HMRC will be responsible for all DRD cases;
- a dedicated helpline will be available to debtors and deposit takers; and
- only established debts of £1,000 or more will be subject to DRD.

4.4 The debtor will be able to appeal the use of DRD:

- no money will be taken until the debtor is notified;
- once the debtor has been notified, no money will be taken until 14 calendar days has expired;

- during this period, the debtor has the right to object to HMRC or provide evidence of hardship; and
  - if the debtor objects and HMRC does not uphold the debtor's objection, they will continue to have the right to judicial appeal on the use of DRD.
- 4.5 Once DRD action has been taken, funds will be held in the debtor's accounts for 14 calendar days before being transferred. This is an additional opportunity for the debtor to object to HMRC on the grounds that removing funds would cause undue hardship, the funds are not theirs, or that the debt is no longer due.
- 4.6 Whilst DRD is in progress the debtor will have access to money to live on and pay business expenses:
- a minimum amount of £5,000 will be left across the debtors' accounts; and
  - enough will be left to cover day to day domestic and/or business expenses.
- 4.7 Joint account holders will be protected through:
- pro-rata safeguards for joint accounts; and
  - notification of all joint account holders and equal rights to object or appeal.
- 4.8 The debtor will be fully recompensed for any losses incurred as the direct result of an error made by HMRC. Where an error by HMRC results in funds being mistakenly transferred out of an ISA account, we will ensure that funds are replaced and that the account holder does not suffer any loss of their tax free limit for the year.

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| <b>Question 9:</b> Are these safeguards appropriate and proportionate? |
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## 5. Assessment of Impacts

### Summary of Impacts

| Exchequer impact (£m)   | 2014-15   | 2015-16 | 2016-17 | 2017-18 | 2018-19 |
|---|---|---------|---------|---------|---------|
|   |   | nil     | +65     | +120    | +100    |
| <b>Economic impact</b>  | The measure is not expected to have any significant economic impacts.   |         |         |         |         |
| <b>Impact on individuals and households</b>                         | This measure will have no impact on compliant individuals. Around 17,000 non-compliant individuals (including self-employed) are likely to be affected by this measure each year. Those affected will have debts to HMRC and will have chosen not to pay.   |         |         |         |         |
| <b>Equalities impacts</b>   | HMRC does not hold data which indicates impacts on any protected group.   |         |         |         |         |
| <b>Impact on businesses and Civil Society Organisations</b>         | <p>This measure will have no impact on compliant HMRC customers. It will only apply to businesses with debts who have not complied with their legal obligations.</p> <p>Deposit-takers will be required to provide information to HMRC and deduct and transfer sums from customers' accounts to HMRC, which may carry an associated cost.</p> |         |         |         |         |
| <b>Impact on HMRC or other public sector delivery organisations</b> | The additional costs for HMRC for implementing this change are estimated to be in the region of £800,000 over five years.   |         |         |         |         |
| <b>Other impacts</b>  | <p>Direct Recovery of Debts will have no impact on compliant small and micro firms. The majority of debtors affected by this measure are self-employed.</p> <p>Other impacts have been considered and none have been identified.</p>  |         |         |         |         |

## 6. Summary of Consultation Questions

### Question 1

Is 12 months' worth of account information sufficient for HMRC to establish how much the debtor needs to pay upcoming regular expenses?

### Question 2

Is 5 working days sufficient time for deposit takers to comply with account information requests?

### Question 3

By leaving a minimum balance in a debtor's account, HMRC needs to strike a sensible balance between avoiding putting taxpayers into hardship and collecting money owed to the Government in an efficient manner. Is £5,000 a proportionate and appropriate sum to meet these objectives?

### Question 4

What changes will deposit takers need to make to their systems to administer this policy and will this impose any administrative burdens?

### Question 5

Is 14 days an appropriate length of time for the debtor to object to HMRC or pay by other means?

### Question 6

What would be a suitable time limit for the deposit taker to comply with an order to release funds, either to the debtor or to HMRC?

### Question 7

What sort of sanction should fall on deposit takers who do not comply either with the initial notice to supply account information or the instruction to release the held amount to HMRC?

### Question 8

Is protecting a proportion of the credit balances of joint accounts the best way to protect non-debtor account holders?

### Question 9

Are these safeguards appropriate and proportionate?

## 7. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process. The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

### How to respond

A summary of the questions in this consultation is included at chapter 6.

Responses should be sent by 29 July, by e-mail to [andrew.willis@hmrc.gsi.gov.uk](mailto:andrew.willis@hmrc.gsi.gov.uk) or by post to:

Andrew Willis  
HM Revenue & Customs  
Debt Management and Banking  
Room 3/46, 100 Parliament Street  
London SW1A 2BQ

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC Inside Government](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

### Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes.

These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

Amy Burgess, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

Please do not send responses to the consultation to this address.

# Annex A: International comparisons

A.1 Measures for recovering tax and benefit debts from funds held in debtors' bank accounts are used extensively by other tax jurisdictions, and in many cases can form a leading collection method. This chapter sets out examples from different countries to highlight how the power is used.

## United States

A.2 In the US, the Internal Revenue Service (IRS) has the ability to place a levy on bank accounts without the need for a court order. This has been a central component of its enforcement strategy for some time. In 2012 the IRS imposed nearly 3 million levies in total.

A.3 Once the IRS has notified the bank<sup>1</sup> to freeze funds in an account, there is a holding period. This allows any disputes about the ownership of bank accounts to be settled, before the bank sends any money to the IRS<sup>2</sup>. A bank must wait 21 calendar days after a levy is served before sending payment. The debtor can choose to waive this waiting period, so that funds are sent earlier.

A.4 The IRS can recover debts from the entire funds held in the bank account at the time the levy is received. Money deposited after this date is not subject to the levy. This includes any deposits made during the 21 day holding period. The bank does not collect any fees for processing the levy.

A.5 If a taxpayer does not agree with the decision to issue a levy, they have an opportunity to appeal it. Taxpayers have multiple appeal rights throughout the collection process; the most fundamental is an appeal to the IRS. The Collection Appeals Program (CAP) and the Collection Due Process (CDP) provide review and oversight opportunities to review collection actions.<sup>3</sup> If the taxpayer is still not satisfied with a decision, they can request a judicial review by petitioning the United States Tax Court

A.6 The IRS can impose a levy on any account which the debtor has 'an unrestricted right to withdraw funds' from<sup>4</sup>. This means that levies can be imposed on joint accounts which bear the debtor's name. A non-liable third party may claim ownership of funds in a bank account when multiple people hold signature authority for that bank account. The IRS treats this dispute as a potential wrongful levy. A wrongful levy is a levy that improperly attaches property belonging to a third party in which the taxpayer has no rights.

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<sup>1</sup> "Bank" includes credit unions, savings and loan associations, trust companies, and others described in IRC 408(n) and Treas. Reg. §301.6332-3(b)

<sup>2</sup> IRC section 6332(c)

<sup>3</sup> Publication 1660 available at [www.irs.gov](http://www.irs.gov)

<sup>4</sup> IRM 5.11.4.2.1(1), *Multiple Signature Authority for a bank Account*

The third party can seek the return of the funds from the United States by making an administrative wrongful levy claim<sup>5</sup>.

## Australia

- A.7 In Australia the Taxation Administration Act 1953 gives the power to the Commissioner of the Australian Tax Office (ATO) to use a Garnishee Order. This enables the recovery of tax debts from third parties owing money to, or holding money for, a tax debtor without a court order<sup>6</sup>. A 'third party' is usually an employer, a contractor, a financial institution or someone holding money on behalf of the debtor.
- A.8 The third party receiving a garnishee notice is required to pay to the Commissioner any monies which may be held for, owed to, or accruing to, the tax debtor<sup>7</sup>. A garnishee notice requires the third party to pay money to the Commissioner in order to pay off the tax debt.
- A.9 There are two different types of garnishees – a 'point in time' and 'standard' garnishee. 'Point in time' garnishees require the financial institution to use the money available in the taxpayer's account to pay the debt, immediately after which the garnishee expires. A standard garnishee can remain in place over time, until the amount in the notice has been paid or the ATO revokes the notice.
- A.10 The ATO's experience suggests that there are key benefits in using these garnishee orders:
- Immediate payments towards tax debts (from the third party)
  - Improved voluntary compliance resulting from taxpayers changing their behaviour and working with the ATO to meet their tax obligations. This not only results in a taxpayer's current debt being cleared, but also increases the likelihood they will meet future tax payment obligations.
  - Garnishees provide the ATO with both a collection tool and a means to engage taxpayers.
- A.11 The ATO often serves garnishee notices to banks and other financial institutions. It expects that the financial institution will undertake search procedures to locate all the accounts of the debtor held at all branches.<sup>8</sup> To assist in this process, the ATO will list any known account numbers in the notice.
- A.12 Garnishees do not list a debtor's accounts in any order of priority from which the debts should be recovered. They can only apply to accounts owned by the taxpayer, which does not include joint accounts.

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<sup>5</sup> Under Internal Revenue Code (IRC) section 6343(b) or file a suit under IRC section 7426(a)(1) should the administrative claim be denied

<sup>6</sup> Under section 260-5 of Schedule 1 to the *Taxation Administration Act 1953* (TAA)

<sup>7</sup> Under subsection 260-5(2) of Schedule 1 to the TAA

<sup>8</sup> Practice Statement Law Administration PS LA 2011/18 para 116



## Sweden

- A.13 In Sweden, the Enforcement Authority (a Government agency which has responsibility for the recovery of tax claims) can recover debt from bank accounts without a court order.
- A.14 The debt balance can only be attached to accounts that are in credit (i.e. overdrafts cannot be engaged). It only applies to funds in an account at the time when the notice is made. Deposits made after this date will not be subject to the notice and, if required, will need to be attached separately.
- A.15 If the account appears it is being used to cover ordinary living expenses, the Enforcement Authority will leave some funds behind. This amount will be estimated and based on when the next deposit/payment of salary will be left in the account.
- A.16 Depending on the debtor, the Authority will look at business accounts as well as personal accounts. Moreover, company directors can under certain circumstances be held liable for the tax debt of the business, and hence their personal accounts can also be attached.
- A.17 In respect of joint accounts, the co-owners are assumed to own equal shares of the money on the account, unless there is information that would indicate otherwise. This means that the relevant proportion of the account can be frozen to cover the debtor's liability (e.g. if there are 2 names on the account up to 50% can be attached).
- A.18 The power does not exempt any accounts entirely. However, certain restrictions apply with regard to attachment of money on Individual Pension Savings accounts.

## Other examples

- A.19 Many other tax authorities around the world use policies similar to Direct Recovery of Debts. This includes, but is not limited to:
- Canada: a "requirement to pay" can be issued to a third party, such as a bank.
  - Finland: the social insurance department can recover overpayment of benefits using a garnishee order.
  - France: an "avis à tiers détenteur" (notice to third party) can be issued on the bank account of a debtor.
  - Hungary: uses a garnishee system to recover tax debt.
  - Netherlands: an 'irreversible direct debit' can be applied to the accounts of those who have unpaid car tax.
  - New Zealand: compulsory deductions from bank accounts can be issued.
  - Norway: can put a distraint order on a business account used to handle credit card transactions.

- Republic of Ireland: can pursue recovery of debt through a third party, obtaining funds (for example, from a bank account) without going through the courts.
- Slovak Republic: the tax authority and banks have a legal duty to investigate a debtor's assets as soon as a debt arises.
- Slovenia: tax enforcement orders can be applied to the bank accounts of debtors.