How to improve HMRC's collection of debt: coding out

Consultation document
Publication date: 11 July 2013
Closing date for comments: 5 September 2013

Subject of this consultation:	As part of its efforts to improve the collection of debt HM Revenue & Customs (HMRC) is seeking views on proposed changes to the coding out of debts and underpayments.
Scope of this consultation:	The Government intends to increase the coding out limit but would welcome views on the detail and implementation of the proposed changes.
Who should read this:	Those who have a PAYE underpayment, a Self Assessment (SA) balancing payment or an unpaid debt to HMRC or who represent them.
Duration:	11 July 2013 – 5 September 2013
Lead official:	Madeleine O'Brien, HM Revenue & Customs
How to respond or enquire about this consultation:	HM Revenue & Customs Coding Out Consultation Tax Administration Policy Team Room 1/C06, 100 Parliament Street London SW1A 2BQ Email: TAP@hmrc.gsi.gov.uk
Additional ways to be involved:	If you are interested in a meeting to discuss send an email to TAP@hmrc.gsi.gov.uk
After the consultation:	Responses to this consultation will be used to help refine the proposals. A summary of responses document will be published in the Autumn. Once the proposals have been refined, draft secondary legislation to make the necessary changes to the coding out rules will be published for consultation.
Getting to this stage:	The Government has previously consulted twice on the principle of HMRC using the PAYE system to collect more debts due to HMRC ("coding out") as well as increasing the threshold for such collection to £3,000.
Previous engagement:	Budget 2013 announced the Government's intention to consult on the proposed change.

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1. Introduction

HMRC's debt strategy

1.1 The current economic climate means that it is increasingly important that HMRC collect monies owed to the Exchequer in the most effective way possible so that money is available to fund the UK's public services. Chapter 2 provides an update on HMRC's long term strategy for debt collection.

This consultation

1.2 **This consultation** seeks views on the proposed legislative changes to the *collection of debt using the tax code*, announced at Budget 2013. The proposal is that HMRC will improve its collection of debts due to HMRC through the PAYE system (known as coding out), to make the process fairer. This will include increasing the size of debts that can be recovered through coding out from those with higher incomes. Chapter 3 below explains what these proposals will mean, the advantages of coding out for the customer and HMRC, and how they will work.

2. HMRC's debt strategy

Policy Aim

2.1 The debt balance is the amount of debt owed to HMRC. One of HMRC's key objectives is to reduce the amount of debt balance in the most effective way possible, providing better value for money for the majority of people who are compliant.

2.2 HMRC has a range of powers which it currently uses to pursue debts efficiently and effectively. HMRC is continually reviewing them to identify improvements, areas where new approaches can be used or where existing powers could be supplemented or extended.

Background

2.3 A vital part of any efficient tax system is dealing with the debt which arises as a result of non-payment of tax and the associated penalties and interest.

2.4 The majority of people in the UK want to pay the right tax at the right time because they believe that it is the right thing to do and appreciate that tax revenue funds public services for everyone. HMRC has a corresponding obligation to make it easy for people to pay their taxes and be repaid monies that are owed to them as quickly as possible.

2.5 HMRC must collect debt efficiently and economically; safeguarding the position of both vulnerable and short term debtors whilst acting quickly to recover debts from those who deliberately choose not to pay what they owe. It is important that HMRC work with those who are genuinely struggling to pay, encouraging open dialogue as early as possible in order to agree how and when the money will be paid. Having supported compliant taxpayers and provided help to those who find it difficult to comply, HMRC must be able to tackle effectively the minority who choose not to do so, whilst keeping the cost of enforcement as low as possible in order to provide real value for money.

Applying customer insight to debt

2.6 The debt balance is made up of a variety of types of debt. HMRC is continuing to work to analyse the characteristics of customers who owe money to HMRC in order to understand them better. It had previously grouped its customers based on the types of tax they pay but is now grouping customers based on their characteristics and past behaviour.

2.7 This allows HMRC to devise targeted responses in order to recover debt, rather than take a one size fits all approach. Having identified how different customer groups might interact with HMRC, it can use the most appropriate method of recovery and deal with debtors with common circumstances or payment histories in a similar way. HMRC is increasingly able to develop communications that target key groups, and distinguish those who persistently default on payment from those who are usually compliant.

2.8 HMRC has identified the following main types of debtor as:

- 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. This segment may regard HMRC debt as low priority or may be based outside the UK and think that they are outside HMRC's reach; and
- those who deliberately avoid engaging with HMRC.

Improvements in debt collection

2.9 HMRC has made significant progress in reducing the amount of debt due to HMRC in recent years: the figure has come down from over £25 billion in 2008/09 to £15.1 billion in 2012/13. This has been achieved by using existing resources and powers more effectively - investing in improved analytic capability and adopting more sophisticated collection strategies.

2.10 HMRC has also been making it easier for people to pay their debts when they tell us that they are genuinely unable to pay in full and on time. When businesses in temporary financial difficulty get in touch with HMRC in advance of the payment deadline date, the Business Payment Support Service is able to agree time to pay arrangements in most cases when this is requested and appropriate. This service is also available to individuals. And HMRC wants to continue to ensure that people have fast and effective ways to pay off debts they owe to HMRC.

2.11 The 2012 Autumn Statement reinforced the importance of investing in effective debt collection and committed to an increase in debt management resource through 2013-2014.

2.12 Several measures designed to improve how HMRC interacts with its customers and collect tax were announced at Budget 2013:

Automated telephony

- By 2015, HMRC intends to have introduced an automated service within debt management which will allow customers to make payments over the telephone without having to speak to an adviser. This will improve the customer experience and deliver cost and resource savings for HMRC.

Better use of data in debt recovery

- Bringing together the data that HMRC already has about a customer will allow more informed decisions to be made more quickly about how to pursue a debt and when it would be appropriate to offer extra time for the customer to pay.

More effective use of charging orders

- HMRC already has the power to apply to a court for a charging order to aid in debt recovery. This is usually a last resort, but where the debtor has long term financial difficulties and does not engage with HMRC it can be an effective method of debt collection. HMRC intends to increase usage of such orders, in line with existing guidance, in order to increase collection success in the most difficult cases.

Extending the use of coding out

- HMRC has the power to collect debts, PAYE underpayments and SA Balancing Payments of up to £3,000 by coding out. This limit applies to all customers within PAYE regardless of their income. HMRC intends to make better use of coding out by allowing larger debts to be collected via PAYE from those with higher earnings.

Future work

2.13 Despite the improvements to date, the level of debt is still significant and HMRC is committed to building on its success to reduce the balance further. This can be done in part by improving or enhancing existing methods (including making comparisons with the private sector and the methods used by overseas authorities), and this consultation seeks responses on extending HMRC's use of one of the most effective tools, coding out. But HMRC also wants to develop new approaches to both preventing and managing debt and so is interested in hearing views on any other options that should be considered in order to reduce debt.

3. Proposals on coding out and assessment of Impacts

Background

3.1 Employees or those with a UK based pension generally pay tax under Pay as You Earn (''PAYE''). Employers or pension providers operate PAYE on the pay or pension payments they make and use a tax code provided by HMRC to calculate the amount of tax to deduct from those payments.

3.2 HMRC calculates tax codes so that individuals get their tax-free Personal Allowance as appropriate and pay the right amount of tax for their PAYE income, spread over a year.

3.3 The tax code can also be used as a tool to collect money owed to HMRC. This is known as coding out.

Coding out debts

3.4 Coding out is used to recover Tax Credit and Self Assessment (SA) debts where the taxpayer has not paid voluntarily. Coding out was introduced in 2011 and is now an established method of debt collection which is routinely applied. This recovery method is being extended to include Class 2 NICs debts from April 2014.

3.5 To collect in this way, HMRC will assign a new tax code to the debtor, which means that the normal deductions made from a taxpayer's earnings by their employer will be increased to include an amount that will pay off the sum they owe to HMRC over the year. Because the deductions are made before the individual receives their net pay, the payments are made without the individual needing to take further action. HMRC will always include the debt in the code for the start of the tax year.

3.6 For debts that cannot be coded out HMRC may need to use more costly, resource intensive recovery and enforcement methods.

3.7 Following consultation[1], the Finance Act 2009 introduced a power for HMRC to collect debts due to HMRC of up to £2,000 a year through the PAYE system, allowing debtors with a source of income within PAYE to spread their payments and reducing HMRC's costs.

3.8 HMRC will always send a letter to the taxpayer explaining the intention to code out. The amount of debt to be collected through the PAYE code will then be

[1] : Payments, Repayments and Debt: The Next Stage published on 24 November 2008

shown on the Annual Coding Notice (P2) which will be sent to the taxpayer between January and March before the new tax year starts on 6 April.

3.9 SA taxpayers cannot object to having the debt included in their code unless they make other arrangements to pay. Tax credit customers can object to recovery through their tax code at any time in the process, and any taxpayer can object to the Annual Coding Notice if they consider it is incorrect. The PAYE system has built in safeguards in place to prevent hardship. These safeguards generally ensure that coding out of a tax underpayment or debt due to HMRC does not result in a tax deduction of more than 50 per cent of gross pay for the pay period.

3.10 HMRC offers help to any taxpayer who believes that having a debt collected by reducing their tax code will cause financial difficulty. Anyone who has concerns about the debt being collected through the code should contact HMRC immediately. Contact details are on HMRC letters and sign-posted on the website.

Coding out underpayments

3.11 Coding out can also be used where there has been an underpayment of PAYE or an SA balancing payment (an amount owing under a taxpayer's SA tax return) if it is below the £3,000 limit.

3.12 Although around 85 per cent of tax deductions made through PAYE are correct, PAYE underpayments can arise when an individual pays too little tax through PAYE. At the end of every tax year employers and pension providers send HMRC details of individuals' income, the tax paid and company benefits received during the year. HMRC then check those figures to ensure the correct amount of tax has been paid. Where a discrepancy arises i.e. either too much or too little tax has been paid, a Tax Calculation (P800) is issued, telling individuals what HMRC considers the correct amount of tax to be.

3.13 An underpayment of tax can occur if an individual's income increases but HMRC does not know about it right away so does not adjust the code, or if the employer or pension provider uses the wrong tax code. In these cases, an individual will often be able to pay back the underpayment for the current or earlier tax years through an adjustment to their tax code. This approach is used for PAYE underpayments up to £3,000. It both spreads the burden of the payment for the individual and reduces the cost to HMRC. The administrative burden for the taxpayer of collecting small amounts is also reduced.

3.14 Where a taxpayer is in receipt of income subject to PAYE and completes an SA tax return, any balancing payments arising up to £3,000 will be automatically collected wherever possible through their PAYE code in the subsequent tax year (for Returns filed by 30 December in the year of issue) provided they do not object to coding out. So for example, an SA customer completing their 2012-13 return would need to file their return by 30 December 2013 to have their 2013 balancing payment included in their PAYE code for 2014-15.

3.15 A customer can contact HMRC if they do not want to have their PAYE underpayment or SA balancing payment coded out. In those circumstances, however, the customer would have to make a direct payment for the amount or, in the case of a PAYE underpayment, submit a return under SA in order for the underpayment to be collected through the legal framework of the SA system.

Increase in the coding out limit

3.16 The coding out limit was increased from £2,000 to £3,000 by secondary legislation from July 2011. The consultation on this was by a technical discussion paper - Collecting debts through PAYE published on 14 April 2011. The consultation sought views on draft secondary legislation designed to extend collection through PAYE to all debts owed to HMRC, as well as increasing the threshold for such collection to £3,000.

3.17 The increase allowed HMRC to reconcile more customers' records electronically rather than requiring manual arrangements which are resource intensive. It applied to debts and tax underpayments and aimed to strike a reasonable balance between allowing HMRC to recover more through the tax code whilst still protecting lower earners.

Advantages of coding out a debt

3.18 Since its introduction, coding out of debts has proved an effective and efficient way to collect debts from those within the PAYE system.

3.19 For those in employment or in receipt of a UK based pension, coding out provides an efficient, simple and convenient method for clearing outstanding debts. In terms of the customer, the benefit is that the debt or underpayment is spread and collected over a tax year, with no need for the customer to do anything.

3.20 The benefit for HMRC is that coding out is a robust automated system. Once it has been set up, the debt due is recovered automatically via PAYE with no need for further intervention by HMRC. Using the PAYE system to collect debt frees up collection resource to be focussed on other debts.

Disadvantages to the current limit

3.21 HMRC's approach to coding out debts and the increase to the limits in 2011 have worked well to date but there are limitations.

3.22 To prevent hardship a limit is necessary to restrict how much can be deducted from a person's salary to recover a debt due to HMRC and/or tax underpayment. This limit is currently £3,000 per year. Whilst the system must treat all earners fairly it is also important that the limit is set at a level which allows HMRC to make the best use of this tool to reduce debt.

3.23 The current coding out limit of £3,000 per annum was set in 2011 in order to strike a reasonable balance between allowing HMRC to recover debts, whilst protecting lower earners. But as it applies to all taxpayers regardless of their incomes, it represents a larger proportion of lower earners' income compared to that of higher earners. And higher earners also tend to have larger debts, which are less likely to qualify for coding out.

3.24 So coding out, one of HMRC's most effective debt collection methods, is a tool that can work well for lower- and middle-income earners, but from which higher earners are often excluded. For example, at present, if a debtor owes £2,995 and earns £25,000 per annum, HMRC can use coding out to collect the debt. But if a debtor owes £3,005 and earns £100,000 per annum, HMRC is not able to use coding out to collect the debt, and must instead use more expensive debt pursuit methods. This is inefficient and unfair.

Proposed changes to the annual limit

3.25 HMRC's aim is to:

- make more use of coding out;
- collect more from higher earners while protecting lower earners; and
- extend the focus of coding out from just small debts to larger ones.

3.26 HMRC is therefore proposing to replace the current single scale by a graduated scale of limits. This would:

- protect those on lower incomes, with no change to the maximum that could be coded out for those earning less then £30,000; and
- introduce a graduated, income related scale for earnings of £30,000 or more so that a maximum of £17,000 could be coded out for a person with earnings of over £90,000.

Earnings in this context means earnings from the source associated with the main source of income paid through PAYE (the 'primary' PAYE source).

No change in the limit for incomes less than £30,000

3.27 To avoid any change for low earners, the limit would remain at £3,000 for anyone with a primary source of PAYE income of less than £30,000 a year.

Proposed graduated limit for incomes of £30,000 or more

3.28 The graduated limit would apply for those with a primary source of PAYE income of £30,000 or above a year. The proposed graduated scale is shown below.

PAYE Earnings	<£30k pa	£30k - £40k pa	£40k - £50k pa	£50k - £60k pa	£60k - £70k pa	£70k - £80k pa	£80k - £90k pa	>£90k pa
Coding Out Limit	£3k	£5k	£7k	£9k	£11k	£13k	£15k	£17k

3.29 The intention is that the new limits would come into effect in 2015. The new limits would be introduced by secondary legislation which would be published for comment once these proposals have been refined. The current PAYE safeguards would remain in place.

3.30 While those on higher incomes can be expected to be in a better position to make repayments, it is still important to bear in mind affordability and HMRC will continue to apply the 50 per cent cap (paragraph 3.9 above).

Applying the new coding out limits to underpayments

3.31 The current coding out limit of £3,000 applies to both debts and tax underpayments, i.e. a PAYE underpayment and/or an SA balancing payment. HMRC's view is that in principle the graduated limits which would apply to coding out debt should also apply to coding out tax underpayments, although it would continue to be up to the customer to let HMRC know if they did not want a tax underpayment coded out (paragraph 3.15 above).

3.32 Having different approaches to coding out depending on the nature of the debt would make it difficult to understand for the customer and go against HMRC's aim to simplify and make things more transparent. For example the notes on the Annual Notice of Coding would need to be very detailed to provide a full explanation. It would also add complexity to the IT systems.

3.33 It could also send the wrong message if HMRC appears to allow more lenient payment arrangements to those who have allowed their tax to fall into arrears than those that have not. This would be unfair to compliant customers who are in the majority.

A 50 per cent limit on PAYE deductions

3.34 A K-code is a tax code used in circumstances where the amount to be deducted is in excess of the personal allowance. PAYE legislation currently provides an overriding limit of 50 per cent for K-codes. This means that when an employer operates a K-code it will not result in deductions of more than 50 per cent of the employee's relevant pay. Other tax codes do not have similar statutory safeguards although HMRC's business rules have built similar limits into the IT systems that generally protect customers from excessive tax deductions.

3.35 To ensure a consistent approach, HMRC now proposes to extend the legislative 50 per cent overriding limit to all tax codes, so that employers and pension providers do not make tax deductions in excess of 50 per cent of an individual's relevant pay.

Q1. Are the graduated coding out limits for debts and tax underpayments recommended for those on incomes of £30,000 or above set at the right level?

Q2: Does the proposal not to change the coding out limits for those with incomes of less than £30,000 adequately safeguard those on lower incomes?

Q3: Should the statutory safeguard to prevent PAYE deductions exceeding 50 per cent of an individual's relevant pay be extended?

Partial collection through coding out

3.36 HMRC has the power to split debts so that part of a debt is collected through the tax code up to the coding out limit, with the remainder collected through another collection method. It does not currently use this facility as the IT capability has not been developed. For example, if a customer had a £5,000 debt and no other tax underpayment, HMRC would not currently use the tax code to collect £3,000 of that debt whilst collecting the remainder via a different method.

3.37 The ability to recover over more than one year through the tax code will allow HMRC to use this recovery method for a greater number of debts. For example, if someone had a £4,000 debt, £3,000 could in future be collected through the tax code and only £1,000 would remain to be collected via other means.

3.38 HMRC proposes to explore the potential to make best use of existing legislation and recover debts over more than one year where appropriate so that we can make best use of the increased limits. HMRC will do this over the coming months.

Q4: In circumstances where a debt cannot be collected via the tax code in one year, do you agree that HMRC should use existing powers to code out part of that debt?

Impacts

3.39 The table below provides some indicative impacts based on applying the proposed limits in the table above to code out debt, PAYE underpayments and SA balancing payments. The Exchequer impact shown only relates to coding out debt. It assumes that the 50 per cent limit on PAYE deductions and the arrangements for partial collection through coding out as set out above will apply.

Exchequer impact (£m)	2013-14 -	2014-15 -	2015-16 45	2016-17 40	2017-18 45
	These figures were set out in Table 2.1 of Budget 2013 and have been certified by the Office of Budget Responsibility. More detail can be found in the policy costings document published alongside the Budget. Those costs do not include any estimate in respect of coding out PAYE underpayments or SA balancing payments or partial collection through coding and the impact of those changes will be set out in Budget 2014.				

Economic impact	This measure is not expected to have any significant economic impact.
Impact on individuals and households	The measure will only impact on those individuals who have a debt/underpayment/balancing payment due to HMRC. As the proposed change would be introduced via a graduated primary PAYE income related scale, the impact of the increase in the limit to those on lower incomes would be minimised. The current limit on the amount that can be coded out would be maintained for those earning under £30,000 per year, meaning that those customers would be protected from the increases in the coding out limit. The new statutory 50 per cent cap would apply. Partial collection of debt via coding out could be more complex for customers to understand. However there are some customer benefits since it would allow more debts to be coded out than currently and over a longer period, rather than immediate payment being required.
Equalities impacts	The proposed changes would affect HMRC debtors earning over £30,000 per year on a graduated scale, with the maximum increase to £17,000 per annum being reached only when primary source earnings are over £90,000. They do not affect those with earnings of less than £30,000. The new statutory 50 per cent cap would apply. It is not expected that the measure would adversely or disproportionately affect any equality group.
Impact on businesses and Civil Society Organisations	As the debt would be collected by the established PAYE system, employers would not have any additional burden in collecting a larger amount/larger volume of debt. However, it may be that a larger proportion of employees/pensioners query their tax codes and, therefore, the employer/pension provider may have to spend more time addressing these questions or directing the payee to the HMRC website or helpline. Similarly, civil society groups may receive more enquiries from taxpayers about this collection method. Increased use of partial collection of debt via coding might increase complexity in the PAYE system for those involved, leading to more enquiries to employers or civil society groups.
Impact on HMRC or other public sector delivery organisations	HMRC would need to make changes to SA and PAYE IT systems and processes. The cost for IT changes is expected to be in the region of £1 million. More cost effective, efficient collection powers would enable HMRC operational resources to be deployed on the best value range of debt pursuit activities.
Other impacts	Other impacts have been considered and none have been identified.

Q5: Do you have any comments or suggestions on the indicative impacts identified in the table of impacts?

4. Summary of Consultation Questions

Q1. Are the graduated coding out limits for debts and tax underpayments recommended for those on incomes of £30,000 or above set at the right level? *(paragraph 3.35)*

Q2: Does the proposal not to change the coding out limits for those with incomes of less than £30,000 adequately safeguard those on lower incomes? *(paragraph 3.35)*

Q3: Should the statutory safeguard to prevent PAYE deductions exceeding 50 per cent of an individual's relevant pay be extended? *(paragraph 3.35)*

Q4: In circumstances where a debt cannot be collected via the tax code in one year, do you agree that HMRC should use existing powers to code out part of that debt? *(paragraph 3.38)*

Q5: Do you have any comments or suggestions on the indicative impacts identified in the table of impacts? *(paragraph 3.39)*

5. 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 the proposals, rather than to seek views on alternative proposals.

How to respond

A summary of the questions in this consultation is included at chapter 4.

Responses should be sent by 5 September, by e-mail to TAP@hmrc.gsi.gov.uk or by post to:
HM Revenue & Customs
Coding Out Consultation
Tax Administration Policy Team
Room 1/C06, 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 confidentially 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

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