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Proposals to tackle lower value tax debts

Response from ICAS

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About ICAS

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants. We represent over 24,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. 12,000 of our members are based in Scotland and 10,000 in the rest of the UK.

2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.

3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. We welcome the opportunity to respond to the HMRC consultation – Proposals to tackle lower value tax debts.

5. We appreciated the opportunity to discuss the proposals with the consultation team on 24 July.

6. We support the objective set out in the consultation - to allow HMRC to recover debts from those who can pay but refuse to do so. However, we have serious concerns about the proposed process, particularly the potential impact on vulnerable taxpayers and those who need extra support.

7. If joint accounts are within scope for direct recovery, the process must include a formal notification from HMRC to non-debtor joint account holders (so they can exercise their right to object before the deposit taker is contacted by HMRC and before any money is taken), and the non-debtor's share of the money in the account must be protected.

8. If the proposals are taken forward, there should be a longer notice period, better safeguards (including a face-to-face visit for individuals) and a mechanism for ensuring that errors are minimised (or quickly corrected where they occur).

Question 1: Do you agree with the proposed process to tackle lower value debts and do you have any comments on the illustrative process outlined above?

9. We agree that HMRC should be able to tackle lower value debts, but we have serious concerns about the proposed process. It should be revised before implementation, to include better safeguards (including a face-to-face visit for individuals) and to reduce the risk of errors which could have serious adverse consequences for taxpayers, particularly vulnerable ones.

10. The existing Direct Recovery of Debt process ('DRD') seems to have operated without significant issues because it includes effective safeguards (particularly the face-to-face visit to individuals) and opportunities to stop the process. That isn't currently the case with the process proposed in the consultation – an automated approach, without adequate safeguards, is unacceptable when there will be severe consequences for taxpayers if HMRC gets it wrong. HMRC has acknowledged that there would be some errors – the proposals should not be taken forward without including more checks and safeguards to minimise these.

11. HMRC must also clarify the interaction between the proposed new process and the existing DRD process. HMRC should not be permitted to use both in the same case. HMRC should be transparent and set out the criteria it will apply to determine which process to use.

Operational issues

12. For the proposed process to work, HMRC would have to be confident that it could supply accurate details of the debtor's name and accounts to deposit takers. We understand that HMRC will rely on data held by Credit Reference Agencies ('CRAs') for details of accounts (and that debtors where this information is not held by CRAs will be excluded from the process). This may not reliably provide HMRC with details of all accounts held by debtors – and the details will have to be accurately matched. We envisage that there could be difficulties for HMRC and deposit takers where several family members with similar (or identical) names live at the same address.

13. The consultation states that deposit takers will need to make system and process changes. There will also be an ongoing administrative burden. Inevitably, debtors subject to the process will find that their relationship with their bank has been adversely affected.

14. We are concerned that in some cases, debtors (including vulnerable taxpayers), or those brought within the process due to an HMRC error, could find themselves debanked. We understand that HMRC regards this as something to be managed by the Financial Conduct Authority ('FCA'). It would expect the FCA to replicate an existing code of practice (used for the Department for Work and Pensions). This would mean that use of HMRC's extended powers should not be the sole reason for debanking (but could be one of a number of factors). It isn't clear how this could be enforced and we are concerned that vulnerable taxpayers, and those with extra support needs could be disproportionately at risk.

15. HMRC and deposit takers must have robust processes in place to rectify any errors quickly and ensure that there are no adverse consequences for those affected.

16. The consultation proposes a 14-day notice period between the issue of the Pre-Deduction Notice ('PDN') and the first deduction. This is too short. Given issues with postal deliveries, if the PDN is issued by post, some taxpayers may not even receive it within the 14-day period. It certainly would not give them time to seek advice, engage with HMRC, or pay the tax. Even if there are reliable electronic options for issuing the PDN (for example, via the Personal Tax Account), 14 days is still insufficient.

17. The 2019 review of DRD makes clear that the majority of cases are resolved without the need to take money directly from bank accounts. The earlier stages of the DRD process (initial letter, telephone call etc) prompt payment in most cases. In the proposed new process, we anticipate that the PDN could prompt engagement with HMRC (including payment) in many cases, so it is essential that the notice period is longer, to facilitate this. It should be at least 30 days, but without stronger safeguards, we suggest that 60 days would be appropriate. This would give taxpayers (particularly vulnerable ones) the opportunity to seek help to engage with HMRC.

Joint accounts

18. The consultation proposes that joint accounts will be within scope for direct recovery but only where no sole account exists, or the sole account has insufficient funds. We do not agree that joint accounts should be in scope unless the process is revised before implementation. As the proposals stand, there is no meaningful protection for the non-debtor holder(s) of a joint account.

19. As noted above, we understand that HMRC will rely on data held by CRAs for details of accounts. There seems to be no guarantee that this will identify all the sole accounts. How will HMRC ensure that there are no sole accounts it could use?

20. If joint accounts remain within scope, HMRC should be restricted to considering only the debtor's share of the money in the joint account(s). We understand that currently, HMRC intends to consider all the money to be available, even though it does not all belong to the debtor.

21. The consultation states that the non-debtor will be able to object to the deduction, but they will be unable to exercise their right to object if they are not told that HMRC proposes to take money from the account. There seems to be no mechanism for notifying the non-debtor in advance (the PDN is only issued to the debtor) – or ensuring that the non-debtor knows that a deduction has

been made at all. There could be circumstances where the debtor conceals what is happening from the non-debtor.

22. Non-debtor account holders will be adversely affected by the direct recovery process. If joint accounts remain within scope, the non-debtor should be formally notified by HMRC before the deposit taker is contacted by HMRC (and before any money is taken), so that they have a genuine opportunity to object.

23. We understand that HMRC believes that excluding joint accounts from scope would be unfair and would prompt some debtors to hold all their money in joint accounts. This seems unlikely – holding money in joint accounts has other consequences.

24. Joint accounts could initially be excluded from scope, with the option to review this approach if evidence emerges of an issue. Alternatively, joint accounts could be included in scope but only where the debtor has no sole accounts, subject (as set out above) to a requirement for formal notification from HMRC to the non-debtor, and protection for the non-debtor's money in any joint accounts.

Question 2: Are there operational or technical considerations HMRC should take into account when developing this approach?

25. See our response to Question 1.

Question 3: How can HMRC ensure the process of receiving, processing and transferring payments and instructions is optimised?

26. We have no comments on this question.

Question 4: Do you agree with the proposed debts and customers that should be within scope for this measure?

27. We agree that only established debts should be within scope, and that debts still in the standard collection cycle should be excluded. However, in practice we receive reports of HMRC pursuing 'debts' that are not established (and in some cases do not exist) – to the point (in some instances) of HMRC's Debt Management staff visiting the taxpayer.

28. The reasons for these problems vary but include HMRC errors, known problems with VAT central assessments, penalties under appeal (but still pursued), tax under appeal that has been postponed (but HMRC still tries to collect it), debts already paid (but demanded again, apparently due to lack of integration of HMRC systems), issues with incorrect VAT and PAYE accounts and HMRC delays in processing repayments and set-offs.

29. It can be very difficult for agents and their clients to have the debt collection process put on hold while the underlying problem is resolved. In some cases, one part of HMRC confirms to the agent/taxpayer that the debt is not due/demands can be ignored, but Debt Management continues to pursue the money through demands and visits – sometimes over long periods.

30. We appreciate that HMRC would not intend these debts to be in scope for the proposed new process, but what is already happening in practice indicates that there is currently no reliable mechanism for excluding them. This problem needs to be addressed anyway, but until it is fixed the proposed new process should not be introduced.

31. We have particular concerns for taxpayers who are vulnerable or require extra support - we have been told about a case where HMRC Debt Management staff visited a taxpayer with dementia.

Question 5: Do you envisage any issues with the proposed upper debt value limits? If so, what should the proposed upper debt value limit?

32. We have no comments on this question.

Question 6: Do you agree with the proposed approach to identify and support customers when administering this proposed measure?

33. As the consultation notes, HMRC may not always know if someone requires extra support, particularly if they have not engaged with HMRC. We also understand that even where HMRC has previously been told about the need for extra support, there is no single record where this could be checked – there may be a flag in one HMRC system but not others (the systems are not 'joined up'). This would need to be rectified before implementation of the new process.

34. Unfortunately, many individuals who need extra support will struggle to engage with HMRC. The most vulnerable are the most likely to ignore letters, particularly in the context of debts they feel they can't pay.

35. The main proposal for addressing this appears to be the inclusion of a 'clear prompt' in the PDN, instructing recipients that if they are in a "particularly difficult personal situation, or require extra support, they should contact HMRC immediately."

36. We do not believe that this is an adequate safeguard. If earlier communications have not prompted engagement, it may not make any difference, particularly as the proposed 14-day notice period is inadequate to allow the recipient to seek advice/support. A better approach would be to mandate a face-to-face visit before instructions are passed to the deposit taker. This would also bring to light cases where HMRC used incorrect contact details, so communications have not been received.

37. The consultation also states that HMRC is "exploring safe and lawful" ways to use data from other government departments or deposit takers, to help identify potential extra support needs. As the consultation notes, this would raise privacy considerations. We can't comment on information held by other government departments, but we understand that information held by deposit takers may sometimes be inaccurate and isn't always up to date. Deposit takers may also be using different criteria for flagging support requirements.

38. It would certainly be essential for HMRC to err on the side of caution. If there is any indication that an individual might require extra support, HMRC should not proceed with the automated process until it has been able to clarify the position. These cases should be included in the manual review process outlined in the consultation (but currently only for cases where HMRC has identified definite support needs). A face-to-face visit would be a good safeguard in all cases but should, as a minimum, be mandated in manual review cases.

Question 7: Are there other suitable sources of information about a customer's potential support needs that HMRC might access in the absence of customer contact?

39. See our response to Question 6.

Question 8: Do you agree with the overall approach to affordability for the purpose of this measure?

40. The existing DRD process requires HMRC to leave £5,000 in bank accounts. One of the reasons behind the current proposals is to give HMRC greater flexibility through the use of instalment payments. However, we do not believe that the process as currently proposed will enable HMRC to achieve the accuracy that would be necessary to make payments affordable and manageable.

41. As the consultation notes, in voluntary Time to Pay (TTP) negotiations HMRC will ask individuals about their income, expenditure and assets to work out what they can afford to pay. In the absence of engagement, the consultation proposes that HMRC would use data provided by CRAs, coupled with information it already holds (for example, PAYE and self assessment records) to determine affordability and establish the appropriate length for an instalment plan.

42. PAYE information could be helpful, but self employed income may fluctuate considerably. It also seems unlikely that CRAs will be able to provide sufficiently detailed and robust data to permit HMRC to adequately tailor instalment plans in all case – particularly If HMRC is adopting a 'bulk'

approach. It is particularly difficult to see how HMRC would be able to ensure that deductions were not more than 50% of disposable income.

43. It would be preferable for HMRC to increase efforts to engage with debtors, so they could provide information (as they do for TTP arrangements). We anticipate, based on the 2019 review of the existing DRD process, that the initial stages of the new process would prompt many debtors to engage with HMRC, so that an approach similar to TTP could be adopted. As set out above, the notice period needs to be longer to facilitate engagement and the process should include a face-to-face visit to individuals (preferably in all cases, but as a minimum in manual review cases).

44. We understand that HMRC is considering a minimum of 6 months and a maximum of 24 months for an instalment plan. It would also allow some leeway, for example, if CRA data suggested that a debtor could afford to repay over 6 months, HMRC could allow 9 months. We agree that this would be a reasonable approach where the debtor is not prompted to engage.

Question 9: Are there other suitable ways HMRC could systematically establish affordability across a high volume of cases?

45. See our response to Question 8. It seems unlikely that a bulk, automated approach could permit HMRC to establish affordability across a high volume of cases.

Question 10: Do you agree with the government's proposed approach to enabling customers to lodge an objection, the proposed grounds for objection and the timescales for doing so?

46. As set out in our response to Question 1, the proposed 14-day period between the issue of the PDN and the first deduction is too short. We anticipate (based on the analysis in the 2019 review of the existing DRD process) that the PDN will prompt payment/engagement with HMRC in many cases. The notice period should be longer to facilitate this. We recommend that it should be at least 30 days but preferably 60 days.

47. Our response to Question 1 also notes our concerns about the potential adverse impact on an individual's relationship with their bank. It is essential that debtors are given adequate time to take advice and object before HMRC makes any contact with their bank. They should also be able to object later in the process.

48. As explained in our response to Question 1, if joint accounts are in scope, the process must include a formal notification from HMRC to non-debtor holders of joint accounts. These non-debtors must have an opportunity to object, before the deposit taker is contacted and any payments are taken. They should be given the same amount of notice as debtors. They should also be able to object later in the process.

49. As set out in our response to Question 4, we have concerns about cases that already arise where HMRC pursues debts that are not established (and in some cases do not exist) – to the point (in some instances) of HMRC's Debt Management team visiting taxpayers. Currently, there isn't an effective mechanism for dealing with these cases quickly, or for putting debt collection on hold while any underlying problems are resolved. Before the proposed new process is introduced, HMRC must establish suitable mechanisms to deal with the existing issues – and to ensure that objections under the new process can be dealt with promptly.

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