

**HM Treasury - Statutory Debt Repayment Plan: Consultation
Response from the Low Incomes Tax Reform Group (LITRG)**

1 Executive Summary

- 1.1 As tax professionals with many years' experience assisting low-income taxpayers, we welcome the opportunity to respond to this consultation in relation to a Statutory Debt Repayment Plan (SDRP) scheme for those with problem debt.
- 1.2 In the area of debt, our expertise is in relation to tax and tax credit debts, and our comments below are based on this specialist knowledge. These debts are of course the responsibility of HM Revenue & Customs (HMRC)¹ and so are government debt. There are many specialist organisations who are better placed than us to comment on the proposals from a wider debt perspective.
- 1.3 We also have an interest in debt that arises as a result of overpaid benefits, in particular universal credit (administered by the Department of Work and Pensions (DWP)) and tax credits (administered by HMRC) which also fall within the scope of government debt.
- 1.4 We feel that the government must be aware that the quantum of tax debt may not in fact be correct. Debt advice providers will therefore need to be equipped with sufficient knowledge to identify and deal with/refer cases where the quantum of tax debt may be disputed.
- 1.5 In cases involving tax debt, it may take time to identify the correct overall debt quantum for a debtor. This ought to be recognised and specifically built into the process of implementing a plan, to ensure that debtors are not prevented from entering the scheme in a timely manner, as any delay could no doubt exacerbate problems for the debtor.
- 1.6 In relation to debtor eligibility, we would like to see certain safeguards built into joint debtor arrangements to ensure that individuals are adequately protected and not put into an SDRP that

¹ In tax credits terms, to the extent that they have not been transferred to the DWP. See <https://revenuebenefits.org.uk/universal-credit/guidance/existing-tax-credit-claimants/tax-credit-debt>

does not suit them. Debt advice must always continue to be offered at an individual level to ensure that debtors are fully aware of what entering the plan would mean to them personally.

- 1.7 We see the merit of including existing 'time to pay' ('TTP') arrangements with HMRC in the SDRP, providing that the terms are similar and no more burdensome than the existing arrangement. If it is not possible to ensure the terms of the SDRP are not more burdensome than those agreed under TTP, then we would like to see debtors being given the choice of whether to incorporate existing TTP arrangements into the SDRP. We would like to see HMRC take a transparent approach in their cooperation with SDRP arrangements and that their internal procedures for dealing with such cases are clearly set out within HMRC's Debt Management and Banking Manual.
- 1.8 We agree that permitted payments breaks should be built into the SDRP, however, we are concerned that the reduction from the proposed six months to one month (or one payment) will not be a sufficient buffer against instances of financial shock for debtors. We also would encourage government to consider some form of 'reasonable excuse' if a debtor is unable to meet the 14 day notification period for a payment break.
- 1.9 Finally we hope that different government departments, including HMRC, will work together to ensure there is joined up implementation of the scheme and to iron out any internal practices that may not currently be compatible with the proposed SDRP.

2 About Us

- 2.1 The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998, LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Introduction

3.1 General comments on this consultation

- 3.1.1 Our interest in this consultation is confined to our experience with individuals who are in debt to HMRC, due to tax having been underpaid or tax credits overpaid. Within this submission we generally refer to both as 'tax debt'. We are also interested in those who have been overpaid Universal Credit by the DWP. However, we are not specialist debt advisers and therefore our comments are limited to our tax debt experience. We defer to those with practical experience of

working in the debt advice area to make comments about the overall proposals and policy in the context of the wider debt landscape.

- 3.1.2 We responded to both the 2018 Call for Evidence¹ and the 2019 Consultation² on the Breathing Space Scheme.
- 3.1.3 We are concerned that thought still needs to be given to how the breathing space and SDRP schemes interact with tax legislation, and indeed with HMRC practice. In particular, it is unclear to us how the existence of these new provisions will fit alongside existing practice, such as HMRC's ability to engage with a taxpayer in debt by allowing 'time to pay'. This is discussed further in Section 4.2.
- 3.1.4 We note that a recent report produced by the Public Accounts Committee³ highlights that tax debt is currently more than double its pre Covid-19 level. The report also suggests that HMRC acknowledge usage of Breathing Space in the context of tax debt is lower than they would expect⁴, suggesting a lack of awareness of the scheme by potential users.
- 3.1.5 Government should do its best to ensure that creditors such as HMRC highlight the existence of schemes such as Breathing Space and the proposed SDRP, as well as other options, to those with tax debt and explain clearly that such schemes are accessible via a qualified debt advisor.
- 3.1.6 For example, HMRC have an Extra Support Service aimed at taxpayers who need additional help. These HMRC officers are therefore likely to encounter people with problem debt, who need to be directed to sources of debt advice where they can obtain information about the options available to them to deal with their tax debt.
- 3.1.7 We would also reiterate an important point made in previous submissions: tax debts are unique in the debt field because often the quantum of the debt itself can be inaccurate. This is usually due to a lack of communication between HMRC and the debtor over a relatively long period of time, perhaps as a consequence of a life event which has caused the debtor to become unable to deal with tax matters.
- 3.1.8 Typical scenarios include late submission penalties having been charged where the taxpayer has a 'reasonable excuse' but has been unable to communicate this to HMRC in a timely manner, or situations where HMRC makes a determination of tax due to non-filing of tax returns, which could be

¹ <https://www.litrg.org.uk/sites/default/files/180116-LITRG-response-HMT-breathing-space-FINAL.pdf>

² <https://www.litrg.org.uk/sites/default/files/190129-LITRG-response-HMT-Breathing-Space-Scheme-FINAL.pdf>

³ See paragraph 1: <https://committees.parliament.uk/publications/9447/documents/163788/default/>

⁴ See paragraph 23: <https://committees.parliament.uk/publications/9447/documents/163788/default/>

superseded (and much reduced) by the submission of the relevant tax returns for the tax year(s) in question.

- 3.1.9 The charity TaxAid have previously provided LITRG with data from their system covering the period August 2019 to March 2020. TaxAid identified 66 cases where they had complete information to draw upon from their sample. The total debt for those 66 beneficiaries when they first approached the charity was £232,093 (an average of £3,516.56 per taxpayer). TaxAid were able to reduce that debt for those 66 beneficiaries by £186,057 (an average of £2,819.05 per taxpayer) leaving total debt of £46,036 remaining due (an average of £697.52 per taxpayer).
- 3.1.10 This powerfully illustrates that checking that a debt is properly due should be the first step. The debt advisers who will be expected to make the eligibility assessments will need good quality guidance and training for their role. Given the specialist nature of tax debt, the public-facing tax charities (TaxAid¹ and Tax Help for Older People²) are perhaps best placed to review whether a tax debt for a low-income taxpayer is correct so, ideally, they would work with generalist debt advisers on individual cases. However, the additional work this would create for the tax charities would also need to be appropriately funded.

4 Chapter 2 – Eligibility for a plan

4.1 Question 3: Do you agree with the approach to debtor eligibility?

- 4.1.1 We have some reservations about the potential for debtors to enter into joint arrangements with their partners, calculated based on household income. Whilst this may be a useful and welcome option for some debtors, we are concerned that this could force some co-debtors into arrangements that do not suit them, particularly if they are already satisfactorily managing their debts.
- 4.1.2 We hope that the implementation of joint-debtor arrangements would be carefully designed to ensure that debtors are protected on an individual level. Since the joint plans are already permitted under Debt Arrangement Scheme in Scotland, we hope that this provides government with access to useful practical experience on the implementation of such schemes which can inform their policy.
- 4.1.3 At any rate, we would hope that those entering into joint arrangements will be entitled to individual debt advice interviews to help debt advisers identify potential instances of issues such as coercion and/or financial abuse. Our view is that safeguarding issues in this area should be carefully considered.

4.2 Question 5: should debt already due to be repaid under a pre-existing payment arrangement or payment plan be treated as non-eligible debt?

¹ www.taxaid.org.uk

² www.taxvol.org.uk

- 4.2.1 We note that the consultation document states at paragraph 2.12, “...the government does not propose to treat payments due under any other form of payment arrangement or payment plan, whether statutory or voluntary in nature, as non-eligible debt.”
- 4.2.2 A key concern of ours, in the context of SDRP and tax debt, is the interaction with any ‘Time to Pay’ (‘TTP’) arrangements¹ that a taxpayer may already have in place with HMRC. A debtor may have already taken steps to deal with tax debt via TTP before seeking advice from a professional debt advisor to assess a wider issue with problem debt across multiple creditors.
- 4.2.3 If tax debt being collected under a TTP arrangement were to be blocked from inclusion within the SDRP, the debtor would be faced with two streams of debt repayment which could add confusion and worry. We would therefore be supportive of existing TTP arrangements being included in any SDRP (subject to some safeguards explained below and assuming SDRP is the appropriate option). It would also seem unfair that individuals who have tried to take steps to deal with problem debt, but who perhaps later realise that professional debt advice is required, could then face the consequence that certain debt (that would otherwise have been eligible) is embargoed from inclusion with in a SDRP.
- 4.2.4 We would point out that if, on entry to a SDRP, any outstanding TTP arrangements lapse, with the debt instead taken into the fold under the SDRP, it is our view that the taxpayer should not be put in a worse position. By this we mean the effective repayment rate under the SDRP should not be more burdensome than had already been agreed under the TTP arrangement.
- 4.2.5 If it is not possible to ensure the terms of the SDRP are not more burdensome than may have been agreed under TTP, then we would like to see debtors being given the choice whether to incorporate existing TTP arrangements into the SDRP. We note in paragraph 2.14 of the consultation document that, under the current proposals, only certain ‘discretionary non-eligible debts’ will be excludable at the decision of the debtor and their debt adviser.
- 4.2.6 As a final point, it goes without saying that where a tax debt under TTP is brought within a SDRP, there must be no risk to the debtor that they will be deemed to have breached the conditions of their former TTP arrangement. In particular, where a TTP arrangement is breached it can be possible for a late payment penalty to be triggered, we assume that replacing the TTP with a SDRP would not risk re-application of any late payment penalties.
- 4.3 **Question 6: Should it be possible for debtors to exclude very small debts from the plan?**
- 4.4 **Question 7: If you think it should be possible to exclude very small debts what amount of debt would you consider to be very small? Should excluding these debts be required or optional? How should these debts be dealt with if they are excluded from a plan?**

¹ <https://www.gov.uk/guidance/find-out-how-to-pay-a-debt-to-hmrc-with-a-time-to-pay-arrangement>

- 4.4.1 Question 6 and 7 are taken together. In principle we would not object to small debts being excluded from the plan, but it is our view that such exclusions should be at the choice of the debtor and not mandatory.
- 4.4.2 For those on lower incomes, it is possible for debt to be spread across many smaller sources, but these can still have a large cumulative impact on the debtor. It would seem unfair if a debtor with many smaller debts were unable to use the scheme, whereas another debtor could theoretically have a single source of debt of comparative total value and qualify for the SDRP option.
- 4.4.3 We would point out that the concept of ‘small’ debt is subjective. We feel it is inappropriate to set a level of what could be considered ‘small’, as this does not necessarily reflect the impact of the debt on the debtor in question, bearing in mind their specific circumstances.
- 4.4.4 In summary, if the scheme were to mandate that ‘small’ debts must be excluded from the SDRP then this could reduce the overall usefulness of the scheme to those on lower incomes, who perhaps are in the most need of help.
- 4.5 **Question 8: Are there scenarios in which a debtor may incur additional debt during the plan without intending to? (e.g. due to administrative error by the creditor)? What might be scenarios be and how should debt incurred in these scenarios be treated?**
- 4.5.1 Universal Credit (‘UC’) is an area where debtors could (and do) incur additional debt due to no fault of their own. Under the s71ZB Social Security Administration Act 1992¹ the ‘Secretary of State’ (which in practice means the Department of Work and Pensions) is entitled to recover overpaid benefits, including UC.
- 4.5.2 A response by the DWP to a freedom of information request² (not submitted by LITRG) suggests that in 2020-21 there were 337,000 new overpayments of UC caused by DWP error. Furthermore, only 10 of these overpayments were waived as ‘exceptional’.
- 4.5.3 It is clear (and indeed, it is now the DWP’s published practice³) that overpayments of UC will be recovered from claimants in all but exceptional circumstances. This is despite the fact that in some cases the claimant may not have contributed to the error in any way.
- 4.5.4 In a case such as this, where such debts represent an overpayment of UC for a period before the SDRP was implemented, there is merit in bringing them within the SDRP plan under the ‘review and variation process’ set out in the consultation document, and not treated as a non-eligible debt or ‘ongoing liability’. As with TTP, this could be given to the individual as a choice. We would make the same point, in principle, in relation to tax credit debts where such debts represent an overpayment

¹ [s71ZB Social Security Administration Act 1992](#)

² https://www.whatdotheyknow.com/request/universal_credit_where_a_waiver

³ <https://www.gov.uk/government/publications/benefit-overpayment-recovery-staff-guide/benefit-overpayment-recovery-guide>

of tax credits for a period before the SDRP was implemented. Tax credit overpayments can occur as a consequence of the design of the tax credits system (no fault on the part of the claimant or HMRC) as well as due to administrative error on the part of HMRC.

- 4.5.5 If these additional debts are not included in the SDRP then a review of the person's situation would be needed as any recovery of these additional debts from their benefits would mean their income is reduced.

5 Chapter 3 - Protections in a plan

5.1 Question 10: do you agree with the proposed protections of the plan?

- 5.1.1 We note that the consultation document suggests (at paragraph 3.9) that the government expects that creditors will voluntarily apply these protections once they have received a 'notice of intention to initiate a plan', despite not being under any obligation to do so until the day after they receive the provisional plan.
- 5.1.2 We feel this creates an uncertain position for debtors and could create situations where creditors attempt to take swift action to recover the debt before the draft plan is submitted. It is our view that debtor protections should mandatorily start from the date that the intention to submit a plan is submitted to the Insolvency Service.
- 5.1.3 If debtor protections will not start from this earlier date, then we would at least like to see assurances that this 'voluntary application' will be applied as standard to government debt, such as tax debt.
- 5.1.4 On the basis that HMRC will apply this voluntary application of the protections, we would expect this to be written into HMRC's Debt Management and Banking Manual¹ to ensure the point is unequivocal and debtors and debt advisers are able to access this confirmation.
- 5.1.5 We have also previously suggested² that government debt collection practices could best be explained by publication of a formal 'Code of Practice'. Compliance with that code could then be monitored independently – for example, by the National Audit Office which has previously reviewed HMRC's management of tax debt.³

5.2 Questions 11: Do you agree with the proposed flexibilities provided for in payment breaks and plan variations?

- 5.2.1 We are pleased to see that there are payment breaks built into the flexibility of the plan, though it is disappointing that this has been reduced significantly from six months to one month (or one

¹ <https://www.gov.uk/hmrc-internal-manuals/debt-management-and-banking>

² Paragraph 4.3.2: <https://www.litrg.org.uk/sites/default/files/190129-LITRG-response-HMT-Breathing-Space-Scheme-FINAL.pdf>

³ See: <https://www.nao.org.uk/press-release/hm-revenue-customs-management-of-tax-debt-2/>

payment) in any 12 month period. We were supportive of the original six-month period, though recognised it would need to be paired with qualifying criteria.

- 5.2.2 It strikes us that this is far less likely to provide debtors in severe financial difficulty with sufficient time to shore up their position. We note that there is discretion for debt advisers to extend a payment break by a further month (or payment) in certain circumstances.
- 5.2.3 We note that the debtor must provide 14 days' notice that they will require a payment break and we understand that this is in order to provide sufficient notice to creditors and for the purposes of administering the scheme. However, for lower earners who receive weekly wages for example, we wonder if a 14 day window will always be possible or practical.
- 5.2.4 We would like to see further protections built in to assist debtors who may not have reasonably been expected to know that they are in need of a payment break 14 days before the payment date. We appreciate any further flexibility would need to be handled delicately to ensure that the system is not abused. However, where the onset of financial difficulty arises suddenly and unexpectedly, such individuals are likely to be distressed and the added worry that they may also face breaching the terms of their SDRP could have a damaging impact on the debtor.

6 Chapter 4 – Starting a plan

6.1 Question 24: Do you have any further comments on or concerns about the processes set out in this chapter for developing and initiating a plan?

- 6.1.1 An ongoing concern we have relates to how the inner workings of HMRC debt recovery might interact with an SDRP. Since HMRC have a statutory duty to collect all tax due, they may not agree to any proposed recovery of tax debt under the plan, particularly if there are still assets that can be taken or the possibility of an attachment of earnings order which would satisfy the whole debt.
- 6.1.2 We appreciate that the Insolvency Service would have overall adjudication rights where a creditor objection arises¹, but we would be concerned that prolonging the implementation period of a plan by raising such objections could be damaging to debtors' wellbeing.
- 6.1.3 We hope that different parts of government, including HMRC, will work closely with each other to understand how this tension might be overcome to ensure that the SDRP is a viable option for those with tax debt, and that HMRC debt management teams will not attempt to block debtors' access to the scheme without good reason.

6.2 Question 64: Do you have any further comments on the consultation stage impact assessment or what is included within it?

- 6.2.1 As a final point, we wish to point out that if further negotiations and discussions with HMRC are required before the correct level of tax debt can be agreed, then this may have a knock-on impact on the debtor, if they are unable to proceed with their plan until matters with HMRC are concluded.

¹ Paragraph 4.35-4.37 of the consultation document.

- 6.2.2 To that end, we would hope that in such circumstances it may be possible to press ahead with the plan on a provisional basis, with further negotiations related to the quantum of tax debt taking place whilst the plan is ongoing – presumably this could fit within the ‘review and variation’ process.

LITRG

5 August 2022