

LOW INCOMES TAX REFORM GROUP

Payments, Repayments and Debt: The Next Stage RESPONSE TO HMRC CONSULTATIVE DOCUMENT

1. Executive Summary

- 1.1. We question what plans HMRC have to improve their repayment processes, as the 'repayments' element of this consultation stream has lacked focus to date.
- 1.2. Prevention of debt is preferable to cure. We therefore recommend various ways in which taxpayers can be prevented from falling into arrears; and that HMRC work with other government departments to ensure a joined-up service is offered to those who at various times pay tax and claim tax credits or benefits.
- 1.3. Payment plans would be a useful tool, but the proposals seem too restrictive. We raise concerns for low-income taxpayers who have neither regular income nor confidence in using direct debit in order to take advantage of the proposed schemes.
- 1.4. Paper filers of Income Tax Self Assessment (ITSA) tax returns appear to be excluded from the proposed payment plans. This discriminates against those people in digitally-excluded social groups; so we recommend that HMRC ensure paper filers can also participate. The impact assessment must be revised to fully consider and address the equality issues arising.
- 1.5. Payment plans also may rely on forecasting a tax liability. We therefore suggest how HMRC can be both proactive and reactive in their support offered; for example identifying common situations where a payment plan might be suitable and drawing it to the attention of the taxpayer, and offering an online calculator and helpline/face to face support.
- 1.6. We also highlight the lack of incentive for taxpayers to enter into a Budget Payment Plan and raise the issue of potential unfairness for student loan borrowers in ITSA.
- 1.7. HMRC's debt pursuit methods must be tailored to individual customer needs, separating those who 'can't pay' from those who simply 'won't pay'. We focus here on the education and support for the former as against action needed to tackle the latter. We recommend that HMRC consult with the voluntary sector as this evaluation work progresses, including LITRG and tax advice agencies such as TaxAid and TaxHelp for Older People.

- 1.8. We recommend that Certificates of Tax Deposit are reviewed and updated, suggesting also an alternative in the form of a 'Tax Savings Account'.
- 1.9. PAYE coding of debts is sensible in many ways, but consideration needs to be given to various points:
 - The ability of HMRC's systems to cope.
 - The period over which a debt is spread and whether the £2,000 limit and 50% 'K code' restrictions are adequate protection.
 - Interaction with debt enforcement methods from other government departments, such as deduction from earnings orders used in child support cases.
 - Automatic coding should never take place where a debt is in dispute, for example ESC A19 cases under review.
 - And finally, what happens to a coded debt where the PAYE income source ceases – highly topical in the current economic situation.
- 1.10. We sympathise with the proposals to seek costs in recovery cases where the debtor has refused to pay, but recommend that this is by application rather than automatic.
- 1.11. We suggest some ways in which the draft legislation to seek debtor details from third parties could be clarified and where safeguards require further consideration.
- 1.12. We welcome the deferral of direct attachment orders and tax clearance certificates proposals.

2. Introduction

2.1. About us

- 2.1.1. 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.
- 2.1.2. 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.

2.2. Concurrent consultations

- 2.2.1. We are also submitting responses to the concurrent consultations on 'Interest – Working Towards a Harmonised Regime' and 'Meeting the Obligations to File Returns and Pay Tax on Time'. Many of the points raised below interlink with those consultations and our responses to them.

3. General comments on this consultation

- 3.1.1. We are generally supportive of any new measures in HMRC's debt management strategy which aim to prevent debt arising rather than simply increase powers to collect debts once they have arisen.

- 3.1.2. The majority of low-income taxpayers who are in debt to the Exchequer are not there deliberately. Therefore, whilst we appreciate the need to deal vigorously with those wilfully in default, we seek proper safeguards for those who deserve lighter-touch treatment.
- 3.1.3. We note that so far the 'Payments, repayments and debt' consultation series has concentrated on payments and debt at the expense of repayments. Meanwhile, taxpayers are waiting ever longer for repayments due to them. In addition, there is no online R40, so that claimants are disadvantaged compared to, say, ITSA customers who can claim refunds electronically. This deterioration in service standards for repayment customers needs to be addressed (even more so now that the rate of repayment supplement is down to 0%).

3.2. ***Interaction with other government departments***

- 3.2.1. The continuing economic downturn will result in many people moving in and out of work, at various times paying tax and claiming tax credits or benefits. The resulting increase in contact with different central and local government departments requires a joined-up approach to the customer. Yet, whilst HMRC is looking at linking taxpayer records internally (albeit manually until such time as the IT systems can catch up), this will not take account of other government debts or how tax collection methods impact on benefits claims.

3.3. ***The 'non-business' taxpayer***

- 3.3.1. The consultation makes reference throughout to meeting the needs of businesses and indeed the Pre-Budget Report placed a good deal of emphasis on helping businesses to phase tax payments via the new Business Payment Support Service. There is scant acknowledgement however that general awareness of Time to Pay needs to be raised, including for individual taxpayers. Whilst taxpayers of course should be encouraged to pay on time, they should be made aware of the facility to negotiate a payment arrangement in times of difficulty. This can surely be done without Time to Pay being seen as too readily available as some sort of soft option.
- 3.3.2. In introducing the new payment schemes, the launch campaign should take into account non-business taxpayers who might benefit from them and be properly targeted to reach all audiences.
- 3.3.3. Many individuals in the current economic situation will have cashflow issues, e.g. having to take on intermittent agency work to make ends meet. And seasonal fluctuations do not only apply to business; for example individuals experience variations in fuel bills with the seasons.

3.4. ***Current 'frontline' experiences***

- 3.4.1. We understand that HMRC have an ongoing campaign to improve their debt management operations and Time To Pay practices. However, experiences at the front line suggest that these have yet to come to fruition. We are aware, for example, that TaxHelp for Older People (TOP)¹ still see cases where debts are being enforced inappropriately. This is particularly harsh in cases where a pensioner has accrued a debt unbeknown to them, for instance through PAYE coding errors, and HMRC refuse to grant a waiver under Extra-statutory Concession A19.

¹ Operated by Tax Volunteers, registered charity no. 1102276 <http://www.taxvol.org.uk/>

3.4.2. The consultation document asserts at para 5.12 that 'HMRC does not knowingly take people to court where it is satisfied that they are unable to pay', but TOP have seen cases of benefits claimants being pursued to bankruptcy; a costly exercise for HMRC (and to taxpayers in general) with little reward.

3.5. **Certificates of tax deposit ('CTDs')**

3.5.1. We understand that CTDs are to remain in existence. As mentioned at para 4.19, because they have certain conditions attached, such as minimum holdings, they are currently of little use to low-income taxpayers and most would be unaware of their existence. They are potentially of use to prevent interest charges where tax is disputed; however the system is outmoded and HMRC acknowledged that respondents to earlier rounds of consultation called for them to be reviewed and updated¹.

3.5.2. We reiterate that recommendation. For example, we outline at 4.11ff how some form of 'Tax Savings Account' or 'Tax ISA' could operate.

3.6. **Taxpayer education**

3.6.1. Para 3.4 refers to reasons why taxpayers do not pay on time. 'Lack of understanding' is another point to include in this list, and we would repeat earlier recommendations that HMRC should increase their educational activity and offer improved, accessible guidance.

3.6.2. This is further confirmed as para 3.7 states that tax debts arise 'not as the result of a direct and readily understood relationship between two parties'. Many of the problems that we see arise not through a lack of understanding that people have to pay tax, but rather due to the intricacies of the systems and scant awareness amongst the taxpaying population of their responsibility to check their tax, or indeed of the fallibility of HMRC.

3.6.3. For instance, the comments at para 3.8 do not seem to recognise that tax debts can arise without the taxpayer's knowledge; ie not necessarily through 'taxable activities'. The passive receipt of pension income, say, could hardly be described as an 'activity' and most assume that their tax should be dealt with correctly under PAYE.

3.7. **Digital exclusion**

3.7.1. Para 3.17 comments on HMRC's activities to educate and inform taxpayers. However, the trend lately is in favour of online filing and guidance at the expense of paper. Research from the Department for Communities and Local Government shows that some 17 million people in the UK are 'digitally excluded'². HMRC currently devote insufficient resource to catering for their needs.

3.7.2. Also, whilst we appreciate the need to keep pace with changes in payment methods and offer new alternatives, traditional payment methods should be maintained for those who wish to continue using them.

¹ Para A4.5, Payments, Repayments and Debt: Responses to Consultation and Proposals, Consultation Document 10 January 2008

<http://tinyurl.com/d6kf4a>

² See <http://www.communities.gov.uk/publications/communities/deliveringdigitalinclusion>

3.8. **Disability**

- 3.8.1. Disabled people do not always receive the level of service they should, nor are their special needs considered. For example, material in alternative formats is not always easy to access, as we have found when carrying out past 'mystery shopping' exercises. Enquiry Centres do not always have information available on paper or adequate facilities or willingness to print it on request.

3.9. **Keeping guidance up-to-date**

- 3.9.1. HMRC's guidance does not always keep pace with new methods of paying tax. For instance, although credit cards are now accepted for income tax, some parts of HMRC's website state that they are not accepted. Whilst we agree that credit card payments should not be advertised as a preferred payment method, guidance should always be up-to-date and accurate.
- 3.9.2. When we met with HMRC's Powers team recently, we requested sight of the scripts that call centres use when taking payment via credit card over the telephone, so that we understand what warnings are given about debt issues and the additional charges in paying by credit card.

3.10. **Suspension of penalties and/or interest charges**

- 3.10.1. We note from para 3.9 that HMRC 'cannot use rebates or discounts to encourage prompt payment'. We think however that 'incentives' could be used such as suspended penalties and, particularly in cases of hardship or exceptional circumstances, perhaps even suspension of interest charges.
- 3.10.2. HMRC must acknowledge that the taxpayer will not always be aware in advance that they will have difficulty paying their tax and exceptional circumstances may arise, such as sudden loss of employment or other personal difficulty.

3.11. **Cost effective recovery**

- 3.11.1. Regarding the comments at para 3.15, the starting point is to understand what the costs of debt action are as compared to the likelihood of successful debt recovery, as recommended in the National Audit Office report on HMRC's Management of Tax Debt¹.
- 3.11.2. We recommend that HMRC consult with the voluntary sector as this evaluation work progresses, including LITRG and tax advice agencies such as TaxAid and TOP.

3.12. **Design principles**

- 3.12.1. We agree with the principles outlined at para 3.26, but would add a further point that 'help and payment options must be accessible, and HMRC must undertake to inform taxpayers fully of their obligations and payment options'.
- 3.12.2. In terms of the first principle, 'set within a clear statutory framework', Time to Pay arrangements are extra-statutory, therefore carry no rights of appeal and dependent for their fair operation on HMRC officers' discretion and internal guidance. HMRC

¹ Recommendation b, HM Revenue & Customs: Management of Tax Debt, 20 November 2008, http://www.nao.org.uk/publications/0708/management_of_tax_debt.aspx

therefore have a high degree of responsibility in managing the Time to Pay processes and dealing with vulnerable customers in debt.

- 3.12.3. This becomes particularly true in the context of the proposed Managed Payment Plan in the event that the taxpayer defaults on the agreed instalment plan, where we understand that the only protection from reinstated late payment penalties would be to agree Time to Pay. (See para 4.7.2 below.)

4. Chapter 4: Payment instalment schemes

4.1. *Non-business taxpayers*

- 4.1.1. Para 4.3 notes that in previous consultations ‘respondents saw great benefits for business’. Clearly there are also benefits for individuals. Whilst there is reference to the ‘monthly business cycle’, it should also be noted that individuals’ circumstances may revolve more around a weekly cycle; for example would a monthly payment plan suit an ITSA state pensioner whose income is received weekly or four-weekly?
- 4.1.2. Ideally, tax payments should be matched to the income cycle, so in the case of the ITSA state pensioner, the tax payment could be debited in a similar way as if it were paid under PAYE, ie weekly where the pension is received weekly. Although perhaps not of interest in debt management terms, such a plan would also be useful for justifying net income figures for pension credit claims, particularly if pensioners were given a statement of their payment plan by HMRC which they could pass to The Pension Service.
- 4.1.3. We understand that this could be done using the Budget Payment Plan (BPP) as this allows them to pay ‘what they want, when they want, providing that all tax is paid by the due date’. This is of course subject to our comments below on the taxpayer being able to choose frequency and dates of payment.
- 4.1.4. The importance of flexibility for low-income households is illustrated by Bacs, which local authorities use to collect council tax by direct debit, recommending that taxpayers pay weekly or choose their preferred monthly payment date:

‘Michael Chambers, Managing Director of Bacs explains more, “Each year, local authorities in the UK invest vast amounts of time and money collecting council tax payments, sending out reminders and even issuing court summons. Many of those people being chased fall into the financially excluded or low income bracket. Some don’t have a bank account so are unable to pay by Direct Debit. However, we know there are 6 million low income adults in the UK that have a bank account, but do not use automated payments because of concerns that insufficient funds will be available in their account to draw on. It is this group that we need to work together to target.”

Continuing he said, “Offering just one set monthly payment date for everyone can be prohibitive. By offering weekly payment options and the flexibility to choose a payment date more closely aligned to a resident’s pay day, local authorities can break council tax bills down into manageable chunks, build the

confidence of low income householders and significantly increase rates of collection and payment recovery.”¹

4.2. **Budget Payment Plans – lack of incentive for the taxpayer**

- 4.2.1. Despite their potential flexibility, what real incentive is there for a taxpayer to enter into a BPP? The attraction for most would surely be severely limited given that entering into a plan would mean paying tax early without any interest. The benefits seem to be strongly weighted in HMRC’s favour.

Student loan borrowers – a fairness issue

- 4.2.2. For example, how would this be fair for a student loan borrower making repayments via ITSA who enters into a BPP? Student loan repayments are due on 31 January following the tax year end, as repayments do not form part of the payments on account process². We understand that the loan would continue to accrue interest up to 31 January, as repayments are not deducted from the balance until that date. But for budgeting purposes, a borrower may wish to include student loan repayments in the monthly sums paid to HMRC under the BPP. Borrowers do not have the option to instead make voluntary monthly payments direct to the Student Loans Company, as doing so would not have any impact on the amount due under ITSA. So by entering into a BPP, they would be making repayments early yet continuing to accrue interest on the full outstanding balance of the loan.
- 4.2.3. We therefore recommend that HMRC reconsider the issue of interest on BPPs – perhaps instead introducing a ‘Tax Savings Account’ alternative, as we suggest at paras 4.11ff below.

4.3. **Forecasting**

- 4.3.1. It is usually necessary to be able to forecast how much the tax debt will be in order to assess accurately how much to pay by BPP instalments, and such forecasting can be difficult. For example, a state pensioner in ITSA is unlikely to know their liability until the return has been submitted and, in many cases, it can come as a surprise.
- 4.3.2. This calls for proactivity on HMRC’s part. For example, during the P161 process (or its replacement) HMRC must identify where a state pensioner needs to be in ITSA, and it would be helpful to provide an estimate of the tax due so that it can be budgeted for in advance.
- 4.3.3. We also recommend that an online calculator is provided to help unrepresented taxpayers to determine the likely tax due, with helpline and face-to-face alternatives for those unable to access or cope with the online service.

4.4. **Publicity and guidance**

- 4.4.1. We agree that tax payment plans should be optional, ie on an opt-in basis rather than opt-out. But in order to be effective, clear guidance on the options and details of how to apply must be made available. How will HMRC publicise these schemes? We trust that this will be done in consultation with external stakeholders.

¹ See ‘Bacs urges local authorities to increase number of council tax billing dates in 2007’: <http://www.bacs.co.uk/BACS/Press/Press+releases/2007/Bacs+urges+local+authorities+to+increase+number+of+council+tax+billing+dates+in+2007+23-02-2007.htm>

² See HMRC’s leaflet ‘Collection of Student Loans for SA Customers – A Quick Guide’ 12/08

- 4.4.2. This is supported by two of the recommendations from Parliament's Communications Committee report on Government Communications on 26 January 2009¹:

'148. We recommend that Government information should always be available and accessible to as many people as possible. In particular, the Government must be clear about its target audiences in communicating information and use the most appropriate method.

149. We recommend that Government departments should consult the voluntary sector about appropriate delivery mechanisms at an early stage when planning new information campaigns or revising old guidance.'

- 4.4.3. We believe it is also sensible for HMRC to pilot the payment schemes prior to implementation and to commit to reviewing them regularly to ensure they are meeting customers' needs, particularly those of low-income groups.

4.5. ***Contemporaneous Time to Pay to clear arrears***

- 4.5.1. Regarding the comments at para 4.17, where a taxpayer is clearing arrears at the same time as paying instalments towards a current liability, the scheduling of the old debt needs to take into account the current payment plan in assessing the taxpayer's means.

- 4.5.2. Furthermore, regarding the comments at 4.35, we do not agree that a taxpayer should have to pay bank charges on two monthly payments in circumstances where they have a Time to Pay arrangement and Managed Payment Plan in place contemporaneously. If they are paying tax under ITSA, both payments will surely be made under the same reference and can be then allocated appropriately on the statement of account. Why could both not be taken as a single direct debit?

4.6. ***What might happen if the obligations are not met?***

- 4.6.1. We note that para 4.20 suggests a 'one strike and you're out' approach to the payment schemes. This seems unduly harsh, and if the taxpayer does not have the money to pay, what good will it do to revert to statutory payment dates? We understand that the fallback option will be for the taxpayer to contact HMRC to negotiate a Time to Pay agreement, but again we are concerned that this 'safeguard' is operated entirely at HMRC's discretion.

4.7. ***Penalties and late payment charges***

- 4.7.1. Para 4.33 notes that penalties will be reinstated if the taxpayer does not keep up the payment plan. However, this would not be fair in cases where there are mitigating circumstances, e.g. events beyond the taxpayer's control, so there needs to be an appeal right against the reinstatement on these grounds and/or some degree of tolerance.
- 4.7.2. As noted above, if the reason for default is that the taxpayer needs extra time to pay, it should be possible to reschedule the debt under an ordinary Time to Pay arrangement without reinstating penalties (see comments at 3.12.3 above).

¹ <http://www.publications.parliament.uk/pa/ld200809/ldselect/ldcomuni/7/7.pdf>

4.8. **Managed Payment Plans (MPPs)**

- 4.8.1. In order to start a payment plan which involves equal amounts being paid before the due date and after it, most taxpayers will need to be in a position to file a return (or at least have all the information available to them) well in advance of the filing date. How many ITSA taxpayers are likely to be in that position?
- 4.8.2. A more flexible scheme could be drafted so that HMRC accept an estimate and refrain from upsetting MPPs arrived at in good faith on the basis of a reasonable estimate, even if it results in uneven payments before and after the due date.

4.9. **ITSA Paper filers**

- 4.9.1. Para 4.29 appears to limit the use of MPPs to online filers. Given that there are some 17 million digitally excluded adults in the UK (see para 3.7ff above), this is undoubtedly discriminatory. What use has been made of the existing analysis of online filing populations to determine who might be affected by such exclusion?
- 4.9.2. We do not support payment plans being accessible only to online filers. All taxpayers should have equal rights to spread payments using these facilities if they so wish. The paper filing system must be adapted to cope, particularly since HMRC seem to accept that there never will be 100% online mandate for ITSA. Paper filing is an accepted option and the earlier filing date of 31 October is sufficient a discouragement without additional discrimination.
- 4.9.3. There is an inherent problem if paper filers are not capable of calculating their own tax liability, but some may have had assistance and as such be able to self assess their tax liability and set up a payment plan accordingly. For those relying on an HMRC calculation who wish to opt for a payment plan, HMRC must commit to processing their tax returns and issuing a calculation within a certain time frame – say 30 days. Indeed, now that returns are designed to be machine-read and many more returns are filed online, paper processing delays should be reduced compared to the past.

4.10. **Payment methods**

- 4.10.1. HMRC's 'experience' of problems with Bacs/Chaps payments is noted at para 4.38. Will HMRC make available evidence and data illustrating the nature and extent of the problems? Similar comments apply to the arguments against standing orders at para 4.40. We think HMRC is wrong to dismiss these other payment methods as many people manage them for other purposes, such as utility bills, and may prefer the control of standing orders as opposed to direct debit.
- 4.10.2. As noted above, direct debit is not always suitable for, or attractive to, low-income households managing a tight budget, supported by research from Bacs¹. Recommendation j of the NAO report on HMRC Management of Tax Debt² also supports exploration and possible introduction of other payment methods.
- 4.10.3. Despite the arguments in favour of direct debits at para 4.42, some taxpayers remain wary of them and mistakes do happen. A full refund of the amount debited in error

¹ See Bacs: 'Research insights into why some people don't use Direct Debit'
<http://www.bacs.co.uk/NR/rdonlyres/B39FA5AD-6EDE-4BBE-BC51-62E7DD6ED478/0/ResearchinsightsintowhysomepeopledontuseDirectDebit.pdf>

² http://www.nao.org.uk/publications/0708/management_of_tax_debt.aspx

may not cover the payer's loss in the event of a mistake, as the taxpayer could have incurred some other financial loss and administrative burden in rectifying the problem (e.g. bank charges). HMRC should undertake that, in the event they request the wrong sum, they will fully compensate for the taxpayer's loss.

4.10.4. We are also concerned about the effectiveness of HMRC warning taxpayers of a change in the amount to be debited from their account – for example, such a warning might not be immediately noticed by the taxpayer.

4.11. ***Other ways of achieving the same aim***

4.11.1. In past workshops, the option of a 'tax ISA' style account has been discussed, which could be a neutral place for a taxpayer to deposit funds with a view to meeting tax liabilities, but from which HMRC could not draw without customer authorisation. This could be used as a means of incentivising taxpayers to save towards future liabilities, for example by paying interest on the balance.

4.11.2. The idea would be to introduce a 'Tax Savings Account', which could:

- be operated by banks and building societies;
- pay interest – perhaps tax-free, subject to conditions;
- include certain conditions, for instance that the savings are used wholly or mainly to discharge tax liabilities. There would probably also need to be a cap on the tax-free interest, by reference to the taxpayer's anticipated tax liabilities;
- be operated like a mortgage savings account. Banks and building societies could offer overdraft facilities, at a commercial rate of interest. The taxpayer would be free to pay into the account at any time to clear the debt;
- give taxpayers the option to allow HMRC to access the account directly, i.e. to discharge liabilities that become due;
- replace Certificates of Tax Deposit.

4.11.3. We believe that this would be a popular type of account, which would encourage saving towards tax liabilities.

4.12. ***Minimum level of monthly payment***

4.12.1. We do not believe that there should be a minimum, as this could exclude low-income customers with small liabilities for whom payment plans could be a useful facility. As noted above, we also do not believe that payment frequency should be limited to monthly if it would better suit the taxpayer to pay, say, weekly. We also note above the importance for a taxpayer to be able to choose their own payment date rather than being restricted to a fixed date of, say, the end of the month.

5. **Chapter 5: Ensuring HMRC has the right tools to tackle debtors**

5.1. ***Collecting small debts through PAYE: cost effective recovery***

5.1.1. Para 5.3 suggests that arrears will be spread over a year, but in our experience PAYE debts are frequently spread over up to three years. We recommend that in any PAYE recovery, the taxpayer's circumstances are taken into account in order to determine a suitable period.

- 5.1.2. Regarding the issues highlighted from previous consultations noted at para 5.4, the concern we previously raised about capability of HMRC's systems still needs to be addressed. Deferral of the new PAYE Service indicates that there may still be problems in the system and therefore raises the question of whether the infrastructure is in place to cope with an additional complication. Already the PAYE system struggles to cope where a taxpayer has income from more than one source (TaxHelp for Older People advisers find that at least half the codes issued to their pensioner clients are incorrect), and adding yet more functions to an already strained infrastructure risks more serious malfunction.
- 5.1.3. HMRC now propose that the taxpayer's consent would not be required before a debt is coded out, but a grace period (of say six months) will be given to offer alternatives before coding is used. How will HMRC ensure they have made contact with the customer and given them adequate opportunity to respond before taking action? Support needs to be offered to customers to make contact and discuss the options to ensure that they have understood that coding will be automatically applied in the absence of an agreement to the contrary. We remain of the view that it would be preferable to require taxpayer consent before coding out.
- 5.1.4. The interaction with other Government departments must also be considered in determining how much the PAYE system can cope with. For example the new Child Maintenance Enforcement Commission is likely to make increasing use of deduction from earnings orders for child support. Depending on the interaction with the PAYE '50% rule' for K codes, taxpayers could receive less than half of their take-home pay. What work has HMRC done and what discussions have been entered into with CMEC to address the potential issues?
- 5.1.5. We think that the 50% rule for K codes and the £2,000 coding limit both need to be flexible (with the taxpayer having a say in any variation and the right to veto any deduction greater than 50% or coding out arrears of more than £2,000). Some may be happier with larger amounts, whilst others may find that, say a 25% deduction is the maximum they could afford. Is HMRC willing to consider combination options, e.g. coding half a debt and immediate payment for the other half?
- 5.1.6. Regarding the trial mentioned at para 5.9/5.10, we understand that some tax credits claimants have agreed to recovery of overpayments through PAYE from April 2009. Will the full findings of the trial be made available in due course?
- 5.1.7. In terms of Time to Pay being included in the list of safeguards at para 5.6, the protection offered by this is only as good as HMRC's application of it. Time to Pay relies on sympathetic and fair application, listening to the taxpayer and understanding their circumstances; therefore it relies on adequate staff training and guidance. As a safeguard, it is not wholly effective as there is no independent right of review or appeal on HMRC refusal.
- 5.1.8. On the question of safeguards raised at 5.11, tax collection should always be capable of suspension in cases where tax is in dispute (such as those where an application for ESC A19 is made), or has been referred to the Adjudicator or Ombudsman pending the outcome of the review. We understand from TaxHelp for Older People that this is not always the case in practice and taxpayers suffer deduction of tax via PAYE or continue to be pursued in the meantime. Tax can be agreed to be postponed on appeal; why not when review is sought by other means?
- 5.1.9. We must also consider what happens to the coded debt in the event that the PAYE income source ceases. In our experience, this can result in HMRC promptly

escalating enforcement of the debt, demanding settlement in full. Particularly in times of economic decline where redundancies are rife, an immediate demand for a coded debt merely adds insult to injury and HMRC must exercise its discretion to defer collection until such time as the taxpayer's situation improves once more.

5.2. ***Award of costs in successful court actions: a level playing field***

- 5.2.1. We have no objection to costs as a general principle, subject to the points we make below about certificates of debt, estimated determinations, and unestablished debt reaching the courts. We agree that it is sensible to have a scale of charges on which costs are based, but any award must not be automatic – HMRC should always have to apply for costs like any other litigant so that the debtor has the chance to resist their application.
- 5.2.2. We are also concerned that if HMRC are able to recover costs (albeit perhaps not the full true cost of court action using the proposed scale) they may be quicker to pursue cases to court. This comes back to reviewing the efficiency of collection methods looking at cost versus recovery, as recommended by the National Audit Office in their Value for Money Study on HMRC's Management of Tax Debt¹. In cases where the taxpayer cannot pay, we would always prefer to see a lighter-touch, tailored initial approach.
- 5.2.3. Whilst para 5.12 states that 'HMRC does not knowingly take people to court where it is satisfied that they are unable to pay', TaxHelp for Older People has evidence of cases where benefits claimants are pursued to court.
- 5.2.4. We also reiterate previous concerns regarding the ease with which HMRC can prove ordinary tax debt in the county court simply by issuing a certificate of debt. Where the debt so certified is estimated (e.g. a determination) there is a risk that any award of costs will be grossly inflated, if assessed according to a scale.

5.3. ***Tracing missing debtors***

- 5.3.1. The implication of para 5.31 is that most people actively avoid informing HMRC of a change in contact details, but in reality most taxpayers paying through PAYE rarely have any direct contact with HMRC and simply overlook it. A fully-functioning 'Tell Us Once' service would overcome many such issues. At a minimum the service should operate across the whole of HMRC but it really should embrace all relevant government departments, e.g. DWP, as well.
- 5.3.2. It also suggests that the taxpayer is always at fault, rather than HMRC's databases and internal processes. For instance, a person should be able to assume that if they inform one part of HMRC of a matter, other parts of the Department will also become aware of it. Statutory obligations, after all, are generally to notify HMRC, not to notify each sub-department of HMRC separately.
- 5.3.3. In addition to the points highlighted in para 5.32, missing addresses can also lead to a debtor not receiving tax returns, with the result that determinations might be issued and tax debts pursued without the taxpayer even being aware there is a problem. Accordingly, we seek assurances that better use will be made of data-matching between government departments and internally within HMRC, and that using tracing powers will only be considered as a last resort.

¹ http://www.nao.org.uk/publications/0708/management_of_tax_debt.aspx

- 5.3.4. Regarding the question at 5.39 of whether there are any debtor/third party relationships that should be excluded from these proposals, these should include fiduciary relationships, professional relationships, and other relationships which impose on one or other party a duty of confidentiality. Legal professional privilege is an obvious one in this context, the parameters of which should also embrace debt advisers (e.g. in a Citizens Advice Bureau or money advice centre). We understand from discussions with the Powers team that the third party information power would not be used against advice agencies, but for the avoidance of doubt the draft legislation should make it clear that the term 'in business' (para 1(4)(b)) excludes such voluntary organisations.
- 5.4. ***Draft legislation: Information powers – contact details for debtors***
- 5.4.1. Our initial reaction to the draft is that it appears very widely drawn.
- 5.4.2. Para 3.24 of the explanatory notes states that 'the officer must have reasonable grounds to believe that the third party has more up to date contact details than HMRC already holds'; yet there does not appear to be anything in the draft legislation to this effect. We understand that use of this power will be a last resort when all other options have been exhausted; we therefore recommend that the legislation clearly sets out all other steps that HMRC first must have taken.
- 5.4.3. Paras 1(3) and 1(4) also seem to be saying that HMRC can request information not in the third party's current possession. We understand that this is not to be used so as to require third parties to act as HMRC's agent in obtaining information; if so, the legislation should contain that restriction. It is insufficient for it to be contained only in HMRC guidance.
- 5.4.4. Schedule para 2(2) says 'The notice must name the debtor'. The legislation should clearly provide that HMRC must also provide sufficient information to the third party to identify the debtor. There is particularly likely to be confusion where a taxpayer has a common name. At the same time, HMRC have to bear in mind their confidentiality obligations.
- 5.4.5. Right to appeal: What if there is a disagreement where the third party says they have never heard of the debtor, yet HMRC insist they have 'reasonable grounds to believe' that they do have the information? There does not seem to be an appeal right to allow the third party to counter the notice on such grounds, only on grounds of it being 'unduly onerous to comply...'. In such circumstances, could the third party comply with the notice by simply advising that they do not hold the information HMRC is seeking? It would be helpful if the legislation were to set out the time limit for compliance and how the third party is to comply rather than leaving this open to what may be 'reasonably specified' by HMRC.
- 5.5. ***Direct attachment***
- 5.5.1. We welcome the announcement that there are no current plans to take direct attachment orders further, as we had many concerns over the proposals (noted in previous consultation responses).

6. Chapter 6 – Encouraging Compliance

6.1. *Greater use of financial securities*

6.1.1. We understand that the increased use of financial securities should be of little relevance to low-income, unrepresented taxpayers, so we are not commenting further on these proposals.

6.2. *Tax clearance certificates*

6.2.1. We note that HMRC are still reviewing international tax clearance arrangements. We would be interested in responding to any future consultation on this subject and at such time, it would be useful if HMRC were to publish their research. Our concerns over clearance certificates were raised in para 6.18 of our response to the June 2007 consultation¹.

7. Impact Assessment

7.1.1. Page 14 of the impact assessment states that HMRC have carefully considered whether the proposals will have any impact on various issues including equality ‘and conclude they do not impact’.

7.1.2. However, as noted above (para 3.7ff), we believe that there will be an impact. For example, it is proposed to exclude people without access to the internet from the benefit of managed payment plans. As previously recommended, HMRC need to consider carefully how the digitally excluded can continue to benefit from the same level of service as their digitally included counterparts.

LITRG
9 February 2009

¹ See http://www.litrg.org.uk/uploadedfiles/document/1_462_0917_Debt_Consultation_final.pdf