

**Call for evidence: modernising tax debt collection from non-paying businesses  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 The focus of the call for evidence is collecting debt from businesses who HMRC believe can pay their tax debts but choose not to. We assume that in this context businesses refers to both individuals who are either self-employed or a partner in a partnership and also companies.
- 1.2 As we have experience of assisting individuals on low incomes dealing with tax debt, we are pleased to respond to the second part of the call for evidence looking at ‘improving the collection of business tax debt from non-paying businesses’. We have no comments to offer in relation to the first section of the call for evidence.
- 1.3 Our experience suggests that when a debt is not being settled and there is no engagement from the taxpayer this could be indicative of there being underlying issues. For example, there may be barriers such as mental health conditions, a lack of numeracy or literacy skills, or a lack of understanding if English is not the person’s first language. These kinds of barriers can prevent people from engaging with HMRC even when they can afford to pay the debt, as well as when they cannot afford to pay. Therefore HMRC need to proceed with a degree of caution and with a greater awareness of what might be causing a delay in payment when pursuing collection of these debts. We consider this further below, in particular at 4.2 and 4.3.
- 1.4 Another group of debtors who may seem like straightforward ‘won’t pay’ cases on the face of it are those who don’t agree that the debt is due, and therefore don’t pay the amount being demanded. An unrepresented individual taxpayer may simply feel helpless and overwhelmed when faced with a debt that they disagree with from a government authority such as HMRC. HMRC’s debt recovery staff need to be ready and able to deal with taxpayer queries about the cause or amount of the debt and be aware of the options available to rectify incorrect debts at a relatively late stage, for example by making late appeals, submitting late tax returns etc. We discuss this at 3.4 to 3.8 below.
- 1.5 We think HMRC should carry out some further research to understand more about the debtors who settle their debts when HMRC threaten or begin enforcement action to better understand this population. The research should look at all aspects, including at what stage of the process the debtors had the means to pay, and what specific action they took, if any, to make funds available to settle the debt. We discuss this at 3.10 – 3.12 below.

- 1.6 When considering how intermediaries other than formal agents can help taxpayers engage with HMRC regarding payment of debts, the role of voluntary agencies should not be overlooked. HMRC could consider making its VSTRS (Voluntary Sector Taxes Resolution Service) more widely available so that voluntary sector advisers such as money advisers from other voluntary sector agencies can also access the service if they wish to. We would also recommend that HMRC investigate whether this service is being used to its full potential by all those who are currently authorised to use the service. For further comment on this, see 7.1- 7.3 below.

## **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 General comments**

- 3.1 In our experience of assisting individuals on low incomes dealing with tax debt, we generally find that they do want to pay their debt but they are more likely to struggle to pay. Assuming they engage with HMRC to arrange time to pay, such people are not within scope of this consultation. The Debt Management and Banking Manual describes these debtors as 'can't pay' cases<sup>1</sup>.
- 3.2 As the guidance in the Debt Management and Banking Manual explains, in order to establish whether a debtor is a 'can't pay' or 'won't pay' case, the HMRC officer would hope to engage in telephone conversations with the debtor to glean more information about their circumstances to enable them to arrive at a conclusion as to which category they fall into. When a debtor fails to engage with HMRC, difficulties inevitably arise in determining which category a person falls into. However, lack of engagement does not always mean that a person has consciously made a choice not to pay – it can indicate that there are other underlying problems that make engagement and dealing with their debt difficult. It is also possible that other factors are affecting their ability or willingness to engage, for example where they do not understand or dispute the amount of the

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<sup>1</sup> <https://www.gov.uk/hmrc-internal-manuals/debt-management-and-banking/dmbm800050>

debt. It is important that HMRC's debt collection processes and guidance recognise these possibilities.

#### *Underlying issues preventing engagement with HMRC*

- 3.3 There are many reasons why someone may not be engaging with HMRC with regard to the debt. For example, there may be barriers such as mental health conditions, a lack of numeracy or literacy skills, or a lack of understanding due to being non-English speaking nationals. Sometimes people simply lack the confidence needed to deal with Government departments. Not all underlying issues are permanent in nature, sometimes people can be facing difficult personal circumstances that can affect their ability to deal with a debt or engage with HMRC – for example bereavement, a relationship breakdown or family illness. These issues can prevent people from engaging with HMRC even when they can afford to pay the debt, as well as when they cannot afford to pay. We look at some possible ways of dealing with these issues in paragraphs 4.2 and 4.3 below.

#### *Lack of understanding/disagreement about the amount of the debt*

- 3.4 Another group of debtors who may seem like straightforward 'won't pay' cases on the face of it are those who don't agree that the debt is due, and therefore don't pay the amount being demanded. In our experience, this situation usually arises because the individual
- does not fully understand how the debt has arisen (which could be due to some of the underlying issues mentioned in paragraph 3.3), or
  - they dispute the amount of debt HMRC are trying to collect from them but either they have not been able to convey this to HMRC or HMRC disagree that there are grounds to dispute the debt, or
  - they do not know how to challenge the amount of the debt HMRC are saying is owed.

An unrepresented individual taxpayer may simply feel helpless and overwhelmed when faced with a debt that they disagree with from a government authority such as HMRC. Therefore, they either do not engage with HMRC at all, or cease to engage any longer with regard to the matter.

- 3.5 Our experience of working with people who have outstanding tax debt is that the threat of enforcement action by HMRC is often the catalyst for the taxpayer to seek advice (usually from the voluntary sector) as to how to deal with their debt. These taxpayers could well give the impression of choosing not to pay but will usually fall into one of the situations described in 3.4 above, particularly where they have the financial means to pay the tax being pursued.
- 3.6 Therefore even where HMRC's view at a particular point in time is that the full amount of outstanding debt being pursued is legally due, HMRC's debt recovery staff need to be ready and able to deal with taxpayer queries about the cause or amount of the debt and be aware of the options available to rectify incorrect debts at a relatively late stage, for example by making late appeals, submitting late tax returns etc. If they can correctly identify such options when the debtor is in contact with them, they should then be able to hand over the debtor to Extra Support Team

colleagues in line with the instructions in the DMB manual<sup>1</sup>. The EST should then be able to listen to the taxpayer's concerns and help them take the necessary steps to arrive at the correct amount of tax due which will then allow the taxpayer to go on to engage about repaying any remaining debt.

- 3.7 By way of illustration, the tax charity TaxAid collated information about tax debts for a sample of 66 cases they had dealt with in the period August 2019 to February 2020 and they found that the individuals had a total debt of £232,093 (an average of £3,516.56 per taxpayer) when they first presented for help. 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).<sup>2</sup>
- 3.8 If HMRC were to improve this area of the debt collection process we anticipate there would be an inevitable reduction in costs for HMRC associated with taking further recovery and enforcement action.

#### Availability of funds to pay the debt

- 3.9 We note comments in the call for evidence document at 3.1, that those who have the ability to pay a debt and choose not to, often do pay once HMRC begin enforcement action. We agree that this may well be the case for those who do not dispute the debt and have funds available since the time the debt first arose but are genuinely just choosing not to pay. As explained at 3.4 above, we also think that this triggers many people to seek independent advice regarding the debt from organisations such as the tax charity TaxAid or Citizens Advice.
- 3.10 However there could be another side to this for some debtors, in that a business may genuinely not have been able to pay initially, but over the period of months during which HMRC have been trying to get engagement with the debtor, they have managed to get funds together. This could be by borrowing from friends and family, taking out a business loan, or re-mortgaging their homes for example. The debtor may have taken the view that not engaging with HMRC would buy them a bit more time to raise the funds to settle the debt than they would otherwise get if they were to engage with HMRC.
- 3.11 It might even be the case that the possibility of enforcement action has forced the debtor to take more drastic action to raise funds to settle the debt, such as re-mortgaging their house, than they would have considered earlier in the process, without the threat of enforcement action.

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<sup>1</sup> <https://www.gov.uk/hmrc-internal-manuals/debt-management-and-banking/dmbm585180>

<sup>2</sup> TaxAid annual report year ended 31 March 2020 : <https://taxaid.org.uk/wp-content/uploads/2021/08/Tax-Aid-UK-Financial-Statements-31-March-2020-Final.pdf>

- 3.12 We suggest that HMRC carry out some further research to understand more about this population, including at what stage of the process they had the means to pay, and what specific action they took, if any, to make funds available to settle the debt.
- 3.13 With regard to the Direct Recovery of Debt legislation introduced in November 2015, this was specifically designed to allow HMRC to take payment from a taxpayer's bank account where there were funds on deposit but the taxpayer was not settling outstanding debt, subject to certain taxpayer safeguards. As noted in the call for evidence at para 2.21, this power was used only 11 times in 2019/20. HMRC conclude this 'shows that the existence of this power encourages customers who have repeatedly resisted paying, to do so'. The consultation does not say how many times HMRC threatened to take this course of action but did not need to do so as the debt was settled beforehand. If it was significantly more than 11 times then this would support HMRC's view. However HMRC's Direct recovery of Debt power is not widely known among taxpayers and therefore the fact it was only used 11 times in 2019/20 could also indicate that, for some people, it is more likely that non-payment is for a reason other than choosing not to pay.

**4 Question 9: Do you have any views on how often businesses who can pay their tax debt repeatedly choose not to, and whether HMRC should take steps to tackle this issue?**

- 4.1 Clearly there are a minority of taxpayers who can afford to pay their tax liabilities and choose not to do so, and we agree that HMRC should be taking steps to tackle the apparent non-payment by this cohort of taxpayers (and indeed have a duty to do so).
- 4.2 However we think that when a debt is not being settled and there is no engagement from the taxpayer this could be indicative of there being other issues as explained in section 3 above. Therefore HMRC do need to proceed with a degree of caution and with a greater awareness that there may be underlying issues causing a delay in payment and it is not necessarily because the person does not want to pay. We accept this inevitably presents a challenge for HMRC where the person does not engage at all but there are some proactive things that HMRC could do which might help identify if people have underlying issues that might be affecting their ability to engage. This includes:
- reviewing the taxpayers existing HMRC records to see if there is any explanation for the lack of engagement and to see their compliance history, ( for example, if it is someone who is usually compliant and has a long history of doing things on time, that could suggest there is a separate factor preventing them from engaging)
  - establishing whether the taxpayer has had any interactions with other areas of HMRC (such as child benefit and tax credits) or other parts of government such as DWP (if someone has recently begun to receive bereavement benefit or universal credit this could be indicative of a significant change in circumstances)
  - making better use of interpreters and translators and ensuring that taxpayers are aware of this possibility in letters sent to them.

- 4.3 HMRC could then use the information obtained to better tailor further debt letters and decide on appropriate next steps in terms of debt recovery. HMRC should also ensure that all letters:
- have information about extra support available and make it clear that it is not too late for someone to get help from HMRC. Sometimes HMRC's letters seem to assume that the person has received and read each of the previous letters. However, where someone for example has a mental health condition, that might not be the case.
  - are clear and written in a way that is easy to understand, even by those where English is not their first language. We are aware HMRC have made changes to their letters recently to improve the content, clarity and tone. We assume some evaluation of the changes made has been or will be carried out. If this shows there has been an improvement in engagement then we would urge HMRC to roll out similar improvements in as many letters as possible as quickly as possible.
  - Signpost people to independent help such as suitably qualified paid professional tax advisers and voluntary sector tax charities.
  - make it clear what taxpayers can do if they still dispute the amount that is stated as due in the letters.

**5 Question 10: To what extent do you think expanding security deposits to include repeated, intentional non-payment would incentivise businesses to pay their future tax liabilities on time?**

- 5.1 To request security deposits in these circumstances means that it would be necessary to identify businesses who repeatedly and intentionally withhold payment and this would seem to be quite a difficult task. HMRC will need to think about how they will identify these businesses in the first instance. It is not clear how much the security deposit would be, but for smaller businesses, having to use funds for a security deposit might be depriving them of working capital which they need to generate revenue to pay their future tax bills.
- 5.2 As mentioned at paragraph 3.12 in the call for evidence, current powers allow for security deposits to be required from high-risk businesses where there is serious non-compliance due to avoidance or evasion and it would seem they are used extremely rarely. If their use was to be expanded, then it seems reasonable to expect them to be used where the debt is above a certain threshold and the business is of a sufficient size to be able to raise a security deposit without it hampering its trading ability.

**6 Question 11: To what extent do you think using director's personal guarantees for businesses with a history of repeated, intentional non-payment would incentivise businesses to pay their tax debt?**

- 6.1 Again, the matter of correctly identifying businesses (in this particular case, limited companies only) who repeatedly and intentionally withhold payment would seem to be a challenge. Many single director companies or small family companies are used to giving personal guarantees in relation to

commercial transactions in many circumstances. However the tax legislation already allows certain liabilities of the company to be assessed on directors in specific circumstances and so HMRC already have powers to collect certain debts from directors. For example the PAYE legislation allows for directors to be personally responsible for paying PAYE due from the company in specific circumstances.

- 6.2 If there is evidence that a director has been drawing down company reserves and so the company has arguably insufficient funds to operate its business, including paying its tax bills, then a potential requirement for a director's personal guarantee in these circumstances might encourage different behaviour.

**7 Question 12: What opportunities are there for agents and intermediaries to play a greater role in helping their clients engage with, and pay tax due, to HMRC?**

- 7.1 When considering how intermediaries other than formal agents can help taxpayers engage with HMRC regarding payment of debts, the role of voluntary agencies needs to be carefully considered.
- 7.2 HMRC could consider making its VSTRS (Voluntary Sector Taxes Resolution Service)<sup>1</sup> more widely available so that voluntary sector advisers such as money advisers from other voluntary sector agencies can also access the service if they wish to. We would also recommend that HMRC investigate whether this service is being used to its full potential by all those who are currently authorised to use the service. If it is not being well used by organisations such as Citizens Advice, HMRC should endeavour to find out why this might be the case.
- 7.3 Independent money/debt advisers can often be useful intermediaries to provide advocacy on a taxpayer's behalf or to help to negotiate payment arrangements which are acceptable to all parties however they are not always able to help with issues around establishing whether the debt is right, without support of tax specific charities.

LITRG  
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<sup>1</sup> <https://www.gov.uk/hmrc-internal-manuals/debt-management-and-banking/dmbm512015>