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Corporate

# Direct Recovery of Debts

Response to Consultation  
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## Introduction

1. The Institute of Financial Accountants (IFA) and the Federation of Tax Advisers (FTA) welcome the opportunity to comment on the consultation document in respect of the direct recovery of debts published by HM Treasury and HM Revenue & Customs (HMRC) respectively on 6 May 2014.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the IFA and the FTA is given below.

## Who we are

4. The IFA is an internationally recognised professional accountancy membership body whose members work for small and medium-sized enterprises (SMEs) or who run or work in small and medium-sized accounting practices (SMPs) that advise SMEs.
5. At the IFA, we put small and medium enterprises (SMEs) first, recognizing their role as vital wealth-creators, as employers to more than half of the UK's private sector workforce and as the power behind vibrant urban and rural communities. We hold the interests of small and medium practices (SMPs) in the accounting profession in equal regard.
6. The FTA is the Tax Faculty of the IFA and is the modern membership body for agents who provide tax compliance and planning expertise to SMEs and entrepreneurs. It is the tax representative for IFA and FTA members.
7. We are proud of our unique relationship with our members, who predominantly come from a SME/SMP background. As a professional accountancy body, we aim to provide the very best support and guidance to our members who operate within this arena, frequently tailoring policies and recommendations to meet the unique challenges and trading relationships associated with smaller business.
8. Founded in 1916, the IFA supports over 10,000 members and students in more than 80 countries with a programme of professional qualifications and education. As well as resources, events, training and seminars. IFA members uphold high standards of conduct, confidentiality and ethics and undertake annual continuing professional development (CPD) activities.
9. The IFA is a full member of the International Federation of Accountants (IFAC), the global body for the accountancy profession. As such, the IFA takes its place alongside the UK and Ireland's six chartered accountancy bodies, as well as 135 national and regional accountancy organisations representing 125 countries and jurisdictions.
10. The IFA is formally recognised as an awarding organisation by Ofqual, the public body responsible for monitoring standards, exams and qualifications (other than degrees) in England, underlining the quality of the IFA's work and the integrity of its qualifications; and is authorised by HM Treasury for Anti Money Laundering supervision.

## General Comments

11. Thank you for the opportunity to respond to the consultation in respect of the direct recovery of debts. We agree that any change made in respect of the legislation must be made in order to improve the fairness of the tax regime in terms of creating a level playing field for all when meeting filing and payment deadlines.
12. We have serious concerns regarding the proposed measures on the basis that they rely heavily on the effective communication between various sections of HMRC. Our experience to date is that the communication between departments can be ineffective. We have dealt with a number of cases where the debt management team have pursued debts, despite a postponement of all liabilities having previously been agreed with the compliance team.
13. We are aware that the repayment of funds from HMRC can be difficult, regardless as to whether these were wrongly taken in the first place. Taxpayers could face a lengthy period without their funds, during which time they may incur a considerable loss of interest income. We consider that the loss of income has not been properly covered.
14. We consider that unrepresented clients are likely to be hit far harder as a result of these measures than those with agents, on the basis that communicating with HMRC can be exceptionally difficult for those unaware as to the appropriate section to contact.
15. These measures have been drafted by HMRC on the basis of information which has not been made publicly available and it is therefore difficult to provide informed responses in respect of all the questions raised.

## Specific comments on the draft legislation

16. In addition to our general comments, our comments on specific questions set out in the consultation document are set out below.

### **Q1: Is 12 months' worth of account information sufficient for HMRC to establish how much the debtor needs to pay upcoming regular expenses?**

17. We consider that while 12 months' worth of information may be sufficient in relation to an account used for one set of specific purposes, the same may not apply across all accounts held. There are likely to be random and exceptional expenses arising on both business and personal accounts which may not occur with the 12 month review period but could arise at any time.
18. There may be accounts held in the name of the taxpayer which have been open for a much shorter period prior to the DRD action being taken. How will HMRC assess the appropriate funds to deduct from such an account?
19. We are concerned that the taxpayer may have taken out a loan to meet personal expenditure, for example home improvements or similar, and HMRC could potentially remove the loan capital from the bank account. The taxpayer may find themselves not only unable to repay the loan but also in breach of the loan contract as the funds have been used for a purpose not previously agreed. This could lead to unnecessary and disproportionate hardship on the part of the taxpayer.
20. We are concerned that information requested by HMRC in relation the DRD action may be used for other purposes. Once the information is in the hands of HMRC there are no statutory measures in place to prevent this information being passed to compliance teams.

### **Q2: Is 5 working days sufficient time for deposit takers to comply with account information requests?**

21. We consider that this question is better answered by the deposit takers although we would comment that we consider it highly unlikely that HMRC would consider 5 working days sufficient time to respond to any form of information request.

**Q3: By leaving a minimum balance in a debtor's account, HMRC needs to strike a sensible balance between avoiding putting taxpayers into hardship and collecting money owed to the Government in an efficient manner. Is £5,000 a proportionate and appropriate sum to meet these objectives?**

22. We consider that a minimum balance of £5,000 may be a proportionate and appropriate sum to avoid putting taxpayers into hardship, but that this will depend entirely on the particular circumstances of the taxpayer and is not a question of one size fits all.
23. For example, a taxpayer may have personal debt problems that are not evident to HMRC, or business issues with a debtor or supplier. In the event that a balance of just £5,000 is left in their accounts they may find themselves unable to meet legal costs associated with the debts, leading to unnecessary hardship.

**Q4: What changes will deposit takers need to make to their systems to administer this policy and will this impose any administrative burdens?**

24. We consider that this question should appropriately be answered by the deposit takers.

**Q5: Is 14 days an appropriate length of time for the debtor to object to HMRC or pay by other means?**

25. We consider that 14 days may not be an appropriate length of time for the debtor to raise any objections to HMRC on the basis that we presume the 14 days will start to run from the date of the letter. In our experience, correspondence issued by HMRC can take up to 10 days to arrive after the date of the letter. We are concerned that should this standard of postal delivery continue, taxpayers may be left with closer to 4 or 5 days to respond.
26. We would refer back to the points made under the general comments section regarding the use of the correct contact details for the taxpayer.
27. What safeguards will HMRC have in place to ensure that the letters are received within a day or so of the date of issue and that they are sent to the correct address?

**Q6: What would be a suitable time limit for the deposit taker to comply with an order to release funds, either to the debtor or to HMRC?**

28. We consider that this question should appropriately be answered by the deposit takers.

**Q7: What sort of sanction should fall on deposit takers who do not comply either with the initial notice to supply account information or the instruction to release the held amount to HMRC?**

29. As above, we consider this question should appropriately be answered by the deposit takers although we would comment that there may be human rights issues related to the supply of confidential information.

**Q8: Is protecting a proportion of the credit balances of joint accounts the best way to protect non-debtor account holders?**

30. We consider that there is no effective way to protect the non-debtor account holders of joint accounts, if these proposed measures go ahead. The proposals regarding joint accounts are based on the assumption that funds are held in a straight 50/50 split which is unlikely to be the case for many. Using the example of a husband and wife account, it may be that one person deposits all of the funds into an account but it is held jointly for practical purposes.
31. We consider the concept of one taxpayer effectively meeting the tax liability of another simply because they hold a joint account to be unjust and unreasonable.

32. Our concerns regarding joint accounts also apply in respect of those accounts held on trust for minor children.
33. There are additional concerns regarding confidentiality and the account details of the non-debtor being passed to HMRC.

**Q9: Are these safeguards appropriate and proportionate?**

34. As noted above in the general comments section, we consider the safeguards do not appear to acknowledge the ongoing issues within HMRC in terms of maintaining accurate information for taxpayers. We consider there to be a strong chance that DRD notifications will be sent to the wrong address for both individuals and companies.
35. The proposals advise that the taxpayer will have been contacted around nine times in total before DRD action is taken. How will HMRC ensure that effective forms of communication have been used to ensure that an appropriate level of contact has been made prior to the DRD being taken?
36. HMRC have previously set up dedicated helplines to assist on particular issues and it is our experience that as with all HMRC telephone helplines, there can be long waiting times and the possibility that the person answering the call may not be able to help. In the event of an agent calling on behalf of a taxpayer, it appears to be a common problem within HMRC that 64-8 forms are not received and processed efficiently. On the basis of an appeal period of just 14 days, this is unlikely to be long enough to resolve any outstanding 64-8 issues as well as settling the DRD matter.

Should you wish to discuss our responses further, please contact [AdamL@ifa.org.uk](mailto:AdamL@ifa.org.uk) in the first instance.