Trust through governance

Institute of Chartered
Secretaries and Administrators

Saffron House
6–10 Kirby Street
London EC1N 8TS

020 7580 4741
info@icsa.org.uk
www.icsa.org.uk

Andrew Willis
HM Revenue & Customs
Debt Management and Banking
Room 3/46, 1900 Parliament Square
London
SW1A 2BQ

By email: andrew.willis@hmrc.gsi.gov.uk

29 July 2014

Dear Mr Willis

HMRC consultation on the Direct Recovery of Debts

We welcome the opportunity to comment on the HMRC's consultation on the Direct Recovery of Debts. The Institute of Chartered Secretaries and Administrators (ICSA) is the professional body that qualifies Chartered Secretaries and, as such, our members are well placed to understand the concerns of organisations and clients with regards to HMRC's ability to directly recover debts. In preparing our response we have consulted, members from a variety of types and size of organisation and representing many types of clients.

General comments

The proposals can be appreciated on first reading as the intentions behind them (as listed below) appear sound:

- To help level the playing field between those who pay taxes and those who do not
- To help ensure that compliant businesses do not face unfair competition from others that try to gain an undeserved financial advantage by evading or delaying their tax payments.
- To target a minority who owe significant debts over £1,000 and have sufficient funds in their accounts
- To target the minority who refuse to respond to numerous communications from the HMRC

- To avoid financial hardship by leaving a minimum balance of £5,000 after recovery of the debt.

However, there are concerns which have been raised in connection with an earlier consultation[1] and also the 2014 Budget[2] which remain valid, these being:

- The proposed powers are effectively reinstating Crown preference (abolished under the Enterprise Act 2002), which must be a concern for other creditors and liquidators
- Apart from a stipulation that a minimum of £5,000 being left in debtor's accounts there are no details of any judicial or other safeguards that would protect those on low incomes struggling with debt problems
- HMRC would effectively be able to act as judge and jury in determining who owes what, how much and the ability to enforce that decision without independent oversight (such as by an ombudsman, tribunal or through the courts)
- The proposed power could undermine the confidence and trust in the HMRC and lead to distorted behaviours, such as not keeping money in bank or building society accounts to avoid seizure
- HMRC's historic performance in making errors or losing data would need addressing before such powers could be exercised with confidence
- Will banks and building societies charge the debtor for their role in debt recovery, as is the case in France?

We acknowledge the counter arguments cited in the consultation document such as an existing ability by the Department for Work and Pensions (DWP) to seize child maintenance payments and the fact that other countries have similar powers. However, child maintenance is not a payment from or to the state and the DWP is acting as an intermediary between parents. Similarly, other jurisdictions have greater safeguards in place. For example, before the Internal Revenue Service (IRS) can seize property and rights to property, specific actions must be completed before a recommendation to seize is made. Furthermore, the IRS cannot recover monies if it would result in economic hardship for the taxpayer. The definition of economic hardship is the ability to pay reasonable necessary living expenses which is unique to each taxpayer[3]. There is no detailed information in the consultation as to the introduction of similar safeguards before HMRC can exercise such powers.

Commentary on specific questions

Q 1: Is 12 months' worth of account information appropriate for HMRC to establish how much the debtor needs to pay upcoming regular expenses?

A 1: Should the power be deemed possible, then 12 months statements would appear to be an appropriate amount of time to properly establish the debtors financial activities and that

[1] *Payments, Repayments and Debt: The Developing Programme of Work, June 2007*

[2] *House of Commons Treasury Committee, Thirteenth Report of Session*

[3] *House of Commons Treasury Committee, Thirteenth Report page 84-85 and IRS Internal Review Manual Part 5*

the HMRC does not inadvertently cause hardship. Some parties have considered this right to be an invasion of privacy but without such information a meaningful assessment cannot be made.

Q 2: Is five working days sufficient time for deposit takers to comply with account information requests?
A 2: This question is probably best answered by deposit takers. It would appear reasonable given the electronic systems now available but there might be circumstances when a longer period was required. More of a concern is who will bear any costs for preparing and providing this information.

Q 3: 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?
A 3: This is impossible to say as it is dependent on the individual/ organisations financial circumstances. The amount should certainly by no less than this.

Q 4: What changes will deposit takers need to make to their systems to administer this policy and will this impose any administrative burdens?
A 4: For deposit takers to answer. Concern has been raised by members as to who will pay for any such administrative burdens.

Q 5: Is 14 days an appropriate length of time for the debtor to object to HMRC or pay by other means?
A 5: We believe this period should be longer, especially as this is 14 days not 14 working days. This would allow for periods when an individual may be out of the country or incapacitated. An additional safeguard against missed communication might be the use of multiple notification methods where possible i.e. letter, email, text, phone call – so as to allow the debtor one final opportunity to respond in the allocated timeframe.

Q 6: 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?
A 6: Deposit takers are in the best position to answer. However, if releasing funds back to the debtor then this should be an immediate withdrawal of the hold on the accounts.

Q 7: 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?
A 7: Again the deposit takers are in the best position to respond. Safeguards would need to be in place to allow for a breakdown in communications between HMRC and the deposit taker and restitution made for any hardship suffered by the debtor.

Q 8: Is protecting a proportion of the credit balances of joint accounts the best way to protect non-debtor account holders?

A 8: Yes. Where possible joint accounts should be targeted after individual accounts.

Q 9: Are these safeguards appropriate and proportionate?

A 9: On initial inspection the safeguards appear simple and logical. However, as mentioned earlier in this submission there are some areas of concern:

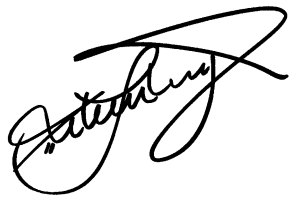
- HMRC is acting as judge, jury and 'executioner' as even objections are dealt with by the HMRC. Some form of external oversight, adjudication and monitoring is required
- Concern has been expressed over the pro-rata safeguards for joint account holders. It is appreciated that if joint accounts are untouchable, this may be used as a loop-hole for avoiding direct debt recovery. However, processes and safeguards for joint accounts need to be more carefully thought out and evidenced.
- Where an objection is made and an error suspected the review process should be expedited and overseen by an independent party, such as an ombudsman or similar process that is less costly and lengthy than judicial appeal.

Conclusion

To conclude, the intention behind the proposal as listed at the beginning of this submission can be appreciated. However, there is hesitation amongst members in supporting this proposal without greater safeguards and a fuller explanation of the operational arrangements. Clearly mandated processes, controls and oversight of the use of the power are required plus a right of appeal and system of recourse would need to be introduced and consideration of paying damages or restitution should errors be made.

We hope our comments are useful and if you would like to discuss any comment in more details, please contact me.

Yours faithfully



Peter Swabey
Policy & Research Director
Tel: 0207612 7014
Email: pswabey@icsa.org.uk