Modernising Tax Debt Collection from Non-Paying Businesses

Call for evidence

Response from ICAS

21 February 2022

About ICAS

1. The Institute of Chartered Accountants of Scotland (‘ICAS’) is the world’s oldest professional body of accountants. We represent over 22,000 members working across the UK and internationally. Our members work in the public and not for profit sectors, business and private practice. Approximately 10,000 of our members are based in Scotland and 10,000 in England.

2. The following submission has been prepared by the ICAS Tax Board. The Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community; it does this with the active input and support of over 60 committee members.

3. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

4. ICAS welcomes the opportunity to contribute to the call for evidence, ‘Modernising Tax Debt Collection from Non-Paying Businesses’, issued by HMRC on 30 November 2021.

5. ICAS members tend not to have much experience of advising businesses which have the ability to pay their tax debts to HMRC but choose not to do so, except in cases where they assist a previously non-compliant business to bring its affairs up to date. However, we do have some comments on a few of the questions in the call for evidence, particularly Questions 8 and 12.

Specific questions

Question 8: What are your views on whether and how HMRC should modernise to adapt to an increased use of digital wallets, in order to minimise non-payment of tax debts?

6. In principle we cannot see any objection to extending the Direct Recovery of Debts (DRD) regime to cover digital wallets – not least to prevent the non-compliant trying to use digital wallets to ensure that HMRC cannot use DRD. However, as the call for evidence notes in paragraph 3.5, it is important that taxpayers are confident that HMRC’s powers are used reasonably, in order to maintain and build trust in the tax system.

7. The 2019 review of DRD provided some reassurance that it was being used in appropriate cases and that the operational process and safeguards put in place were working. It seems clear from section 6 of the review that the existence of the DRD power encourages payments from those who can pay, with the initial letter or telephone call about DRD prompting payment – removing the need to progress to the use of DRD in many cases. The current call for evidence mentions this and notes that in 2019-20 DRD was only used 11 times, which suggests that HMRC’s proportionate approach to using DRD continued after the end of the review period

8. If DRD is extended to digital wallets, it is important that this reasonable approach to the use of DRD is also extended – and that it continues to be adopted for access to bank and building society accounts. Given that hearing about the existence of the DRD power appears to encourage taxpayers who can pay to do so, more extensive publicity could be helpful. However, DRD gives HMRC significant powers, so it is also important that HMRC periodically provides evidence that it is being used properly.

9. The 2019 review of DRD was undertaken because ministers had agreed, when DRD was announced at Budget 2014, that HMRC would provide Parliament with a full review of DRD after it had been operational for two years. We suggest that a further review should be undertaken at a future date, to demonstrate that DRD continues to be used appropriately. If DRD is extended to digital wallets, this review could take place two years after that extension and could consider both the general operation of DRD and any specific issues which may have arisen with digital wallets.

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?

10. As set out in our general comments, ICAS members tend not to be involved in advising businesses which have the ability to pay their tax debts to HMRC but choose not to do so, so we do not have any views on how often this happens.

11. It would be useful to have robust data on the size of the problem, before deciding whether steps should be taken to tackle it and what those steps should be. It is unclear whether HMRC is attempting to establish the extent of the problem as part of its work on a more data driven approach (set out in paragraph 3.3 of the call for evidence).

12. If new measures are introduced, it is essential that they are proportionate and include adequate safeguards, for the reasons set out in paragraph 3.5 of the call for evidence. A full consultation should be carried out on any proposals for new measures; preferably this consultation would include additional data on HMRC's estimate of the scale of the problem.

13. This question and Questions 10 and 11 refer respectively to:

    a. Businesses which 'repeatedly choose not to pay their tax debt';
    b. Businesses where there is 'repeated, intentional non-payment'; and
    c. Businesses with 'a history of repeated, intentional non-payment'.

14. It will be very important that any measures introduced include objective criteria for determining whether a taxpayer's behaviour is within scope, and that these criteria are subject to consultation. Trust in the tax system could easily be undermined if taxpayers feel that HMRC is not applying its powers fairly and consistently.

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?

15. See our response to Question 9.

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?

16. See our response to Question 9.

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?

17. ICAS members support tax compliance and compliant taxpayer behaviour; however, whilst agents support compliance and will generally inform their clients of amounts due and the due dates, they are not responsible for tax payments on behalf of their clients.

18. We do not think it is realistic to expect agents to play a greater role in helping their clients to engage with, and pay tax due, to HMRC – it is generally not a part of their remit. Clarity is required around the relationships between HMRC, taxpayer and agent and the consequent duties that flow from these relationships.

    There are three separate relationships, which are:

    HMRC and taxpayer

19. There is a direct statutory relationship between HMRC and the taxpayer; the taxpayer must pay their due tax to HMRC on a timely basis, and HMRC must collect the tax due.

Agent and taxpayer

20. There is a contractual relationship between an agent and the taxpayer; the taxpayer appoints (contracts with) the agent to handle their tax affairs. The appointment may be a one off to deal with a particular transaction, or it may be ongoing and may cover some or all the client's tax affairs.

21. The role of the agent is to act on behalf of the taxpayer in terms of submitting a tax return and agreeing the quantum of liability. Generally, the agent will inform/remind the taxpayer of the amount due and the payment dates.

22. The agent does not have access to the taxpayer's bank accounts; the agent is not responsible for paying or settling their client's debts.

Agent and HMRC

23. Tax agents have a relationship with, and responsibilities to, HMRC. They should conduct themselves in a professional manner, and any agent who is a member of a professional body is bound by Professional Conduct in Relation to Taxation. HMRC and agents need a good working relationship, with mutual trust and respect, to facilitate taxpayer compliance.

Responsibilities for payment of tax

24. The agent may advise a client to pay tax, but the agent is not responsible for making the client do so and in many cases would be unlikely to know that the client was deliberately not paying. If an agent knows that tax is not being paid by the client, the agent can provide advice on cash flow (if that is the cause of non-payment) or might be able to assist with putting in place Time to Pay arrangements (if the client is in financial difficulties). If, unusually, an agent did know that the non-payment was deliberate, they should withdraw from the engagement.

25. Agents support compliance and will generally inform their client of the amounts due and the due dates; give clients links and details of how to pay; advise on cash flow and provide links/phone numbers to set up payment plans etc. We have also had feedback that they will check Online Services for Agents when advising clients of their liabilities to check if there is any unpaid tax from earlier years – so that they can advise of total liabilities, not just what is outstanding from the return they have just prepared. If there are any figures they do not recognise, in terms of different payments on account to those they had previously calculated, they would follow this up with HMRC/the client depending on the circumstances, for example:

    - If a payment had not been made by a client who is normally a very prompt payer, they would follow up with the client (in some cases it has emerged that HMRC has misallocated amounts).
    - In husband-and-wife partnerships the partners may have paid each other's payments so the agent would contact HMRC to reallocate the payments against the correct liability.

26. Ultimately, however, agents are not responsible for tax payments on behalf of their clients. It is not realistic to expect agents to play a greater role in tax collection than that which they already undertake.

Opportunities to encourage engagement and payment

27. HMRC could perhaps be more proactive in contacting taxpayers, particularly those without agents, to set up payment plans where deadlines have been missed. We understand from members that there is still a fear of dealing with HMRC amongst many taxpayers; what may appear to be deliberate non-payment, may simply be a struggling taxpayer sticking their head in the sand. For individuals with earnings below a certain threshold, contact could perhaps be routed through a third party (such as MoneyHelper or debt advice charities) then referred back to HMRC if the taxpayer is uncooperative.

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