Direct recovery of debts

Management of taxes

04 December 2015

CIOT, ATT and LITRG continue to work with HMRC to improve DRD

The CIOT, ATT and LITRG made submissions to the House of Commons Finance Bill Committee on what has become FA 2015 s 51 and Sch 8. These introduce a new power to allow HMRC to recover debts due to it (including those relating to tax and tax credits) directly from debtors' bank and building society accounts. The legislation calls this power 'Enforcement by Deduction from Accounts', but it was previously known as Direct Recovery of Debts (DRD).

The CIOT still believes no convincing case has been made to justify giving HMRC this new power. HMRC can already recover money owed from a debtor's bank account through the county court process. Enabling HMRC to take money directly out of bank accounts without specific court approval is, in our view, disproportionate.

During consultation on this measure we expressed concern that the safeguards proposed at that stage would be inadequate in preventing errors that could lead to hardship and other serious consequences, particularly for vulnerable taxpayers. In November 2014 HMRC put forward revised proposals, including stronger safeguards, taking account of representations from ourselves and others. In particular:

- a right of appeal to the county court for a taxpayer affected after a hold has been placed on their bank account but before any money is taken from it;
- a guarantee that HMRC use the new power to take money only after a face-to-face meeting with the debtor, at which HMRC officers will satisfy themselves that they have identified the right person and calculated the amount correctly; and
- taxpayers identified as 'vulnerable' would be excluded from the DRD process and dealt with instead by a specialist unit and helpline working alongside the voluntary sector.

Of the three safeguards, only the first appeared in the wording of the Finance Bill published on 14 July 2015. However, the commitment to a face-to-face meeting with an HMRC officer was mentioned in the explanatory notes to the Bill, and will, we anticipate, be laid out in more detail in guidance.

During the passage of the Bill through parliament, the CIOT, ATT and LITRG worked with HMRC to explore whether the primary legislation could be amended to incorporate the other two safeguards – a specific reference to the Revenue being satisfied that the taxpayer is not a vulnerable person and to give a legislative commitment to the face-to-face meeting or other direct contact. After these discussions, government amendment 12 was tabled to insert a new paragraph 4A into Schedule 8. This places a requirement on HMRC to consider whether, to the best of their knowledge, the person is, or may be, at a particular disadvantage in dealing with their tax affairs, before the Revenue decide whether to exercise these new powers.

In addition, government amendment 11 makes it a condition that the hold notice must contain a statement to the effect that HMRC are satisfied that issuing it accords with their obligations under paragraph 4A. New paragraph 4A also contains a commitment that HMRC must publish guidance on the factors that are relevant to determining whether a person is at a particular disadvantage in dealing with their tax affairs. In effect, this means

that the third safeguard is now included in the Finance Act. We see this as further evidence that HMRC are committed to ensuring that vulnerable taxpayers are identified early and excluded from the DRD process.

Although we still do not have the commitment to a face-to-face meeting or other direct contact explicitly mentioned in primary legislation, in our view, HMRC will find it difficult to determine that a person is not at a particular disadvantage (and put a statement to that effect in the hold notice) without having first made direct contact with that person.

In its submission, the ATT invited ministerial confirmation of the commitment to a face-to-face meeting between HMRC and every debtor who was being considered for DRD action.

We were pleased to note that the Financial Secretary to the Treasury, David Gauke, assured the Finance Bill Committee on 15 October 2015:
'The Government have listened carefully to the concerns that have been raised, including by those representing vulnerable members of the public and by respected members of the tax agent community. In response to their feedback, the Government have committed that every person whose debts are considered for direct recovery will receive a guaranteed visit from an HMRC officer. This will be an opportunity for debtors to have a face-to-face conversation about their debt, confirm beyond any reasonable doubt their identity and give them another opportunity to pay.'

The CIOT also raised concerns about joint bank accounts that remain in scope. Clearly, if they were not, they would present a simple way for a determined non-payer to circumvent the legislation, but they do present particular difficulties and risk to HMRC if they decide to apply DRD to them.
It is clear that HMRC themselves recognise this by specifying that accounts other than joint accounts always have a higher priority than joint accounts. The default position is that funds held in a joint account are deemed to be held equally between the holders. So in the case of a joint account held by two persons, one half of it will be subject to hold arrangements. However, this will not necessarily be a fair representation of how the account has been funded. The non-debtor joint account holder will have to wait until after the hold notice has been issued before they can object to HMRC on the ground of exceptional hardship or as an interested third party. We still question whether it is right for an innocent joint account holder to have to make such representations to prevent HMRC accessing their money in the mistaken belief that it belongs to someone else.