



MODERNISING TAX DEBT COLLECTION FROM NON-PAYING BUSINESSES

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ICAEW welcomes the opportunity to comment on the Modernising tax debt collection from non-paying businesses published by HMRC on 30 November 2021, a copy of which is available from this link: [Call for evidence: modernising tax debt collection from non-paying businesses - GOV.UK \(www.gov.uk\)](https://www.gov.uk/call-for-evidence/modernising-tax-debt-collection-from-non-paying-businesses)

This response of 17 February 2022 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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KEY POINTS

1. We support HMRC's efforts to recover unpaid tax. However, we believe that it could make greater use of the powers it already has, such as issuing tax determinations when businesses have failed to file tax returns after a certain period. This would help to uncover outstanding tax debts HMRC is unable to quantify.
2. HMRC could also do more to publicise both the mechanisms it has in place to support businesses struggling to pay their tax debts and the powers it has to recover debts from businesses able to pay them. Improved dialogue would help to make the relationship between HMRC and non-compliant businesses less adversarial and more effective in recovering outstanding debts.
3. We stress that there is only a limited amount that tax agents can do to encourage their clients to pay taxes on time, other than to remind them to do so and the consequences of non-compliance.
4. ICAEW fully supports HMRC's actions to recover outstanding tax debts. In the area of VAT for example there are a number of mechanisms used to ensure that taxes are never collected by a potentially defaulting taxpayer.

Split payments:

- (a) A significant amount of work was undertaken on the use of split payment mechanisms – see <https://www.gov.uk/government/consultations/alternative-method-of-vat-collection-split-payment> - whereby VAT due on a transaction is remitted by the purchaser to HMRC (or locked bank account) and only the net amount of the transaction is remitted to the supplier. This mechanism could be implemented in both B²C and B²B scenarios and reduce the capacity for large VAT debts to accrue in the hands of the supplier.

Reverse charges

- (b) The introduction of a split payment system would require significant changes to the existing VAT system and an alternative could be a greater use being made of the reverse charge mechanism – as recently introduced in the construction sector - such that those sectors, where significant VAT liabilities can rapidly accrue, do not collect the VAT on their supplies of services (and high value goods) before remitting it to HMRC, an example here was the action taken to stop large VAT liabilities accruing in the carbon emissions trading certificates market in 2009. At least one EU country has a very broad application of the reverse charge mechanism on transactions within their national territory (the reverse charge applies to all transactions over €17 500 in value).

A taxpayer different to the taxable person

- (c) Still in relation to VAT the government could introduce legislation to require that a person, other than the person making the supplies is liable for the VAT due (including for non-established businesses the compulsory appointment of a tax representative – who would be solely liable for the VAT due (and not 'just' jointly and severally liable).
- (d) Following the OECD's guidelines on the role of online platforms in the VAT collection process, legislation could be introduced in the UK to make such platforms liable for the VAT on supplies made via them (both for goods and for services). Interaction with other VAT regimes would need to be considered eg the TOMS. By making platforms liable for the VAT due on the supplies by the underlying suppliers, this reduces for HMRC the number of potential taxpayers with which they have to interact.

Digital Reporting Requirements (DRR) and e-invoicing

- (e) By bringing closer to the time at which taxes are due to the time at which such transactions are reported, through DRR and a normalised e-invoicing system as

introduced in say Italy and soon to be introduced in France will enable HMRC to be alerted to accruing tax liabilities and being able to take rapid action to ensure that they are collected.

ANSWERS TO SPECIFIC QUESTIONS

Question 1: To what extent do businesses not hold any UK assets at their principal place of business, and do you think this will increase?

5. While we do not have any statistics on the percentage of businesses to which this applies, we believe that a growing number of businesses are holding assets other than at their principal place of business.
6. It is correct that there are more and more internet businesses using third party warehouses and this is likely to keep growing. Those that own their own warehouse space will no doubt have some of their assets located there but these warehouses are currently unlikely to be deemed a 'principal place of business'.
7. In addition, some businesses use their accountant's or solicitor's office as their registered address and so if this counts as their 'principal place of business', then they will not have assets there. Partly due to the high cost of property use (eg, due to rent and business rates) some smaller businesses are increasingly making use of serviced offices where they can rent space for varying lengths of time (even a few hours) – again this may or may not be a principal place of business but the business is unlikely to have any assets there either.
8. Depending on how the prevalence of working from home pans out in the medium term, HMRC may also find more and more businesses have relatively small office space (eg, head offices) as more people spend relatively little time in the office so smaller sites with less assets could be used. Employees may keep much of the business's infrastructure (eg IT equipment) at their homes and cloud based server technology means that little physical infrastructure needs to be kept at a central location on the business' premises.
9. Service based businesses (particularly those who also market their services via digital platforms or drop shipping services) may have few assets wherever their 'principal place of business' is located.
10. It is also worth bearing in mind that if the Government's recent **consultation** results in the introduction of a facility to re-domicile to the UK, companies will need a registered office in the UK to re-domicile to but they may not actually transfer any assets to the UK.

Question 2: What are your views on whether and how HMRC should modernise to adapt to the increase in businesses who do not hold any UK assets, in order to minimise non-payment of tax debts?

11. With an increasing number of businesses carrying out significant and in some cases their core business away from what would traditionally be considered their principal place of business, it makes sense for HMRC's powers to be widened to cover UK premises owned or leased by the business other than those that meet that definition. We consider that it would be problematic for HMRC to be given powers to seize goods held at third party premises as those parties would need to grant access and may lead to confusion as to which assets belong to the non-paying business. We are also concerned about taxpayer confidentiality as a visit to a third party's premises would cause the premises owner to become aware of the other business' tax debts.

Question 3: To what extent do businesses make use of in-house leasing, is it more popular in certain industries/sectors than others and do you think this model will increase?

12. We take 'in-house' leasing to mean situations where one company leases an asset to another company in the group. We don't have any data to confirm how prevalent this is. However, we are aware that one of the most common reasons for groups to have a leasing

company is because that company can get a better deal on the assets it brings into the business rather than individual companies making arrangements with the same vendor.

Question 4: What are your views on whether and how HMRC should modernise to adapt to the use of in-house leasing, in order to minimise non-payment of tax debts?

13. It is difficult to see what HMRC can do to respond to this trend, given that it has no rights over assets that the non-paying business does not own, other than to focus on recovering other assets. Seizing the asset from the lessee would seem inappropriate given the lessee does not own it, even if the lessee has a significant tax debt. Seizing the asset in order to settle the lessor's tax debt would potentially cause the lessor to breach its contract and also detrimentally affect the lessor's business activities (and its own ability to pay tax).
14. Where the lessee and lessor are companies in the same group, or owned by the same ultimate individual owners, there might be a way to make those owners liable for the debts of the lessee company. We recommend, however, that HMRC looks to recovery of assets actually owned by the lessee in the first instance,

Question 5: To what extent do businesses make use of intangible assets, and do you think this will increase?

15. The digital economy is only likely to increase in size and this is being supplemented by businesses that focus purely on producing purely electronic assets eg, Non-Fungible Tokens (NFTs).

Question 6: What are your views on whether and how HMRC should modernise to adapt to an increased use of intangible assets, in order to minimise non-payment of tax debts?

16. Again, it is difficult to see how HMRC could take ownership of intangible assets owned by the business without stripping the value out of that asset once it has been decoupled from the business unless, for example, the asset is sold to a competitor that could use the intangible in its own business.
17. It may be that the threat of seizing a UK brand, customer details etc would scare businesses into paying tax debts, but we don't recommend that HMRC calls the bluff of non-paying businesses and instead only takes ownership of such assets as a last resort.
18. A more measured approach might be to obtain a lien over the asset so that HMRC is entitled to share of the proceeds if the asset is sold, or it could take part ownership and charge royalties to the business.
19. Electronic assets such as NFTs may be different but they are still only worth what an interested buyer is willing to pay for them. Typically, NFTs are purchased by 'fans' of the business that created them so decoupling them from the business may make them virtually worthless.

Question 7: To what extent do businesses use digital wallets, and do you think this will increase?

20. Digital wallets are used most commonly by businesses that trade on digital platforms such as Amazon and E-bay. These businesses are only likely to get more numerous the more that businesses operate online rather than from physical premises.

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?

21. It seems to us that HMRC could adapt to this by extending its ability to use Direct Recovery of Debts to digital wallets on the basis that this power is already used to access bank accounts via third parties. However, HMRC will need to determine whether digital wallet operators have the same levels of due diligence and oversight over their customers as banks do.

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?

22. We are not aware of any publicly available statistics on how often business who could pay their tax liabilities repeatedly choose not to. Perhaps HMRC should publish statistics on this so we can see how much of a problem it is (eg, what proportion of businesses are repeated non-payers, how much is involved and the types of businesses). HMRC should take steps to tackle this issue which could involve making more use of their existing powers eg, Direct Recovery of Debts and publicise this.
23. However, some businesses (incorporated & unincorporated) may take other steps when they don't have the money to pay their tax liabilities, such as delaying submission of their tax return (eg, a sole trader may delay submitting their self assessment return). HMRC then does not know how much they owe.
24. The initial £100 penalty for late filing is not a huge incentive to file on time, compared to the tax that might be owed. While HMRC can impose tax geared penalties of up to 100% of the tax for individuals who delay submitting for over a year, this does not apply to companies. Also this provision applies after a whole year and is not widely known.
25. Some years ago. HMRC would routinely issue determinations of tax within a few weeks of the filing date if returns were not submitted on time. They were often based on the taxpayer's previous years' return. This crystallised a debt which HMRC could then pursue. This was a much bigger incentive for the taxpayer to submit their missing return than just an initial late filing penalty. If HMRC reverted to this practice (which is perfectly permissible under s28C TMA 1970 (income tax) & Para 36 Sch 18 FA 1998 (CT) and the equivalent provision for VAT) then it would enable HMRC to pursue debt sooner and probably reduce the number of taxpayers submitting late returns.
26. It is not that unusual for our members to take on new clients who have not filed returns for four years, who ignored the £100 penalty notices and have not had any HMRC determinations – so their debt is not even in the tax debt records which HMRC is pursuing. If HMRC properly monitored and followed up late filing more actively then these cases would become rarer.
27. It is also somewhat easier to find information online about services to write off debts than it is to find out about HMRC's debt powers and how to pay HMRC. Such debt write off 'services' are publicised on TV and social media too and often put their users in a worse financial position in the long run than they were before they availed of the service. Perhaps HMRC should do more to encourage taxpayers to enter into time to pay arrangements, for example. That includes people who are running businesses who are going through a tough time and could benefit from HMRC's enhanced support service. That service can't be contacted directly which may put people who are struggling off from contacting HMRC.

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?

28. In our experience, taxpayers are generally unaware of HMRC's powers in this area. Consequently, the existence of this power does not incentivise businesses to pay on time. Given the statistics at 3.10 & 3.11 of the consultation document it is unsurprising that taxpayers are unaware of this power. Yes, HMRC could expand security deposits to cover repeated, intentional non-payment but in order for this to be an incentive:
- a) it would need to publicise it widely so businesses were aware it exists, and
 - b) HMRC would need to increase its use of the power (and then publicise how much it is used) so businesses would consider it a realistic prospect that HMRC might target them with the power. Only then might it pose a real deterrent to repeated, intentional non-payment.

29. It is also worth mentioning here that seasonal businesses often have issues with paying tax debts if they arise at a time when the business is short of funds. A rolling time to pay arrangement would perhaps have more effective in recovering tax debt in such circumstances.

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?

30. It might incentivise them if they knew about the power and considered that there was a realistic prospect of HMRC using the power against them – see our response to question 10. However, this might also drive some people who intend not to pay to put more of their assets in their spouse's, partner's or other family member's name (for example) in the hope that they could avoid much of the consequences. What powers could HMRC bring in to recover tax debts from related parties?

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?

31. Agents usually tell their clients what tax needs to be paid and the payment deadline as part of the letter sending them their tax return for approval. The letter typically also sets out the level of late payment interest and gives some information about late payment penalties too. It is difficult to know what else agents could do to encourage tax payments as part of the regular tax compliance process. Unless they have particularly bad debt management, businesses are generally aware of the debts they have outstanding and so reminding is unlikely to have much effect in most cases.
32. Agents might not always help with obtaining time to pay arrangements (partly as these can be requested online via gov.uk fairly easily – which is a good thing) but also because the clients may not be able to afford the professional fees for the agent's help. If a taxpayer is struggling to pay their tax liabilities then they can ask their agent to explain their options, but they may turn to the tax charities, Citizens Advice or an insolvency practitioner for help instead.
33. Without agents being able to see which clients haven't paid their tax via the various gateways etc – it may be hard for them to know who is not paying and would therefore rely on the client informing them that they haven't paid. Also, not all taxpayers have agents. It would be interesting to see some statistics on how many taxpayers who have appointed an agent for the tax in question are regular non-payers.
34. It would certainly help if the following facilities were made available to agents where they have the appropriate authorisation:
- transferring payments between group members (where they act for both companies), between taxes, between tax periods, etc.
 - putting a hold on repayments (for example where a payment is made in anticipation of submission of an amended return); and
 - agreeing time to pay arrangements on fixed terms (fixed terms meaning the agent fills out a template and it generates the standard time to pay arrangement offered by HMRC).
35. We are unclear what forms of intermediary you are referring to in this question. However, if digital platforms will soon be required to provide details to tax authorities of income earned by businesses using their platforms, it would not seem unreasonable for the platform to be required to remind the sellers that this income may be subject to tax. Indeed, platforms are already required to carry out some checks if the seller is overseas. However, such platforms are not tax advisers and therefore it would not be appropriate for them to calculate liabilities arising without knowing the business owners' individual circumstances.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).