Draft legislation: direct recovery of debts – CIOT comments

Technical

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The CIOT has commented on the draft Finance Bill clauses on the enforced deduction from accounts, otherwise known as direct recovery of debts (DRD).

We acknowledge that it is HMRC's intention that these proposals will apply only to those people who are in a position to pay but choose not to, or delay payment for as long as they can, and to those who deliberately avoid engaging with HMRC. We believe that HMRC should be taking all action within its powers to seek to reduce the debt it is owed by deliberate non-payers and we fully support the department's efforts in this area.

We understand that the government remains committed to all of the DRD safeguards it announced last year and we are grateful for the continuing assurances that we have received from HMRC that the promised safeguards will be honoured. However, not many of these are included in the primary legislation. It is clear, then, that we do need to see the secondary legislation as soon as possible to assess whether we think the safeguards will provide enough protection for taxpayers.

However, we are pleased that, if HMRC's internal review confirms the decision to proceed with DRD, the taxpayer will be given a further 30 days to appeal to the county court before withdrawal of any money by HMRC, and that this is enshrined in primary legislation. HMRC may not deduct any money from the targeted account unless both the periods for making objections to the Revenue and an appeal to the county court have expired and any appeal has been finally determined.

It is disappointing that the grounds of objection to the hold notice (both to HMRC and to the county court) are restricted. For example, they do not include that it was not reasonable for HMRC to issue a hold notice, or that the amount of the debt is incorrect. In fact, we can see no reason to restrict the grounds of appeal. We would

expect the county court will be able to deal quickly with irrelevant issues. In addition, we question the need to specify that hardship must be ‘exceptional’, particularly where non-debtor joint account holders and/or other interested third parties are involved.

Also, we would like to have seen a clearer commitment to rectifying any financial consequences of HMRC’s unlawful use of DRD, whether those were direct or indirect. There is no such provision in the draft primary legislation.

Finally, we are concerned that the proposals to apply DRD to joint accounts remain unchanged from the proposals in the original consultation document last year. It is unrealistic to make the assumption that balances in joint accounts should be split equally between the holders. In our view, joint accounts should either be excluded from the DRD legislation altogether, or there has to be a right to object to a hold notice on the ground that the joint account is held in unequal shares to protect the non-debtor, both when requesting an internal review by HMRC and on appeal to the county court.

The CIOT’s response can be found at here.