Draft FB 2015: direct recovery of debt

Technical

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LITRG, the ATT and the CIOT have responded to the draft Finance Bill clauses on enforced deduction from accounts, otherwise known as direct recovery of debt (DRD). LITRG's response concentrated on safeguards for the vulnerable debtor within the primary legislation, which the group still feels are inadequate. The ATT's responded with a review of the detailed provisions and emphasised the importance of the DRD process enabling debtors to become and remain compliant. The CIOT's response will be reported on separately in a future edition.

Both LITRG and the ATT welcomed the openness of the consultative process. Key points from the responses are summarised below.

LITRG

The group is particularly encouraged by the appeal to the county court against HMRC's refusal of a debtor's objection, and by the clear intention expressed in meetings to exclude vulnerable debtors from DRD by insisting on a face-to-face encounter – or an alternative process in the exceptional cases where face-to-face may be inappropriate – at which the 'vulnerable' can be identified and referred to a specialist unit.

Nevertheless, it is essential that a framework for the intended safeguards for 'vulnerable' debtors should be set out in primary or secondary legislation, and not left to the explanatory notes. Otherwise the best of policy intentions will have no legal force or effect, and that would be a major concern. How to interpret the 'Condition C' – that HMRC must be 'satisfied that the person is aware that the sum is due and payable by the person to the Commissioners' – is germane to the whole process of identifying the vulnerable debtor.

LITRG strongly recommends to HMRC that the question of vulnerability should be the subject of a full consultation involving the voluntary sector. This would include framing a definition of ‘vulnerable debtor’; considering how best to identify such persons and how to train HMRC personnel to do so; and exploring ways of explaining to debtors what they owe and discussing options to resolve it. The outcome of the consultation should be set out in a code of practice that should be given statutory backing.

Describing vulnerability and deciding how to determine whether to exclude persons from DRD on those grounds will be hugely challenging, and HMRC through their Vulnerable Customer Unit will doubtless seek the assistance of specialist and other charities in framing a description. That will take time, but it is crucial that no DRD activity takes place until the description is ready, fully understood and agreed, the code of practice published, the field officers fully trained in the legislation and the descriptors of vulnerability and how to react when on the phone to or face-to-face with a vulnerable defaulter. It may be necessary for parts of the legislation to be brought in by statutory instrument when everything is in place.

We recommend HMRC carry out a full equality impact assessment before these draft clauses are submitted to parliamentary scrutiny.

LITRG further recommends that the draft legislation should contain a provision for board/commissioner authorisation for each exercise of DRD powers. An additional and useful safeguard would be a requirement for HMRC to report publicly each year on the number of applications made for use of DRD and the number of applications granted.

Finally, the group makes several observations in its response about the detail of the clauses. Although no regulations had been seen at the time of submission, it said it would be pleased to comment further once they are published. LITRG’s response can be found at www.tinyurl.com/k5av9du

ATT

ATT’s response identified a number of recurring themes: the breadth of the Treasury’s capacity to make regulations, the critical importance of defining when a notice is given, the timeframes for compliance with notices, the question of compensation, and the protection for joint account holders and interested third

parties.

On joint accounts, ATT stressed the importance of identifying funds that are held on trust and recommended that the statutory presumption that the debtor was beneficially entitled to the ‘appropriate fraction’ of an account should be rebuttable.

The ATT drew attention to the scenario where an elderly or infirm (and potentially vulnerable) individual might include the debtor as a joint holder of their account simply as a matter of domestic convenience.

The association questioned why a joint account holder or an interested third party should only be able to object to a hold notice if it scaused them exceptional hardship, given that they might be an innocent bystander. It also observed that the draft legislation appeared to make interested third parties very dependent on the goodwill of a debtor for information about HMRC’s actions in relation to an account.

The ATT’s main criticism of the draft provisions so far as the debtor was concerned was that neither the objection process nor the appeal to the county court enabled or encouraged the debtor to take the necessary action to bring their tax affairs up to date. The response emphasised the need for a link between the DRD proposals and the existing provisions for displacing a determination made under TMA 1970 s 28 in the absence of a tax return and (a point also made by LITRG) the special relief provisions of TMA 1970 Sch 1AB para 3A.

The draft provisions only permit an appeal to the county court if an objection to a ‘hold notice’ has first been made to and rejected by HMRC. The ATT expressed concern that making an appeal dependent on the prior objection in this way might be confusing to debtors, joint account holders and interested third parties. It recommended that the appeals process should start with the objection so that it is clear from the start what action is needed.

ATT’s response can be found www.tinyurl.com/k98y9sb