HM Revenue and Customs and the Taxpayer:

Modernising Powers, Deterrents and Safeguards

Payments, Repayments and Debt: The Developing Programme of Work

Consultation Document
25 June 2007
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Chapter 1: Introduction

1.1 HM Revenue & Customs (HMRC) inherited the frameworks and legislation for the taxes it administers from the Inland Revenue and HM Customs and Excise. Many taxpayers interact with HMRC across a range of taxes. But the regimes within which they do so differ significantly in design and effectiveness. The current review of HMRC’s powers, deterrents and safeguards provides an opportunity to modernise areas that are not working well, such as the lack of focus on promoting behaviours that support compliance, and to address the extra costs to taxpayers that arise from different regimes.

1.2 HMRC is responsible for the collection of most of the taxes that contribute to public revenues. It collected around £400 billion in the year to March 2006 and repaid around £85 billion. Many taxpayers both make payments to and receive repayments from HMRC, either in respect of a single tax or because of their dealings with HMRC across a number of taxes.

1.3 Most tax is paid on time, but as at March 2006 there was an outstanding balance of around £22bn representing some five percent of receipts (shown by head of duty in Annex A). While the majority of this debt is under three months old and is successfully collected within a short time, HMRC writes off around one per cent of its receipts – mainly because of taxpayer insolvency.

1.4 The majority of taxpayers want to pay what they owe on time. HMRC aims to make it as easy as possible for them to do so. It is then only fair that the minority who do not pay on time are pursued promptly for what they owe, so that the non-compliant do not gain an advantage over the compliant. Equally, HMRC must provide a flexible range of support for those who would like to pay on time, but find it hard to do so.

1.5 HMRC now has a single debt management organisation, bringing responsibility for managing the department’s cashflow alongside the management of outstanding debt. This helps secure the benefits of creating the new Department, and brings down the amount owed by taxpayers through:

- a better understanding of taxpayers’ needs, putting them at the heart of what HMRC does;
- encouraging and helping them to pay on time;
- reducing costs both to them and to HMRC.

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1 Taxes should be taken to include all the taxes, duties and national insurance contributions for which HMRC is responsible. Taxpayer should be taken to include anyone paying all such taxes, and also, unless the context says otherwise, those receiving tax credits and child benefit. It also includes those paying tax on behalf of another person.
1.6 **HMRC will deliver these benefits, through:**

- switching its focus from individual taxes to taxpayers
- changes to its procedures and operations, including IT systems
- changes to legal powers, which are the subject of this consultation.

1.7 **Getting the right framework of law and practice to underpin HMRC’s relationship with its customers is key to securing these improvements.** Modernisation enables HMRC to support the Government’s objectives of a fair tax administration that meets taxpayers’ needs. This consultation document considers a range of ideas which would require legislative change if they were adopted. They form part of a broader agenda which aims to transform the way HMRC handles payment and manages debt over the next five years.

1.8 **Chapter 2** explains why these changes are being sought. They aim to encourage compliance by making it easier for the compliant to pay on time, by focusing on them across all their dealings with HMRC rather than on debts arising from individual taxes. Having done so, they suggest changes to the way HMRC tackles those who remain non-compliant. And they explore opportunities to align rules, where doing so would provide greater clarity, consistency, efficiency and reduce costs for taxpayers and HMRC. This chapter also sets out the wider context of HMRC’s transformation of its payment services and debt management operations over the next five years, of which these legislative changes would form part.

1.9 Some ideas are set out in separate chapters which each consider one area of change in detail: a more taxpayer focused approach; making it easier to pay; and tackling the problem of debt. The ideas are at different stages of development, and if adopted will be introduced over different timescales.

1.10 **Chapter 3** sets out suggestions that focus on taxpayers rather than their individual debts. It seeks views on extending HMRC’s ability to set off debts owed by HMRC to taxpayers against those taxpayers owe HMRC, reducing the number of transactions between the two. And it suggests where alignment of the currently different rules on enforcing debt inherited from the two former departments would make sense.

1.11 **Chapter 4** responds to earlier informal consultation by setting out a range of suggestions to make it easier to pay. It seeks views on extending the range of payment methods by allowing taxpayers to pay their tax more flexibly, including the option of paying by credit card.

1.12 Having made it easier for taxpayers to pay on time, and offering support to those who wish to pay but find it hard to do so, HMRC aims to improve the way it tackles non-compliance. **Chapter 5** sets out further suggestions to tackle those who do not pay on time.

1.13 **Chapter 6** summarises the questions for consultation.
Further consultation

1.14 If it is decided to proceed with the ideas outlined in this document there will be further consultation, including draft clauses if appropriate.

How to comment

1.15 The questions on which this consultation is focused are summarised in Chapter 6. However, we welcome comments on any aspect of this consultation document. You should aim to send in your comments by 17 September 2007 and they should be sent:

- by email to: powers.review-of-hmrc@hmrc.gsi.gov.uk
- or by post to: HMRC and payments, Room 1C/03, 100 Parliament Street, London SW1A 2BQ
- or by fax to: 020 7147 2460

This document can also be accessed from the HMRC Internet site:  
http://www.hmrc.gov.uk/consultations/index.htm

The Review Team can be contacted by telephone on: 020 7147 2401.

Confidentiality

1.16 Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

1.17 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

1.18 The Department will process your personal data in accordance with the DPA and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

1.19 Any FOIA queries should be directed to the Review Team, using the contact details above.
Chapter 2: The Wider Picture

Principles underlying change

2.1 The majority of people in the UK want to pay the right tax at the right time because they believe that is right and they are aware of the link between tax and public services. HMRC has a corresponding obligation to make it easy for them to pay and to repay tax owed to them as quickly as possible. Where people realise that they are not going to be able to pay on time HMRC will seek to open a dialogue as early as possible in order to agree how and when the money will be paid. Having supported compliant taxpayers, and provided help to those who find it difficult to comply, HMRC must tackle the minority who choose not to do so.

2.2 Consultations since the formation of HMRC have consistently shown that businesses and individual taxpayers see it as a prime function of the tax authority to ensure that people do pay the right amount of tax at the right time. Businesses are particularly concerned about the ability of the non-compliant to undercut their compliant competitors. Where there has been no attempt to pay, HMRC has to assume that non-payment is deliberate and take action to ensure payment.

2.3 Two areas of taxpayer behaviour are central. Firstly, taxpayers must provide the information required by statute on a timely and accurate basis, to allow tax liabilities to be calculated or agreed. Second, they must pay what is owed at the right time. This document addresses the second of these alongside the means by which HMRC can make it as easy as possible for taxpayers to fulfil their obligation.

2.4 In practice this means HMRC must ensure that:

- taxpayers are aware of the need to file tax returns on time and the consequences if they do not;
- those consequences are an effective deterrent to late filing;
- it is easy to pay tax that is due and there is support for those who may have difficulty in paying;
- it is easy to claim a tax repayment that HMRC systems can deliver quickly;
- there is provision for broadly commercial restitution where tax is paid late or is repaid;
- there are appropriate penalties or surcharges to deter late payment;
- there is a range of administrative measures as well as legal powers backed by appropriate safeguards to pursue tax that has not been paid; and
- there is wider awareness of HMRC’s activity to ensure timely filing and payment.
2.5 The work done by the Review of Powers, Deterrents and Safeguards (“the Review”) has identified a series of principles which should underpin a balanced and effective framework for powers, deterrents and safeguards. These reflect comments from the previous consultations.

2.6 In order to be both effective and respected, powers and the statutory obligations they impose need to be:

- set within a clear statutory framework,
- easily understood – by taxpayers, their agents and HMRC staff,
- straightforward to comply with,
- proportionate to the risk to the Exchequer,
- used consistently, and
- effective in providing the information HMRC needs to assess risk and discover and deal with non-compliance.

2.7 These principles guide HMRC in modernising and transforming its payment and debt management services when considering alignment and modernisation of its powers, deterrents and safeguards in the following areas.

**This consultation**

**Modernising debt management**

2.8 HMRC inherited powers from the two former Departments which are inconsistent in places and can impose undue burdens on taxpayers and the Exchequer. In this consultation, we suggest where powers could be aligned to provide greater clarity and consistency. We also suggest where greater use of automatic set-off of debts could produce simplification, and reduce costs and the number of times a taxpayer has contact with HMRC.

**Helping taxpayers to pay on time**

2.9 Making it easier to pay on time benefits both taxpayers and HMRC. Under the operational changes HMRC is making, taxpayers will receive tailored treatment according to their needs and characteristics. New ways of paying will encourage and enable the majority to pay on time. Better and quicker help will support those in difficulties. Ideas being considered in the document are those that will require legislation, and include flexible payment methods and payment by credit cards.
Enforcement

2.10 Just as making it easier pay on time benefits compliant taxpayers and HMRC, so too does the introduction of powers that enable HMRC to be more effective in collecting money that is owed. In this consultation we consider some changes which would need legislation if they were taken forward, including the direct attachment of assets and ways of collecting small debts fairly and efficiently.

Other elements of transformation

Encouraging timely and accurate filing

2.11 Without tax returns HMRC does not know what payments have to be collected. Although the majority of taxpayers do seek to get their returns filed on time, significant numbers do not. The Review will be looking at the regimes for Self Assessment, PAYE, NICs and VAT to see what more can be done to encourage timely filing. For example, a significant minority of SA taxpayers still do not file on time despite efforts to remind new filers and those from customer segments prone to file late.

2.12 The Review will carry out further research on whether more can be done to encourage timely filing. It will explore the balance between concentrating on deterring late filing itself and deterring further delay after the deadline has been missed. It will consider whether cases where tax is paid late as a result of the late filing should be treated differently from those where late filing leads to no loss of tax. It will also look at the level of penalties, and whether these should reflect subsequent failures to file on time.

2.13 Returns, once filed, must accurately reflect the taxpayer’s correct liability so that HMRC knows how much is owed or must be repaid. The Review published A new approach to compliance checks on 17 May. This invites comments by 10 August on a compliance checking framework, which:

- aligns rules across income tax, corporation tax, VAT, PAYE and NICs, where doing so would bring clarity, consistency, efficiency and reduced costs for both taxpayers and HMRC;
- has requirements and safeguards which distinguish between non-business and business taxpayers; and
- better aligns the time limits for making tax assessments.

2.14 As this work progresses it will be the subject of further consultation.
The range of HMRC's responsibilities

2.15 HMRC aims to have a consistent framework of legislation and practice supporting payment and debt which where possible would apply across all the taxes and duties it administers. However, these taxes and duties currently have different rules to address their particular requirements, and operate on very different customer bases. An example would be the tax credit scheme. HMRC welcomes views on how the options discussed in this document might apply in these particular cases, and whether they should be phased in across the different heads of duty. HMRC would consult on any further development in due course.

Interest

2.16 Currently the rules about charging interest on late payment by taxpayers and paying interest on repayment of overpaid tax are inconsistent across the range of HMRC’s responsibilities. In some areas the principle is well established that such interest represents broad commercial restitution for the period that the Exchequer, or the taxpayer, has not had the use of the money. In others it is not. Similarly, where interest is payable the detailed rules governing how it is calculated and applied vary. HMRC will be examining options for a more consistent approach over the coming months with a view to further consultation.

Sanctions for late payment

2.17 The goal is for people who realise they will have difficulty in making a payment to approach HMRC so that a realistic way forward can be found. However, for those who decide that they will not pay their tax, interest alone (where this is charged) is not a sufficient disincentive to late payment. The evidence of payment patterns suggests that surcharges and penalties for late payment itself are more effective deterrents. The creation of HMRC provides an opportunity to look across its responsibilities with a view to understanding which of the current arrangements work best and what design principles should inform a more aligned approach, including how best to protect those who are genuinely unable to pay.

2.18 In particular we will be looking at PAYE. Over £200bn is paid each year in income tax and national insurance contributions via PAYE, 47% of all the tax that HMRC collects. While very many employers pay their PAYE on time, a significant minority do not. Those employers wait for HMRC to initiate some action before making any in-year payment. At present, these late payments attract neither interest nor a penalty. It is estimated that the cost of this to the Exchequer is some £60-70m in terms of lost interest, in addition to the use of HMRC’s resources in taking action. HMRC will look at developing options that could act as a deterrent to late payment without imposing new burdens on those who do pay on time.
**Other HMRC initiatives**

2.19 The Government announced in Budget 2007 the details of how it would implement the recommendations from the **Carter Review** to increase the use of HMRC’s online services. Amongst other measures, the Finance Bill includes measures that would align direct and indirect taxes regulation making provisions relating to electronic payment and enabling changes to be made to the date on which payment is regarded as paid. New regulations will be introduced under these provisions for CT and VAT payments from the time that the Carter requirements to pay electronically come into effect.

**Changes to the legal system**

2.20 The Tribunals, Courts and Enforcement Bill (T, C&E) includes measures that would change the handling of debt in England & Wales. If enacted as it currently stands, it would modernise and simplify the way that enforcement agents – including HMRC – can take legal control of goods (the process currently known as distraint) to meet an outstanding debt. Second, it would introduce measures to help creditors with claims in the civil court to enforce their judgments, including a new court-based mechanism to help the court gain access to information about the debtor on behalf of the creditor. Third, it would make changes to two statutory debt-management schemes, administration orders and enforcement restriction orders. Fourth, it would provide safeguards and give greater help to allow debtors to manage their indebtedness. Details of the T,C&E can be found at http://www.justice.gov.uk/publications/tribunalscourtsandenforcmentbill.htm

**Scotland and Northern Ireland**

2.21 HMRC administers a tax system across the United Kingdom, but the legal system supporting debt enforcement differs between England and Wales, Scotland and Northern Ireland. Accordingly, if it is decided to proceed with the ideas in this document HMRC will consult as appropriate with regional and national stakeholders including the devolved authorities and territories and their Law Officers.
Chapter 3: A More Taxpayer Focused Approach

Introduction

3.1 HMRC is seeking to change the way it looks at amounts it is owed by focusing:
   ▪ less on the debts arising from individual taxes, and
   ▪ more on the whole of a taxpayer’s interaction with HMRC.

3.2 This would allow support to be offered and (where necessary) action to be taken in a more joined up and consistent manner. HMRC is looking at ways to provide taxpayers with a single and complete view of their current financial position across all HMRC heads of duty and credit entitlements. This would enable HMRC to engage with taxpayers rather than individual debts or repayments, and reduce unnecessary transactions.

3.3 Wherever possible, HMRC wants to avoid taking enforcement action against taxpayers, and offers help to those facing temporary financial difficulties through debt scheduling (“Time to Pay” arrangements). HMRC has adopted a strategy of early intervention, through education and support, to prevent taxpayers from getting into debt in the first place. For example, HMRC now contacts taxpayers who have set up in business in advance of the filing date for their first return, to remind them of what they need to do. This has been very successful in helping them to file their returns and to pay what they owe on time.

3.4 Improving the quality of HMRC contact with taxpayers will help them to avoid getting into debt or, if they already have, to manage their debt. Chapter 4 looks at ways to make it easier for taxpayers to pay, and this section sets out two ideas for change to improve HMRC’s interaction with taxpayers. Both would require legislation.

Setting off repayments of one tax against debts of another

3.5 HMRC’s current practice is to set established repayments off against established debts where they can be linked. While few object in practice, if they did HMRC would normally reverse the set-off, make the repayment and then pursue the debt. Taxpayers can indicate on their self assessment returns if they want HMRC to hold back repayments and set them against future liabilities, so reducing their correspondence with HMRC.

3.6 Consultation has shown that many taxpayers, particularly businesses, consider that the increased use of set-off would be a significant simplification. Some currently receive repayments from one part of HMRC and requests for payment from another around the same time – occasionally even in the same post. Setting off debts and repayments would greatly

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reduce the number of contacts a taxpayer has with HMRC, whether by form, letter, telephone call or visit.

3.7 There are significant overlaps between the different taxes, particularly for business. For example, looking just at the major taxes:

- 850,000 companies pay both CT and VAT, or receive repayments;
- 600,000 of these companies also operate at least one PAYE scheme;
- 200,000 self-employed businesses are within ITSA, are registered for VAT and operate PAYE.

3.8 Set-off is a normal business principle. As Lord Walker of Gestingthorpe said in the House of Lords in *Mellham v Burton*:

“set-off is a general principle founded in simple convenience and fairness, even if it has some arcane fringes. It should be taken to apply generally to all liquidated cross claims unless excluded by statute or contract.”

3.9 Set-off also applies in Scotland but the principles are somewhat different.

3.10 Greater use of set-off would ensure that HMRC is not both creditor and debtor in respect of the same taxpayer at the same time. There would have to be a clear legislative framework in which set-off could operate, giving certainty when it could and could not take place.

3.11 Statutory set-off, within the context of a single view of their financial affairs, could provide taxpayers with a comprehensive and clear picture of what they were owed and what they need to pay. Instead of having to manage different taxes, repayments would be set off and only the net balance would need to be paid or repaid. This would be clearer, reduce the need for contact with HMRC, and reduce unnecessary payments and banking costs. It would also ensure that the non-compliant, who may currently receive a repayment even when they have an outstanding debt which they do not plan to pay, do not gain a cashflow benefit over compliant taxpayers.

3.12 Set-off would be expected to operate as a matter of principle, but initially HMRC would operate it only in some circumstances and for some taxes. This is partly because of the complexity of a taxpayer’s interactions with all of HMRC and also because of the constraints of HMRC’s current accounting systems. The range could then be expanded to more taxes as and when systems were in place to do so.

3.13 HMRC would not set payments of tax credits or child benefit against other tax debts owed to HMRC. However, where an award has been made and an overpayment subsequently arises, it might be helpful to the claimant to allow any tax repayment to be set against the sum they owe.

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2 *Mellham v Burton* [2006] 1 WLR 2820
3.14 In cases where a taxpayer is insolvent, insolvency legislation applicable in England and Wales already applies mandatory set-off. No change is proposed to the rules for insolvency.

3.15 Where a repayment is set off against a debt, interest charged on the debt until the point of set-off would be included in the debt. Similarly, if interest were to be paid on a repayment, the interest would be included in the amount set off against any debt.

3.16 HMRC envisages that where a taxpayer has assigned a repayment to someone else, and that repayment could be subject to set-off, then set-off would apply first and the assignment would apply only to the balance (if any). However, HMRC does not expect this change to apply where a taxpayer has assigned a SA repayment to charity on his SA return.\(^3\)

3.17 VAT treats a partnership as a single entity whereas each partner is separately liable for income tax on their share of the partnership profits and gains. And a company group can be a single trader for VAT but individual entities for CT (although payment can be simplified by adopting a Group Payment Arrangement). In each case for VAT purposes, joint and several liability applies which means that individual partners or members of VAT registered groups will be liable for all VAT due from the VAT-registered entity. HMRC welcomes views on how set-off might be extended to related entities.

We welcome views on the greater use of automatic set-off, and in particular on the following questions:

- Which taxes should it apply to first?
- Would it be helpful to claimants to use tax repayments owing to them to off-set any tax credit or child benefit overpayments?
- Should set off override any assignment which the taxpayer has effected for repayments, so that the assignment applies only to the balance after set off?
- Should set off also apply, in particular circumstances, between related entities?

**Removing inconsistencies in current enforcement powers**

3.18 The two former departments had enforcement powers in England and Wales and Northern Ireland – distraint and court action – that they used when other reminders and other action had not succeeded. Although these

\(^3\) The Government’s Gift Aid consultation, launched on 19 June 2007, will examine and identify measures to drive up charitable giving through Gift Aid.
enforcement powers were similar, they had different legislative bases and in some cases powers are available only for the taxes administered by one of the former departments. There are also differences with regard to the enforcement of debts between different parts of the United Kingdom.

3.19 At present HMRC has only one enforcement method where direct and indirect taxes can be included in the same action, namely by suing on behalf of the Commissioners for HMRC in the civil court. For other methods, HMRC has to take two actions against the same taxpayer, for example when using distraint to collect both direct and indirect tax debts.

3.20 These differences are illogical, difficult for taxpayers to understand and expensive for them. Where separate actions are required for different taxes owed by the same taxpayer, that taxpayer faces having to pay two sets of fees and costs.

3.21 Consistent powers would allow payments to be treated in the same way for all taxes and wherever the debt arises. There may be some exceptions, for example where the debt is not tax or where HMRC is collecting a debt on behalf of another department (e.g. National Minimum Wage penalties). But, in general, HMRC envisages taking action in a single set of proceedings for the whole of the debt owed by a taxpayer. The following paragraphs set out the ideas in more detail.

3.22 It is suggested that there should be a **single power of distraint**, which would allow HMRC to take a single action to recover a debt or debts owed by a taxpayer regardless of the taxes involved. Any change would ensure that the new rules can apply alongside reforms proposed for England and Wales by the Tribunals, Courts and Enforcement (TC&E) Bill. This includes measures which would replace all forms of seizure of goods in order to collect debts, including that of distraint, with a single power called ‘taking legal control of goods.’

3.23 A second suggestion is to remove inconsistencies in the way that HMRC can **pursue debt in the civil courts**. For example, in no part of the United Kingdom can an officer of HMRC take a single court action in his own name for both direct and indirect taxes. Certain provisions aimed at simplifying the court process apply only in England and Wales and only to claims for direct tax debts. As far as possible within the court rules, it is envisaged that HMRC should be able to take a single civil court action, anywhere in the United Kingdom, for the whole debt owed by a taxpayer to HMRC.

3.24 Together, these would remove the current differences in handling the different tax debts of a taxpayer and provide a single, coherent set of powers which apply across all taxes and all parts of the United Kingdom, delivering the consistency which was one of the prime objectives of the creation of HMRC.

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4 An example of a debt that is not tax is a contract settlement in respect of a compliance action against a negligent or fraudulent taxpayer settled for a sum that includes tax, interest and penalties
We welcome views on removing the current inconsistencies in enforcement powers, and in particular:

- whether there any types of debt that should still be considered separately, and if so why
- are there other inconsistencies in enforcement which might be considered as part of this review.
Chapter 4: Making it Easier to Pay

Introduction

4.1 HMRC wants paying tax to be no different from paying other bills, and aims to make it as easy as possible for taxpayers to pay what they owe by providing a range of payment methods. Payment methods currently vary according to the tax to be paid. There are advantages in extending these methods and introducing new ones to make it easier to pay.

4.2 Plastic cards are an increasingly popular form of payment in the UK. Taxpayers can pay various tax liabilities by debit card using the Billpay system on the HMRC internet, allowing them to pay at a time of their choosing. HMRC also accepts debit cards as payment for a wide range of tax debts. HMRC plans to extend this facility to take payment for debts across a number of regimes in a single transaction.

4.3 Direct debit is a cheap, easy and reliable form of electronic payment. Although it is mainly used to help those who have agreed to a “time to pay” arrangement to clear their debts or linked to e-filing VAT returns, HMRC will be extending the availability of online facilities to establish direct debit mandates in April 2008. This would help taxpayers to budget for tax and to keep up to date with their payments.

4.4 HMRC is also examining Faster Pay, a new method developed by the banks and expected to be ready in 2008. Faster Pay will enable taxpayers to use the internet or phone to make a payment that will reach the recipient’s bank account within a few hours, rather than several banking days as at present. The service will be available all day, every day.

4.5 Further payment flexibility is possible but would require legislative change. This section outlines two ideas on which HMRC would welcome comments. The first would allow taxpayers to pay more flexibly, either by making fixed payments, or by spreading existing payments over a longer period. The second would allow taxpayers to pay tax using a credit card.

Flexible payments

4.6 Some businesses get into difficulties when they fail to make provision for tax, such as the six-monthly and annual self assessment payments. Small businesses have said in consultation that they would welcome the opportunity to pay their tax more flexibly. A more flexible approach would help them manage their cashflow, while at the same time ensuring that they were making regular payments of tax to keep up to date.

4.7 There are two current schemes which are available to help taxpayers: certificates of tax deposits (CTDs) and the VAT annual accounting scheme.
4.8 Taxpayers can buy **certificates of tax deposit** and use them to pay tax. Interest is paid on CTDs up to the due date for payment, and when used to settle a debt they eliminate the interest that accrues in the period from the certificate date to the payment. Details can be found at http://www.hmrc.gov.uk/howtopay/cert_tax_deposit.htm.

4.9 However, CTDs have a number of drawbacks. The minimum initial payment is for £500 and additional deposits must be of at least £250. It is a paper based system and taxpayers have to write in with a cheque when they make an initial or subsequent purchase. They can only be used for certain direct taxes: they cannot be used to pay any indirect taxes, nor for corporation tax or PAYE. Consequently they are little used.

4.10 Under the **VAT annual accounting scheme** taxpayers with turnover below a limit – currently £1,350,000 – can make monthly or quarterly instalments during the year, based on an estimate of their total annual VAT bill. At the end of the year taxpayers submit a single annual return and pay any balance due or receive a refund of any excess paid. Similar schemes are not available for PAYE, corporation tax or income tax.

4.11 HMRC would welcome views on how to extend the principles behind these two schemes. The aim is to allow taxpayers to make flexible payments, so helping them with cashflow and preventing them getting into debt in the first place. This has to be balanced with ensuring that they pay enough, regularly enough, to keep their tax affairs up to date. It also has to protect the flow of funds to the Exchequer. Any scheme should reflect the principle that amounts deducted from an employee’s wage are accounted for promptly. It must also be affordable for HMRC, both operationally and for changes to computer infrastructure.

4.12 It should be emphasised that any such payment options would be **voluntary**. Those businesses which prefer to pay under the current rules would still be able to do so.

4.13 One option might apply to VAT and PAYE and would be similar to budget plans for utility bills. Businesses would make pre-arranged regular payments each month based on their likely liabilities for the year. The actual position would be checked once a year and any difference paid or repaid, and the regular payments recalculated if necessary.

4.14 Another option might apply to CTSA and ITSA and be similar to paying a bill by instalments. Here businesses would pay a fixed amount over a period to meet a particular liability, spreading the amount payable over a number of months.

4.15 Such options would enable businesses to budget much more easily for their tax payments. They would know at the start of the year how much they needed to pay each month. It would help them manage their cashflow to take account of temporary reductions in earnings. Making it easier for
businesses to pay would reduce the number which get into payment difficulties, and require intervention.

4.16 A business with an outstanding tax debt would not be prevented from taking up one of these options, as long as it was in contact with HMRC. Any fixed payment could also be extended to include payment of the outstanding tax.

4.17 Initially these plans would be specific to a particular tax but, subject to demand and the introduction of suitable technology, they could be developed in a number of ways. First, they could be extended to cover all the tax a business has to pay – VAT, PAYE and income tax/corporation tax – in a single monthly payment. Second, they could be adapted to provide more flexibility, for example by allowing seasonal businesses to make variable payments.

4.18 There are a number of considerations before any scheme could be introduced, particularly if it were to include the sort of flexibility outlined above. These include what happens if a business misses a regular payment, and whether it should be withdrawn from the scheme.

We welcome views on these ideas for making it easier to pay, and in particular on the following questions:

- To what extent should HMRC allow businesses to pay their tax more flexibly?
- HMRC seeks views on two possible models for flexible payment schemes. Are there alternative models which would be preferable?
- What size of business should qualify for the scheme?
- Should any scheme be able to cover all of a business’s tax payments?
- How should businesses which fail to keep up their payments be handled?
- Should HMRC consider additional flexibility, such as variable payments?

**Paying by credit card**

4.19 HMRC currently does not accept payment by credit card, except in limited circumstances such as paying customs duties at ports and airports on imported goods. However, credit cards are now widely used and accepted by a wide range of businesses, local authorities and the Driver and Vehicle Licensing Agency. Earlier consultation has shown that many small businesses use credit cards to manage their short term cashflow, and taxpayers regularly ask HMRC whether they can pay by credit card. Some taxpayers use cheques drawn against their credit card to pay their tax.
4.20 Recent reports\textsuperscript{5} by the National Audit Office and the Public Accounts Committee have recommended that HMRC explore the benefits and implications of accepting payment by credit card.

4.21 Accepting payment of tax by credit card has been viewed in the past as encouraging taxpayers deeper into debt. However, credit cards are used to manage cashflow, and may be a better alternative to other forms of finance. HMRC has also improved its efforts to identify taxpayers who may be in financial difficulties, and to help them more quickly.

4.22 A key issue with credit cards is the transaction fee which card issuers charge those accepting payment – in this case HMRC. Some payees pass this charge on to those using a credit card, either as a flat fee or as a percentage of the value of the transaction. HMRC believes that, if taxpayers wish to pay their tax by credit card, then they should also pay this fee. If not, then the cost would in effect be borne by all taxpayers. Given that the amount of tax would vary from taxpayer to taxpayer, HMRC feels that it would be fairer to make the fee a percentage of the tax that is owed. It would be made clear to the taxpayer that choosing to pay by credit card would incur an extra fee on top of the tax owed.

We welcome views on the proposals for payment by credit card, and in particular on the following questions:

- Would it be helpful to allow taxpayers to pay their tax by credit card?
- Should credit card payments only be accepted for tax which is overdue, or should it be available for any tax payments?

\textsuperscript{5} The recovery of debt by the Inland Revenue (March 2004) and The Public Account Committee 49th Report (October 2004).
Chapter 5: Tackling the Problem of Debt

Introduction

5.1 Since HMRC offers a wide range of opportunities for taxpayers to pay on time, and provides help and support to those in genuine financial difficulties, it is right that those who deliberately choose not to pay should not gain an advantage by doing so. HMRC will use risk profiling to identify those who will not pay, and to target appropriate methods to encourage and enforce payment.

5.2 The vast majority of taxpayers pay their tax on time, either directly or through their employer. But a minority do not comply without some form of intervention. HMRC makes more than 400,000 visits every year to collect payment or take distraint action and takes more than 200,000 court actions a year for unpaid tax.

5.3 As explained in Chapter 2, the Review is considering the legislative framework of penalties for the late filing of returns and other information, and for late payment, in the context of other work on penalties.

5.4 Existing powers for enforcement provide valuable tools for tackling those who pay late or not at all. But they are not always effective. HMRC therefore believes that it is right to seek new powers, subject to appropriate safeguards, to enable it to enforce payment and ensure that nobody gains an advantage by choosing to pay late. There are five ideas, which would require legislative change, on which views are sought.

Direct attachment of taxpayers’ assets

5.5 Taxpayers who owe money to HMRC frequently have sufficient funds or assets to pay their debts, but choose to delay doing so. HMRC currently lacks the full range of powers to ensure prompt payment.

5.6 HMRC has a unique role as a tax collector, acting as a statutory creditor on behalf of the Exchequer. And in cases such as PAYE or withholding tax, it is collecting tax from one party which has been deducted on behalf of another. To reflect this role, Parliament has given HMRC powers beyond those available to other creditors.

5.7 HMRC currently has the legal power to distrain certain types of goods in England and Wales and Northern Ireland without first needing to apply to the courts as other creditors must. HMRC has wide experience of administering distraint fairly, and only exercises its powers after multiple requests for payment and other warnings have gone unheeded.

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6 The Tribunals Courts and Enforcement Bill proposes that in England and Wales the term “distrain” should be replaced by the concept of “taking legal control of goods.”
5.8 HMRC’s powers of distraint do not extend to assets such as bank accounts and property. HMRC can apply to the court to obtain judgment, which establishes the right to recover the debt and makes available a range of options to enforce its rights as a creditor. In England and Wales, this can involve seeking a third party debt order to secure funds in the taxpayer’s bank account or to place a charge over the property. Usually, collection proceeds using other methods. In some cases, the time that the process takes allows the determined late payer to put assets out of reach before the order is made.

5.9 In October 2004, the Public Accounts Committee recommended:7

“The Department should seek additional powers for enforcing debts, similar to those of other tax authorities. These include recovery of debt from a person’s salary or from funds held by their bank or other third party without the need to go to court. Recovering debts through court action is expensive for the Department and yet it has had to make increasing use of this method of enforcing debts.”

5.10 HMRC seeks views on extending its current powers so that it could attach a taxpayer’s assets directly, without the need for an application to the court. If taken forward, this extension would be similar to the existing third party debt order in England and Wales and would ensure that taxpayers owing debts to HMRC cannot escape payment where they have sufficient funds to meet their debts.

5.11 Distraint, which may involve the seizure of goods from a private residence, can be an unpleasant experience and goods sold to satisfy a debt seldom realise the cost of their replacement. Taxpayers who have a County Court Judgment entered against them find their creditworthiness affected. Direct attachment could be seen as less disruptive than the other recovery methods of distraint against goods, or HMRC seeking summary action through the magistrates’ court. In addition, taxpayers whose assets were attached by HMRC would no longer face the additional costs associated with seeking a court judgment which HMRC would pass on.

5.12 In more detail, HMRC suggests that it should be able to secure bank or building society accounts for the amount of the debt. HMRC would exercise the same judgement in doing this as it currently uses when deciding whether to seek a third party debt order in England and Wales. An amount equal to the outstanding debt would be frozen within the account and would be paid over to HMRC after a specific period by the bank or building society if other attempts to collect the debt proved fruitless. For land and buildings, HMRC could place a charge on the asset so that HMRC would be paid if the asset were sold. HMRC would continue to pursue the debt using other methods while the charge was in place.

7 Public Accounts Committee 49th Report (October 2004).
5.13 Any such power would require important **safeguards** to protect the taxpayer and, in the case of joint assets, the other owners of the asset. There are already appeal rights attached to each tax or duty, allowing genuine disputes about the amount of tax to be settled. The large majority of the 200,000 court orders sought by HMRC each year for unpaid tax are undefended, reflecting the fact that as the debt is imposed by statute there is little opportunity for challenge. Where HMRC issues a third party debt order, the court makes an interim order which notifies the parties concerned and allows the debtor to make an application to the Court if they or their family would suffer hardship if the order were enforced. When considering hardship, the courts take into account evidence that the debtor has difficulty in meeting ordinary living expenses.

5.14 HMRC would maintain the same level of safeguards. HMRC would inform taxpayers immediately of attachment and allow them to provide evidence of hardship. HMRC already has considerable operational experience in considering hardship applications through its debt scheduling procedures (“Time to Pay”), using criteria very similar to those the Courts use for hardship payment orders. And if HMRC did not accept that freezing the asset would cause hardship, the taxpayers would have the right as now to appeal to the court.

5.15 The direct attachment of assets is a feature of other countries tax systems. For example, the Australian Tax Office (ATO) is empowered to issue a notice and collect debts from third parties who owe, hold money or who may hold money for, a tax debtor. This can be done without having obtain a court judgement. The effect of the notice is to prevent payment to the tax debtor and require payment instead to the ATO.

5.16 Similarly in France, the tax administration can issue a notice to third parties holding a taxpayer’s money (such as banks or employers), which requires the payment of tax due. If the usual recovery actions have failed to prompt the tax payment, the tax administration can issue what is called the “avis à tiers détenteur” (ATD) to the third party (copied to the taxpayer) by registered mail. Again, the tax administration is not required to go to the courts for this purpose.

5.17 Annex B provides some further examples drawn from overseas tax administrations.

We welcome views on giving HMRC the power of direct attachment of taxpayers’ assets, and in particular on the following questions:

- Should HMRC have the power to attach taxpayers’ assets and property in the same way that it currently carries out distraint on moveable property?
- How could jointly owned assets and accounts be addressed?
- What form of safeguards would be appropriate to protect taxpayers and others affected by the attachment?
Tax clearance certificates

5.18 The National Audit Office’s recent report on CT and VAT filing and payment\(^8\) recommended that HMRC should explore the feasibility of a certificate confirming a business’s tax compliance. The report set out the purpose of such certificates, saying:

"Revenue Departments in some other countries have introduced certificates for businesses which prove that they are fully compliant with all their tax obligations. They may be available to businesses which have paid business taxes in full and on time, filed returns on time, and paid any interest or penalties due. The certificates are updated for each tax cycle and require the revenue department to take a full view of customer compliance.

Tax clearance certificates are a powerful incentive for businesses to comply with their obligations, as they need a current certificate to gain government contracts, receive grants or subsidies and obtain a range of licences. Controls are necessary to prevent businesses fraudulently claiming they have a current certificate, for example, by holding the certificate on the Revenue department’s website."

5.19 Tax clearance certificates offer the opportunity to improve tax compliance in an easily understood way. They chime with the Government’s wider policy review calling for a relationship between citizen and state which identifies rights and responsibilities. At present, the UK building industry is the main trade sector which is regulated for tax purposes by reference to its payment and filing compliance history. The construction industry scheme requires subcontractors to pass certain compliance checks in order to receive payment from contractors without deduction. Compliance checks are also done on organisations bidding for some government contracts.

5.20 Other tax authorities use tax clearance certificates in a variety of ways. For example the Irish Republic uses a certificate of tax compliance for businesses who require a licence to trade or who wish to do work for or receive subsidies from the state. Further examples of how other countries use certificates are summarised in Annex B.

5.21 To be effective in influencing taxpayer behaviour, any tax clearance certificate scheme should be simple to administer and be based around easily understood tests. These might include filing history over a specified period, or payment history or both. Any scheme would need to be flexible enough to deal with isolated or comparatively minor failures and to deal with

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\(^8\) HM Revenue & Customs: Filing VAT and Company Tax Returns Report by the Comptroller and Auditor General HC 102 13 December 2006.
a number of taxes with different reporting and payment periods. There would have to be safeguards and a mechanism for handling differences of opinion.

5.22 HMRC welcomes views on how a tax clearance certificate scheme might operate.

We welcome views on the feasibility of a tax clearance certificate scheme, and in particular on the following questions:

- What would be the advantages of a tax clearance certificate scheme?
- What should such a certificate cover?
- In what circumstances should a tax clearance certificate be used?
- What form of safeguards would be appropriate?

**Tracing missing taxpayers**

5.23 In today’s mobile economy, many taxpayers move house frequently and fail to tell HMRC their new address or provide other contact details. HMRC makes every effort to ensure that the address information it holds is accurate and up to date, and uses a range of techniques to trace taxpayers who have gone missing. But many people delay telling HMRC about a new address until it has initiated moves to trace them. This can lead to delay in pursuing the taxpayer and, in the worst cases, the debt may have to be written off.

5.24 Accurate address records would ensure that taxpayers owing debts to HMRC cannot escape payment by moving and failing to inform HMRC of their new address.

5.25 There are normally third parties who hold information which would enable HMRC to regain contact with a taxpayer. They include agents, solicitors, accountants, banks, estate agents, utility companies, and mobile phone companies. It would improve debt management if HMRC could require third parties it had good reason to believe held more up to date address and contact details to disclose them. We anticipate that such requests would be discretionary rather than automatic and only be made once the normal avenues had been exhausted. Based on present practices we believe the number of requests would be fewer than 5,000 a year.

5.26 While many third parties would already comply voluntarily with such an approach, confidentiality undertakings and Data Protection issues might
prevent others from doing so without the protection of a statutory request. The present safeguards for such requests would remain, and HMRC will consult as appropriate with the Information Commissioner.

5.27 The Social Security Fraud Act 2001 allows authorised officers from the Department for Work and Pensions or local government to obtain information from certain organisations and their customers to combat fraud against the benefit system. The use of these powers is governed by a Code of Practice. While these powers operate in a very different context from those suggested here, restricting the power to certain HMRC officers and publishing an HMRC Code of Practice would be an additional safeguard for taxpayers and third parties.

5.28 HMRC would welcome views on the practicality of such arrangements and whether there are other ways in which it could obtain addresses on indebted taxpayers.

We welcome views on requiring third parties to provide HMRC with contact details, and in particular on the following questions:

- Should third parties be required to provide contact details?
- Are there other ways of obtaining up to date contact details?
- What form of safeguards would be appropriate?

**Collecting small debts through Pay As You Earn**

5.29 HMRC currently collects some small underpayments of tax through Pay As You Earn, which both spreads the payment for the taxpayer and reduces the cost to HMRC of collecting small amounts. Where a taxpayer is in receipt of PAYE income, Self Assessment underpayments up to £2000 are collected through the taxpayer’s PAYE code (“coded out”) for a subsequent year unless the taxpayer indicates, by ticking a box on their Self Assessment return, that they do not want the tax to be collected this way. Underpayments in PAYE cases outside the Self Assessment regime are similarly coded out but a taxpayer who objects to the coding deduction would either need to make a direct voluntary payment or submit a return and self assessment in order for the underpayment to be collected though the Self Assessment system. HMRC will generally ensure that coding out would not result in tax deductions which exceed 50% of the gross pay for the pay period.

5.30 Extending coding out to all small debts, whether or not the taxpayer requests this, would provide a simple and cheap collection method. Where a taxpayer has failed to pay a debt below a particular threshold (for example £500) within a reasonable time and is in PAYE employment or in receipt of a
UK-based pension, the debt could be collected through PAYE. There would need to be some time limit within which the sum is fully recovered. Coding out would remain subject to the normal coding limits to prevent excessive deductions.

We welcome views on collecting small debts via PAYE, and in particular on the following questions:

- Should HMRC be able to collect small debts via PAYE?
- What level of debts should be collected in this way?
- What time limits should be used – ie how long after debts were payable could they be coded out, and for how long afterwards?

**Award of costs in debt litigation**

5.31 It can be cheaper to owe money to HMRC than to a commercial creditor, giving scope for taxpayers to pay other debts before tax debts and so putting HMRC (and the compliant taxpayer) at a disadvantage.

5.32 When a creditor takes legal action through a solicitor, the legal costs for actions in England & Wales will be included in the claim together with the court fees. There are scales of fixed costs, which are incremental and depend on the action taken and the value of the claim. Creditors who represent themselves can claim capped costs at two thirds the solicitor’s level (although disbursements including expert fees and Counsel’s fees can be recovered in full). However an officer of HMRC, if successful, cannot claim costs and can only recover the court fees. In Scotland, an officer of HMRC can recover expenses if successful in Sheriff Court proceedings.

5.33 One option would be to allow HMRC, if judgment is obtained following a court action for unpaid debt, to claim simple fixed costs. These would relate to the work done up to the time judgment is given. The costs of enforcing the judgment would be a separate matter.

We welcome views on whether HMRC should be awarded costs, and in particular on the following questions:

- Should HMRC be awarded costs where it receives judgment in court when taking action for unpaid debt?
- At what level do you think that the costs should be set?
5.34 An equivalent statutory approach could be adopted for insolvency actions, so that there should be fixed costs in bankruptcy and winding-up proceedings.
Chapter 6: Summary of Questions for Consultation

HMRC would be interested in comments on any aspect of this consultation particularly on the suggestions for:

- A more taxpayer focused approach
- Making it easier to pay, and
- Tackling the problem of unpaid tax.

Comments are also invited on the following specific issues:

**Chapter 3**

Setting off repayments of one tax against debts of another

- Which taxes should it apply to first?
- Would it be helpful to claimants to use tax repayments owing to them to off-set any tax credit or child benefit overpayments?
- Should set-off override any assignment which the taxpayer has effected for repayments, so that the assignment applies only to the balance after set-off?
- Should set-off also apply, in particular circumstances, between related entities?

Removing inconsistencies in current enforcement powers

- Whether there are any types of debt that should still be considered separately, and if so why?
- Are there other inconsistencies in enforcement which might be considered as part of this review?

**Chapter 4**

Making it easier to pay

- To what extent should HMRC allow businesses to pay their tax more flexibly?
- HMRC seeks views on two possible models for flexible payment schemes. Are there alternative models which would be preferable?
- What size of business should qualify for the scheme?
- Should any scheme be able to cover all of a business's tax payments?
- How should businesses which fail to keep up their payments be handled?
- Should HMRC consider additional flexibility, such as variable payments?
Paying by credit card

- Would it be helpful to allow taxpayers to pay their tax by credit card?
- Should credit card payments only be accepted for tax which is overdue, or should it be available for any tax payments?

Chapter 5

Direct attachment of taxpayers’ assets

- Should HMRC have the power to attach taxpayers’ assets and property in the same way that it currently carries out distraint on moveable property?
- How could jointly owned assets and accounts be addressed?
- What form of safeguards would be appropriate to protect taxpayers and others affected by the attachment?

Tax Clearance certificates

- What would be the advantages of a tax clearance certificate scheme?
- What should such a certificate cover?
- In what circumstances should a tax clearance certificate be used?
- What form of safeguards would be appropriate?

Tracing missing taxpayers

- Should third parties be required to provide contact details?
- Are there other ways of obtaining up to date contact details?
- What form of safeguards would be appropriate?

Collecting small debts through Pay As You Earn

- Should HMRC be able to collect small debts via PAYE?
- What level of debts should be collected in this way?
- What time limits should be used – i.e. how long after debts were payable could they be coded out, and for how long afterwards?

Award of costs in debt litigation

- Should HMRC be awarded costs where it receives judgment in court when taking action for unpaid debt?
- At what level do you think that the costs should be set?
Annex A: Breakdown of amounts owed to HMRC

Breakdown of amounts owed to HMRC at 31\textsuperscript{st} March 2006

<table>
<thead>
<tr>
<th>Type of debt</th>
<th>Value (£bn)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income Tax (SA and PAYE)</td>
<td>6.3</td>
</tr>
<tr>
<td>NIC</td>
<td>3.1</td>
</tr>
<tr>
<td>Companies</td>
<td>1.2</td>
</tr>
<tr>
<td>Overpaid credits and benefits</td>
<td>3.8</td>
</tr>
<tr>
<td>VAT and Excise</td>
<td>5.5</td>
</tr>
<tr>
<td>Inheritance Tax</td>
<td>0.7</td>
</tr>
<tr>
<td>Other Taxes and duties</td>
<td>1.3</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>21.9</strong></td>
</tr>
</tbody>
</table>
Annex B: International Comparisons

Setting off repayments of one tax against debts of another

In Australia offsetting may occur within or between the tax accounts belonging to a taxpayer. For example, a credit balance on the account which maintains the record of assessed income tax can be offset against a debit balance on the activity statement account. This is a simple process that is efficient and makes it easier and cheaper for a taxpayer to comply.

Generally, the process of offsetting a payment or credit amount against a tax debt is mandatory, except in limited circumstances where the Commissioner has discretion to refund the amount to the taxpayer. These circumstances include where:

- the debt is not yet payable (unless the debt relates to obligations notified on an activity statement, in which case the discretion does not apply);
- the debt is the subject of an arrangement to pay by instalments; or
- the Commissioner has agreed to defer debt recovery.

Although the Commissioner's general principle is to offset the credit entitlements belonging to a taxpayer against any tax debt they owe, the credit may be refunded to the taxpayer provided the Commissioner has the discretion not to offset and the taxpayer has shown that the offset will cause 'serious financial hardship'.

In New Zealand, if a taxpayer has any overdue debt which is not under an instalment arrangement, their refund may be used to pay this debt first. Any remaining credit will be refunded to them.

In the USA set-off is used where a payment by instalment arrangement is operating. As a condition of the instalment agreement, any refund that becomes due to the taxpayer will be applied against the amount owed. Thus, if federal tax, state tax, a student loan, or child support are outstanding the IRS will automatically apply the refund to the debt. If the amount of the refund does not satisfy the entire debt; then the instalment agreement continues until all of the terms are met.

**Tax clearance certificates**

The Republic of Ireland has been using a certificate of Tax compliance as a tool to encourage compliance for a number of years. The purpose of the scheme is to encourage tax compliance from businesses or individuals who either require a licence to trade or who wish to be contracted to do work for, or receive subsidies from, the State.

Any customer can ask for a Tax Compliance Certificate, regardless of whether they fit into either of the above two categories.
A certificate is required by businesses or individuals requiring liquor and gaming licences, auctioneers, money lenders, taxi and road transport operators, employers employing non-nationals, and some other specific trade sectors. The certificate is required regardless of whether the applicant is self-employed or in PAYE. The certificate is also required in the case of the sale of a property over €1.14m (in place of a Stamp Duty Land Tax equivalent).

The Jamaican Tax Administration uses certificates of compliance in a similar way to the Irish. They must be issued to certain businesses and individuals before they can register for licences for their trade. The certificates are required by all importers wishing to clear goods through Customs, contractors applying for Government contracts, individuals applying for citizenship, security firms, and customs brokers.

In order to obtain a certificate for the first time a taxpayer would require original receipts proving the payment of: PAYE, Company / Income Tax, National Insurance, education tax, general and specific consumption taxes and some other national taxes and duties.

In the USA tax certificates of compliance are administered at a State rather than Federal level. The overall administration of the certificates lies with the IRS; however the individuals requiring the certificates and the way they are managed varies from State to State.

For example, the State of Massachusetts Department of Revenue will issue a Certificate of Good Standing to any individual, business or partnership with all returns due and tax payable in order. However there is no law to say that entities must have a certificate to gain a licence for certain trades, it is up to the trading body / financial institution to decide if a certificate is required.

The South African Revenue Service (SARS) issues Tax Clearance Certificates for tenders and good standing to taxpayers. A Certificate is also required before emigration and for offshore investments. The applicant must have no outstanding debt, returns or outstanding information which has been requested about their income tax. They must also be adhering to any deferred arrangements. The Tax Clearance Certificate is valid for one year. SARS can withdraw the Certificate at any time should any taxes or levies become due and outstanding by the taxpayer during the period the certificate is valid.

**Direct attachment of taxpayers’ assets**

The Canadian Revenue Service can use a process called ‘garnishment’ without involving the courts. Where a debt remains outstanding and the debtor has not been in contact to discuss payment, garnishment action will be taken which allows the Revenue Service to intercept funds payable to the debtor by a third party.

In Australia, the Commissioner is empowered to issue a notice and collect debts from third parties who owe, hold money, or who may hold money, for a Tax Office debtor. This can be done without having to obtain a court judgment. The effect of issuing the notice is to place a charge on an amount owed to the Tax Office debtor,
preventing payment to them and requiring payment to the Commissioner. The terms of the notice are not limited to known accounts and the Commissioner will expect the financial institution to undertake searching procedures to locate all the accounts of the debtor held at all branches.

Similarly in France, the tax administration can issue a notice to third parties holding taxpayers’ money (eg banks, employers), which requires the payment of tax due. If the usual recovery actions have failed to prompt the tax payment, the tax administration can issue the “avis à tiers détenteur” (ATD) to the third party (copied to the taxpayer) by registered mail. Again, the tax administration is not required to go to the courts for this purpose.

In the Republic of Ireland they also recover debt through a third party, such as a bank, which holds funds on behalf of the debtor. Where a debtor will not pay his taxes the Tax Authority can obtain these funds directly from the third party without going through the courts.

And finally, in Norway the Tax Authority can distress on the account set up by the business to handle customers’ credit card transactions. It is mainly used where businesses have few tangible assets and high daily takings, such as restaurants. All of the business’s takings from transactions using that company’s credit card over the period of the agreement are paid over directly to the Authority.
What is the problem under consideration? Why is government intervention necessary?
HMRC was created out of two former revenue departments (Inland Revenue and Customs & Excise) by the Commissioners for Revenue and Customs Act (CRCA) 2005. The powers of the former departments were carried forward to the new department ring-fenced. Some of the inherited powers and systems for payment and repayment are inconsistent and can impose undue administrative burdens and costs on taxpayers and the Exchequer. The merger provides the opportunity to improve and modernise HMRC's payment and debt management.
Making these changes requires amendment to primary legislation.

What are the policy objectives and the intended effects?
The objective is to deliver more efficient systems for payment and repayment by developing a more taxpayer focused approach, making it easier to pay and tackle debt more effectively.
The intended effect is to produce a fairer and modernised payment and repayment system that more fully supports those who wish to comply and takes effective action against those who would seek to gain an advantage through non-compliance.

What policy options have been considered? Please justify any preferred option.
1. No Intervention
2. Explore opportunities to align rules, where doing so would provide greater clarity, consistency and efficiency, and reduced costs for taxpayers and the Exchequer. This would be taken forward with an initial high-level consultation and later through more detailed consultations and research as the proposals are developed. This option is preferred as it will deliver the potential benefits of aligning and merging processes following the formation of HMRC.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Post implementation review will take place around three years after the full implementation of any option.

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:
Dawn Primarolo
.............................................................................................................Date: 25 June 2007
Summary: Analysis & Evidence

Policy Option: 2
Description: Alignment and Modernisation of Rules from the former Inland Revenue and HM Customs and Excise

<table>
<thead>
<tr>
<th>ANNUAL COSTS</th>
<th>Description and scale of key monetised costs by ‘main affected groups’ It is envisaged that the most significant costs would come from one-off changes to HMRC’s administrative processes, and that these would fall to HMRC rather than taxpayers. These costs have yet to be determined. Further work will be undertaken to cost the ideas as they are developed.</th>
</tr>
</thead>
<tbody>
<tr>
<td>One-off (Transition) Yrs</td>
<td>£</td>
</tr>
<tr>
<td>Average Annual Cost (excluding one-off)</td>
<td>£</td>
</tr>
<tr>
<td>Total Cost (PV)</td>
<td>£</td>
</tr>
<tr>
<td>Other key non-monetised costs by ‘main affected groups’</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ANNUAL BENEFITS</th>
<th>Description and scale of key monetised benefits by ‘main affected groups’ Benefits to business and the Exchequer will be primarily in reduced administration costs following the changes. There should also be improved cash flow to Exchequer from more timely payment of debts. Further work will be undertaken to assess the economic, social and environmental benefits of the proposals as they are developed.</th>
</tr>
</thead>
<tbody>
<tr>
<td>One-off Yrs</td>
<td>£</td>
</tr>
<tr>
<td>Average Annual Benefit (excluding one-off)</td>
<td>£</td>
</tr>
<tr>
<td>Total Benefit (PV)</td>
<td>£</td>
</tr>
<tr>
<td>Other key non-monetised benefits by ‘main affected groups’</td>
<td></td>
</tr>
</tbody>
</table>

Key Assumptions/Sensitivities/Risks
This option complements reforms introduced by the Tribunals, Courts and Enforcement Bill to replace all forms of seizure of goods, including distraint, with a single power.

<table>
<thead>
<tr>
<th>Price Base Year</th>
<th>Time Period Years</th>
<th>Net Benefit Range (NPV) £</th>
<th>NET BENEFIT (NPV Best estimate) £</th>
</tr>
</thead>
<tbody>
<tr>
<td>What is the geographic coverage of the policy/option?</td>
<td>United Kingdom</td>
<td></td>
<td></td>
</tr>
<tr>
<td>On what date will the policy be implemented?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Which organisation(s) will enforce the policy?</td>
<td>HMRC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>What is the total annual cost of enforcement for these organisations?</td>
<td>£</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Does enforcement comply with Hampton principles?</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Will implementation go beyond minimum EU requirements?</td>
<td>N/A</td>
<td></td>
<td></td>
</tr>
<tr>
<td>What is the value of the proposed offsetting measure per year?</td>
<td>£</td>
<td></td>
<td></td>
</tr>
<tr>
<td>What is the value of changes in greenhouse gas emissions?</td>
<td>£</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Will the proposal have a significant impact on competition?</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annual cost (£-£) per organisation (excluding one-off)</td>
<td>Micro</td>
<td>Small</td>
<td>Medium</td>
</tr>
<tr>
<td>Are any of these organisations exempt?</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)</td>
<td>Increase of £</td>
<td>Decrease of £</td>
<td>Net Impact £</td>
</tr>
</tbody>
</table>

Key: Annual costs and benefits: Constant Prices (Net) Present Value

35
Initially this will be a high-level consultation exploring opportunities to align rules for the payment and repayment of tax, and to modernise HMRC Powers, where doing so would provide greater clarity, consistency, efficiency and reduced costs for taxpayers and the Exchequer. Further consultation and research evidence will be undertaken, as appropriate, to assess the balance of economic, social and environmental costs and benefits and the risks associated of each proposal as they are developed.

HM Revenue & Customs (HMRC) is responsible for the collection of most of the taxes that contribute to public revenues. It collected around £400 billion in year to March 2006 and repaid around £85 billion. Many taxpayers both make payments to and receive repayments from HMRC, either in respect of a single tax or because they deal with HMRC across a number of taxes.

Most tax is paid on time, but as at March 2006 there was an outstanding balance of around £20bn representing some 5% of receipts (shown by head of duty in Annex A of the consultation document). While the majority of this debt is under 3 months old and is successfully collected within a short time, HMRC writes off around 1% of its receipts – mainly because of taxpayer insolvency.

The ideas outlined in this consultation document fall into three broad categories:

1. A more taxpayer-focused approach:

HMRC wishes to focus less on the debts arising from the individual taxes, and more on the whole of a taxpayer’s interaction with HMRC. Doing so will allow support to be offered, and (where necessary) action to be taken in a more joined-up and consistent manner.

While the geographic coverage of these ideas extends to the whole of the United Kingdom, appropriate consultation would be made with devolved administrations.

The proposals here include:

(a) Setting off repayments of one tax against debts of another. Increasing the current use of set-off would provide significant simplification for taxpayers and the Exchequer. Instead of taxpayers having to manage different taxes, receive repayments and make payments, repayments would be set off and only the net balance would need to be paid or repaid. This would make their affairs much clearer, reduce the need for contact with HMRC, reduce unnecessary payments and so their banking costs.

(b) A single power of distraint for HMRC that would enable a single action to recover a debt owed by a taxpayer regardless of the type of tax involved. This would benefit the taxpayer by consolidating the debts owed to HMRC resulting in only one set action for all tax debts. Currently where multiple actions are required for two different taxes owed by the same taxpayer, that taxpayer faces having to pay two sets of fees and costs.

(c) Removing the differences in powers between taxes so that debts can be pursued in civil courts more efficiently or as one debt rather than as several smaller separate debts.
(2) Making it easier to pay

Taxpayers who try to pay but get into difficulties can benefit from extra payment methods available, especially schemes for flexible payments. Improved services can target these taxpayers earlier so that help and advice can be provided more quickly, either preventing them getting into debt at all, or addressing the debt before it gets too big. They would also help those who are already in difficulty return to full compliance.

(d) More flexible payment methods for businesses and individuals can help them to better manage cash flow while ensuring that they make regular payments to HMRC to keep their affairs up to date. One of the fundamental principles to these improved systems is e-payment (direct debit) which will reduce processing costs for everyone.

(e) Payment by credit card could be extended beyond the limited circumstances under which it is currently available. This would help taxpayers to budget much more easily for their tax payments and improve their cash flow.

(3) Tackling the problem of Debt

Compliant taxpayers can be doubly disadvantaged by those taxpayers who deliberately fail to pay the tax they owe. Not only can compliant taxpayers end up paying more than their fair share of what is needed to fund government expenditure, but compliant businesses can find themselves at a competitive disadvantage from non-compliant taxpayers who can offer lower prices subsidised from unpaid taxes. The ideas for tackling those who deliberately pay late seek to redress the balance by tackling non-payment more quickly and more effectively.

(f) Extending HMRC current powers of distraint to allow it to directly attach taxpayer’s assets without the need to obtain a court judgment would ensure that taxpayers do not escape payment where they have sufficient assets to meet their debts.

(g) Tax Clearance Certificates can be a powerful incentive for businesses to comply with their tax obligations and as an assurance to others. The feasibility of such a system would need to be established as part of further work.

(h) Tracing taxpayers via a third parties to provide contact details could be a valuable tool in tackling non-compliance where taxpayers fail to inform HMRC of their new address when owing tax.

(i) Extending the Collection of small debts through Pay As You Earn can both spread the cost for the taxpayer and reduce the cost to the Exchequer of collecting those small amounts.

(j) Awarding HMRC costs when successful in debt enforcement litigation. It can be cheaper to owe money to HMRC than to a commercial creditor. This gives scope for some taxpayers to pay other debts before tax debts and so putting HMRC and the time compliant taxpayer at a disadvantage. To encourage timely payment HMRC proposes that it should be entitled, if judgment is obtained following a court action for unpaid debt, to claim simple fixed costs.

Overall, the changes would aim to produce a modern and consistent set of powers and processes. These changes would support taxpayers while also helping to reduce the amount of outstanding debt.
Specific Impact Tests

Full details of the specific impact tests are listed at http://www.cabinetoffice.gov.uk. These have been applied to the high-level ideas presented in this consultation. They will be applied again to test the impact as more detailed proposals are developed.

The competition filter has been applied at this stage, and this option found to have little or no competitive impact.

HMRC has consulted on these ideas as part of Review of Powers, Deterrents and Safeguards with a Consultative Committee which consists of representatives of the wider taxpaying community including Small Business. This committee has considered the ideas in the consultation document in an earlier stage of the review. Compliant businesses will generally not face extra costs under the ideas in this document, and will benefit from the increased range of payment methods and improved service to taxpayers. HMRC welcomes views on the impact of the ideas in this consultation on small businesses.

This option would not significantly increase legal aid impacts, and would have the potential to decrease impacts.

This option is in accordance with the principles of sustainable development. In particular more effective finance arrangements across taxes promote good governance and a sustainable economy.

This option will have no significant impact on emissions of greenhouse gases, or other environmental impact. For cases which still require further enforcement action, it will overall reduce the environmental impact through fewer visits to taxpayers to enforce by distraint and less consumption of paper and other resources in court processes.

This option will have no significant impact on health and well-being.

This option will have no significant race equality impact.

This option will have no significant disability equality impact.

This option will have no significant gender equality impact.

This option is compatible with the Human Rights Act

This option will not have a significantly different effect in rural areas.
Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

<table>
<thead>
<tr>
<th>Type of testing undertaken</th>
<th>Results in Evidence Base?</th>
<th>Results annexed?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competition Assessment</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Small Firms Impact Test</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Legal Aid</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Sustainable Development</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Carbon Assessment</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Other Environment</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Health Impact Assessment</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Race Equality</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Disability Equality</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Gender Equality</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Human Rights</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Rural Proofing</td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>
Annex D: Cabinet Office Code of Practice on Written Consultations

This consultation is being conducted in accordance with the code, which sets down the following criteria:

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
- Ensure that your consultation is clear, concise and widely accessible.
- Give feedback regarding the responses received and how the consultation process influenced the policy.
- Monitor your Department’s effectiveness at consultation, including through the use of a designated consultation co-ordinator.
- Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

You can see the full Cabinet Office Code of Practice on consultation on the internet, at the following address:


Complaints

If you have any comments or complaints about the consultation process, please contact:

Duncan Calloway, Room 3/37, 100 Parliament Street, London SW1A 2BQ

Email: duncan.calloway1@hmrc.gsi.gov.uk

Tel. 020 7147 2389

Details of how to respond to the consultation itself can be found at paragraph [18] of this consultation document.