TAXREP 39/14

(ICAEW REPRESENTATION 101/14)

DIRECT RECOVERY OF DEBTS

ICAEW welcomes the opportunity to comment on the consultation document *Direct Recovery of Debts* (DRD) published by HM Revenue & Customs on 6 May 2014.

This response of 29 July 2014 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's *Ten Tenets for a Better Tax System*, by which we benchmark proposals for changes to the tax system.

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DIRECT RECOVERY OF DEBTS

INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation document *Direct Recovery of Debts* (DRD) published by HM Revenue & Customs on 6 May 2014.

2. We should be pleased to discuss any aspect of our comments and to take part in all further consultations on this area.

3. On 10 June 2014 we attended a meeting with HMRC in which we were able to put forward some key comments and concerns and discuss aspects of the consultation document. Previously ICAEW has been actively involved in the review of HMRC's powers including the *Payments, Repayments and Debt* work strand.

4. ICAEW represents the views of our members. We also have an obligation to act in the wider public interest. Our comments on the DRD proposals cover both these aspects.

KEY POINT SUMMARY

5. ICAEW does not support the proposals in this consultation document. They should not be taken forward.

6. ICAEW has no sympathy with those who do not pay the tax they owe despite having the means to do so. We support HMRC in its task of collecting such debts and accept that it needs effective powers to do this. However, recovery powers must be fair, proportionate and accompanied by robust safeguards. The DRD proposals do not meet these criteria.

7. In overview our principle objections are that:

   - HMRC should not have the power to collect debts from bank accounts without independent judicial oversight: this contravenes the constitutional principle of separation of powers.
   - We are not convinced that a new power is necessary in addition to those already at HMRC's disposal. HMRC should be asked to provide much better evidence as to why the current powers are not adequate.
   - We are concerned about the risk of errors on HMRC's part, which could have damaging consequences not just for the taxpayer concerned but also for public trust in the tax system.

   Our objections and concerns are set out in more detail below, under Major Points.

8. We appreciate that the consultation does not ask whether respondents support the proposal but focuses on procedural matters on the assumption that DRD will be taken forward. However, we think it is necessary to go back a step, to re-think the policy and consult upon the strategies by which HMRC can tackle those who wilfully refuse to pay.

9. In this response document we first set out our concerns about the DRD proposals and the reasons why they should not be implemented. In

10. We then comment on some aspects of the consultation which are not covered by the consultation questions, and finally we give answers to the consultation questions. We would like to make clear that in providing these detailed comments, we are not suggesting that we think DRD could be taken forward after some adjustments to the proposed procedure: that is not our view.

11. We have consulted widely among our membership and the views expressed in this consultation response reflect the large number of comments we have received. The overwhelming majority are very concerned about the DRD proposals and think they should be dropped. If required we can provide a summary of members' comments to illustrate this point.

12. We have set out, in Appendix 1, the ICAEW Tax Faculty's *Ten Tenets for a Better Tax System* by which we benchmark proposals to change the tax system.

MAJOR POINTS

Constitutional concerns

13. Under UK law, if someone owes you money, you cannot just help yourself to it; permission of the court is required. The reasons for this were summed up by Jonathan Schwarz, barrister, speaking at the ICAEW Tax Faculty Wyman Symposium on 2 July 2014:

    "The court's function is to ensure that all the correct procedures are followed, that the claim is justified and that all relevant circumstances are taken into account. Courts may refuse an order if it would be inequitable to grant it. This would take into account all relevant facts, not just those HMRC might. These factors include the insolvency of the debtor. To do otherwise may be to grant a preference to the creditor. Similarly, certain payments such as state pensions and benefits cannot be attached, and it would be inequitable to allow this to happen indirectly."

14. Further, where the creditor is the state, a separation of powers is essential. Again, this was clearly expressed by Jonathan Schwarz at the Wyman Symposium:

    "It is a fundamental principle of justice that nobody should be a judge in their own cause. … Thus while the courts provide only one method of dispute resolution between citizens, it is one that is critical where the government or the executive is involved and independence is necessary."

15. For these reasons, the proposed DRD procedure is unconstitutional and wrong in principle. Independent, judicial oversight is essential for any such recovery power.

Position of other creditors

16. The DRD power enables HMRC to go directly to a debtor's bank account to collect a debt, rather than via the court route as other creditors must. This gives HMRC an advantage over other creditors, putting it in prime position to collect funds. This might be described as "restoring Crown preference by the back door".

17. This is unfair to other creditors. It may also be unfair to the debtor, such as a vulnerable person with many debts for whom the practical priority might be to pay their housing costs before HMRC.

HMRC's existing powers

18. HMRC already has a variety of debt enforcement methods at its disposal for tax and tax credits, one of which is to obtain a court judgement. If the debt is not paid, HMRC has power under Part 72 of the Civil Procedure Rules (Third Party Debt Orders) to apply to a court to allow it to take money from the debtor's bank account. This has the same effect as DRD but with the crucial difference that it is done with the oversight of the court.

19. HMRC has indicated that this method of accessing funds is time-consuming and costly. However, we do not consider that HMRC has made a good case for why the court order route is not effective; the consultation paper contains little information about this.

20. HMRC should be required to provide better evidence to support its case (including the numbers of cases it has taken and the costs of doing so).

21. The county court procedure, including Part 72 of the Civil Procedure Rules, provides the option for the creditor to recover their costs from the debtor. We should like to know whether HMRC recovers its costs in this way and if that has been factored into its figures of costs for debt recovery by this route.

22. We should also like to know more about how HMRC uses the county court route. It may be that it is not being used efficiently and improvements could be made to the process.

23. The consultation document suggests that HMRC knows quite a lot about the debtors who wilfully won't pay, for example that they owe an average of £5,800 and around half have more than £20,000 in their accounts, and that most of them are self-employed. If HMRC has this sort of detail, we would like to ask why it has not been more successful in tackling those concerned.

24. The DRD powers are targeted at a minority of debtors do not pay or engage with HMRC. However, the consultation document presents no evidence as to the make-up of this group or why they do not pay. HMRC should be required to provide evidence of the information it holds on this aspect, including any research undertaken.

25. This leads on to the wider issue of HMRC's debt management system and its effectiveness. Before obtaining any new powers, HMRC should demonstrate that it is making the best use of information it already has to collect old outstanding debts. This should include explaining what steps it takes to contact, and engage with, debtors who do not pay – especially those such as Mr A in HMRC's case study who have hitherto had a good compliance record.

26. A contributory factor to HMRC's difficulties in using the existing powers for debt recovery may be a lack of resources. If so, the government should address this issue; this is discussed under Impact assessment and HMRC resources at paras 90 et seq 7 below.

Risk of HMRC error

27. The DRD process relies heavily on HMRC having correct information and using its judgement appropriately. For example:

    - HMRC must have correct figures for "established debt".
    - It must have the debtor's correct address.
    - It must have reliable information about bank accounts.
    - It will be up to HMRC to decide what funds should be left in the accounts for essential personal or business expenses.
    - It will be up to HMRC to rule on any objection the taxpayer might make, including whether DRD will cause hardship.

28. We are concerned that HMRC will inevitably make errors in operating DRD. While any large organisation handling millions of transactions is bound to make errors, an error in operating this particular power could have very damaging consequences.

29. First, the consequences for the individual taxpayer if HMRC get things wrong will be severe: not just loss of funds, but perhaps a knock-on effect on their business and personal life, and damage to their credit-rating.

30. Second, the publicity given to any case where DRD is used inappropriately would have a damaging effect on public confidence in the tax system. In the UK, voluntary compliance and trust in the tax system are crucial to the way the system operates. The cost of trust being eroded will far outweigh the sums DRD is expected to yield.

31. The evidence that HMRC makes errors is provided by feedback from our members.

32. At the Wyman Symposium, for example, a number of audience members related their practical experiences where HMRC had pursued a "debt", sometimes in a threatening manner, which was not actually due because the figure was wrong or it had been paid already. A straw poll of all practitioners in the room indicated that nearly all had had client cases like this.

33. Further evidence for the risk of HMRC error is provided by the Adjudicator's report for 2013/14: in that year, an unprecedented 90% of complaints against HMRC were upheld wholly or in part.

Other options

34. As noted, our view is that DRD is unconstitutional and that HMRC has not made out a convincing case as to why current powers are not adequate.

35. A very similar proposal was put forward under the review of HMRC powers in 2007 and dropped the following year in the face of criticism it received. HMRC said in November 2008:

    "HMRC has developed its thinking on this proposal further in the light of comments received during the previous consultation, and explored the issues with the Powers Consultative Committee. Following that discussion HMRC has no current plans to take this proposal any further."

36. HMRC has not explained why, if criticisms were valid in 2008, it is now thought appropriate to introduce this power in 2015. What has changed? It should be asked to explain this.

37. There has been no consultation on the principle of DRD – the current consultation looks just at the process but assumes the power will be implemented – or on other options to achieve the same objective.

38. Our strong recommendation is that government should go back a step and consult on the policy objectives and the strategies by which they might be achieved.

Lack of parliamentary scrutiny

39. The DRD legislation is planned for Finance Bill 2015. Next year we will have a general election and – potentially – changes resulting from the Scottish Independence referendum.

40. DRD, if it goes ahead, will represent an important change to UK legislation. It needs proper parliamentary scrutiny and debate, but we question whether there will be adequate parliamentary time or interest for this in 2015. It is absolutely not the sort of legislation which should be nodded through.

41. This concern reinforces our recommendation for a re-think of the policy and further consultation.

FURTHER COMMENTS ON ASPECTS OF THE CONSULTATION

Overseas jurisdictions

42. The consultation document refers to the fact that other jurisdictions have a similar power to DRD. We are not convinced that this is an argument for introducing DRD in the UK. Other jurisdictions have different legal systems, and what powers are right for the UK must be decided in the context of the UK legal and tax system.

43. A second point regarding overseas jurisdictions is the impact of reciprocal arrangements for debt recovery. The UK is a party to the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters of which Article 11(1) reads:

    "At the request of the Applicant State, the requested State shall, subject to the provisions of Articles 14 and 15, take the necessary steps to recover tax claims of the first-mentioned State as if they were its own tax claims."

44. So, the tax authorities of the 60 countries (currently) that have signed the Convention could require HMRC to use DRD to collect overseas debts from their UK bank accounts without prior judicial approval. This could leave UK residents vulnerable – how could HMRC verify that the amounts demanded were "established debts" for this purpose?

Comparison with distraint

45. The consultation document, and some commentators, compare DRD with distraint and suggest that DRD may be a better procedure than distraint for the taxpayer, by being less intrusive. We do not agree with this analysis.

46. Distraint (now, since April 2014, correctly termed "Taking control of goods") is not necessarily intrusive, as HMRC cannot enter a taxpayer's home or premises unless its officers are invited in or have a warrant. There are rules in the Tribunals, Courts and Enforcement Act 2007 and in HMRC's own guidance about what assets can be taken. Distraint is not levied immediately but the assets are listed and the debtor allowed 14 days (ie no less than what is proposed for DRD) to sort out payment or clarify what is actually due. Distraint action has no effect on the taxpayer's credit rating.

47. Most importantly, a distraint visit can in many cases be the first opportunity the taxpayer has of face-to-face contact with an HMRC officer and the chance to sort things out if the debt is wrong or the taxpayer needs time to pay. DRD does not offer this until after the event, and does not offer face-to-face contact at all.

Established debt

48. The consultation indicates – and cites as a safeguard – that DRD will only be used to collect "established debt". It appears that a debt will be established if "the taxpayer does not pay or contact HMRC" (para 3.4 of the consultation document).

49. However, this is not sufficient to prove that a debt is correct. There could be many reasons it appears the debt is unpaid or the taxpayer has not contacted HMRC. HMRC might have the wrong address; the taxpayer might have tried to phone but been unable to get through, or sent a letter which is in a post backlog; the taxpayer might have paid but the payment been incorrectly logged on HMRC's systems.

50. The consultation does not make clear whether "established debt" would include liabilities which are under appeal, liabilities which are the subject of a complaint or tax credit overpayments which are in dispute. In our view, none of these should be the subject of DRD.

51. The consultation does not explain what would happen if the taxpayer has a debt to HMRC under one head of tax but is due a repayment under another head. Will HMRC check its systems and set one against the other before proceeding to DRD?

Contact with the debtor

52. HMRC says that before getting to the stage where DRD is applied, the taxpayer will have been contacted at least four times, and in many cases nine times.

53. The contacts appear to include standard communications such as the notice to file a return. They involve HMRC writing to the debtor, or phoning or leaving messages. The DRD process as described does not include checking if HMRC has the right address or phone number, or whether the person has received the letter or heard and understood the phone message. If DRD is to be applied to the "won't pays" rather than the "can't pays", we would expect HMRC to be more proactive in checking that its communications have reached the right person and why they haven't responded – particularly if they have previously had a good compliance record.

54. HMRC has been criticised for its service standards in both answering telephone calls and handling post. We are concerned that taxpayers may have tried and failed to get in touch with HMRC to sort out their debts, and will find themselves the subject of DRD action. This situation may be exacerbated by the closure of enquiry centres: some taxpayers may prefer face-to-face contact, which is no longer available except to those who find their way to the "Needs Enhanced Support" service.

Information from banks

55. In order to operate DRD, HMRC is planning to obtain a great deal of detailed information from banks. This will (we assume – though the consultation does not spell it out) require a new statutory power.

56. Although HMRC is obtaining this information for the purposes of DRD, it could be very useful for other purposes. We are very concerned that this is in effect a new information power "by the back door".

57. The proposals indicate that, using the bank account information, HMRC will decide how much money the taxpayer has and how much must be left in the accounts for essential expenses. This will be done without recourse to the taxpayer.

58. The consultation does not say whether HMRC will check that the information from the banks is correct, or whether the accounts are beneficially owned by the debtor in question. For example, how will HMRC know if the account is a nominee account where the debtor does not have beneficial ownership of the funds?

59. We are also sceptical of HMRC's ability to judge, from 12 months' bank account information, what a person's future essential expenditure might be. This is something many accountants would not undertake lightly. Past patterns do not necessarily indicate future needs.

60. A further issue is that the accounts might contain funds which HMRC is not empowered to take, such as payment from a local authority to a care and support employer, to pay their carer.

Targeting the right people

61. It is a serious concern that the central example in the consultation document of how DRD might operate (Case Study 1, Mr A) is of a determination of tax due, ie an estimate made in the absence of a tax return. The debt might be established under the workings of self assessment law but the actual liability might be very different based on Mr A's actual figures. Far from illustrating a case where DRD is appropriate, and illustrating how DRD and its safeguards would work, Case Study one shows clearly how the application of DRD could go wrong.

62. We are told Mr A has a good history of compliance but HMRC does not explore why it has suddenly ceased to hear from him. For example, has he suffered a major personal disaster or has HMRC simply failed to register that he has a new address?

63. It appears to us that far from demonstrating a classic case for DRD action, the case study of Mr A shows how difficult it will be to target this power appropriately at those taxpayers who have a real established tax that they just will not pay.

64. On the other hand, those who intend to avoid paying tax can – once they know that DRD is an option – easily side-step it by taking their funds out of their UK bank accounts. HMRC does not explain how it would counteract this simple and obvious strategy. Introducing DRD could in fact encourage such people to move their funds offshore.

65. We commend HMRC for saying in the consultation document that it wants to ensure it that it does not target DRD on the wrong people and that vulnerable people are protected. It has invited suggestions on relevant safeguards. Our view is that the only way to protect those who are not intended to be the target of DRD is not to implement it.

66. A category of taxpayers which concerns us is those with so-called "brown envelope syndrome" – they may not have fraudulent intent, but may have personal, heath or financial problems which mean they are terrified to contact HMRC. It is not unusual for such people to have mental health problems. Those in this category need assistance to sort things out – DRD will achieve little except in the very short-term, and will not build a relationship to ensure future compliance.

67. Another category which concerns us is those with tax credit overpayments. Overpayments can arise through the way the tax credit system operates rather than any fault of the claimant, and those on lower incomes, and so with higher awards, often clock up overpayment quickly when things go wrong. Sizeable overpayments are still being recovered from the earliest years of tax credits, and overpayments can be far in excess of £1,000. These are likely to be vulnerable and (despite the size of their overpayments) not on high incomes. The oversight of a court in recovery proceedings is an important protection for them.

Safeguards generally

68. HMRC summarises the safeguards in chapter 4. We do not think these are adequate. For the most part these rely on HMRC's internal procedures – and on HMRC staff following those procedures. Given that the proposed power is a robust one, safeguards should be equally robust and enshrined in primary legislation.

69. Our comments on specific aspects of the safeguards are given below.

Initial appeal rights

70. HMRC notes at para 3.26 that before DRD is applied, the taxpayer will have the option of appealing to the Tribunal regarding the amount of the liability.

71. We do not consider this to be such a robust safeguard as HMRC implies, as it fails to recognise that there is not always a right of appeal, in many common situations. For example, there is no right of appeal against a P800 tax calculation or against HMRC's decision to recover a tax credit overpayment (assuming the award itself is correct).

72. To refer to HMRC's own case study of Mr A – intended to how DRD and its attendant safeguards would work – there is no appeal against a self assessment determination, which can only be displaced by submitting a return or by the operation of special relief.

Objecting to DRD

73. As stated at paragraph 3.26, once DRD has been applied, the debtor can make an objection on various grounds: that the debt is not due, or collecting it will cause hardship.

74. We assume this right will be in statute though the consultation does not make that clear.

75. Our concern is that it will then be up to HMRC to consider the objection and accept or reject it: in other words, HMRC will be judge and jury. The taxpayer has far better protection under the current system where the county court will consider whether the debt is due and can also recommend instalment payment based on the debtor's own information rather than what HMRC might be prepared to accept.

"Judicial appeal"

76. The consultation indicates that if HMRC does not accept the taxpayer's objection, the latter has the right of "judicial appeal". This is an unclear and hitherto unknown term, but we understand from HMRC it is intended to mean an appeal to a court or tribunal. HMRC indicated that appeals against DRD might follow the route of current child maintenance payment appeals, which is to the Social Security and Child Support Chamber of the First-tier Tribunal.

77. While it is welcome that appeals would go to a tribunal, we do not think it is appropriate that appeals should go to a chamber other than the Tax Chamber.

78. We also question what would happen if the tribunal was asked to look at the validity of DRD action but found, when it did so, that the debt might be wrong. Would it be able to look again at the debt or ask the parties to do so?

79. Our main criticism of this proposed appeal right is that it is available far too late – after DRD has been applied and after the taxpayer has objected and had their objection refused.

80. Taking a case to the tribunal takes time. A taxpayer who contends their funds have been wrongly taken under DRD will have a long wait before their funds are reinstated (if they succeed).

81. A number of commentators have assumed that "judicial appeal" is intended to mean judicial review. While we do not think this is what HMRC has in mind, we should like to state that judicial review is an expensive and difficult procedure, in practice beyond the reach of the majority of taxpayers unless they can afford legal representation, and thus not suitable as a robust safeguard in DRD.

Joint accounts

82. HMRC acknowledges that joint accounts are a problem under DRD (paragraph 3.29 et seq in the consultation document), but its proposals to deal with them are far from adequate.

83. A pro rata approach when applying DRD to joint accounts is simplistic. An account might be in joint names, but this does not mean the beneficial ownership of the funds is 50:50. We cannot see how HMRC can easily ascertain the beneficial ownership from bank account information.

84. In the case of a joint account it will be necessary for HMRC to assess the future spending needs of both the debtor and the other account holder(s). It would be unfair to the non-debtor account-holders to seize funds without considering this – the pro rata approach will not address this issue.

85. Joint account holders will have the right to object and to appeal if HMRC does not uphold their objection. These protections are only available after DRD has been applied and are unfair to joint account holders who are not the debtor – through no fault of theirs, their funds will have been taken and will not be reinstated until and unless the objection or appeal is upheld. Further, it is an unnecessary burden on the non-DRD joint account holder to have to convince HMRC what funds they need in future so that less should be taken.

86. There is also an issue of confidentiality. In writing to all account-holders in a joint account, HMRC will be telling the non-DRD account-holders about DRD action against another taxpayer. HMRC has no idea of the relationship between the account-holders and, given that the UK has a system of independent taxation, the fact that one of them owes money does not give HMRC the right to breach taxpayer confidentiality.

Compensation for HMRC error

87. HMRC states at paragraph 4.8 that the debtor will be fully compensated for losses incurred in the application of DRD.

88. However, the detail given refers only to the loss when funds are mistakenly taken from an ISA account. There is no mention of other implications – for example, if HMRC's mistaken action has an adverse impact on a taxpayer's credit rating.

89. There is also no mention of how HMRC might endeavour to compensate the non-DRD account-holder in a joint account.

Impact assessment and HMRC resources

90. The impact assessment in chapter 5 of the consultation document is very brief. It provides a simplistic view of the target population and insufficient detail about how the expected yield and costs have been calculated.

91. We would like to have more detail about the current costs of using the existing court order route to take funds from bank accounts, and whether a cost saving here has been factored into the additional costs of DRD.

92. DRD is expected to incur additional costs of £800,000 over five years, ie £160,000 a year. This seems a very low cost for the staff time involved in the time-consuming process of obtaining and analysing bank accounts and following the DRD procedures. We query whether HMRC's estimate of the time involved is realistic and would like more information about how the costs have been calculated.

93. HMRC says that debtors likely to be subject to DRD owe an average of £5,800. This seems a relatively small average debt and we are concerned that a swingeing new power to tackle such cases will be the proverbial "sledgehammer to crack a nut" which will impact most on the vulnerable.

94. A final but important point is that HMRC's resources have been cut repeatedly over recent years. If they do not have adequate resources to operate their existing powers effectively, ministers must address that. The answer is not to introduce new powers which circumvent the courts.

RESPONSES TO THE CONSULTATION QUESTIONS

95. We set out below our answers to the consultation questions. The fact that we have supplied detailed comments and, in some cases, suggestions, does not indicate that we think the proposals in the consultations could be taken forward if suitably amended.

Q1: Is 12 months' worth of account information sufficient for HMRC to establish how much the debtor needs to pay upcoming regular expenses?

96. Whether 12 months' of account information will be adequate will depend on the individual case. Our concern is that even with full bank account information, HMRC will not be able to

determine what the debtor's essential future expenditure might be. See our comments at para 50 et seq above.

Q2: Is five working days sufficient time for deposit takers to comply with account information requests?

97. This is a question for the deposit-takers to answer. However, it seems unlikely that the volume of information HMRC is requesting can be provided in such a short period of time.

Q3: By leaving a minimum balance in a debtor's account, HMRC needs to strike a sensible balance between avoiding putting taxpayers into hardship and collecting money owed to the Government in an efficient manner. Is £5,000 a proportionate and appropriate sum to meet these objectives?

98. On the face of it, a minimum amount of £5,000 seems reasonable, given that HMRC will leave a larger sum if that seems warranted. But as noted above, we are concerned that HMRC will not be able to establish what the debtor's essential future expenditure might be. See para 59 above.

Q4: What changes will deposit takers need to make to their systems to administer this policy and will this impose any administrative burdens?

99. We cannot comment: this is a question for the deposit-takers to answer.

Q5: Is 14 days an appropriate length of time for the debtor to object to HMRC or pay by other means?

100. No, 14 days is not adequate.

101. The 14 calendar days will be counted from the date of the letter. This does not allow for the time it can take for a letter, once finalised, to actually be posted by HMRC. It might not arrive until well into the 14-day period, leaving the debtor insufficient time to take action.

102. There are many situations where a debtor might not see the letter until the 14 days had elapsed, or might see it so close the deadline that he or she would have no time to take action. For example, the debtor might be on holiday, working away from home or ill in hospital.

103. The time allowed for statutory appeals against HMRC decisions is in most cases 30 days. The time allowed under DRD should be at least that.

104. The 14 days makes no allowance for postal delays or whether the debtor has received the letter at all. One reason why HMRC has not heard from the debtor could be that it is using the wrong address. The letter would have to be delivered by a method which ensured the debtor had received it.

Q6: What would be a suitable time limit for the deposit taker to comply with an order to release funds, either to the debtor or to HMRC?

105. We cannot comment: this is a question for the deposit-takers to answer.

Q7: What sort of sanction should fall on deposit takers who do not comply either with the initial notice to supply account information or the instruction to release the held amount to HMRC?

106. We are not in a position to make recommendations on sanctions to be applied to deposit-takers.

107. In this context we would like to point out another way in which things might go wrong when the banks are required to provide information to HMRC: they might provide incorrect information, leading to HMRC taking funds from the wrong person or making an incorrect decision on how much can be taken.

Q8: Is protecting a proportion of the credit balances of joint accounts the best way to protect non-debtor account holders?

108. The proposed protection for joint account-holders is inadequate, as discussed at paras 82 et seq.

Q9: Are these safeguards appropriate and proportionate?

109. We do not think the safeguards are adequate, as explained throughout this response document but in particular at paras 68–89.

APPENDIX 1

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

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.

2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.

3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.

4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.

5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.

6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.

7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.

8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.

9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.

10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see icaew.com/en/technical/tax/tax-faculty/~/media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx)