

## **Recovery of Debts under PAYE Regulations: Draft Guidance**

This is draft HM Revenue & Customs (HMRC) guidance on how Clause 109 and Schedule 58 of Finance Bill 2009 (Recovery of Debts under PAYE Regulations) may be implemented in due course.

### **Background**

Many of HMRC's customers owe relatively small amounts of tax or other debt. 'Small' debt is defined in this context as less than £2,000.<sup>1</sup> In most instances it is not cost effective to enforce payment of small debts by distraint or court action. This type of enforcement action is intrusive for the debtor and increases their level of debt.

Currently HMRC, with the taxpayer's agreement, can collect small underpayments of Income Tax and Capital Gains Tax<sup>2</sup> by an adjustment to their PAYE tax code (often referred to as 'coding out'). Similarly, HMRC can recover overpayments of tax credits in this way<sup>3</sup>.

### **The way forward**

The new legislation in XXXX will, in appropriate cases, allow HMRC to collect other small debts by an adjustment to the tax code. The sum to be coded out may be made up of several small sums not exceeding £2,000 in total. This will give debtors a way to spread payment of their debt while reassuring compliant taxpayers that debt is being pursued.

### **Consent and right of appeal**

If the debt has not been paid within say, six months of the due date, HMRC may issue a notice imposing the coding change. HMRC will not need a debtor's agreement to code out but the debtor has the right of appeal against a coding notice as now.<sup>4</sup> If the debtor does not wish to have their debts recovered in this way they will be expected to make alternative arrangements for payment.

### **Interest**

If the debt is already attracting interest for late payment, any amount recovered through an adjustment to the debtor's code will be treated as having been paid on the first day of the tax year in which the coding out is applied. For example the effective date of payment for amounts successfully recovered by coding out during 2012-13 will be 6 April 2012.

Interest will be calculated and collected once the debt has been fully paid.

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<sup>1</sup> For consistency with Regulation 186(3) (a) (b) of the Income Tax (Pay As You Earn) Regulations 2003.

<sup>2</sup> Section 684 Income Tax (Earnings and Pensions) Act 2003.

<sup>3</sup> Section 29(5) Tax Credits Act 2002 (TCA)

<sup>4</sup> Regulation 18 of the Income Tax (Pay As You Earn) Regulations 2003

## **Criteria for coding out debts**

The existing safeguards that limit the amount that HMRC can code out through the PAYE system and protect the level of the taxpayer's net income will be preserved. The right to object to collecting underpayments of Income Tax and Capital Gains Tax under Self Assessment, where the due date has not already passed, will not be disturbed.

In addition:

- The debtor must be in PAYE employment.
- The debt must be established and overdue. An established debt is one where the amount has been agreed and the time for appeal has either passed or the appeal has been determined.
- The total amount coded out must not exceed £2,000 in any year. Where amounts to be recovered exceed £2,000, the order of priority for inclusion in the coding will be:
  - any tax underpayment that can be coded out under the existing arrangements
  - any tax credit overpayment that can be coded out under the existing arrangements
  - any other debts that can be coded out under these new arrangements

Small debts which are not coded out may be pursued through the usual enforcement process. Similarly HMRC will not code out part of a larger debt. The debt will be collected in its entirety by other means.

## **Order of satisfaction of debts coded out under the new arrangements**

Where more than one debt is coded out but the amount recovered is not sufficient to cover the whole amount owed, debts will be satisfied in accordance with the rules in the DMB Manual ([DMBM210110](#)).

## **Impact on the customer**

Greater use of coding out of debts will be proportionate, reduce the number of times HMRC will have to contact customers for payment and ensure that the collection of debt is less intrusive.