
HM Revenue and Customs

Modernising Powers, Deterrents and Safeguards

Payments, Repayments and Debt: The Next Stage

Consultation Document
November 2008



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Chapter 1: Summary table

Scope of the consultation

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| Topic of this consultation: | HMRC proposals on its approach to payment, repayment and debt. |
| Scope of this consultation: | HMRC consulted on a package of proposals for its approach to payment, repayment and debt in June 2007. This resulted in legislation in Finance Act 2008 for three of the proposals. This consultation sets out HMRC's latest thinking and seeks further views on a number of proposals. |
| Impact Assessment: | An impact assessment is published separately as part of this consultation. |

Basic Information

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| Who should read: | Taxpayers and their representatives interested in the proposals raised in the consultation document. |
| Duration: | From Pre Budget Report 2008 to 13 February 2009. |
| Enquiries: | The Review can be contacted by telephone on 020 7147 3223 or at powers.review-of-hmrc@hmrc.gsi.gov.uk . |
| How to respond: | Responses should be sent to: powers.review-of-hmrc@hmrc.gsi.gov.uk ; or HMRC Review of Powers: Room 1/72, 100 Parliament Street, London SW1A 2BQ; |
| Additional ways to become involved: | HMRC will be inviting taxpayer representatives to meet with the Review team and discuss the issues raised in the consultation document. |
| After the consultation: | Subject to consultation, any changes may be introduced through the 2009 Finance Bill, to take effect from appointed days thereafter. Responses to consultation will be published around Budget 2009. |

Background

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| Getting to this stage: | The Review of Powers, Deterrents and Safeguards was set up to provide a framework of law and practice for HMRC that is appropriate to the merged Department's tasks and allows those tasks to be carried out effectively and efficiently while also providing appropriate safeguards for taxpayers. |
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| <p>Previous engagement:</p> | <p>The Review has published the following formal consultation documents covering payment services and debt management. Other documents have covered compliance checking, penalties and criminal investigation powers:</p> <ul style="list-style-type: none"> • March 2005: <i>HM Revenue & Customs and the Taxpayer: Modernising Powers, Deterrents and Safeguards</i> • March 2006: <i>HM Revenue & Customs and the Taxpayer: Modernising Powers, Deterrents and Safeguards</i> • June 2007: <i>Payments, Repayments and Debt: the Developing Programme of Work</i> • January 2008: <i>Payments, Repayments and Debt: - Responses to Consultation and Proposals, - Draft Legislation & Commentary and - Interim Impact Assessment.</i> • March 2008: <i>Summary of Responses: Modernising Powers, Deterrents and Safeguards and Final Impact Assessment.</i> <p>The Review has continued to listen to issues raised during the legislative process and changes were made to guidance and operational practice to reflect these.</p> <p>These formal consultations have been supplemented by various methods of informal consultation through workshops, conferences and other meetings with taxpayers, advisers and their representative bodies, as well as regular meetings of the Review of Powers Consultative Committee which was established in June 2005.</p> <p>Here is a link to the Review's website: http://www.hmrc.gov.uk/about/powers-appeal.htm</p> |
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Chapter 2: Introduction

- 2.1 HMRC has begun a programme of legislative, administrative and operational changes designed to help taxpayers¹ to pay what they owe and to improve and modernise HMRC's ability to recover tax unpaid.
- 2.2 This programme forms part of HMRC's modernisation agenda and supports the Government's objective of a fair tax administration that better meets taxpayers' needs. It aims to provide an improved and consistent suite of powers and practices for HMRC's payment services and debt management. The review establishing the creation of HMRC out of the Inland Revenue and HM Customs & Excise² identified these two areas as key drivers for the success of the new Department.
- 2.3 This work is overseen by the Review of HMRC's Powers, Deterrents and Safeguards (The Review). This review is a rolling programme of changes to align and modernise HMRC's framework of the law and practice that underpins HMRC's relationship with those it deals with. Getting this right is a key element in securing the improvements that the merger is expected to deliver.
- 2.4 HMRC published high level consultation in June 2007³ on a balanced package of proposals which, if adopted, would require legislation to bring into effect. A summary of the responses to four of these suggestions was published in January 2008⁴, together with draft legislation for three. These were to:
- align and modernise HMRC powers to seize and sell goods to satisfy tax debt and to take action for debt in the courts;
 - allow HMRC to set repayments due to taxpayers against what they owe more often than now; and
 - enable HMRC to accept payment by credit card and pass on the associated transaction fee.
- 2.5 Following that consultation, legislation was introduced in Part 7 Chapter 5 of Finance Act 2008.
- 2.6 Throughout these consultations HMRC has met and held workshops with numerous stakeholders representing businesses, taxpayers and their professional representatives. Wherever possible, HMRC has reflected concerns that arose in proposed legislation and guidance. HMRC are grateful to all who participated.

¹ Throughout this document 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.

² *Financing Britain's Future: Review of the Revenue Departments* March 2004

³ *Payments, Repayments and Debt: the Developing Programme of Work*

⁴ *Payments, Repayments and Debt: Responses to Consultation and Proposals*

- 2.7 The first stage of the debt programme was mainly concerned with consolidating and aligning the different legislative powers inherited from HM Customs and Excise and the Inland Revenue, and with making it easier for taxpayers and HMRC to handle funds. Taking into account the very helpful comments received in consultation, work has continued to explore how HMRC's approach to payment, repayment and debt might be further improved. This consultation sets out HMRC's latest thinking and seeks further views on the remaining proposals included in the June 2007 consultation, which have been developed considerably in the light of the comments received.
- 2.8 An Impact Assessment is published separately as part of this consultation.

Other consultations

- 2.9 This consultation is running alongside two further strands of work being taken forward by HMRC.
- 2.10 First, the Review of HMRC's Powers, Deterrents and Safeguards published a consultation document on 19 June 2008 that considered how HMRC can encourage taxpayers to meet their obligations to file a return and pay on time including looking at sanctions for failing to meet those obligations.
- 2.11 Responses and further consultation ("*Meeting the Obligations to File Returns and Pay Tax on Time: Consultation Responses and Refined Models*") is published today. The consultation includes draft models for late filing and late payment penalties.
- 2.12 Second, HMRC is exploring the case for harmonising and simplifying the rules on interest charged by HMRC on tax paid late and interest paid by HMRC on overpayments. Consultation published on 19 June 2008 considered the principles that might underpin a modern interest regime and sought views on how to translate those principles into a regime that is clear, simple and easy for taxpayers and their advisors to understand.
- 2.13 Further consultation ("*Interest-Working Towards a Harmonised Regime: Summary of Responses and Proposals*") is published today.
- 2.14 These three strands of work are complementary. All three are further supported by improvements in the way HMRC engages with those who want to pay or those who have difficulty paying. Taken together they provide a framework designed to influence taxpayer behaviour so that more taxpayers than now file their returns and pay what they owe on time, and to recompense the taxpayer and HMRC for loss of use of money. Collectively they will reduce the number of times HMRC needs to take more forceful action to collect debt.
- 2.15 Excise duties, bulk information powers and repeal of further specialist powers will be considered as part of the Review's next stage of work.

The Review's Work Programme published today gives more details on this.

Overview of consultation document

- 2.16 **Chapter 3** sets the scene for this consultation. It explains the problem HMRC is faced with when collecting what it is owed; what it is doing to help those who want to pay on time, and why HMRC needs effective powers to collect unpaid tax.
- 2.17 **Chapter 4** discusses payment instalment schemes to help taxpayers manage their cash flow.
- 2.18 **Chapter 5** discusses further proposals included in the June consultation, and how HMRC sees these being taken forward.
- 2.19 **Chapter 6** looks at wider ways of encouraging compliance.
- 2.20 **Chapter 7** summarises the questions for consultation.

How to comment

- 2.21 Comments should be received by **13 February 2009**.
 - by e-mail to: powers.review-of-hmrc@hmrc.gsi.gov.uk
 - or by post to: HMRC Review of Powers, Payments, Repayments and Debt, Room 1/72, 100 Parliament Street, London SW1A 2BQ;
 - or by fax to: 020 7147 2460.

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

Hard copies are available from the above address. The Review team can be contacted by telephone on: 020 7147 3223.

Confidentiality

- 2.22 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).
- 2.23 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.

- 2.24 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.

The Government's Consultation Code of Practice

- 2.25 This consultation is being conducted in accordance with Government's Code of Practice on Consultation. A copy of the Code of Practice and a contact for any comments on the consultation process can be found in Annex C.

Chapter 3: Background to this Consultation: the Case for Further Change

Introduction

- 3.1 HMRC has a statutory duty to collect money on behalf of the Crown, which Government needs to fund the delivery of public services.
- 3.2 In discharging this duty, HMRC aims to understand its customers better to help those who wish to comply, balanced with the need to be fair to all taxpayers by pursuing those who do not.
- 3.3 HMRC's aim, in Finance Act 2008 and in this present consultation, is to establish efficient processes that create fairness between taxpayers.
- 3.4 The June 2008 consultation: "*Meeting the obligations to file returns and pay tax on time*" explored why taxpayers do not pay on time. It noted that there is a range of reasons why taxpayers fail to pay the tax they owe on time. This could be that they do not have the money, that something more important gets in the way or in the extreme that they are trying to avoid their obligations. This is supported by independent research from IPSOS Mori to explore attitudes to tax debt. That research is summarised in the consultation document published today "*Meeting the Obligations to File Returns and Pay Tax on Time: Consultation Responses and Refined Models.*"
- 3.5 Most taxes are paid on time in the correct amount. For 2006/07, net tax receipts amounted to about £423bn. Around £64bn (15% of the net receipts) were paid late, though a significant proportion of these were paid within a few days of the due date. This supports the view that most taxpayers want to meet their obligations and will do so if properly informed and supported.
- 3.6 It is important that HMRC manages outstanding debt effectively. Consultation has shown that businesses especially resent the unfair advantage gained by those who do not pay their tax.

HMRC as a creditor

- 3.7 Unlike most commercial debts, the sums HMRC seeks to collect involve wider social issues of obligations and responsibility. They are due under statute and not as the result of a direct and readily understood relationship between two parties created by contract or agreement. The independent research mentioned above shows that debtors look at tax debt differently from other debts. Arguably, the link between payment of tax and the services the taxpayer receives in return is perceived to be weaker than in a commercial context.
- 3.8 Tax debts are also different in that they arise periodically and regularly without requiring action on the part of the taxpayer beyond carrying on taxable activities. And experience shows that the longer a tax debt

remains unpaid the less likely it will be recovered, as fresh debt builds up in the interim.

- 3.9 HMRC is therefore an “involuntary creditor” for what it is owed, and unlike commercial creditors can neither withdraw credit nor hold back supply of goods or services from a debtor. It cannot use rebates or discounts to encourage prompt payment. Nor can it easily protect itself by means of debentures or other charges on the debtor’s assets⁵, a common feature in the commercial world.
- 3.10 For these and other reasons, tax debt is frequently a lower priority. In recognition of this, and in order to fund public services, it has historically been recognised that HMRC need a wider range of different powers to collect what is owed than those available to other creditors.
- 3.11 HMRC has a duty to receive payments and manage its debt efficiently, and the scale of its task is larger than for most other organisations. This precludes a bespoke approach to each and every debt or debtor, and so on pragmatic grounds HMRC and the courts have adopted a set of consistent processes that aim to treat all taxpayers fairly and equally.
- 3.12 However, following the creation of HMRC those powers inherited from the former departments need reviewing together to ensure they are the right ones to allow HMRC to meet its statutory obligations.
- 3.13 HMRC’s performance in managing its debt has been examined a number of times by the National Audit Office (NAO) and the Public Accounts Committee (PAC). These reviews are against the background that HMRC’s debt book is £22bn and rising and indications generally are that traditional methods of enforcing payment are becoming less effective. In the course of those reviews, both have recommended that HMRC should seek additional powers, similar to those they have seen when comparing the Department with overseas tax authorities.

HMRC’s role

- 3.14 HMRC has a crucial role to play in:
- securing a revenue flow to the Exchequer, in a cost efficient way;
 - making sure taxpayers understand their responsibilities;
 - encouraging taxpayers to pay promptly to avoid the build up of tax debts; and
 - supporting those who have difficulty paying towards a position where they can settle their tax debts.

⁵ Except in cases of extreme non-compliance

Securing a revenue flow to the Exchequer in a cost efficient way

- 3.15 HMRC is improving its processes to ensure that taxpayers are dealt with according to their needs and any risk of not paying on time. It seeks to deliver these benefits through an efficient debt management and banking organisation, with a smaller number of highly skilled staff able to deal with taxpayers on the basis of their overall liability and to target interventions according to customer needs and behaviour.

Making sure taxpayers understand their responsibilities

- 3.16 It is better to inform taxpayers of their responsibilities in advance so that those who wish to comply may do so, rather than try to tackle late payment after the event.
- 3.17 HMRC undertakes various programmes of work each year including advertising campaigns, information roadshows and seminars designed to inform and educate taxpayers. HMRC continually reviews its guidance, leaflets and forms to ensure that they are accessible and understandable (including for those for whom English is a second language) and has begun a programme to improve access to help through its internet sites. Many large businesses are in continual day to day contact with HMRC via their Client Relationship Managers (CRMs). And HMRC continually engages with stakeholders through regular consultative fora, to better understand its customers.

Encouraging taxpayers to pay promptly to avoid the build up of tax debts

- 3.18 HMRC has introduced new ways to encourage taxpayers to make payment on time in a way which is convenient for them and cost effective for all. These include:
- card payment systems continue to be developed to extend the range of taxes that can be paid over the internet;
 - work is underway to implement the changes introduced in Finance Act 2008 to enable HMRC to accept payments by most major credit cards, subject to a fee;
 - an improved system to accept direct debit is being phased in this year; and
 - payment methods are under constant review to keep abreast of banking industry developments and customer requirements.
- 3.19 Chapter 4 sets out how HMRC propose helping businesses to manage their cash flow.

Supporting those who cannot pay towards a position where they can settle their tax debts

- 3.20 Tax is a statutory obligation. The fundamental presumption must be that all taxpayers are expected to make payment in full, by the due date, where they have the means to do so.
- 3.21 Although most taxpayers pay on time, some get into arrears because they are unable to meet their obligations as they fall due. HMRC expects those who need further time to pay to make contact before the debt becomes due. In such cases HMRC will consider whether it is appropriate to reschedule the debt due by a 'time to pay' arrangement (TTP).
- 3.22 Time to Pay is not a right to delay payment in all cases, but a pragmatic solution in specific circumstances.
- 3.23 These longstanding processes for rescheduling debt are detailed in published Departmental guidance⁶. A TTP arrangement is an agreement to pay a liability by more than one instalment later than its due and payable date, over a longer period than a simple short-term promise to pay. The main feature is that the debtor commits to make regular payments to pay off the debt over a reasonable time. Provided those regular payments are made as agreed, HMRC will take no further recovery action.

Design principles for this consultation

- 3.25 The work done by the Review of Powers has identified a series of general principles that should underpin a balanced and effective framework for powers, deterrents and safeguards. These reflect comments from previous consultations and are consistent with the Hampton Review (which set out a view for the approach to regulation based on risk, proportionality and consistency) and the Macrory Review (which recommended consistency with the risk-based approach of Hampton and a flexible set of sanctioning tools).
- 3.26 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 order to be both effective and respected, powers and the statutory obligations they impose need to be:

⁶Debt Management and Banking Manual, published on the HMRC website, paras 80000 onwards

- 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.

Chapter 4: Supporting those who want to pay through Payment Instalment Schemes

- 4.1 HMRC aims to make it as easy as possible for taxpayers to pay on time, and to avoid getting into arrears. And for those with temporary cash flow problems, HMRC is committed to helping them recover and bring their tax affairs fully up to date within a reasonable time.
- 4.2 The June 2007 consultation suggested that schemes to allow more flexible payment options than now would help individuals and businesses manage their finances better and to budget to meet tax bills.
- 4.3 This view was accepted, and nearly all respondents saw great benefits for business. This view has also been supported by the independent research mentioned in paragraph 3.4, which showed strong calls for spreading payments over a longer period than at present and in bringing tax payments more in line with the monthly business payment cycle.
- 4.4 HMRC proposes to proceed with some form of payment instalment scheme and welcomes further views.
- 4.5 There are of course constraints. Any scheme must be affordable to the Exchequer and not place undue burdens on the general body of taxpayers. And any necessary enhancements to HMRC systems must be achievable and affordable.
- 4.6 Our earlier consultation suggested two different payment schemes.
- The first was intended for employers and businesses with payment dates that recur frequently (monthly or quarterly) and would allow them to negotiate a monthly payment based on their estimated liability for a full year. There would be an annual reconciliation, with further payment or repayment as appropriate. The taxpayer would be responsible for ensuring that their payments were sufficient to meet their liability, and so the agreed monthly payment would be adjustable by agreement;
 - The second was seen as suitable for individuals within Income Tax and Corporation Tax Self Assessment, and would allow them to make monthly payments so that their annual liability would be satisfied by a series of payments straddling the due dates.
- 4.7 Having considered this further, HMRC now feels that comprehensive schemes which would allow single payments to satisfy liability across multiple taxes are too difficult to deliver and beyond reach at present. HMRC therefore seeks views on models based on the second option.
- 4.8 Given that any scheme will be based around single taxes, there seems little benefit in making changes to Pay as You Earn, which already requires monthly payments in most cases. Smaller VAT traders may

already apply to join the annual accounting scheme, which delivers many of the benefits HMRC are aiming at.

- 4.9 Work has therefore concentrated on payment schemes for individual and business taxpayers facing annual or biannual lump sum obligations; Income Tax Self Assessment and Corporation Tax Self Assessment (but not disturbing the Quarterly Instalment Payments made by large companies).

Design principles for a payment instalment scheme for ITSA and CTSA

- 4.10 HMRC sees any scheme as including the following separate design principles.

- 4.11 Overall the payment instalment schemes should:

- be voluntary,
- be attractive enough to encourage take-up,
- enable customers to pay by regular monthly instalments, be flexible enough to allow some variation to reflect seasonal cash flow,
- require taxpayers to pay enough to keep abreast of their current obligations,
- allow any arrears to be paid off within a reasonable period.

- 4.12 These are discussed in more detail below. HMRC now welcome views on whether the proposed schemes meet these design principles, are appropriate and proportionate and strike the correct balance between the taxpayer and the Exchequer.

Voluntary scheme

- 4.13 Any scheme would be voluntary. Taxpayers who choose not to agree to a payment instalment scheme would remain subject to the normal payment regimes.

Regular versus unstructured payments

- 4.14 Some responses to the earlier consultation suggested that the pattern of payment should be left to the discretion of the business, perhaps through top-up cheque payments as and when they could be afforded.
- 4.15 HMRC believe payments should be sufficient to keep abreast of obligations. A wholly unregulated system of voluntary payments could not guarantee this, and the discipline of a more structured scheme involving regular payment would be more appropriate.

Amount of the payment

- 4.16 Initially the amount of the regular payments would be based directly on the taxpayer's liability for the tax period. However there may be scope for greater flexibility in the future to allow the taxpayer to decide the level of payment. This could be based on the previous year's liability, or best projections in the case of a new business; one without a UK tax history; or where the future trading pattern is expected to change materially. This could also be tailored to seasonal businesses, who might prefer to pay more during productive parts of the year and less in others.

Taxpayers in arrears

- 4.17 Any scheme should be aimed not just at those taxpayers who would like to make more regular payments to meet lump sum tax bills. Taxpayers who have arrears of tax (where interest is running or surcharge/penalties already imposed) should also be able to pay their current year liability flexibly. The arrears would be paid by a separate "time to pay" arrangement running alongside the payment instalment scheme. This would aim to both clear past arrears and encourage better financial management going forward.

How to make schemes work

- 4.18 There were suggestions that any new scheme should include incentives. HMRC agrees that the scheme must encourage take-up but the aim is to make it attractive enough on its own merits, in the same way as those offered by utility companies and others. The advantage for taxpayers of schemes involving payment before and after the due date include the incentive that only half the liability would need to be paid at the time the statutory debt falls due.
- 4.19 It is worth noting taxpayers can obtain interest on payments of tax made early, in some circumstances:
- income tax payers may apply for certificates of tax deposit ("CTDs"). CTDs have been in existence for many years and have several conditions attached to them, such as minimum holdings;
 - corporation tax payers may simply pay early. Credit interest is paid on all early payments under CTSA. It is not just paid to those in the Quarterly Instalment Payment (QIPS) regime.

What might happen if the obligations are not met?

- 4.20 Under any voluntary scheme, it seems appropriate that the outcome for not making the payments should be removal from the scheme and a return to the normal course of collection. Taxpayers would be reminded of what they owe and requested to pay. Failure to do so would result in enforcement action and also sanctions for late payment.

Detailed models for ITSA and CTSA

- 4.21 The core of any payment scheme is to make regular payments through the year. HMRC are proposing two variants, applying equally to both ITSA and CTSA:
- **Budget Payment Plans:** where all the tax is paid by the due date;
 - **Managed Payment Plans:** where half the tax is paid by the due date and half is paid after it.
- 4.22 A **Budget Payment Plan** in each case would allow taxpayers to pay the whole of their expected liability in advance of the due date. They may pay what they want, when they want, providing that all tax is paid by the due date.
- 4.23 Independent research suggests that this variant would be attractive to taxpayers who wish to tailor payment of tax to their business cash flow. It is administratively simple to operate and, once set up, the certainty of payment gives taxpayers peace of mind.
- 4.24 For income tax, this model is already offered through the existing Budget Payment Plan. Approximately 3000 taxpayers currently pay their tax in this way, and customer surveys suggest further significant demand. An overview may be found at:
- <http://www.hmrc.gov.uk/manuals/dmbmanual/DMBM200177.htm>
- 4.25 The main features of this existing scheme are as follows:
- payment is made monthly by direct debit and taxpayers will be able to set these up online using the National Direct Debit Scheme;
 - amounts paid are decided by the taxpayer and can be varied at any time.
- 4.26 For corporation tax, HMRC proposes something comparable to the income tax budget payment plan. Companies would be able to pay early, at a time and in an amount of their own choosing. Companies would continue to benefit from the present rules giving them entitlement to credit interest on early payments.
- 4.27 Budget payment plans could be offered without any changes to legislation. HMRC proposes a campaign to publicise them and their benefits.
- 4.28 **Managed Payment Plans** would allow income taxpayers and corporation taxpayers who are not within QIPS or group payment arrangements to make regular monthly payments based on their liability, but which straddle the due dates equally. This model is neutral between

taxpayer and Exchequer, as the payments in advance of the due date are balanced by those made in arrear.

- 4.29 The plans would be voluntary and there may be scope for further development in the future, but as a first step it would be open to taxpayers who have met certain conditions:
- income taxpayers who want to set up a managed payment plan would file their return online. By doing so they would be able to see immediately what is payable on 31st January and 31st July. The earlier they file their return the more time they would have to pay their tax;
 - income taxpayers would be able to spread their payments over 12 months if they file their current return by
 - 31st October for those who have to make Payments on Account on 31st January and 31st July; or
 - 31st July for those who make a single payment on 31st January.If they file after these dates they would still be able to set up a managed payment plan, but payment would be spread over a shorter period; and
 - corporation taxpayers would need to file their corporation tax return as soon as possible after the end of the accounting period. If they do so within 6 months, they may pay in six instalments. Filing earlier would allow a greater number of instalments.
- 4.30 Taxpayers who have arrears of tax (where interest is already running or surcharge or penalties have already been imposed) would need a separate time to pay (“TTP”) arrangement.
- 4.31 HMRC wants to explore later the possibility of leaving it up to the taxpayer to decide the level of monthly payment within a managed payment plan. This may mean that payments made before and after the due date(s) need not balance exactly. HMRC believe this would be particularly helpful for seasonal traders for whom it would be more convenient to pay their tax at particular times rather than spread payment evenly across the whole year.
- 4.32 Annex A provides three case studies to illustrate how these schemes might work.
- 4.33 There are a number of ways in which the aim of managed payment plans might be achieved. One would be to make the effective date of payment of each instalment the normal due date. Under such a scheme payments made after the due date would not attract late payment interest or penalties (if introduced). However if the taxpayer defaulted or left the

scheme, the normal interest and penalties would be reinstated on any tax outstanding at the due date.

- 4.34 Arrears would be accommodated through a separate Time to Pay arrangement running alongside the managed payment plan. Payments will be agreed so that together they satisfy both the arrear and the current obligations. The payments relating to the managed payment plan will be set against current liabilities and the payments relating to the time to pay arrangement set off against arrears. This will ensure that taxpayers with debt are not given an advantage over those who pay their taxes on time.
- 4.35 Because Time to Pay arrangements and Managed Payment Plans will run on different timescales and are designed to address different needs HMRC believe that the payment of each should be kept separate. This might need two monthly payments (one for the time to pay arrangement and the other for the managed payment plan).
- 4.36 Regular payments could be made in a number of ways, each with advantages and disadvantages for taxpayer and HMRC:

Regular cheque payments

- 4.37 Taxpayers could simply undertake to provide HMRC with regular cheque payments. However, substituting (say) twelve payments for two would be a manual process which would increase payment processing costs for all, without giving any assurance that payment would in fact be received.

BACS/ CHAPS

- 4.38 Taxpayers can instruct their bank to make payment to HMRC. Both BACS and CHAPS require the payer to provide a reference against which the payment is to be set in the receiving organisation. HMRC's experience is that this increases the likelihood of error, adds complexity and might discourage take-up.

Standing order

- 4.39 A Standing Order is an instruction from customers to their bank or building society to make regular automated payments of a specified amount to a named creditor. This gives both the debtor and HMRC the advantages of regularity of payment, speed and efficiency as for direct debit. Standing orders are usually used for fixed amounts, and varying the payment requires the customer to instruct their bank or building society on each occasion. Processing costs are lower than for cheques and comparable to direct debits.
- 4.40 Again, standing orders require the payer to provide a reference against which the payment is to be set in the receiving organisation. HMRC's experience is that this increases the likelihood of error.

Direct debit

- 4.41 A Direct Debit is an instruction from a customer to their bank or building society authorising an organisation to collect varying amounts from their account. This can be used to ensure regular, safe and efficient payments of anything from household bills to charitable donations. The 2007 BACS Customer Survey shows that 2.7 billion Direct Debit payments are processed by BACS every year and 73% of adults use this payment method.
- 4.42 Direct debits give both the debtor and HMRC the same advantages of regularity of payment, speed and efficiency as for standing orders. They also allow HMRC to direct the payment to the correct taxpayer account. No sums could be taken through the direct debit without advance notification. They come with a guarantee that if an error is made by the business requiring payment, or a customer's bank or building society, the payer receives a full and immediate refund from their account provider of the amount paid. The costs involved are comparable to payment by standing order.

Payment by Debit card over the internet (BillPay system)

- 4.43 HMRC currently accepts payment by debit card over the internet, using a facility developed and hosted by Alliance & Leicester on behalf of HMRC. This would allow periodic payments to be made. Details of the scheme may be found at: http://www.hmrc.gov.uk/howtopay/debitcard_int.htm

HMRC preference

- 4.44 Having considered these options carefully, HMRC's preference is for a system of regular electronic payments based on direct debits. According to the Payments Council:

“Direct debits are well-established with high penetration rates for almost all regular bills. Nearly nine in ten of all satellite and cable subscriptions and mortgages are paid by direct debit, as are around two-thirds of utility bills (excluding pre-payment meters). They are also widely used for personal commitments, such as life insurance, personal pensions and mobile phone contracts.

Within the business sector, direct debits are most extensively used by SMEs, as most large businesses prefer to pay their suppliers by automated credit. They are used for a variety of commitments by SMEs, including utility bills, subscriptions, business rates and insurance.

For businesses of all sizes, paying by direct debit may be part of the terms of trade; including for leasing arrangements, mobile phone subscriptions and charge cards.”

- 4.45 Taxpayers would be able to set up direct debit instructions online using the HMRC National Direct Debit Scheme.
- 4.46 HMRC will continue to explore how Payment Instalment Schemes might be offered using other electronic payment methods, in line with Carter Review principles.

Questions for consultation

- 4.47 We seek your views on these proposals, and in particular on the questions below. You may find the Case Studies in Annex A useful when considering these.

- **Are the design principles the correct ones, and do the proposed schemes meet them?**
- **Are there other ways to achieve the same aim?**
- **To what extent are these schemes attractive enough to encourage take-up?**
- **How might the regularity of payments best be ensured?**
- **How could it be ensured that payments are spread equally either side of the due date?**
- **What should be the minimum level of monthly payment?**
- **How should the schemes cater for later claims which affect the amount of the liability?**
- **What further safeguards would be appropriate?**

Chapter 5: Ensuring HMRC has the right tools to tackle debtors

Introduction

5.1 This Chapter sets out HMRC's responses to further proposals included in the consultation published in June 2007, and how they might be taken forward. HMRC has a responsibility to those who pay on time and those who face temporary difficulties in doing so to ensure that effective action is taken against those who deliberately do not pay.

Collecting small debts through Pay As You Earn: cost effective recovery

5.2 HMRC already uses legislation in section 684 Income Tax (Earnings and Pensions) Act 2003 (ITEPA) to collect small underpayments of income tax through adjustment to the employee's notice of coding. Section 29(5) Tax Credit Act 2002 (TCA) allows HMRC to recover overpayment of tax credits in the same way, but until now that legislation has not been used.

5.3 The June 2007 consultation suggested extending this to include any small debt owed to HMRC. It was also included in the January 2008 consultation, but without exposing draft legislation for comment. HMRC sees a number of benefits in this approach, not least that unlike distraint or court action debtors would not incur any further costs and payment of arrears would be spread over a year.

5.4 Most respondents supported this method of recovery as a simpler way to pay, and a cost efficient way for HMRC to recover small debts. However, many were concerned about this being done at HMRC's option rather than the taxpayer's.

5.5 It would be complex for all to allow debtors to change their mind once collection through PAYE has begun. And doing so would mean that HMRC would press for payment using other, more intrusive means. However, HMRC are mindful of concerns raised about choice in the previous consultation. HMRC now envisage that any scheme would not require consent as a prior condition. Rather, HMRC would offer this route as a choice until a particular date (say six months after the due date). Until that time, taxpayers could decline to have their debts recovered in this way, but would be expected to make other arrangements for payment. For the minority who set out not to pay their tax debts on time or who do not respond to attempts to contact them, HMRC would have the option to recover what it is owed in this way.

5.6 There would be safeguards.

- A taxpayer could contact HMRC to discuss difficulty in making payment and to arrange a Time to Pay agreement.
- There would still be an appeal against the notice of coding.
- And the present monetary limits for coding out small SA underpayments would apply (broadly £2,000 or 50% of monthly income).

- 5.7 Legislative change would mean amending section 684 Income Tax (Earnings and Pensions) Act 2003 to allow HMRC to change the current PAYE regulations or to create new ones.
- 5.8 Any scheme would be simplest to implement if collection commenced from the beginning of a tax year, to allow the notice of coding to be correct from the start. But HMRC will continue to consider whether this could be extended to allow debts to be collected in this way throughout the year.
- 5.9 Paragraph 6.22 of *Tax credits: improving delivery and choice – a discussion paper* published by the Treasury in May 2008 announced that from April 2009, HMRC will start to trial the recovery of overpayment debt using the customer's PAYE tax code. This uses the existing legislation in section 29 Tax Credits Act 2002 and is to establish how HMRC's existing processes and accounting systems could support this payment choice.
- 5.10 Emerging early findings from the tax credit trial, together with the number of people who choose now to have small SA underpayments collected in this way, suggest that many debtors would choose this method of payment. Having a period of say 6 months from due date before HMRC could recover a debt through PAYE gives time for those who prefer an alternative payment and for people to come forward if they have cash flow difficulties.

Questions for consultation

- 5.11 We seek your further views on the proposal to collect small sums through Pay As You Earn, and in particular on the following questions:

- **To what extent does the proposal strike the right balance between HMRC and debtor?**
- **Are there further safeguards that should be considered?**

Award of costs in successful court actions: a level playing field

- 5.12 Court action is a last resort for HMRC. It is in no sense a matter of routine and HMRC does not knowingly take people to court where it is satisfied that they are unable to pay.
- 5.13 In the commercial world, a creditor is entitled to include both court fees and legal costs in his claim against the debtor under the Civil Procedure Rules (CPR) in England and Wales and equivalent rules in the rest of the UK. These are awarded when the creditor successfully obtains

judgment. Two scales of legal costs are applicable, one for solicitors and one for litigants in person capped at two-thirds the solicitors' level.

- 5.14 Currently, in England and Wales, HMRC cannot normally claim costs on either scale because most officers of HMRC are normally neither solicitors nor paralegals, and nor are they litigants in person. In practice it is cheaper, for the defaulting taxpayer, to be sued by HMRC than by other creditors. As a delaying tactic, others deliberately wait to be taken to court before paying knowing they only face the court fees. Some debtors see these as further reasons to leave tax debts unpaid.
- 5.15 In Northern Ireland the position is the same as in England and Wales, and an officer cannot claim costs as a solicitor or as a litigant in person.
- 5.16 Officers of HMRC in Scotland can claim up to two-thirds of the expenses which a solicitor might claim. The entitlement to two-thirds is not mandatory and various circumstances such the nature, time, earnings lost and complexity have to be taken considered. Unlike in England and Wales and Northern Ireland, entitlement to claim is not affected by whether or not officers are litigants in person for there is a statutory right for officers to be treated as such for that purpose.
- 5.17 The earlier consultation suggested that HMRC should be entitled to recover costs when it is successful in obtaining judgment. This suggestion found broad support in consultation because it levelled the playing field between HMRC and other creditors, although the point was made that adding court costs to a debt simply adds to an individual's indebtedness.
- 5.18 HMRC proposes to proceed with this suggestion and to align its position with those other creditors, on a scale of fixed costs based on the value of our claim.

What charges would apply?

- 5.19 The scale of fixed solicitors' charges that apply in England and Wales under CPR are set by the Rules Committee and Ministry of Justice. Under these rules two different sets of fixed Solicitors' costs apply, one for claims for money in the County Court up to £15,000 and the other for High Court claims of £15,000 and above. Further fixed costs are added when judgment is entered. An illustrative table summarising the fixed costs that apply can be found at Annex B.
- 5.20 HMRC's staff and other internal costs are broadly the same throughout the UK. As far as possible HMRC would want a uniform scale of costs to apply across the UK but we recognise that separate legislative procedures apply in Scotland and may have to apply in Northern Ireland.

- 5.21 Similarly, the award of court costs would be intended to reimburse HMRC for some of the work done in successful civil action taken in the courts in a straightforward and simple way.
- 5.22 Most claims for sums of money in the county court are under £1000, but HMRC claims can often exceed £1m and the average claim for tax in recent years has run at about £14,000.
- 5.23 HMRC therefore propose that the fees it might seek should be based on or tied to the current scales already in place in the county court and High court to recognise the higher value of HMRC claims. Doing so would mean that the present costs, and any future changes, are independent from HMRC.
- 5.24 HMRC's claims for fixed costs **in England and Wales** could be based on the current scales that apply and which are shown in Annex B.
- 5.25 There may be instances where the claim in England and Wales is exactly £15,000 and it would be possible to claim costs for two different amounts. Although this would be expected to occur infrequently, HMRC would claim costs for the lesser of these.
- 5.26 HMRC is discussing with the Rules Committee to establish whether legislation will be needed to bring this into effect.
- 5.27 Separate discussions will be held with the authorities in **Northern Ireland**.
- 5.28 HMRC proposes no legislative change to the sheriff court in **Scotland** but will review how HMRC seeks its costs and its procedures.

Symmetry for the taxpayer

- 5.29 In a very small minority of cases HMRC is not successful in securing judgment. In these cases, unless the claim has been satisfied by payment or other means such as by filing late returns, the customer has always been able to make a claim for the costs of legal representation and accountancy costs in relation to the court case. This will not change.
- 5.30 Questions for consultation:

- **Is the suggested scale a proportionate way to achieve the desired policy?**
- **Is there another way of achieving the same aim?**

Tracing missing debtors

- 5.31 In today's mobile economy, many taxpayers move residence frequently and fail to tell HMRC their new address or provide other contact details until it has initiated moves to trace them. Others deliberately operate through e-mail and mobile phones which have no obvious link to a geographic location; and others from accommodation addresses or 'fronts'. Their decision may be tax driven, or for other reasons including crime and avoiding other obligations such as having to pay child support.
- 5.32 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 go missing. However, the lack of a current address can lead to delay in pursuing the debtor and in the worst cases the debt may have to be written off.
- 5.33 In the earlier consultation, HMRC suggested that it would improve debt management if HMRC could require relevant third parties to disclose address and contact details of debtors. While many third parties would already comply voluntarily with such an approach, confidentiality undertakings and Data Protection issues might inhibit co-operation without statutory cover.
- 5.34 Responses were fairly evenly divided. Those in support had little or no objection to requests from third parties, and saw it as right that HMRC should have the appropriate powers to collect what it was owed. The preference would be for requests to be made in writing rather than by telephone, and that HMRC should search its own records and use appropriate gateways with other Government Departments before approaching a third party.
- 5.35 Others felt that HMRC should only use the data and legislation that is available to the business community. Some professional bodies were concerned about client confidentiality or professional privilege. Another felt that this would give HMRC similar powers to the Serious Organised Crime Agency, a proposition seen as disproportionate. And there was some concern that vulnerable people might not seek advice or debt counselling if they thought their details would be passed on.
- 5.36 Having considered those responses in detail HMRC now proposes to proceed with this proposal.
- 5.37 HMRC proposes a third party information power based on the model of Schedule 36 FA 2008. Such requests would be made to the third party in writing, would provide an appeal and a penalty for non-compliance. We are proposing that the power relate only to companies and those who act or have recently acted for the debtor in a business or professional capacity. Draft legislation will be published separately.

5.38 Any information acquired in this way will be subject to HMRC confidentiality.

5.39 Question for consultation:

- **Are there any particular debtor/ third party relationships that should be excluded from these provisions?**

Direct Attachment

5.40 The earlier consultation suggested extending HMRC's current powers to levy distraint or distress for unpaid debts to include the freezing of assets (primarily funds held in bank accounts) without the need to first seek the approval of the court. This suggestion would have changed a court based procedure to one that could be carried out by administrative action alone.

5.41 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.

Chapter 6: Encouraging Compliance

- 6.1 This chapter discusses two further ways that HMRC might encourage greater compliance. Both are used in other tax administrations and have been recommended in the past by the National Audit Office. The discussion on financial securities represents the first consultation on the topic by the Review. There are no plans for any changes arising from this first round of consultation to be taken forward in the short term.

Greater use of financial securities

- 6.2 HMRC currently require a small number of seriously non-compliant businesses to provide a financial security, to ensure payments are made.
- 6.3 Security is most often required for VAT where the taxpayer has a very poor payment record. This might involve:
- phoenixism – repeated insolvency and new company creation, leaving HMRC debts unpaid
 - habitual refusal to pay until HMRC is about to tax bankruptcy or liquidation proceedings
 - suspected tax fraud.

Where someone acting as a director has been involved in such behaviour, HMRC may require security from both the individual and one or more companies.

- 6.4 This determined non-compliant behaviour can also result in other taxes remaining unpaid, most notably PAYE by employers, but also taxes on profits, gains and transactions (income tax, corporation tax and stamp duty land tax). But presently the law does not allow HMRC to require securities for direct taxes or to apply securities held to settlement of them.
- 6.5 Security is most commonly a cash deposit held by HMRC or paid into a joint HMRC/taxpayer interest bearing banking facility. Taxpayers may make withdrawals from these accounts but only with HMRC approval. Security can also be a third party guarantee provided by an approved financial institution, normally a bank. The level of the security is determined by a calculation of tax at risk for one or two years depending on the filing pattern of the taxpayer.
- 6.4 There are two models currently in legislation, one for VAT (Para 4, Schedule 11, VATA 1994) and most environmental taxes. The other is for excise duties including Air Passenger Duty. The main difference is that the VAT model includes criminal sanctions for supplying or being supplied with taxable goods or services at a time when security is required and has not been given.

- 6.5 HMRC's stated policy is to seek security only in the most serious cases of revenue risk and to do so reasonably and proportionately. In the year to March 2007 HMRC issued 2,221 notices requiring VAT security, seeking an average security of £41,363. There were 60 prosecutions, all successful, for trading without a security where required by HMRC to do so.
- 6.6 The National Audit Office has suggested, as a way of tackling late or non-payment of PAYE, that tax deducted from wages and salaries should be paid into a designated account, which would serve much the same purpose as obtaining a security. The NAO said:
- “The department may wish to explore the benefits and implications of the practices listed below which are used elsewhere in the private sector or by tax authorities overseas:
- requiring companies with a poor payment record to provide bank guarantees and/or set up separate bank accounts in the Department's name in which taxes deducted should be immediately transferred to help protect the revenue from losses from bankruptcy.”
- 6.7 The Review of Powers, Deterrents and Safeguards provides an opportunity to reconsider whether a more consistent, aligned approach to the use of securities to tackle determined non payment is appropriate across the taxes HMRC administers.
- 6.8 A number of issues arise when considering whether greater use of securities is appropriate. One is how to determine when it is appropriate to require a security and how to articulate these criteria in legislation and guidance. Other issues include the level at which securities should be set and the consequences of not providing a security.
- 6.9 Safeguards will, as always, be important. A right of appeal to an independent tribunal (with prior internal review) against the decision to require a security and any civil penalty for failing to provide one, seems appropriate.
- 6.10 For VAT and some other indirect taxes there is an element of conditionality about the requirement to provide a security. Supplying or being supplied with taxable goods or services at a time when a VAT security is required, and has not been given, can attract criminal prosecution with a maximum penalty of level 5 on the standard scale (currently £5,000) per offence. It is more difficult to see how such a linkage might work for some other taxes. Views would be welcome on how the requirement for a security could be linked to direct taxes. One option might be to have a civil penalty for failing to provide a security for direct taxes such as PAYE. The question would then be whether such a tool would still be administratively effective.

- 6.11 Another issue that arises is whether the security provided should be generic or tax specific. Requiring securities for PAYE may be seen as particularly appropriate as the tax is being paid over on behalf of employees. Where there is determined non-payment debtors often default on both VAT and PAYE, but the use of securities might become too restricted to be effective if HMRC had to demonstrate default for both taxes before requiring a security to cover both. An alternative approach might be for a more generic security that could be applied across taxes.
- 6.12 HMRC would welcome views on this proposal, and in particular on the following questions:

- **In what circumstances should HMRC be able to seek a security?**
- **Should the existing models be aligned?**
- **Should the existing VAT model apply automatically across regimes, so that a trader required to provide VAT security must also provide PAYE security even if there has been no PAYE default?**
- **Could the use of securities be made to work for direct taxes based on profits?**
- **What would be a suitable sanction for not providing a security?**
- **What would be suitable safeguards?**
- **What would be the advantages and disadvantages of requiring employers to pay Pay As You Earn into a designated account?**
- **Are there other ways in which the desired policy aim can be achieved effectively?**

Encouraging Compliance - Tax Clearance Certificates

- 6.13 The National Audit Office (NAO) and Public Accounts Committee (PAC) have both previously recommended that HMRC explore the possibility of introducing some form of Tax Clearance Certificate⁷ (“TCCs”) to encourage greater compliance with filing returns and paying on time. The National Audit Office’s report⁸ on CT and VAT filing and payment said:

”Revenue Departments in some other countries have introduced certificates for businesses which prove that they are fully compliant with all their tax obligations.

Tax clearance certificates are a powerful incentive for businesses to comply with their obligations... “

- 6.14 High level views on the introduction of TCCs were sought in the June 2007 consultation⁹ and explored in a workshop held with business and their representatives in September that year.
- 6.15 Views about the possible use of TCCs were mixed. There was doubt about what a TCC could be used for. Concerns were raised about the extra bureaucracy any scheme would entail and HMRC’s ability to operate it effectively, whilst others felt that TCCs would provide an unnecessary burden on those taxpayers who were already meeting their obligations. Issues raised included the requirement for a simple system, clear guidance, rights of appeal and quick routes to resolving any disputes.
- 6.16 On the other hand some respondents felt that there were circumstances where TCCs could have a positive role, such as when applying for Government contracts or applying for grants and licences. Others said that TCCs could provide assurance to other taxpayers by demonstrating creditworthiness and status, in a method similar to that of quality kite marks.
- 6.17 Having considered this further, HMRC will continue to examine the evidence from other countries before deciding whether and how to proceed.

⁸ *HM Revenue & Customs: Filing VAT and Company Tax Returns* Report by the Comptroller and Auditor General HC 102 13 December 2006.

⁹ *Payment, Repayment and Debt: The Developing Programme of Work* published in June 2007.

Chapter 7: Summary of Questions for Consultation

Chapter 4: Supporting those who want to pay through Payment Instalment Schemes

Para 4.47

1. Are the design principles the correct ones, and do the proposed schemes meet them?
2. Are there other ways to achieve the same aim?
3. To what extent are these schemes attractive enough to encourage take-up?
4. How might the regularity of payments best be ensured?
5. How could it be ensured that payments are spread equally either side of the due date?
6. What should be the minimum level of monthly payment?
7. How should the schemes cater for later claims which affect the amount of the liability?
8. What further safeguards would be appropriate?

Chapter 5: Ensuring HMRC has the right tools to tackle debtors

Para 5.11 – Collecting small debts through Pay As You Earn

1. To what extent does the proposal strike the right balance between HMRC and debtor?
2. Are there further safeguards that should be considered?

Para 5.30 – Award of costs in successful court actions

1. **Is the suggested scale a proportionate way to achieve the desired policy?**
2. **Is there another way of achieving the same aim?**

Para 5.39 – Tracing missing debtors

1. **Are there any particular debtor/ third party relationships that should be excluded from these provisions?**

Chapter 6: Encouraging Compliance

Para 6.12 – Greater use of financial securities

1. **In what circumstances should HMRC be able to seek a security?**
2. **Should the existing models be aligned?**
3. **Should the existing VAT model apply automatically across regimes, so that a trader required to provide VAT security must also provide PAYE security even if there has been no PAYE default?**
4. **Could the use of securities be made to work for direct taxes based on profits?**
5. **What would be a suitable sanction for not providing a security?**
6. **What would be suitable safeguards?**
7. **What would be the advantages and disadvantages of requiring employers to pay Pay As You Earn into a designated account?**
8. **Are there other ways in which the desired policy aim can be achieved effectively?**

Managed Payment Plans: Detailed Model for Income Tax and Corporation Tax

Taxpayers within Income Tax Self Assessment

The first example illustrates how monthly payments are calculated for an ITSA taxpayer and how the date by which the return is filed effects the number of monthly payments over which the tax can be paid.

Example 1

Joe is a self-employed plumber who often finds it difficult to pay his self-assessed tax on the due dates. This year he paid his 2007/08 Payment on Account (POA2) late, incurring an interest charge. He would welcome the opportunity to pay his tax by monthly payments. He knows there is still a balancing payment of £1020 due on 31st January 2010

Joe files his 2008/9 SA return online on 31st October 2009 and his tax liability for the coming year is:

Payment on Account 1 £7500 due on 31st January 2010, and Payment on Account 2 £7500 due on 31st July 2010.

He decides to join the managed payment plan to pay his tax by 12 monthly payments as follows:

The tax due on 31st January 2010 (Balancing payment £1020 + PoA1 £7500 = £8520) to be paid by 6 equal monthly instalments of $(£8520 \div 6) = £1420$. The first payment is due on 15th November 2009 and the 6th payment on 15th April 2010.

The tax due on 31st July 2010 by 6 monthly payments of $(£7500 \div 6) = £1250$ starting on 15th May 2010 with the final payment for the year on 15th October 2010.

The table below shows the payments that Joe will make and illustrates how the payments are spread equally around the normal due dates of 31st January and 31st July. Although half the tax is paid late and would normally attract both a surcharge and interest, it is balanced by the early payments and the exchequer position is neutral.

| Date | Payment made | Amount due | Balance +/- |
|----------------------------|--------------|------------|-------------|
| 15 th Nov 2009 | £1420 | | + £1420 |
| 15 th Dec 2009 | £1420 | | + £2840 |
| 15 th Jan 2010 | £1420 | | + £4260 |
| 31 st Jan 2010 | | £8520 | - £4260 |
| 15 th Feb 2010 | £1420 | | - £2840 |
| 15 th Mar 2010 | £1420 | | - £1420 |
| 15 th Apr 2010 | £1420 | | £0 |
| 15 th May 2010 | £1250 | | + £1250 |
| 15 th Jun 2010 | £1250 | | + £2500 |
| 15 th Jul 2010 | £1250 | | + £3750 |
| 31 st Jul 2010 | | £7500 | - £3750 |
| 15 th Aug 2010 | £1250 | | - £2500 |
| 15 th Sept 2010 | £1250 | | - £1250 |
| 15 th Oct 2010 | £1250 | | £0 |

If Joe had not filed his return until 30th November he would get less time to pay. Because his return was filed only 2 months before the first due date of 31st January 2010 he has only 4 months to pay the £8520 due on that date. So he will pay his tax by 10 monthly payments as follows:

The tax due on 31st January 2010 to be paid by 4 equal monthly instalments of $(£8520 \div 4) = £2130$. The first instalment is due on 15th December 2009 and the 4th instalment on 15th March 2010.

The monthly payments in respect of the tax due on 31st July remain unchanged.

The table below shows the payments that Joe will make and illustrates how those payments are spread equally around the normal due dates of 31st January and 31st July and the exchequer position remains neutral.

| Date | Payment made | Amount due | Balance +/- |
|----------------------------|--------------|------------|-------------|
| 15 th Dec 2009 | £2130 | | + £2130 |
| 15 th Jan 2010 | £2130 | | + £4260 |
| 31 st Jan 2010 | | £8520 | - £4260 |
| 15 th Feb 2010 | £2130 | | - £2130 |
| 15 th Mar 2010 | £2130 | | £0 |
| 15 th Apr 2010 | | | |
| 15 th May 2010 | £1250 | | + £1250 |
| 15 th Jun 2010 | £1250 | | + £2500 |
| 15 th Jul 2010 | £1250 | | + £3750 |
| 31 st Jul 2010 | | £7500 | - £3750 |
| 15 th Aug 2010 | £1250 | | - £2500 |
| 15 th Sept 2010 | £1250 | | - £1250 |
| 15 th Oct 2010 | £1250 | | £0 |

The second example shows what will happen if the taxpayer fails to keep up with his payments.

Example 2

Joe sets up a managed payment plan as in example 1.

He makes the first 4 payments as agreed but then the payment due on 15th March is not made. After 7 days the payment has still not been made and so the managed payment plan is cancelled.

This means that the outstanding balance of £2840 at 16th March 2010 becomes payable on the normal due date of 31st January 2010 and subject to late payment interest and surcharge.

Also, Payment on Account 2 will become payable in full on the 31st July 2010.

The table below illustrates the consequences of missed payments.

| Date | Payment Due | Payment made | Liability | Balance +/- |
|---------------------------|-------------|--------------|-----------|-------------|
| 15 th Nov 2009 | £1420 | £1420 | | + £1420 |
| 15 th Dec 2009 | £1420 | £1420 | | + £2840 |
| 15 th Jan 2010 | £1420 | £1420 | | + £4260 |
| 31 st Jan 2010 | | | £8520 | - £4260 |
| 15 th Feb 2010 | £1420 | £1420 | | - £2840 |
| 15 th Mar 2010 | £1420 | - | | - £2840* |
| 15 th Apr 2010 | | | | |
| 15 th May 2010 | | | | |
| 15 th Jun 2010 | | | | |
| 15 th Jul 2010 | | | | |
| 31 st Jul 2010 | £7500 | | £7500 | |

* The outstanding balance of £2840 becomes payable immediately and is subject to the Normal Due date of 31st January 2010.

Taxpayers within Corporation Tax Self Assessment

The third example illustrates how a managed payment plan would work for a CTSA taxpayer

Example 3

ABC Ltd has an accounting period ending on 31st December 2009.

The company files its Corporation Tax return on 31st March 2010 in order to join the managed payment plan.

ABC's corporation tax liability due on 1st October 2010 is £28080 and this will be paid by 12 equal monthly payments of £28080/12 = £2340 spread evenly either side of the normal due date.

The first payment will be made on 15th April 2010 and the twelfth payment on 15th March 2011.

The table below illustrates how the payments will be made.

| Date | Payment made | Amount due | Balance +/- |
|----------------------------|--------------|------------|-------------|
| 15 th Apr 2010 | £2340 | | + £2340 |
| 15 th May 2010 | £2340 | | + £4680 |
| 15 th Jun 2010 | £2340 | | + £7020 |
| 15 th July 2010 | £2340 | | + £9360 |
| 15 th Aug 2010 | £2340 | | + £11700 |
| 15 th Sept 2010 | £2340 | | + £14040 |
| 1 st Oct 2010 | | £28080 | - £14040 |
| 15 th Oct 2010 | £2340 | | - £11700 |
| 15 th Nov 2010 | £2340 | | - £9360 |
| 15 th Dec 2010 | £2340 | | - £7020 |
| 15 th Jan 2011 | £2340 | | - £4680 |
| 15 th Feb 2011 | £2340 | | - £2340 |
| 15 th Mar 2011 | £2340 | | £0 |

In order to take full advantage of the managed payment plan and have twelve months over which to spread payment, ABC Ltd has filed its return just 3 months after the accounting period end.

However if ABC Ltd did not file its return until 30th June (6 months after the accounting period end) it would have less time to pay.

Because the return was filed only 3 months before the due date of 1st October 2010 the company only has 6 months to pay
The first payment will be made on 15th July 2010 and the sixth payment on 15th December 2010.

The table below illustrates how the payments will be made

| Date | Payment made | Amount due | Balance +/- |
|----------------------------|--------------|------------|-------------|
| 15 th July 2010 | £4680 | | +£4680 |
| 15 th Aug 2010 | £4680 | | +£9360 |
| 15 th Sept 2010 | £4680 | | +£14040 |
| 1 st Oct 2010 | | £28080 | -£14040 |
| 15 th Oct 2010 | £4680 | | -£9360 |
| 15 th Nov 2010 | £4680 | | -£4680 |
| 15 th Dec 2010 | £4680 | | £0 |

Scale of Fixed Solicitors costs in England & Wales

The scale of solicitors' costs, on which HMRC's court costs in England & Wales could be based, is in CPR 45 and is summarised in the table below. It is compiled from:

- CPR 45.2A: Table 1: Fixed costs on commencement of a claim for recovery of money and goods;
- CPR 45.4A Table 3: Fixed Costs on Entry of Judgment in a claim for the recovery of money or goods in default or admission. Different costs apply to claim amounts below and above £5,000 up to £15,000;
- Chancery and Queen's Bench Divisions table of fixed cost in respect of Solicitors' charges (compiled, as relevant, from Part 45 and Sch 1 Part 50 (RSC Order 62) CPR 1998 (SI1998/3132) and the Civil Proceedings Fees Order 2004 (SI 2004/3121). These apply for claims of £15,000 and above¹⁰.

| Fixed costs: Solicitors (CPR 45.2A & 4A) | Claim amount (£) | On commencement (£) | Judgment in default (£) ¹¹ (a)/(b) | Judgment in admission (£) (a)/(b) | Total: Judgment in default (£) (a)/(b) | Total: Judgment in admission (£) (a)/(b) |
|---|---------------------|---------------------------|---|---|--|---|
| | 25 – 500 | 50 | 22 | 40 / 55 | 72 / 75 | 90 / 105 |
| | 500 – 1,000 | 70 | 22 | 40 / 55 | 92 / 95 | 110 / 125 |
| | 1,000 - 5,000 | 80 | 22 | 40 / 55 | 102 / 105 | 120 / 135 |
| | 5,000 – 15,000 | 100 | 30 | 55 / 70 | 130 / 135 | 155 / 170 |

¹⁰ See link for the full table of High Court fixed costs introduced in January 2005: http://www.hmcourts-service.gov.uk/docs/fixed_costs_1204_new.pdf

¹¹ There are slight variations in the fixed costs depending on whether judgment is in default because (a) default of filing acknowledgement of service or (b) default of filing defence. Similarly, the costs on Judgment on admission can also vary slightly depending on the details of the payment arrangements ordered by the Court

| | | | | | | |
|---|-------------------|-------|---------|---------|---------------|---------------|
| Fixed costs: Solicitors for claims in the High Court | 15,000 - 50,000 | 500 | 30 / 35 | 55 / 70 | 530 / 535 | 555 / 570 |
| | 50,000 – 100,000 | 800 | 30 / 35 | 55 / 70 | 830 / 835 | 855 / 870 |
| | 100,000 – 150,000 | 1,000 | 30 / 35 | 55 / 70 | 1,030 / 1,035 | 1,055 / 1,070 |
| | 150,000 – 200,000 | 1,200 | 30 / 35 | 55 / 70 | 1,230 / 1,235 | 1,255 / 1,270 |
| | 200,000 – 250,000 | 1,400 | 30 / 35 | 55 / 70 | 1,430 / 1,435 | 1,455 / 1,470 |
| | 250,000 – 300,000 | 1,600 | 30 / 35 | 55 / 70 | 1,630 / 1,635 | 1,655 / 1,670 |
| | Over 300,000 | 1,800 | 30 / 35 | 55 / 70 | 1,830 / 1,835 | 1,855 / 1,870 |

The Government's Consultation Code of Practice

ABOUT THE CONSULTATION PROCESS

This consultation is being conducted in accordance with the Government's Consultation Code of Practice. If you wish to access the full version of the Code, you can obtain it online at:

<http://www.berr.gov.uk/files/file47158.pdf>

THE CONSULTATION CRITERIA

1. **When to consult** – Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. **Duration of consultation exercises** – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact** – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercise** – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation** – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises** – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult** – Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints about the process, please contact:

Richard Bowyer
Better Regulation Unit
020 7147 0062 or richard.bowyer@hmrc.gsi.gov.uk