



Tax debt?

Can't afford to pay?



TaxAid

Thousands of people are unable to pay their tax on time, and many have sleepless nights worrying about going bankrupt, losing their home or job, or even going to prison.

The worst thing is to ignore the matter. Your situation may not be as bad as you think, but you should act quickly. If you do nothing at all, you increase the risk of legal action against you.

Most often, you will become aware that you owe tax in one of the following ways:

- you may receive a letter from HM Revenue and Customs (HMRC) stating that not enough tax was taken off your employment or pension income, and enclosing a calculation of the tax “underpaid”. **You may not previously have much contact with HMRC. The action to take is explained at pages 03 and 04;**
- if you have previously been sent a tax return, then you may receive an HMRC Statement showing that tax is due, or a letter or telephone call demanding payment under threat of legal action. **The processes followed by HMRC, and the legal actions they can take, are all explained at pages 05 to 23.**

Do not ignore a letter or demand from HMRC which states that tax is due, as this will usually make things worse. Quite often, a quick response can reduce the size of the problem.

Note on Tax Credits: HMRC also recovers overpayments of tax credits. The procedures are very different and beyond the scope of this booklet, but there is some brief guidance at page 23.



What to do if you have never declared your income? For some people the tax bill has yet to be worked out. Getting back in the system is possible. Go to page 24 for details.



Recovery of underpaid PAYE

If you have earnings from employment and/or any pensions from previous jobs, then tax is normally taken off under the Pay As You Earn (PAYE) system. PAYE should collect the right amount of tax from most people each year.

However, you may not have paid the right amount where, for example:

- you were given your annual tax free allowance against more than one job or pension;
- a taxable social security benefit - such as incapacity benefit or state pension - was ignored;
- you received allowances which were not due to you, or have not received some that were due.

A new computer system now enables HMRC to check whether the right amount of tax has been paid, shortly after the end of each tax year. If you have received a bill for a tax year up to 5th April 2011, look at the guidance under points to consider facing.

If HMRC say you have not paid enough tax

If HMRC's calculation shows that you have underpaid tax of:

- **Less than £50 for that year**, then the tax should be written off. If you receive a letter asking for payment, call HMRC on 0845 3000 627 and ask for the debt to be cancelled¹; or
- **£50 - £2,999.99**, HMRC will normally collect the unpaid tax by reducing your PAYE tax code for the next tax year. You should receive a coding notice shortly before the next 5th April showing the adjustment made; or
- **£3000 or more**, HMRC will ask you to pay the full amount directly. If you do not respond, they will issue a tax return for the year(s) concerned and you will then fall within the system of Self Assessment. The full payment will fall due 3 months later, with interest and surcharges being added for late payments. **The system for collecting tax under Self Assessment is explained at pages 05 to 23.**

Points to consider

Underpaid PAYE for tax years up to 5th April 2011

Special rules applied to underpayments for tax years 2007/2008, 2008/2009 and 2009/2010. In some cases 2010/2011 may also be affected. In particular where a taxable state benefit, such as state pension or Incapacity Benefit was not adjusted for in your tax code, HMRC should write off the underpaid tax.

Cont'd over...

1. HMRC numbers are subject to change; alternatively contact HMRC using the number shown on the letter.

Check the calculation

Make sure that your employers and pension providers are correctly shown, and that the figures for income, and tax taken off under PAYE, are the same as those on any documents you hold (P45, P60, P11D or payslips). There is guidance on this on the HMRC website at www.hmrc.gov.uk/P800. If you need guidance or find any error, call HMRC on 0845 3000 627.

Error or delay

There may have been a mistake or delay for which you should not be held responsible. The official guidance (at www.hmrc.gov.uk/manuals/pommanual/PAYE95011.htm) says that HMRC must collect the unpaid tax from **your employer or pension provider** if they have failed to operate PAYE correctly. This could be where they used the wrong tax code, or failed to process a form P45 or P46 correctly when you joined them. Write to HMRC for confirmation that they have checked for any such employer error.

If you think tax was underpaid because of a **mistake or delay by HMRC**, you can ask them to consider writing off some or all of the tax. It must have been reasonable for you to have thought that your tax code was correct, and HMRC must have delayed using information for at least 12 months from the end of the tax year in which it was received. See the HMRC website at www.hmrc.gov.uk/esc/esc.htm for more details.

Hardship

If a tax debt between £50 - £2,999.99 is to be collected through PAYE, and this will cause hardship if it is all done in a single tax year, you can ask HMRC to spread the collection over two or three years instead.

Avoiding Self Assessment

If the debt is £3,000 or more, there are two alternative ways to get more time to pay, and avoid getting tax returns, **but you must contact HMRC without delay:**

- if you can pay some of the tax immediately - to reduce the debt below £3,000 - then the rest should be collected through your PAYE code e.g. Harry owes £3,500 and is able to make a payment of £501 straight away, reducing the debt to £2,999. The remaining debt should then be collected through his PAYE code over one year, and can be extended up to 3 years in case of hardship. This avoids the need to complete tax returns and allows more time to clear the debt;

OR

- if you contact HMRC on 0845 3000 627 immediately - and explain that you cannot pay the full amount right away - they should allow you to make payments over a period of time. Such arrangements may extend over several months, or longer, depending on your personal circumstances.

Check any refund

If you have paid too much tax, HMRC will automatically send you a refund. It is still important to check the calculation since, if HMRC has made a mistake, they could ask for the money back later on.

TaxAidTIP

HMRC can now collect underpayments of tax and overpayments of tax credits of up to £3,000 through your PAYE code if you have not made alternative payment arrangements. So check your PAYE code carefully.



Tax debts under Self Assessment

Self Assessment is the system under which HMRC administers tax due on income from self-employment, rental income, capital gains and other sources. It is also used to collect PAYE underpayments of £3,000 or more (see page 04). Under Self Assessment, you are expected to complete a tax return each year, and to pay tax directly to HMRC.

You may first become aware of a problem when a debt appears on your Statement of Account, or you receive a letter threatening legal action. Soon after that Debt Management and Banking (DMB) will try to contact you by phone. DMB will want you to make immediate payment.

If you have a tax debt problem it's important to understand these different roles within HM Revenue and Customs. **DMB deals with collection of tax due, not with the assessment of income which is the basis of the tax bill.** If you can't pay your tax, the first office to contact is Debt Management and Banking. If you think the amount of tax is wrong or if you need to file tax returns, you may need to contact your tax office as well.

TaxAidTIP

Missed the 31st October paper filing deadline? You can avoid a penalty by filing on-line by 31st January. You will incur a penalty of £100 if you miss this deadline, but you will be avoiding the escalating penalties of paper filing. Go to www.hmrc.gov.uk to register for a gateway number and pin-activation code. It can take a couple of weeks to get the code through the post so do not delay.

What to do next?

1. The amount demanded might be wrong

You must act promptly to get the figure sorted out. A simple error, such as a failure to credit a payment you have made, can be corrected by a phone call. But an unexpectedly high tax demand may include a "determination" - an estimate made by HMRC when they have not received your tax return. Even if this is much higher than your true liability for the year, it is legally due and enforceable. **The only way to cancel a determination is to complete and send in a tax return.** You may need to offer DMB some interim payments while the final tax bill is sorted out.

2. You need time to pay

If you owe tax which you cannot pay immediately, then you may want to seek some agreement with DMB to pay your tax by instalments. You will need to complete all outstanding tax returns and explain how you will meet on-going tax bills. The maximum time you will normally be allowed is 12 months, though a shorter timescale is more usual. Interest will still be due on the debt.

Go to page 07 for details

3. You may be at risk of enforcement action

If you cannot reach an agreement with DMB, you face the risk of enforcement action. It is important to understand what each procedure involves, and the defences that could help you.

Go to page 14 for details



1. The amount demanded may be wrong

In many cases, you may not agree with the amount of tax shown on a Statement of Account, or demanded by DMB. There could be a simple error - such as failure to credit a payment you have made - which can be sorted out by a phone call to the telephone number shown on your Statement of Account.

In other cases, the statement might be based on an estimate of your income (a "determination"), because you have not sent in your tax return. It is usually possible to get it corrected, provided you follow the right procedures.

If you have not completed any tax returns you will be liable for any penalties, surcharges, interest and tax charged under a "determination". These are treated as being correct and are enforceable until the completed tax return is submitted, and the tax bills are revised.

Once the tax return has been submitted, the amount of tax is revised and you will then be asked for this revised debt plus interest and any penalties and/or surcharges which remain due in respect of the revised debt. If the tax bill seems wrong based on your tax return there are routes to amending it for up to four years. You may need to claim Overpayment Relief.

TaxAidTIP

Tax returns can be made even after the legal deadline. If your tax demand includes a "determination" from several years ago, HMRC may say that it is too late to submit a tax return, as these cannot be accepted more than four years after the tax year end. However, there is a "Special Relief" which requires HMRC to process returns after that deadline if it would be "unconscionable" for them to refuse. There are very stringent conditions which are difficult to meet in practice. There is more information on Special Relief on our website at www.taxaid.org.uk in the tax debt section. If you have received determinations from HMRC from several years ago call TaxAid's helpline on **0345 120 3779**.

DMB is concerned not just with payment of outstanding tax, but also with bringing your affairs completely up to date. **If you have not sent in all your tax returns, DMB is likely to continue taking action against you, even if you pay all the tax demanded.** It is in your best interests to send in all your tax returns as soon as possible. This may reduce the size of the tax debt to more manageable proportions.

You might think that the amount demanded is too high but, for the tax years from 2010/11, penalties for late filing of tax returns will be charged and can reach £1,600 in the first 12 months, even if no tax is due. They include:

- £100 for missing the filing deadline;
- £10 per day for up to 90 days (£900) where a return is over 3 months late; &
- an additional £300 at 6 months and 12 months late.

It is possible to appeal if you have a reasonable excuse.



2. You need time to pay

Seeking time to pay

Once you have established that this is a “true” debt, if you can’t afford to meet it you may need to negotiate time to pay.

Although tax should normally be paid when it falls due, DMB may allow you to pay your tax over a period of weeks or months (and sometimes even longer).

Interest will be added although the amount involved may be small and, unlike some other creditors, HM Revenue and Customs has no discretion over the amount of interest charged. It cannot “freeze” the interest to help you to clear the debt.

If you try to seek an agreement, DMB will want to know why you can’t pay the debt immediately and in full. Normally you will make contact with DMB by phone. You should be aware that you may be asked a lot of personal questions. For example, DMB may want to know what other members of your family earn, or what you spend on clothes or holidays.

From your point of view, the only reason for having such discussions is to try to avoid DMB taking enforcement action against you. You can choose not to discuss matters (in particular, the earnings of other family members), but you then increase the risk of enforcement action, as DMB may feel that they have no other way of collecting the debt.

Depending on your circumstances you might ask DMB for:

- a payment arrangement; or
- suspension of collection action for a period; or
- waiver of the tax.



TaxAidTIP

Reducing payments an account (where tax bill lower than last year). Commonly a tax demand will include “payments on account” for the latest tax year. If you think that your tax bill will be lower than previous year, you can “claim to reduce the payments on account” by completing a form SA303. This can be downloaded from www.hmrc.gov.uk (search for “SA303”), or you can request the reduction by phoning the HMRC office shown on your statement.



Payment arrangements

Most agreements involve making a payment arrangement. Typically you offer to pay a certain amount each week or month, until the tax plus interest is cleared. Taxpayers with a good compliance record - those who have previously paid their tax on time and kept their returns up to date - can make a good case for an arrangement that suits their current circumstances. The essence of DMB's approach is to separate taxpayers into two categories, the genuine "can't pay" and the "won't pay". Taxpayers who make no attempt to contact DMB are treated by default as people who "won't pay". Individuals who come to Voluntary and Community Sector organisations for advice are normally treated as genuine "can't pay" cases, once contact with DMB has been made.

"Can't pay" taxpayers who want a payment arrangement will be expected to:

- complete all outstanding tax returns very quickly; &
- pay the arrears of tax, plus interest, surcharges and any penalties over the period of the arrangement; &
- show that they can provide for on-going tax bills that will arise during that period.

The maximum timescale allowed for doing this will normally be 12 months, with longer periods allowed in very exceptional cases, **but in practice DMB normally wants the money paid much quicker than this.**

Even with a time-to-pay agreement in place, interest will still be charged on any overdue tax.

On occasion you may be under pressure to reach an agreement to pay a bill which includes a "determination" then the tax, surcharges, penalties and interest due under the arrangement will be revised when your tax

returns have been submitted. It can become very complicated to track which bits have been paid, which are still owed and attracting interest and penalties. You can ask for a full statement of account from DMB to list your transactions.

DMB will require details of savings and other assets plus full income and expenditure information before an extended time to pay agreement is accepted. Short-term time to pay agreements of a few months duration only, may be agreed with less detailed information.

DMB prefer this information to be given by phone during the initial contact if possible. Your expenses will be reviewed by the Debt Management officer and any which are thought to be unusual, large or exceptional may be challenged. It may well be worth taking advice to help prepare these figures.

You will need to agree a payment plan with DMB. This plan must cover not only the tax currently outstanding, but also any future tax liabilities as they arise during the period of the plan. This would include "payments on account" in January and July if you are self employed.

You are more likely to receive a sympathetic response if there are exceptional, unforeseen reasons why you can't pay, such as a sudden illness, or the insolvency of a major customer.

TaxAidTIP

If you have not yet fallen behind with your tax payments, but expect to receive a demand in the near future which you will be unable to pay, consider contacting HMRC's Business Payment Support Service (BPSS) on 0845 302 1435. The BPSS can agree a payment arrangement, which may be easier than negotiating with DMB after a demand is received. For more information see www.hmrc.gov.uk/payinghmrc/problems/bpps.htm



If you have mental health problems

HMRC's duty to you

Under the law, HMRC must make "reasonable adjustments" for a person with a "mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities".

HMRC's internal guidance for DMB staff says that:

- your affairs should be handled sensitively and sympathetically;
- if you provide evidence of a mental health problem, then DMB may agree not to enforce the debt if this would cause unreasonable distress to you; &
- DMB staff should refer to the Money Advice Liaison Group guidelines for an explanation of good practice in pursuing debts from people with mental health problems.

The Money Advice Liaison Group guidelines are at <http://www.malg.org.uk/dmhdocslist.html> and the DMB guidance is at www.hmrc.gov.uk/manuals/dmbmanual/DMBM585185.htm

What this means in practice

This does not mean that DMB will simply write off your tax. But if you can provide DMB with evidence that you have a mental health problem, such as a letter from your GP or other health professional, then you may reasonably ask for some leeway in the way you are treated. For example:

- if you need a little time to obtain evidence of your mental illness, this should be given;
- if DMB has asked for any details of your financial situation, but because of your illness you find paperwork particularly stressful, you should be allowed extra time to get help to gather this information;
- if you are unable to give any attention to your tax debts for a short period while you are in hospital or undergoing other treatment, DMB should normally be prepared to suspend action for a short period;
- if you can show that enforcement action being threatened by DMB (see pages 14 to 23) would be harmful to your health and that the tax debt could be settled as quickly in another way, then DMB should take due account of this; &
- if your mental illness is expected to continue in the long term, with little likelihood of improvement, and that it is highly unlikely that you will ever be able to pay the tax, then DMB should consider "remitting" the tax so that no further action is taken unless your circumstances improve unexpectedly.

TaxAidTIP

Speaking to DMB. It may feel difficult to speak to DMB about your own mental health. You may prefer to ask a care worker, friend or relative, or an advice agency such as TaxAid to speak to DMB on your behalf. DMB should be willing to speak to them, but may ask you to sign a letter or form of authority first.

You may be contacted by a debt collection agency

HMRC now uses private debt collection agencies to follow up on some tax debtors by telephone. Before your details are passed to such an agency you should receive a letter from DMB warning that this will happen if the tax is not paid immediately. The agency will phone and ask you to make payment in full if you have the money to do so, or by a payment arrangement. The agency should always conduct itself with the same courtesy and professionalism as HMRC. If you cannot reach agreement, your case will be passed back to DMB for consideration of enforcement.



TaxAidTIP

Make sure DMB understands that you “can’t pay”. “Won’t pay” taxpayers, and those who have been late with payments before, are likely to be put on a fast track to recovery action. It is therefore worth explaining carefully why you “can’t pay” rather than risk leaving it to their judgement and being seen a “won’t pay”.

If your request is accepted

If DMB, or a debt collection agency appointed by HMRC, agrees to your request for time to pay, you should receive confirmation of this in writing.

If you receive a verbal agreement at a meeting or on the telephone, ask for it to be confirmed in writing. If not, there could be difficulties later if there is a dispute over exactly what was agreed.

Having an agreed payment plan in place will mean that you avoid the surcharges for late payment.

If Debt Management & Banking rejects your proposal

DMB has a duty to consider your proposal. If you believe that it has been rejected out of hand, without being properly considered, you can make a complaint and ask for your proposal to be referred to a more senior official and for a full response in writing.

If you fail to agree a payment plan with DMB, then recovery action is likely to be taken. Recovery action may include legally taking control of goods (previously known as distraint), court action in the Magistrates’ Court or County Court, or Bankruptcy proceedings.

Other points on time to pay



Lump sums

DMB is most unlikely to accept a lump sum of less than the tax due in full settlement. But an offer of a lump sum may help to persuade DMB to accept the rest of the tax over a period of time.

For example, Julian owes £2,000 in tax but has no money or other assets and is unemployed. He does not want to face enforcement action, and he tells DMB that his mother will give £1,000 towards settling the debt if HMRC will agree to write off the rest. DMB may not agree to this, even though HMRC are likely to receive nothing if it proceeds to enforcement action (since Julian has no income or assets). But offering the lump sum may mean that DMB is more willing to agree time to pay for the balance of the £2,000 that Julian owes.

Only offer what you can afford

When making a proposal, be careful of offering more than you will be able to afford. If you fall behind with an agreed scheme of payments, you may try to renegotiate, but you will have lost some credibility and the DMB officer may decide to proceed to enforcement.

Short delays while you sell an asset

If you are requesting a short delay, for example to allow you to raise funds by selling a property, or your business, DMB may agree to grant the extra time.

Suspension of collection action for a period

DMB may agree to suspend making demands for a period if you are temporarily unable to pay the tax, for example because you are unemployed or have business or health problems that should end fairly soon.

Typically, such an agreement may last for three or six months, with a review of your circumstances at the end of that period.

Waiver of tax

Very occasionally HMRC decides not to pursue payment of a tax bill. This is sometimes known as remission. The tax is not permanently written off, but you will not receive further demands unless your circumstances improve unexpectedly.

Remission is most common in the case of a person who is elderly, sick or long term unemployed, and has no assets of particular value. If these are your circumstances you might want to contact TaxAid's helpline 0345 120 3779 for advice on how to put your case to DMB.

Freezing of interest

HMRC cannot agree to "freeze" interest on the tax, so as to help you to clear the debt. HMRC is obliged by law to charge interest.



Some practical pointers

It is important to understand who you are dealing with and be sure it is the right person to deal with your particular problem.

People within DMB do not deal directly with your personal tax return, although they may contact you if your tax returns are outstanding. The issue and processing of tax returns is dealt with by "Processing Centres". It is the Processing Centre which works out how much tax you owe and processes your return.

In general if you cannot pay you must speak to someone from DMB. This can be at one of the Accounts Offices (call the Payment Helpline on 0845 366 1204), the local DMB Office or the Enforcement and Insolvency Service. **You should contact the office from whom you have received the most recent contact.**

You are likely to be contacted by phone. If so talk to them about the problem there and then or if you are left a message don't ignore it. Call them back - the problem is unlikely to go away and they certainly won't!

Most initial requests for payment are sent from the two "Accounts Offices" in Cumbernauld and Shipley.

"Time to pay" helpline number: 0845 366 1204

If matters need to be pursued locally e.g. for enforcement action where payment has not been made, this is dealt with by a "Debt Management Office". Cases involving bankruptcy are handled by the Enforcement and Insolvency Service (EIS) which is based in Worthing.

How Debt Management negotiates

If you enter discussions with the DMB, you must understand that HM Revenue and Customs will not always act the same as other creditors.

Issues of policy

Apart from collecting your tax, DMB has a wider duty to protect the tax system as a whole. So it will sometimes make a person bankrupt even where it is clear that he or she has no assets. This may be done to stop further arrears accumulating, to strengthen HM Revenue and Customs' position if the person involved starts up in business again, or by way of example to encourage other people to pay their tax on time. On the other hand, DMB may sometimes decide not to take enforcement action if this would close a business down and lead to many redundancies.

Negotiations can be very personal

DMB will pay regard to your personal circumstances, and the following points may help and should be mentioned:

- if you are elderly;
- if you are in poor health or have family problems;
- if you are unemployed or dependent upon tax credits and/or welfare benefits; or
- if you have always paid your tax on time before.

On the other hand, it will not help if:

- you are, or have been, rude or aggressive to any HMRC staff;
- you have paid other creditors in preference to HMRC; or
- you have had unpaid tax debts before.

Other factors that may be taken into account

DMB will also be influenced by the following factors.

The size of your tax debt. It may be easier to reach an agreement if the amount unpaid is relatively small.

If you are about to leave the country. DMB will not allow discussions to drag on if there is a risk that you are about to leave the UK. But remember that HMRC has agreements with overseas tax authorities to assist it in collecting UK tax debts if you move abroad, so leaving without paying your debt will not make the problem disappear.

If the tax bill has arisen unexpectedly. Particular sympathy should be shown if you owe tax because of a mistake by HM Revenue and Customs. For example, if DMB is trying to collect a refund which you could not have known was given to you in error. In some circumstances they may waive the debt altogether under a practice known as Extra Statutory Concession A 19 - see www.hmrc.gov.uk/specialist/esc.pdf for details.

On the other hand, DMB can sometimes appear hard on self-employed people unable to pay their tax on time. They will often say that you have no excuse, because you should have set aside the money to pay the tax when the income was earned. Self-employed people often complain that DMB officials have little understanding of what it is like to run a business, and how difficult it can be to set money aside, or the problems that arise if a customer goes bust or disappears.

The earlier you make contact to discuss the situation the easier it should be to reach an agreement acceptable to both sides. If you do not, you risk enforcement action by HMRC. It is important to be aware of which kind of office you are dealing with (see section "Some practical pointers" on page 12), as this may indicate what enforcement action is imminent.



3. You may be at risk of enforcement action

There is very little risk of criminal prosecution or imprisonment. Some people fear that failure to pay tax on time may lead to criminal prosecution and imprisonment. In fact, this is rare. HM Revenue and Customs does prosecute a small number of people every year, but all cases involve allegations of serious dishonesty or tax evasion. HMRC does not normally take such action just because someone has not paid their tax on time, or has difficulty finding the money to settle.

It is important to know what DMB will do if you refuse to seek an agreement, or cannot reach an agreement.

In such circumstances, DMB will consider taking enforcement action, which will be one of the following measures:

- Legally taking possession of goods for sale at public auction (formerly known as distraint);
- Summary Proceedings in the Magistrates' Court (or Sheriff Court in Scotland);
- County Court proceedings; or
- Bankruptcy.

Legally taking possession of goods is a process formerly called "Distraint", whereby HM Revenue and Customs may take some of your possessions for sale at auction towards settlement of an unpaid tax bill. HMRC has the legal power to do this without any court order.

Threats of distraint or legally taking possession of goods should not be ignored, but it may be reassuring to know that:

- the first visit may be from a member of HMRC's "Field Force", local staff whose initial function is to check the debtor's address, and make face contact with them, so as to see if matters can be sorted out without resorting to enforcement;
- the HMRC officer should act within the law, and you need not fear the illegal behaviour that is sometimes reported of bailiffs who carry out the process for other debts;
- the HMRC officer cannot force his way into your premises without a court order, and such orders are very unusual; and
- in practice only a tiny number of such visits lead to sales at auction.

If you do not agree that you owe the tax demanded, or believe it is a lot less, you should tell the HMRC officer, but you will find that he is in a non-negotiable position once he is in your home.



What should you do?

Some people are very frightened by the thought of an HM Revenue and Customs officer turning up at their home and taking possession of their goods.

If so, the first thing is to ensure that you have done everything possible to pay the tax or reach an agreement with HMRC. But in some cases it is not possible to obtain an agreement.

If you are upset at the thought of the HMRC officer turning up at your home, you might be able to persuade him that such a visit would be pointless because you have no assets worth seizing, perhaps by offering a list of the main items that you own. If so, you should explain this to the HMRC officer and tell him you would prefer to deal with this on the phone, or come to see him at his office instead. **If he will not agree to this, and makes a visit to your home, you do not have to discuss the debt with him there and have the right to deny him entry.**

You may be worried because you have a family member who suffers from poor health or stress, who might be very upset by such a visit. If so, you should explain this to the HMRC officer and ask him to visit at a time when that family member is expected to be out. He should normally agree, and it is a good idea then to write a letter to him confirming what has been agreed.

For a more detailed explanation of the factors involved go to the section on TaxAid's website www.taxaid.org.uk.

Points to note:

- HMRC does not normally take such action for debts below £100;
- there are some goods that are protected from such action, e.g. basic household goods;
- tools of your trade may be at risk if you have no other assets or way to pay;
- vehicles can be particularly at risk; &
- only assets owned by the taxpayer exclusively should be included.





County Court proceedings

If the officer from DMB is unable to recover your tax by distraint, and the amount is large, then he may immediately transfer the file to HMRC's Enforcement & Insolvency Service for consideration of bankruptcy proceedings (see page 20). In other cases he will probably seek a **judgment** (CCJ) in the County Court², which orders you to pay the amount due.

The main disadvantage of a County Court judgment is that it will affect your credit record. On the "plus" side, there is a procedure to ask the court to order the debt to be paid by instalments, and County Courts can be quite sympathetic in allowing time to pay. In many cases County Courts order payments at a level previously rejected by DMB in negotiations.

Most County Court actions are conducted purely by paperwork. It is unlikely that you will be required to attend a hearing.

If you fail to make any payment due under a court order, DMB will usually pass your file to the HM Revenue and Customs' Enforcement & Insolvency Service office to consider proceedings for bankruptcy. Unlike other creditors they rarely opt to enforce through the County Court instead.



2. The procedure for Magistrates Court is very similar, the major difference being that these case involve debts limited to under £2,000.

Things you need to do:

You need to act quickly

Consider: is the amount HMRC are suing for correct? (see page 06). If not, you cannot leave it until you are in Court as the Court has to accept HMRC's position that tax has been charged and has not been paid; this applies even if the tax debt is estimated. If you are disputing the amount of the debt get some additional time to sort it out by contacting DMB and asking them to delay court action.

Note that, if a Court action is brought by other creditors, you should ensure that any tax debt is taken into account in determining what you can afford to pay, or you may find that you remain incapable of paying your debts. It may take a while to agree with HMRC the correct amount due and, if in the meantime HM Revenue and Customs has obtained a judgment for the full amount claimed, the debt due under the judgment is reduced to reflect the correct amount due.

What happens first

You will receive a County Court claim which lists the amounts claimed by HM Revenue and Customs together with court costs. The claim is accompanied by a response pack, which contains three forms:

- Defence and counterclaim;
- Acknowledgement of service; &
- Admission.

The first two forms are needed if you wish to contest the claim, and the third form to ask for time to pay.

It is always worth completing the Admission, if you want to pay by instalments, even if you cannot offer very much. You should offer only what you can genuinely afford. If you offer more than you can manage, and the court makes an order for instalments at that level, and you then fail to meet the payments due, HMRC can take further enforcement action.

If you do nothing

If you do not respond at all within 14 days from the service of the claim, DMB can ask the court to enter judgment against you. You will then receive a document from the court stating that a judgment has been given for the amount claimed by HM Revenue and Customs, and that payment must be made "immediately".

If you do not pay in response to this demand, HMRC can ask the Court to enforce its judgment. The Court has powers to require you to attend Court and provide evidence of your means (ability to pay) and may authorise direct payment by attaching your income through your bank or employer. If you ignore such a "Judgment Summons" you may be imprisoned for contempt of Court.

In practice however if local court action is unsuccessful and the debt is more than £2000, the case will usually be referred to HMRC's Enforcement & Insolvency Service for consideration of bankruptcy proceedings (for more information, see Bankruptcy on page 20).



Contesting the claim

If you think that the amount shown in the claim is wrong, you might feel encouraged to contest it in the County Court, using the Defence and the Acknowledgement of service forms contained in the response pack. However, these are standard forms that are sent out by the County Court with claims for all kinds of debts, and the paperwork does not tell you that **it is very difficult to contest a claim by HM Revenue and Customs successfully in the County Court because the certificates that will be produced by HMRC, stating that tax has been charged and has not been paid, must be accepted by the court as sufficient evidence that the tax is due.** So there is hardly ever any point in contesting the amount through the court.

If you do think that no tax is due or that the figures on the claim are wrong, take the matter up with HM Revenue and Customs directly. At the same time, ask Debt Management to delay asking the court to enter judgment. This can help to avoid the situation, for example, where HMRC obtains a judgment and it is later agreed that there was actually no tax to pay.

If, having looked into your case, HMRC accepts that there is nothing due, it should take no further action on the claim. If it accepts that there is just a small amount due, Debt Management may agree not to obtain a judgment if you can pay it fairly quickly.

Asking the court for time to pay

If you accept that you owe all or part of the amount claimed, and you do not have the means to pay it, then HM Revenue and Customs will want judgment entered against you. A court judgment can require payment immediately.

To avoid this, you can ask the court to make the judgment debt payable over a period of time. This is done by completing the Admission form that comes in the response pack. You give details of your financial situation and make an offer to pay based on what you believe you can afford, (usually) a certain amount each month, or (less often) the full amount by a specified date in the future.

After completing the Admission, you send it to HMRC at the address shown on the claim. This must be done within 14 days of the date the claim was served on you, so that the Court has this information and the Revenue's comments available when making their judgment.

If HMRC is not happy with the proposal you have made, it will advise the court of this, but it is for the court to decide the payments that will be ordered. And this will usually be done by the court staff without a hearing.

You will then receive a document from the court stating that a judgment has been given for the amount claimed by HMRC, and how payment must be made. The court may well order payment in accordance with what you offered on the Admission form.

Once judgment has been given, you must make payment in accordance with it. If you do, HMRC cannot take further enforcement action in relation to that debt. If you fail to do so, HMRC can take further enforcement action - and they are known to be extremely harsh in respect of broken agreements - so it is vital that you inform HMRC if your circumstances have changed radically and you can no longer afford to keep to the Court agreement.

You should then apply to the court for a variation of the order, to reflect what you can afford to pay. The procedure is very similar to that for an Admission (described above).

Getting help

County Court claims, procedures and forms can be difficult and you may want to get help.

If there are problems relating to the amount of tax due, or negotiating with HMRC, and you cannot afford to pay an accountant or tax adviser, you may contact TaxAid. See back cover for contact details.

Advice on court procedures and forms is available from Citizens' Advice Bureaux and law centres. County Court staff can also be very helpful.

Useful guidance and downloadable forms may be found on Her Majesty's Courts Service website
www.hmcourts-service.gov.uk





Tax debt and bankruptcy

Bankruptcy is one way the law deals with people who are unable to pay their debts. Following an order of bankruptcy, a Trustee is appointed who takes possession of your assets towards payment of your debts fairly between your creditors, according to certain rules. Bankruptcy also imposes a number of restrictions on what you can do. For detailed information on bankruptcy obtain advice from an adviser from the list of contacts on page 27. Being made bankrupt by HMRC is broadly similar to being made bankrupt by a commercial creditor, but it may help to understand HMRC's particular procedures discussed below.

If you owe HM Revenue and Customs more than £2,000 - and the local recovery office has been unable to reach an agreement with you or to enforce payment by distraint or a CCJ - then your file may be passed to HM Revenue and Customs' Enforcement and Insolvency Service (EIS) for consideration of bankruptcy proceedings.

What happens when your file reaches the Enforcement Office?

When your file reaches the EIS, it will write to ask you to pay the full debt quickly (normally within 14 days) or to make a proposal for payment. It will sometimes accept an arrangement for the tax to be paid within a matter of months, but will not usually consider any offer that will take over a year to clear the debt.

If you are not able to pay the tax or agree a payment arrangement, or if you fail to stick to a payment arrangement, the Enforcement Office will usually write to say that it is starting bankruptcy proceedings.

It is important to understand that the Enforcement Office does not behave like most commercial creditors. In particular, it often petitions for bankruptcy even where it is clear that this will not benefit HM Revenue and Customs because the taxpayer has no assets. Indeed, sometimes the bankruptcy costs the government money, because the bankrupt loses their home and/or job and is forced to rely upon social housing and/or welfare benefits.

Very occasionally the Enforcement Office may decide not to take further action against a person who is unable to pay. This might apply where you have no assets and a low income, and your situation is unlikely to change in the future because you are older or suffering from long-term poor health.



The statutory demand

The first stage in the legal process is the service (i.e. delivery to you) of a statutory demand, which is a formal document stating the amount owed to HM Revenue and Customs. Normally this will be delivered to you by hand.

By law you may apply to have a statutory demand from any creditor “set aside”, for example because the amount demanded is not due, but in tax cases such an application is unlikely to be successful. This is because the certificates produced by HMRC, stating that tax has been charged and has not been paid, must be accepted by the court as sufficient evidence that the tax is due.

The bankruptcy petition

After three weeks have passed following the service of a Statutory Demand, HMRC may proceed to present a bankruptcy petition.

The petition is usually filed in the High Court in London, but it may be possible to have the hearing transferred outside London though HMRC is likely to oppose such an action. The petition is served on you personally. If you try to keep out of the way, so as to avoid receiving the petition, the court may order service in another way, for example by post or advertisement.

The petition gives details of the tax due and tells you the date and time when the case will be heard at the Bankruptcy Court.

The bankruptcy hearing

There is a process for opposing a bankruptcy petition but, as with a statutory demand, there will not often be good grounds in a tax case.

More often, you may want to ask the court for an adjournment, to allow time to raise the money, or

- reach a payment arrangement with HM Revenue and Customs; or
- contest the amount demanded; or
- make a complaint if you believe that this might lead HMRC to withdraw its demand.

The court may well be prepared to grant an adjournment for two months or so.

If during the period of the adjournment (or further adjournment(s) if granted) you are successful in raising the money necessary to clear the tax debt, or in reaching an agreement with HMRC or in getting the tax demand withdrawn, then HMRC will apply to have the petition dismissed, which is the end of the matter.

If you are not successful, HMRC will ask the court to make an order for your bankruptcy, to which the court is likely to agree.

Bankruptcy is good for some people

Although the term “bankruptcy” may sound negative, it can sometimes help a person who is hopelessly insolvent and needs a fresh start. You need to weigh the “downsides” of bankruptcy against the possible advantages.

The main advantages of bankruptcy are that:

- when you are discharged from bankruptcy (normally after one year) - income tax and other debts are written off (apart from maintenance obligations, parking fines and student loans); &
- your creditors may no longer contact you about your debts.

The main disadvantages of bankruptcy are:

- you may lose valuable assets such as your home, investments and valuable private possessions;
- until you are discharged you are prohibited from certain jobs - e.g. being a company director, lawyer, chartered accountant, or justice of the peace;
- until discharge, you may not seek credit of more than £500 without declaring that you are bankrupt;
- you may have to make payments out of your income for the benefit of your creditors for up to 3 years; &
- your bankruptcy is published in the London Gazette and the Insolvency Service’s website, so people who know you personally may become aware of it, which may be embarrassing.

While many people would not want to accept these disadvantages, they may not matter much to you if you have little of value and are in a job that is not prohibited. Your home is unlikely to be at risk if it is rented, or you own a property with negative equity. If so, you may not mind

HMRC petitioning for your bankruptcy. Indeed, you may decide to speed things up by presenting a “debtor’s petition” for bankruptcy, although in this case you would have to pay a deposit of £525 towards the costs of administering your bankruptcy, and a court fee of £175 (which is waived for people on income support and certain other benefits).

Debt relief orders

If you have worrying debts but can’t raise the money for a debtor’s petition for bankruptcy, then you may want to apply for a debt relief order (DRO). This procedure was introduced in 2009 to help people in England and Wales who owe relatively little money, have little or no disposable income and no assets to repay what they owe, but cannot afford to make themselves bankrupt.

DROs cost £90 and are administered by “authorised intermediaries” (many of whom are advisers in Citizens Advice Bureaux), and the main requirements are that:

- you are unable to pay your debts;
- you owe up to a maximum of £15,000;
- your total gross assets do not exceed £300; &
- after taking away tax, national insurance contributions and normal household expenses, your disposable income is no more than £50 a month.

There is more guidance on DROs in ‘Guide to Debt Relief Orders’ published by the Insolvency Service which may be downloaded from www.bis.gov.uk/insolvency

In Scotland there is a similar process, Low Income Low Asset (LILA) bankruptcy. See www.aib.gov.uk



But do get independent advice

Petitioning for bankruptcy or a DRO is a serious step - with possible pitfalls depending on your situation - and so it is important that you get good independent advice before going ahead. This could be obtained from a money adviser in a Citizens Advice Bureau or other voluntary organisation, or from a registered insolvency practitioner. You may also want to review the resources mentioned on page 27.

Individual voluntary arrangements

Bankruptcy can sometimes be avoided by entering an individual voluntary arrangement (IVA) with your creditors. This can be any arrangement to pay them part or all of your debts, immediately or over a period of time, provided it is acceptable to over 75% of your creditors (by value of the amounts owed).

Unfortunately, many people facing tax debts are unable to make an IVA because:

- they are unable to raise the fees necessary to pay an insolvency practitioner who is required to supervise the IVA; or
- creditors who are owed 25% of the total debt vote to block the proposals.

Nevertheless, it is worth exploring whether you might be able to propose an IVA which might be acceptable to at least 75% of your creditors. Most insolvency practitioners will be happy to have a short meeting with you - without making any charge - to consider whether this is possible. However, it can be difficult to obtain HMRC's agreement to an IVA and around half the cases submitted to HMRC are likely to be turned down.

Tax Credits and overpayments

We do not seek to explain the enforcement of tax credit overpayments, which involves several different procedures. **Do not rely on the information in respect of other tax debt in this booklet.**

If HMRC advises that you have been overpaid, there are separate provisions to appeal, or to dispute the overpayment on grounds of HMRC error or delay under Code of Practice 26.

Overpayments are collected in two ways:

- **If you are still receiving tax credits under the same award** as that in which the overpayment arose, then the overpayment is recovered by reducing your future tax credit payments, usually by 25% (or 10% for those on low incomes). You may ask HMRC to reduce the deduction if it will cause you hardship.
- **If the award on which the overpayment arose has ended**, then HMRC will contact you to repay the overpayment directly, but the rules and procedures are more generous than for income tax debts. You can get 12 months to repay on request, with much longer periods of up to 10 years or more if needed. If you are on a very low income or on certain benefits, then collection will be suspended and in some cases the debt may be written off. HMRC does not use bankruptcy to recover tax credit overpayments. From 6th April 2012 tax credit overpayments of under £3,000 can be recovered through your PAYE tax code.

The tax credit system is explained on www.taxaid.org.uk in the tax credits section, while HMRC explains its rules for recovery of overpayments at www.hmrc.gov.uk/leaflets/how-hmrc-handle-txcr-opay.pdf

If you need advice contact your local Citizens Advice Bureau.

What to do if you have never declared your income

Some people owe tax, but do not receive demands because the HM Revenue and Customs does not know that they have been receiving taxable income.

This situation is serious, because you may be charged penalties for failing to report your income and, in the most serious cases, there is the risk of prosecution.

You will generally benefit from disclosing the position to HM Revenue and Customs without delay because:

- if you report the situation voluntarily, before HMRC suspects anything, you are unlikely to be prosecuted
- if you disclose your income and cooperate fully with the investigation or enquiry that will follow, this should help to reduce any penalties payable.

It may also help to know that HMRC will often try to reach an agreement with you, regarding your outstanding tax, that reflects your ability to pay.



TaxAidTIP

It is not a good idea to visit a tax office to tell them of your failure to declare your income before you have written. The staff working on the reception desk will not normally be trained to deal with such cases, nor will you have a record of what you have reported, which may be very important later on.

What should you do?

While we would advise you to report your failure to notify to HM Revenue and Customs as soon as possible, it is usually a good idea to seek advice from an accountant or tax adviser first. After reviewing the situation, they may be able to tell you how much tax you have failed to pay, how seriously HMRC will view your situation, and how best to approach HMRC.

If you cannot afford to pay for this advice, TaxAid may be able to help you. For more information, see www.taxaid.org.uk. Then contact **TaxAid's helpline 0345 120 3779** and select option one. Otherwise, find an accountant or tax adviser (see below).

Once you have received this advice, the matter should be reported to HMRC. This may be done by you or the adviser. It should normally be in writing, as it gives the chance to present your case in full, explaining any personal reasons why you failed to declare the income, and to include accounts or summaries which indicate the level of income involved.

This should help to ensure that HMRC responds to you appropriately.



Sources of information and advice

If you need free advice on dealing with your tax or HM Revenue and Customs, see www.taxaid.org.uk. There is also further detailed information on this site in the Advisers section.

HM Revenue and Customs

You may also want to have a look at the following leaflets available free from all tax offices or on the HM Revenue and Customs website www.hmrc.gov.uk/leaflets/C14.htm

- Distraint - what it means for you (EF1);
- The Magistrates Court - What it means for you (EF2);
- Northern Ireland Magistrates' court - What it means for you (EF2 (NI));
- The County Court - what it means for you (EF3);
- The Sheriff Court - what it means to you (EF4) (for Scotland);
- Bankruptcy - what you must do (EF5);
- Bankruptcy in Northern Ireland - what you must do (EF5 (NI)); &
- Sequestration in Scotland - what you must do (EF5 (Scotland)).



TaxAidTIP

You have important rights as a taxpayer. HM Revenue and Customs has a Charter, under which it promises to treat you fairly and courteously. If you have clear evidence that the person dealing with your case has been harsh, rude or unfair, you may complain and ask for your case to be handled by someone else.

For more information see "Your Charter" on the HMRC website at www.hmrc.gov.uk/charter

Other sources of advice

Outside our guidelines for income threshold (£17,000 a year for a single person)? If you appoint a professional accountant or tax adviser to help you with your tax, you should do so with great care. It is not widely understood that absolutely anyone can set up in business offering tax advisory services, even if they have absolutely no qualifications or experience. So if you choose someone at random from the phone book, yellow pages or the internet, you do so at your own risk.

In our experience you are more likely to make a good choice if you appoint someone who meets all, or at least three, of the following criteria:

- they are recommended by someone you know
- they belong to a professional institute which will have required them to take tax examinations, will require that they have professional indemnity insurance and will have a complaints procedure
- they have considerable experience in advising on tax in the areas in which you require help
- you have met them and they seem to be efficient in the way that they work and someone whom you could get along with.

If you need a professional tax adviser, a good place to start would be the:

Chartered Institute of Taxation
www.tax.org.uk • Tel: 020 7340 0550

Institute of Chartered Accountants in England & Wales
www.icaew.com • Tel: 020 7920 8100

Institute of Chartered Accountants of Scotland
www.icas.org.uk • Tel: 0131 347 0100

Institute of Chartered Accountants in Ireland
www.icaei.ie • Tel: Belfast (from NI) 028 9043 5840



Further information and advice on bankruptcy

There is lots of useful information available from the government's insolvency services and others. Contact details are as follows:

FOR ENGLAND AND WALES:

The Insolvency Service

www.insolvency.gov.uk • Tel: 0845 602 9848
The Insolvency Service publishes a Guide to Bankruptcy. Copies of this and other leaflets are also available by phoning Insolvency Service Publications: 0845 015 0010 or through their website.

The Bankruptcy Advisory Service

www.bankruptcyadvisoryservice.co.uk
This is also a good source of help and information. They can be contacted on 01423 862114. They make a small charge for their services.

FOR SCOTLAND:

The Accountant in Bankruptcy

PO Box 8313, Irvine, KA13 2AA
www.aib.gov.uk • Tel: 0845 762 6171

FOR NORTHERN IRELAND:

The Insolvency Service

Fermanagh House, Ormeau Avenue,
Belfast BT2 8NJ
www.detini.gov.uk/deti-insolvency-index.htm Tel: 028 9025 1441

**TaxAid, Room 304, Linton House
164 - 180 Union Street, London SE1 0LH**

www.taxaid.org.uk

Helpline: 0345 120 3779

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TaxAid

In this booklet we describe the law and practice in England and Wales. The legal procedures in Scotland and Northern Ireland are somewhat different, but follow broadly the same approach.

This document can be downloaded from www.taxaid.org.uk

Ask for a copy of this document in larger print or download from www.taxaid.org.uk

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