



TAXREP 03/14

(ICAEW REP 11/14)

## ICAEW TAX REPRESENTATION

### PAYE REAL TIME INFORMATION

Comments submitted on 24 January 2014 by ICAEW Tax Faculty in response to HMRC technical note *Legislative changes relating to Real Time Information: draft secondary legislation for comment* published on 29 November 2013

#### Contents

	Paragraph
Introduction	1-3
Who we are	4-6
Key point summary	7
Major points	8-11
Detailed comments	12-14
Ten Tenets for a Better Tax System	Appendix 1

## INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the technical note [Legislative changes relating to Real Time Information: draft secondary legislation for comment](#) published by HM Revenue & Customs (HMRC) on 29 November 2013.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the Tax Faculty and ICAEW is given below. We have also set out, in Appendix 1, the Tax Faculty's Ten Tenets for a Better Tax System by which we benchmark proposals to change the tax system.

## WHO WE ARE

4. ICAEW is a professional membership organisation, supporting over 142,000 chartered accountants around the world. Through our technical knowledge, skills and expertise, we provide insight and leadership to the global accountancy and finance profession.
5. Our members provide financial knowledge and guidance based on the highest professional, technical and ethical standards. We develop and support individuals, organisations and communities to help them achieve long-term, sustainable economic value.
6. The Tax Faculty is the voice of tax within ICAEW and is a leading authority on taxation. Internationally recognised as a source of expertise, the faculty is responsible for submissions to tax authorities on behalf of ICAEW as a whole. It also provides a range of tax services, including TAXline, a monthly journal sent to more than 8,000 members, a weekly newswire and a referral scheme.

## KEY POINT SUMMARY

7. A year after go live, PAYE real time information (RTI) still has too many teething troubles. We and other representatives of employers, payroll agents/bureaux and software developers have set up a joint task force with HMRC to fix RTI. In the meantime, we recommend that:
  - commencement of automatic penalties should be delayed, and
  - Government should ensure that HMRC is adequately funded to fix RTI so that it provides an adequate level of service.Implementing both of these suggestions would help to curtail ongoing operational costs for employers and HMRC.

## MAJOR POINTS

### Penalties and the need to fix RTI

8. In principle we accept the need for penalties to ensure compliance. However, nearly a year after go live, we are concerned that RTI still has serious teething troubles. It also does not comply with our *Ten Tenets for a Better Tax System*, notably Tenets 3 and 4 *Simple and Easy to collect*. Some of the problems have arisen from the demands of universal credit, where the need to submit full payment summaries on or before payday has had to be relaxed by the government, which we welcome, and other problems, which continue, are the result of the design of HMRC's RTI processes and information technology.
9. Symptoms that not all is well with RTI include:

- employers are not filing RTI returns at the right time or including the correct data in the appropriate boxes because adjustments that they have had to make to their processes to fit in with HMRC's IT requirements are neither logical nor intuitive, eg the time limits for submitting employer payment summaries for different purposes,
  - the need for employers to input data to suit HMRC's IT rather than in accordance with the law, for example starter and leaver dates and payments after leaving,
  - errors on HMRC's employer PAYE accounts, some of which are inexplicable and others which arise from employer confusion and yet others which arise from HMRC reallocations,
  - duplicate employment records,
  - incorrect documentation sent to employers by HMRC, for example generic notification notices (GNN) where employers have done what they should have and demands for payments leading to visits from bailiffs even where the employer or payroll agent has been liaising with HMRC,
  - the fact that the HMRC online business tax desktop (BTD), alias liability & payments viewer (LPV), which can be looked at by employers, shows information that is incomplete and different from what HMRC helpline operators can see (this may be due to the timing of updates to BTD/LPV which is too slow for a real time system),
  - the inability of agents to view the BTD/LPV,
  - gaps in HMRC's guidance (which we acknowledge HMRC is rectifying), and
  - delays by HMRC in announcing problems with RTI until after they are fixed.
10. We and other representatives of employers, payroll agents/bureaux and software developers have set up a joint task force with HMRC to make RTI work. We understand that as RTI is no longer a project in development but is 'business as usual' for HMRC, in funding terms the potential for improvements is limited. This raises the prospect of RTI taking a long time to bed down and provide an acceptable level of service: five years seems to be the average time for HMRC IT. In the modern commercial world, which is where most employers are, and at a time when the economy is recovering from crisis and business is having to work hard to make profit, such a long period is unacceptable.
11. We therefore feel that to provide sufficient time for employers to become familiar with the new regime and for HMRC to get the RTI processes and IT right under the auspices of the joint task force, it is essential that:
- the start date for RTI automatic penalties is delayed, and
  - HMRC has adequate funding to sort out RTI as soon as possible.

## DETAILED COMMENTS

### Penalties – late filing

12. We understand that late filing penalties will be notified to employers once per quarter, and that in the intervening months GNNs will be used to remind employers that they are in default before a penalty notice is issued. Given that, as noted above, many GNNs are being sent to employers even when employers have done what they should, we urge HMRC to ensure that incorrect GNNs are not issued once penalties are introduced, otherwise employers faced with the prospect of a penalty at the end of the quarter are likely to call helplines to ensure that the GNN will not count as the first strike in the penalty process. Similarly, it will be essential to ensure that penalty notices are not issued incorrectly.
13. In new Regulation 67K we should welcome confirmation that a new employer will not be penalised for not submitting an RTI return within 30 days of first paying an employee where there has been a delay beyond the control of the employer in making the PAYE scheme operational, for example, in obtaining online log in identification/password etc.

## Impacts of these changes

14. In view of the fact that for so many employers RTI is still not working as it should be, we are disappointed that in para 26 the [impact assessment](#) supporting the non-penalty measures is that dated March 2013 which contains the misleading statement that 'The resulting net ongoing impact on administrative burdens is estimated as a £300 million saving per year.'. We acknowledge that it is not easy to quantify compliance costs but in the light of the results of surveys undertaken in 2013, including by HMRC, we feel that recognition should be given to the fact that estimated savings of £300 million was, to put it mildly, optimistic.

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## APPENDIX 1

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

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

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