

TAXREP 41/09

EMPLOYER COMPULSORY ONLINE FILING

Memorandum submitted in July 2009 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment on draft PAYE and NIC regulations published in April 2009 by HMRC

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EMPLOYER COMPULSORY ONLINE FILING

INTRODUCTION

1. We welcome the opportunity to comment on the draft regulations published on 9 April for employer online filing at http://www.hmrc.gov.uk/drafts/payee-nic_regs.htm. Also the updated impact assessment ('RIA') at <http://www.hmrc.gov.uk/ria/carter-ia-final1.pdf>. We shall be responding separately on the draft regulations on compulsory VAT and CT online filing and electronic payment but the comments in this memorandum also apply to those taxes.
2. Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are set out in Annex A. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex B

KEY POINT SUMMARY

3. We consider that laying the regulations for compulsory online filing for all should be deferred until:
 - HMRC service standards for e-filing payroll returns, including correct PAYE codes and P11D returns has been fully operational for at least 12 months,
 - HMRC has been able to process data received electronically from taxpayers promptly, correctly and without the need for manual intervention, for at least 12 months,
 - Landline broadband access is available throughout the UK, and
 - The economic climate which is causing financial strain to most businesses has improved.
4. If the date for compulsory online filing is not deferred then there should be no automatic penalties for failing to e-file unless and until the foregoing conditions are met.

GENERAL COMMENTS

5. In principle we support the move to online filing and agree that the benefits it offers ultimately will enable information to be processed more quickly and more accurately enabling HMRC to provide a better service to taxpayers and their agents. However, in practice this is not happening.
6. We do not think that the system is currently sufficiently robust and fit for purpose to bring forward the Regulations for compulsory online filing.
7. We continue to receive reports of e-filing issues with both customer facing and back office systems.
8. Lord Carter in his report published in March 2006, states in Recommendation 23 that to be fit for purpose, online services should not be implemented unless rigorous testing at least a year before implementation is successful.

9. The IA gives the impression that there are few practical problems with the e-filing system. However, these are some of the issues raised by our members in recent months which illustrate HMRC customer-facing and back office IT failures:
- Incorrect penalty notices for returns filed online and on time (eg P35 and P11D(b) for 2007/08).
 - Notices of coding which ignore the ticks by taxpayers in the relevant box in the self assessment tax return asking for non-PAYE income not to be included in the tax code. Taxpayers/agents have to ask for the code to be amended which employers then have to reprocess for payroll purposes.
 - NIC deficiency notices (for example, those sent out in September 2008) that do not take into account all NICs paid for the relevant period.
 - NIC repayment claims not taking into account all employments because not all forms P14 had been processed.
10. Here is an example of the frustrations suffered by members submitting employer end-of-year returns:
- "I filed an end-of-year set of PAYE forms yesterday (20.4.09), and the system told me that there was a delay and I should log in again after two hours to check progress. In the meantime, I got the usual e-mail confirming successful submission. Today I logged in to print the forms P60, and the message now is that the submission is still pending. So off we go to the on-line technical helpline, who say that 'it could take as long as 48 hours' and it's only possibly affecting some and not others etc etc etc. I ask the helpline why there isn't a warning on the website at the point of the problem to save us agents wasting time trying again and again and also a message on the technical helpline, who know less than us about the problem, to save us holding on the phone for ages just to get this useless answer – no coherent reply received to that one."*
11. When the system is sufficiently robust and reliable, the business case for e-filing will mean that employers will choose to file returns online because of the benefits. There would be no need for compulsion.
12. There remains a sizeable minority of employers who do not yet have access to the internet, or where they do have no access to broadband. This may be attributable to the cost of those services for which they have little other use or because of where they live and work.
13. Alternative access using an internet café or library carries security risks and raises confidentiality issues.
14. We note the provision in the draft PAYE and NIC regulations which impose £nil penalties for employers of 1-5 employees in the first tax year of full compulsion (year to 2010). However, this is insufficient reassurance that HMRC will be able to provide alternative filing options to help such people to overcome this difficulty.
15. We acknowledge that the government in Budget 2009 pledged expenditure to extend broadband coverage but in the meantime we consider that the commencement date of the regulations should be deferred until this has been achieved.
16. Lack of computer access is noted in the research report commissioned by HMRC: ['The Extent and Nature of the use of Computerised Accounting by Businesses to meet their VAT and Corporation Tax Obligations'](#) published in December 2008. This

states that 10% of businesses do not have access to a computer. We understand that a proportion of these may use an agent to e-file on their behalf, but this will not apply to all of them.

17. Not all types of business either want or need a computer. For example, smaller businesses often, but not exclusively, run by older individuals who have not needed to learn to use new technology. Such entities will have either to incur additional costs buying a computer and training to use it in order to comply with HMRC online filing requirements, or pay agents to complete and file returns for them. The impact assessment does not include costs for this, but only lists registering on the website and HMRC customer support. Costs to business are understated.
18. Many small employers do not run businesses. Those employing home helps such as nannies and carers will also be compelled to e-file employer returns. Current Government proposals will make many more elderly and disabled carers responsible for their own budgets to empower them to choose and pay for their own care. We do not think it is appropriate for such 'accidental' employers to be forced to e-file at this time.

SPECIFIC COMMENTS ON THE DRAFT REGULATIONS

19. We recommend that:
 - The commencement date for the regulations should be deferred (Regulation 1 in both Statutory Instruments), and
 - If the date for compulsory online filing is not deferred then there should be no automatic penalties for failing to e-file unless and until:
 - HMRC service standards for e-filing payroll returns, including correct PAYE codes and P11D returns has been fully operational for at least 12 months,
 - HMRC has been able to process data received electronically from taxpayers promptly, correctly and without the need for manual intervention, for at least 12 months,
 - Landline broadband access is available throughout the UK,
 - Proper provision is made for non-business employers, and
 - The economic climate which is causing financial strain to most businesses has improved.

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ICAEW AND THE TAX FACULTY: WHO WE ARE

1. The Institute of Chartered Accountants in England and Wales (ICAEW) is the largest accountancy body in Europe, with more than 128,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department for Business, Enterprise and Regulatory Reform through the Financial Reporting Council. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.
3. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 10,000 members of the ICAEW who pay an additional subscription.
4. To find out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at taxfac@icaew.com or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

THE 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 www.icaew.co.uk/index.cfm?route=128518.