



ICAEW TAX REPRESENTATION

PAY AS YOU EARN AND REAL TIME INFORMATION

Comments submitted on 11 January 2013 by ICAEW Tax Faculty in response to HMRC technical note *Legislative changes relating to Pay As You Earn and Real Time Information* and draft secondary legislation published on 16 November 2012

Contents

	Paragraph
Introduction	1-5
Who we are	6-8
Key point summary	9-11
Major points	12-18
Comments on the draft legislation	19-20
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 Pay As You Earn and Real Time Information* and draft secondary legislation](http://www.hmrc.gov.uk/drafts/improving-payerti.htm) published HM Revenue & Customs (HMRC) on 16 November 2012.
2. Topics covered include not only real time information (RTI) reporting deadlines, forms P45, employer mandation dates, direct collection of NIC from employees who do not have a UK based employer, information about payments to employees and earlier year updates, but also phased closure of the Simplified PAYE Deductions Scheme and a change in the tax code applied to certain commuted pension payments from registered pension schemes.
3. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
4. We are members of HMRC's Customer User Group and have attended numerous meetings with HMRC jointly with other professional bodies in which we have put forward some key comments and concerns about certain of the policies behind the draft legislation.
5. 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

6. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
7. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
8. 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

9. The deadlines for submitting RTI reports are unrealistic for many employment situations and the [relaxations announced on 12 November 2012](http://www.hmrc.gov.uk/news/rti-payee-returns.htm) will not apply in many cases. The burdens imposed by RTI are likely to cut across the Government's growth agenda by discouraging recruitment. Improvements to the welfare system need to take into account the needs of employers. Employers with employees with simple pay patterns – covering the majority of employees but not the majority of employers – are likely to be able to comply with RTI without undue difficulty, as evidenced by HMRC's pilot, but those with facing more complex but not uncommon circumstances, as outlined in the Appendix of our October letter to the Exchequer Secretary to the Treasury ([TAXREP 54/12](#))

<http://www.icaew.com/~media/Files/Technical/Tax/Tax-faculty/TAXREPs/2012/taxrep-54-12.pdf>), and smaller employers generally will find it very burdensome and costly if not impossible to comply. We do not believe that it is possible for HMRC to go-live pilot such circumstances, resolve them satisfactorily and provide guidance for employers by the time RTI is mandated for most employers. The only realistic solution for these situations is to have a backstop reporting deadline coinciding with the familiar current due date for accounting to HMRC for PAYE and NIC of 19th of the month following payment, or when the next regular payroll run is done.

10. The impact assessment published in March 2012 <http://www.hmrc.gov.uk/tiin/rti-improving-payee.pdf> is wholly unrealistic and needs updating with true data; we suggest it be revised and reissued at Budget 2013.
11. It is disappointing that HMRC has not been able to provide a marked up version of those portions of the statutory instruments that are being amended by the draft legislation on which comments are invited. It would make it easy to check that the draft legislation works as intended and we would have thought it is needed to ensure that the amended legislation is correctly worded. In the absence of such a document we have not been able to devote the time needed properly to consider the draft legislation. We have therefore with regret decided not to comment on the text of the draft statutory instruments.

MAJOR POINTS

12. We remain concerned that the deadlines for submitting RTI returns will be impossible to meet and unreasonably burdensome for many employers despite the relaxations announced on 12 November 2012.
13. Such burdens will act as a barrier to growth and deter recruitment for many employers, as well as encourage the growth of the shadow economy and bogus self-employment. This cuts across the Government's growth agenda and the need to reduce the burdens on developing businesses. Unless addressed, the potential for RTI to trigger unintended behaviour and attract extremely negative publicity and extra work for HMRC remains high, despite any soft landing for penalties.
14. We acknowledge that RTI is intended to support the Government's welfare reforms, especially Universal Credit, but a better balance between the needs of employers, vital to the recovery of the economy, and the needs of the welfare system must be achieved. For employers employing the majority of employees who have straightforward pay patterns, complying with RTI as presently proposed should not present undue difficulties, as demonstrated by HMRC's go-live pilot, leaving aside costs of transition. However, we believe that HMRC's pilot will not reveal more complex yet not uncommon situations in time for solutions to be devised and implemented before all employers are mandated into RTI. We have collaboratively been helping HMRC to anticipate and resolve coal-face issues before RTI goes live for all, but more flexibility is needed if the system is to work smoothly.
15. As explained in our letter dated 18 October 2012 to the Exchequer Secretary to the Treasury, published as TAXREP 54/12, and papers submitted to HMRC, the main burden arises from the need for employers in most cases to submit, online, an RTI return to HMRC on or before the day of each payment subject to PAYE or NIC is made to an employee, i.e., potentially daily returns, rather than one annual return as at present. However, in the situations listed in the Appendix to that letter, in many circumstances this will be impossible, or at best impractical and costly.
16. The relaxations announced on 12 November 2012 will do little to alleviate the additional burdens imposed by RTI in many of the situations listed in the Appendix to the above-mentioned letter and on smaller employers generally. The seven day extensions contain

conditions which do not reflect real life (eg end of shift payments made by mobile telephone text which is more secure than cash disqualifies the employer from benefitting from that relaxation) and even if met will oblige employers and payroll agents to submit 52 reports per year.

17. The only realistic solution for the early examples in the aforementioned Appendix and smaller employers is to have a backstop reporting deadline coinciding with the familiar current due date for accounting to HMRC for PAYE and NIC of 19th of the month following payment, or when the next regular payroll run is done.
18. We also consider that the [Tax Information and Impact Note \(TIIN\)](#) published on 15 March 2012 should be revised to reflect realistic costings and reissued at Budget 2013. It underestimates materially both transitional and on-going costs for employers. By way of example, whereas the TIIN shows ongoing cost savings for employers, initial research carried out by a smaller practice with relatively common client payroll situations suggests an overall average additional cost of £323 per payroll, with the highest additional costs falling on those for which all that is needed to be filed presently are year-end forms P35. We have supplied HMRC with names of payroll agents who are willing to explain how RTI will create extra work and quantify time costs.

COMMENTS ON THE DRAFT LEGISLATION

19. We find it disappointing that HMRC has not been able to provide us with a marked up version of those portions of the statutory instruments that are being amended by the draft legislation on which comments are invited. We believe that the existence of such a document would help everyone, including HMRC, better and more quickly to appreciate and understand the impact of the draft legislation on which comments are invited. We would have expected this would be an essential prerequisite to ensuring that the draft legislation is correctly worded so that the amended regulations work as intended.
20. In the absence of such a document we have not been able to devote the time needed to consider thoroughly the draft legislation. It is with regret that we have therefore decided not to comment on the proposed text of the draft statutory instruments.

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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)