



## TAX COMPETITIVENESS REVIEW

ICAEW welcomes the opportunity to comment on the paper [Competiveness review: initial thoughts and call for evidence](#) published by the Office of Tax Simplification on 19 March 2014.

This response of 30 June 2014 has been prepared on behalf of ICAEW by the Tax Faculty. Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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## GENERAL POINTS

1. We have set out detailed comments below in relation to the content of the OTS paper and answered the majority of the questions posed in the paper. We believe there are a number of administrative problems with the current UK tax system and we have provided analysis and recommendations which we hope you will find helpful. We would be very happy to meet with you to consider the issues in more detail.

## COMMENTS ON SPECIFIC PARAGRAPHS

### Payroll taxes: paras 2.15-2.22

#### Paras 2.15 and 2.16

2. Despite official reports that RTI is going well, a significant number of employers and payroll agents/bureaux are having difficulties with PAYE real time information (RTI). A joint task force (JTF) was set up in November 2013 comprising about 15 employer/ payroll agent/bureau and software developer representatives and HMRC. We and other representatives are providing examples of errors to HMRC to help them investigate what has gone wrong and devise IT and process fixes and issue guidance. This work is likely to continue for the foreseeable future.
3. HMRC's 'go-live' pilot officially ran for tax year 2012/13, but, as evidenced by the welcome relaxations to the on or before payday deadlines in specific circumstances and delays to start dates for certain penalties, 2013/14 was effectively an additional pilot year. Given the evidence of problems being provided to HMRC by the JTF and the amount of work that HMRC is doing behind the scenes, the current year 2014/15 may also turn out to be somewhat of a pilot year.
4. The requirement to submit pay data to HMRC on or before payday continues to create enormous difficulties for employers of certain categories of employee, eg the weekly paid and those paid at the end of a shift, and we welcome the fact that the government has continued the relaxations to the filing deadlines until April 2016 for certain employers in specific circumstances.
5. Current issues under discussion by the JTF include payments after leaving, joiner and leaver dates, schemes that have ceased or are dormant but need to submit forms P11D, incorrect generic notification notices (GNNs) and interim penalty letters issued by HMRC often without employer identification, duplicate employments (which can be created when a payroll software provider changes mid-year), errors on HMRC's employer PAYE accounts (nothing we have seen over the last month or so suggests that there has been any improvement) exacerbated by HMRC Debt Management & Banking's (DMB's) heavy-handed approach to debt collection based often on wrong figures, and difficulties in getting overpayments agreed and refunded, inaccuracies and delays in updating HMRC's online PAYE business tax dashboard (sometimes referred to as the payments and liabilities viewer) which for PAYE is visible only by employers not agents, and the government gateway falling over. The new Employment Allowance, with uncertainties over who is eligible to claim owing to lack of clarity over how to define functions of a public nature and who are connected parties, and auto enrolment, which in 2014/15 stages in employers with 50-250 employees, most of whom do not already have active pension schemes, are exacerbating problems.
6. We are also concerned about the poor quality of advice provided by HMRC's helplines and the time it takes to get connected to, and, following the introduction of the voice activated system to direct calls, the difficulty of getting through to an operator.
7. Looking forward, the JTF is meeting HMRC to discuss online penalty appeals, starters and leavers including plans to abolish P45, HMRC's debt management activities, including payments not reconciling to remittances (eg because of duplicate employments, and estimated liabilities, referred to as 'specified charges', imposed in the absence of a full payment submission (FPS) or 'no payment' employer payment summary (EPS) and HMRC's IT corrupting payments that have been received) and wording of standard debt collection letters, annual PAYE schemes, shared

parental pay (and leave) reporting under RTI including for premature births which could be as early as November 2014, this summer's upgrade to HMRC's Basic PAYE Tools, migration of guidance to Gov.uk (some, including calculators, is not being migrated and may be lost), how apprenticeship funding will interact with RTI from 2016 (Government has been consulting on whether to use HMRC's employer PAYE accounts to deliver funding to employers), student loans from 2016, decommissioning of electronic data interchange (EDI), introduction of identity authentication, and the possibility of an agent portal from 2015.

8. We acknowledge that since the JTS was set up HMRC has issued a lot of guidance and is putting IT fixes in place, including some from April 2014, eg to include a new data field for why an FPS has been submitted late and the ability to submit a nil payment EPS during the tax month to which it relates. However, much remains unresolved.

9. The relaxation to 'on or before' requirements only applies to PAYE schemes opened prior to 6 April 2014. This distinction is likely to pass many employers by and cause more confusion.

10. The separation within HMRC of PAYE RTI and the NIC & PAYE system (NPS) from debt management systems and processes hinders the operation of RTI.

#### 2.17

11. We agree that it is not only the different treatment of benefits and expenses for NIC and income tax which causes difficulties. Compliance costs are created when HMRC insists on employers submitting returns of benefits-in-kind and expenses when they have been included on, and tax and NIC accounted for via, payroll.

#### 2.18

12. Whilst there is a view that NIC is no more than an employment tax by another name, the fact remains that our international obligations necessitate the UK's having a social security levy. Also Government has decided to raise the income tax personal allowance but not the lower NIC thresholds.

13. Given these policy constraints we recommend that Government should concentrate on aligning the rules by which remuneration, benefits-in-kind and expenses are chargeable to tax and NIC. And we also believe that it would make NIC feel much simpler if the Class 1 primary and secondary thresholds were the same by design (rather than, as this year, by accident), and if the Classes 2 and 4 thresholds aligned with equivalent Class 1 thresholds. We see no reason why this could not be achievable on a revenue-neutral basis.

#### 2.19

14. Determining the correct employment status for contractors is an area of concern. Many contractors use agencies who issue contracts to the intermediary company which contain clauses to try and protect the company from the provisions of IR35 and operate on the basis that IR35 does not apply. There is much uncertainty in this area – a proper alignment of employment law and PAYE legislation could be one way to bring more certainty to the situation.

15. One other area that is likely to cause further confusion to businesses is the new regulations with regard to taxation of partners of an LLP, as many partners are going to come under the PAYE regime from 2014/15.

#### 2.20/2.21

16. Regarding employment allowance, once employers have determined whether they are eligible, which may involve working out the meaning of 'functions ... of a public nature' and/or how a new version of the connected persons rules impact, claiming it is unlikely substantially to increase the burden of payroll preparation, provided that their payroll software allows the submission of an employer payment summary. Similarly, for the NIC exemption for the under 21's, employers will have to expend additional effort and time to ensure that they have the correct dates of birth for their younger employees, but claiming it is unlikely to result in major cost implications.

17. However, auto-enrolment will substantially increase employer compliance costs, both in terms of setting up and on-going operation.

## 2.22

18. The OTS have recognised that the amount of time taken to file payroll taxes is higher than any other tax due to filing requirements and frequency of payroll routines. The frequency of payroll routines has been exacerbated by RTI.

## RESPONSES TO CONSULTATION QUESTIONS

### Q1. Which taxes are most difficult for you and why? Which do you find easiest?

19. Whilst, as noted above, payroll creates operational compliance costs because of RTI, the application of tax and national insurance contributions (NIC) on benefits-in-kind and expenses is more complex than dealing with payroll, the operation of which tends to be fairly automated. NIC is more complicated than income tax due to the fact that NI is divided into primary and secondary contributions and different rates and thresholds apply to each (albeit the primary and secondary NIC thresholds are aligned this year, but only by coincidence).

20. In recent months, we have received few comments about the difficulty of dealing with filing corporation tax returns using Inline Extensible business reporting language (iXBRL). There would appear to have been acceptance of it as a compliance obligation which must be endured rather than one which has lessened. The smallest companies with simplest accounts can use HMRC's free software, but this does not suit all circumstances and those excluded from this by the nature of their income do incur additional costs. We have previously suggested that a small company could be able to make a return similar to the self assessment return for an unincorporated business rather than needing to submit accounts.

21. The construction industry scheme is a particular burden for those involved in construction. We understand why the scheme was first introduced, but query why this particular sector of the economy continues to be singled out for this special treatment. We continue to be concerned that HMRC retains in excess of £300m each year, which is collected through the scheme, but which remains unreconciled to any tax returns submitted. The presumption is that many of those on behalf of which these amounts have been paid, have simply presumed the sums equate to their tax liability for the year. This illustrates a significant difficulty with this area of tax.

### Q2 Over the past five years, has it become easier or harder to understand your tax obligations? Please give examples of good or bad changes

22. It has become harder to understand tax obligations, by which we include processes, particularly with regard to PAYE, because RTI has been a big learning curve, which still continues, and has been fraught with difficulties for many employers.

23. Capital allowance computations can be difficult for companies, particularly in relation to the availability of the annual investment allowance during a period where the rate change affects the limits. This complicates the calculations. As technological advances make machinery more complex, specialist advice may also be needed to identify elements of larger items of equipment which qualify for further reliefs, such as those for energy saving or environmentally beneficial plant and machinery.

### Q3 Over the past five years, have you had to spend more or less time and money complying with your tax obligations? It would be helpful to have specific examples.

24. As noted above in our comments on payroll taxes, PAYE reporting to HMRC has become far more time consuming and burdensome and therefore costly following the introduction of RTI. Indeed the [Daily Telegraph reported on 20 June 2014](#) that official figures show that the new

system will have cost taxpayers at least £273 million by next year. This seems at odds with the expected saving for employers of £300m cited in the government's [tax information and impact note published on 15 March 2012](#).

25. Other issues that have started to become more problematic in the last year are obtaining repayments of overpayments of PAYE. Up until a couple of years ago, if an employer had overpaid PAYE for whatever reason, obtaining a repayment was relatively straightforward. However, from 2012/13 HMRC send out a questionnaire form P35D asking for an explanation. Explanations such as 'client made duplicate payment in error' are not accepted and a further identical form P35D is then sent out. In many cases, it takes employers and agents months and protracted correspondence to get the repayments made. Others give up.

**Q4 How easy or difficult do you find calculating corporation tax for your business?**

- a What parts of calculating corporation tax take time or are difficult to understand?**
- b Are there any adjustments you make which you feel take up large amounts of time compared to the tax at stake?**
- c How would you improve matters?**

26. We have not asked our members recently which parts of the calculations they or their clients find most difficult. Historically, there have been problems identifying which items are allowed in the accounts but disallowed for tax. Examples are entertainment, travel and subsistence.

27. Capital allowances computations can be complex and reconciling these to the fixed asset register can be time consuming. Consideration could be given to allowing accounts based depreciation to be tax deductible instead of capital allowances.

**Q5 How easy or difficult do you find managing your business's payroll? What takes time and what is difficult to understand?**

28. Please see our comments on specific paragraphs (payroll: 2.15-2.22) above.

**a How have you found the transition to RTI?**

29. Managing payrolls has been more complicated. The majority of issues arise from having to make employer payroll processes and IT requirements fit around HMRC's IT requirements which are not always clear or logical, incorrect communications from HMRC such as generic notification notices (GNNs) and letters chasing underpayments, and trying to reconcile liabilities and payments with HMRC debt management, in particular 'specified charges' (ie estimated PAYE liabilities). The time wasted on dealing with errors is compounded by difficulties with HMRC's helplines. Please see our comments on specific payroll paragraphs above.

**b How would you improve matters?**

30. To improve PAYE RTI we would suggest (the list below is not exhaustive):

- Reduce the number of FPS filings that are required so that a submission is not required each time an employee is paid, but can take place monthly. Even if an employer currently runs a monthly payroll, if an employee leaves midway through the month and is paid prior to the payroll date, then this triggers a requirement for an FPS with a supplementary FPS being required later in the pay period. Monthly reporting would also help alleviate the difficulties of getting information to the payroll on time for weekly paid employees, especially for employers who use payroll agents/bureaux, would not adversely affect Exchequer cash flow, and would not offend against the principles of universal credit, which is assessed on a monthly basis.

- Combine the FPS and EPS submissions. The FPS and EPS have different reporting requirements – and have to be filed on different dates. Furthermore, for EPS there are different filing ‘windows’, depending on the reason for the EPS, ie whether EPS is ‘financial’ (eg recovering statutory payments), ‘nil payment’ or ‘no activity’.
- Put in place IT and process fixes within HMRC to make PAYE RTI and the PAYE liabilities and payments system including viewers, and triggers for automatically produced communications such as GNNs, work properly, as a matter of priority.
- Combine HMRC’s PAYE processing and collection departments and scrap the dual tax reference system.
- Enable agents to view the PAYE part of HMRC’s business tax dashboard as a matter of priority so they can see movements on the account, as they can with every other type of tax. And ensure that employers and HMRC helpline operators can see the same full picture in respect of liabilities, payments and other adjustments on employer PAYE accounts.
- Introduce better training of HMRC staff and communication between HMRC departments. A typical example cited, still ongoing, is where a client is disputing the fact that they had PAYE owing and they spoke to HMRC last year. To follow this up, one of the agent’s staff spoke to three different people at HMRC in January 2014 who were all looking at different sections of her records – one said that HMRC had tried to call the client but had not written, the second that they had been sending letters to the client since July 2013 and the third wouldn’t comment as it was out of their remit. The only things they agreed on was that whoever the employer client had spoken to in 2013 had not logged the call and that the payment that the client had sent HMRC had not been logged as received.
- Ensure that employers do not have to make corrections themselves where a glitch in HMRC’s systems has created an error, eg a specified charge or where HMRC has moved a scheme away from being annual or not processed a scheme cessation.
- See also answer to Question 11.

**Q6 How easy or difficult do you find managing VAT for your business? How would you improve matters?**

**Additional compliance burdens on small businesses supplying electronically supplied services.**

31. We are concerned that the treatment of electronic supplies on a destination basis from 1 January 2015, and the new Mini One Stop Shop (MOSS) which is supposed to simplify the system, will do the very opposite and will be a significant burden on small UK business and will stifle the international activities of such businesses.

32. The Mini One Stop Shop simplification measures will not be available to small UK businesses that are not registered for UK VAT.

33. Such businesses will have the following options;

- register for UK VAT and suffer the loss of VAT from their UK income;
- register for VAT in every Member State to which they supply electronic services; or
- cease to make electronic supplies to customers in other Member States.

34. This will clearly be either an enormous financial or administrative burden or cause a curtailment of business and create a barrier to intra-EU trade. Unfortunately the problem cannot be resolved by unilateral action but will require a change to the Directive.

35. In practice, it may well be that small, non VAT registered, UK businesses involved in making supplies of electronically supplied services in other EU countries will fail to appreciate the challenges of the new EU rules . It is therefore likely that such businesses will be non-compliant through ignorance rather than as a result of deliberate intent.

36. Under the regime introduced by Directive 2002/38/EC from 1 July 2003, a non-EU small business is able to register for the non-EU MOSS scheme and be provided with a VAT registration number by HMRC. This will make it easier for such businesses than for their UK equivalent.

37. It is also worth noting that supplies made in another member state by UK businesses which are not registered for VAT in the UK can also be a problem because as there is no registration threshold for foreign supplies strictly any overseas, non UK, supply, however low the value, has necessitated registration in the member state where that supply is made.

#### **Agents will not be able to fill MOSS returns**

38. We understand that agents of small business will not be able to apply for MOSS registration on behalf of their clients.

#### **Mixed supplies of goods and electronically supplied services**

39. A further complication will arise in 2015, where a supplier has a mixed supply of, for example, hard copy and electronic B2C supplies of publications, such as examination material and website access. Not only will this be mixed rate, but also mixed country of supply, so will have to split between VAT returns in two countries, one of which could be under the MOSS regime.

#### **Another issue – Tour Operators Margin Scheme**

40. Another fairly specific but not uncommon problem arises with the impact of the Tour Operators Margin Scheme on businesses that would in no way consider themselves to fall within this heading. An example here would be a business organising a conference that includes overnight accommodation. An example here would be a business organising a conference that includes overnight accommodation. In practice it is possible to overcome the problem by the business acting as agent so that the final client contracts direct with the hotel. We know that the European Commission is aware of the problem and we understand that new proposals in about 2016 are likely to seek to tackle this issue.

**Q7 Although we are focussing on CT, PAYE/NICs and VAT, we are interested in any difficulties with other taxes, such as vehicle excise duty, business rates, landfill tax, and insurance premium tax, so please give feedback on those**

41. No comments.

**Q8 Does the type of business you work in create any particular difficulties?**

42. There are various employment patterns that make it impossible or impractical to comply with the requirement to submit RTI returns on or before payday. Examples include weekly paid employees and employees who are paid on the day, eg bar/waiting staff and harvest workers. The problems of getting the information to payroll in time in such situations are exacerbated where the employer uses a payroll agent. We welcome the fact, that in response to extensive representations, government has legislated for certain circumstances to allow relaxations, albeit some temporary and only relating to smaller employers which set up a PAYE scheme before a certain date, but we feel that more robust solutions are required – see answer to Question 5B.

43. There are also regions of the country which broadband does not reach. It should be accepted by government that the digital by default policy cannot work in these areas.

**Q9 What has your experience been of contacting HMRC? Have you been able to reach an adviser, and when you have, have they been helpful?**

## Telephone

44. The responsiveness of HMRC when contacted by phone has been a major concern for ICAEW and other professional bodies over the past few years and we submitted a comprehensive report in May 2014 [TAXREP 32/14 HMRC Telephone Service Standards](#) which sets out our concerns in detail.

45. We posted an item on our newsite at the end of May 2014 notifying readers of the publication of TAXREP 32/14 and in that posting summarised some of our main recommendations for improvement, as follows:

- an evaluation of Intelligent Telephony Automation (ITA) system to assess its effectiveness including a review of key words currently programmed for recognition and a review of questions asked by ITA;
- an analysis of the reasons why callers hang up before actually speaking to an adviser;
- an increase in the number of front line staff deployed to answer telephone calls at peak times;
- delivery of the 90% target for handling all calls, aspiring to 95% and not just settling for 80% which is yet to be achieved;
- an extension of the Agent Dedicated Lines (ADL) to include all avenues of tax such as PAYE for employers, VAT, CT, etc.;
- a review of security questions asked when calls are made to and received from HMRC;
- the introduction of a push button menu to allow callers to divert away from lengthy pre-recorded messages signposting GOV.UK.

## Post

46. We have had much less negative feedback in recent times and our most recent posting on our website to elicit readers' experiences was put up in January 2014 [How long is it taking HMRC to reply to post in 2014?](#) and the most recent comment we have received was dated early April.

## Face to face

47. HMRC is closing its enquiry offices at the end of June 2014 and the effectiveness of the replacement arrangements will need to be kept under review.

### Q10 Have you found the HMRC website and guidance easy or difficult to understand?

#### a Are there any specific areas of guidance which could be improved?

48. The HMRC website is currently being transferred to GOV.UK and in the process it is being rewritten. In the circumstances it is too early to comment on the GOV.uk site and how easy it is to locate and understand guidance. We have concerns that the new HMRC site is being developed for the general public and its content will be too simplistic for those working in tax. We are, however, pleased that HMRC is consulting with the public and agents as the new site is developed on an 'agile' basis.

49. The constant updating of RTI guidance, not all of which is integrated with the main body of PAYE RTI guidance, makes it difficult to keep abreast of the latest amendments.

### Q11 What could HMRC do to improve any of these difficulties you have had with them?

50. We suggest that with regards to the helplines:

- HMRC should replace its voice activated system for directing calls on helplines with a push button system.
- HMRC should set up a dedicated agent line that can deal competently with employment taxes and NIC – especially NIC. Agent queries are normally more complicated than queries from employees themselves, and better trained operators are needed to deal with the former.

51. We wrote in May 2014 to HMRC about their telephone helplines: see TAXREP 34/14, which we have mentioned in our above comments.

52. Turning now to the business tax dashboard (BTD):

- Agents should be able to access the PAYE part of the business tax dashboard (BTD).
- The PAYE part of the BTD should be updated in real time, and all parts of the dashboard should be available in real time.

53. And when there is an apparent underpayment, there needs to be a simple means of registering a charge as disputed, which should ensure that collection activity is halted until the reason for the discrepancy has been investigated and resolved to the satisfaction of the employer/payroll agent.

**Q12 We are focussing on the UK's tax system – but are interested in lessons from other countries. Do you have any experiences of other countries' tax systems – positive or negative – to contribute to our project?**

54. No comments.

**Q13 If you could suggest any one way of simplifying the tax system to make it more competitive, what would it be?**

55. A competitive tax system would comply with our Ten Tenets for a Better Tax System (set out in Appendix 1).

56. We would streamline personal tax and payroll by abolishing age allowance and high income child benefit charge and not remove the personal allowance at income of £100,000. Also the married couples' allowance and transferrable personal allowance which, while a good idea, is too complex for the amounts involved and those who might benefit.

57. Abolishing such provisions would simplify the tax system and make it more transparent because people would more easily be able to ascertain their marginal rate of tax. They would not even need to fill in a tax return. The Chancellor said as much when he announced that the personal allowance would be increased to overtake age allowance. It would also enable HMRC to issue more tax codes that allow PAYE to fulfil its stated purpose of collecting more or less the right amount of tax in the year, thereby reducing the number of year-end reconciliations (which for 2013/14 are estimated to encompass about 15% of (about 5.5 million) employees, which would save time for, and unnecessary contact between, HMRC and taxpayers.

## 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) )