

TAXREP 42/09

VAT: COMPULSORY ONLINE FILING AND ELECTRONIC PAYMENT

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 VAT regulations published in April 2009 by HMRC

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INTRODUCTION

1. We welcome the opportunity to comment on the draft regulations published for comment on 9 April for VAT compulsory online filing and electronic payment at http://www.hmrc.gov.uk/drafts/vat_regs.htm. Also the updated impact assessment ('IA') at <http://www.hmrc.gov.uk/ria/carter-ia-final1.pdf>. We are responding separately on the draft regulations on compulsory employer filing 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:
 - The user experience of online submission of tax forms generally to HMRC and the provision of essential information by HMRC, for example supplying VAT registration numbers to businesses, is sufficiently robust.
 - The business case for e-filing obviates the need for compulsion.
 - The financial and opportunity costs to business outweigh the financial costs. The impact assessment ignores the cost to business of buying computers, broadband connections, software, and training and forcing newly VAT registered businesses to e-file as soon as they reach the registration threshold is an additional administrative hurdle.
 - HMRC has put in place and fully tested a system which allows e-filing of VAT returns by non-VAT registered agents.
 - HMRC has put in place and fully tested a less burdensome system by which agents can set up their clients to e-file VAT returns.
 - 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.
5. We remain concerned about business data security. Home computers used for purposes other than the business accounts are often insecure. Compelling small businesses to e-file will increase the likelihood of lost data or confidential business data accidentally being seen by others. Furthermore, those who are not wired up to broadband at their home or place of business might feel obliged to use a computer to file online in a public place such as an internet café or library. Physical data security then becomes an issue.

GENERAL COMMENTS

6. 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.
7. We do not think that the system is currently sufficiently robust and fit for purpose to bring forward the Regulations for compulsory online filing.
8. We continue to receive reports of e-filing issues with both customer facing and back office systems.
9. 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.

Filing by agents

10. It is not currently possible for non-VAT registered agents to e-file VAT returns for their clients. HMRC has agreed to put in place such a system, but this is not yet operational. Regulations requiring compulsory e-filing should not be laid until this system is in place and been properly tested.
11. The current system requires clients to register and wait to receive an activation code before their agent can e-file on their behalf. A less administratively cumbersome process is needed before e-filing is made compulsory.

Data security

12. We remain concerned about business data security. Home computers used for purposes other than the business accounts are often insecure. Compelling small businesses to e-file will increase the likelihood of lost data or confidential business data accidentally being seen by others. Furthermore, those who are not wired up to broadband at their home or place of business might feel obliged to use a computer to file online in a public place such as an internet café or library. Physical data security then becomes an issue.

Access to the internet

13. There remains a sizeable minority of businesses which 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.
14. 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.
15. 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.

Costs

16. 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 to buy 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 which is particularly important during a recession.
17. HMRC states that 21% of VAT-registered traders are not connected to the internet. There are 2.1 million VAT-registered traders implying that 440,000 are not connected.
18. The cost of buying the simplest computer, without software or training, would be a minimum of £300. Assuming a three year computer life, a business broadband connection cost of at least £10 per month and a security package costing £30 per year, then the ongoing annual cost to just these businesses of just the computers, broadband connection and security will be £110 million. HMRC annual benefits are estimated at just £64 million per year compared with a cost to businesses just for hardware, broadband and security of nearly double that amount.
19. Because the VAT return is relatively short, there is no saving in time for the ordinary user in filling in or submitting the VAT return online.
20. We also think it essential to allow an opt out for those business owners with disabilities, such as those registered blind.

SPECIFIC COMMENTS ON THE DRAFT REGULATIONS

Regulation 1

21. We consider that the commencement date should be deferred for the reasons explained above.

Regulation 4: New regulation 25A

Paragraph (5) – ‘specified person’, (6) – those who are not specified, and (7) – Commissioners to notify in writing those whom they consider specified persons

22. We consider that where a small business’s normal turnover is under £100,000 and it temporarily goes over the threshold because it enters into a one-off transaction, for example sells a ‘taxed’ property, then it should not have to incur all the disruption of compulsory online filing.
23. This could have a disproportionate effect on the operating capacity of the business and in some circumstances could be sufficient to persuade the business not to undertake the transaction.
24. We suggest that, for the avoidance of doubt, the regulations should provide that the Commissioners can exercise discretion when they are considering whether someone

is a specified person and take into account factors such as a one-off breach of the threshold.

Paragraph (16) – penalties

25. The penalty for those who cannot file online owing to deficient telephone lines / lack of broadband access should be set at £zero. Alternatively, it should be specified grounds for appeal.

Paragraph (17) – grounds for appeal

26. The fact that paragraph (7) has not been complied with (ie notification has not been received) should be included as a ground for appeal in order to obviate the need to consider whether non-receipt of notification is a reasonable excuse, failing which we should welcome clarification in the regs that non-notification under para (7) is indeed covered in ground for appeal (a), viz: 'he is not a specified person'
27. The quantum of a person's VAT exclusive turnover in para (18) should be included as a grounds for appeal because the view of the Commissioners as to what is 'fair and reasonable' should be subject to an accessible external review by the Tribunal, rather than traders having to go to judicial review even if HMRC refuses to modify a turnover figure that is so unreasonable as to be oppressive.
28. Sub-paragraphs (c) and (d) should be swapped around so they are in logical, ie paragraph number, order.

PCB/AM
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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.