

TAXREP 33/00

PAYE INTERNET SERVICE AND DISCOUNTS

Memorandum submitted in November 2000 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales to the Revenue in response to the draft Income Tax (Employments and Electronic Communications)(Amendment) Regulations 2000.

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INTRODUCTION

1. We are grateful for this opportunity to submit evidence to the Revenue on its draft Income Tax (Employments and Electronic Communications)(Amendment) Regulations 2000 and on the related issues.

EXECUTIVE SUMMARY

2. In relation to discounts, we believe that this situation has been mishandled, leading to considerable confusion, but if discounts are going to be offered to the 'small' employer, the definition of 'small' should be that found in the Companies Act definition.
3. In relation to the Regulations, we have a number of specific comments, as set out below, but are disappointed that as a result of Regulations 4 to 10, a user a user now has to refer to two statutory instruments. In the context of the Tax Law Rewrite Project it is disappointing that the opportunity was not taken to simply repeal the existing regulations and rewrite them.

SPECIFIC COMMENTS

Discounts

4. Of the various definitions offered for determining who is a 'small' employer we favour the Companies Act definition. This is because it is an established definition handed down from Europe so this will remove any suggestion that the Revenue is choosing its own restricted definition to suit the purpose.
5. It has the added advantage of being a far more generous definition of 'small' than the alternative definition of '9 or fewer employees'. This should reduce the number of arguments which could arise as to whether an employer was within or outside of the definition, depending on when the figure 9 was reached.
6. Although one element of the tests in the Companies Act definition is the number of employees, this is an average test which is easy, at least for the company, to apply. For example, a company which took on a 100 staff to meet a three month peak rush but which had 20 staff during the rest of the year would have an average of less than 50. It consequently would fall within the Companies Act definition. This, of course, assumes that the legislation would actually adopt the full Companies Act definition, not the Revenue's précis of it as found in the papers accompanying the draft regulations.

7. The one problem with the Companies Act definition is the level of difficulty facing the Revenue in checking whether or not the business is small. Where a company is subject to audit this probably does not matter unduly as the auditors will probably have reviewed this issue as part of their work. In other cases it would mean that the Revenue would have to rely on the honesty of the taxpayer. Considering the low monetary level of the discounts this should not amount to a particular problem but obviously we would be concerned if this definition lead to a high degree of bureaucracy being imposed to surmount the Revenue's potential problem.

Draft regulations

8. We were disappointed that Regulation 4 to 10 ensures that a user has to refer to two statutory instruments. In the context of the Tax Law Rewrite Project it is disappointing that the opportunity was not taken to simply repeal the existing regulations and rewrite them.
9. The new Regulation 9(b) (introduced by Regulation 6) is puzzling. If X is employed by A Ltd part-time and by an unconnected company B Ltd part-time, we would have expected details of both employments to be on the same Revenue computer system. Therefore, it seems strange that a printout of X's employment details with A Ltd should create a presumption (albeit rebuttable) that the computer does not contain any information about his employment with B Ltd. We would welcome confirmation of why this is necessary. It will become even more nonsensical in a few years time when the Revenue has a single comprehensive system instead of several incompatible ones so that the whole of the information in relation to everyone would then be on the same computer.
10. In addition, the PAYE Regulations do not define a 'taxpayer', which is a term referred to in the new Regulation 9(b). For example, can an employer be a taxpayer merely because he deducts tax under PAYE as agent for the Revenue? Surely this only makes him a National Insurance payer and as we are frequently told, and as legislation provides, NIC is not a tax.
11. The same point arises on Regulation 8(5).
12. We would be interested to know why the order in Regulation 10 and 12(5) should be 'send the form, arrange electronic transmission and use a computer' whereas in Regulation 12(3) it is 'send the form, use a computer or arrange electronic submission'. Is there some deep significance in this or is it just inconsistent?
13. We would welcome clarification of how Regulation 15(4) works in the case of an electronic transmission. Is the answer that no declaration is required as transmission electronically does not constitute delivery? Or is there some other meaning intended?

Conclusion

14. We are happy to discuss these issues with you further if that would be of assistance and we look forward to seeing the outcome of the consultation.

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