



Faculty of Taxation

## **TAXREP 31/03**

### **MANDATORY ELECTRONIC PAYMENT BY EMPLOYERS**

*Memorandum submitted in September 2003 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to an invitation to comment on draft Regulations published in June 2003 by the Revenue*

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## MANDATORY ELECTRONIC PAYMENT BY LARGE EMPLOYERS

### General comments

1. We welcome the opportunity to comment on the draft regulations published by the Revenue on 12 June on their website at [http://www.inlandrevenue.gov.uk/consult\\_new/epayment\\_largeemp.htm](http://www.inlandrevenue.gov.uk/consult_new/epayment_largeemp.htm).
2. As noted in previous representations, we do not favour compulsion as a means of encouraging citizens to save the government money. However, as most businesses who employ 250 or more employees are likely to be already making salary payments by electronic means, extending this to payments to the Revenue is, in principle, not particularly onerous.

### Detailed comments

#### *New Regulation 42A: mandatory electronic payment*

3. New Regulation 42A(4)(b) defines ‘the specified date’. The specified date is the date on which the Revenue will take a ‘snapshot’ of the number of employees to whom the employer is paying PAYE income or tax credits, and that has to be announced annually by the Revenue not later than 31 January of the preceding year. We consider that the Regulations should provide for the specified date to be not later than 31 October of the preceding tax year in place of 31 January.
4. In addition, we consider that the Regulations should provide for a date by which the Revenue have to notify formally employers whether they are obliged to pay electronically, and that the date laid down in the Regulations should be not later than 14 November in the preceding tax year.

#### *New Regulation 42B: default surcharge*

5. New Regulation 42B introduces the concept of a default surcharge where an employer is required to make payment by an approved method of electronic communication. Some general points arise:
  - given that there is already provision for interest on PAYE and NIC paid late, we would welcome clarification of why default surcharge is required as well;
  - we would welcome confirmation that the default surcharge will not apply to other employers who operate the electronic payment system voluntarily; and
  - we would welcome clarification of whether the default surcharge will be allowable for tax.
6. In new Reg 42B(4), we would welcome confirmation that given that in their press release the Revenue indicate that approved methods of payment include BACS and CHAPS, an employer will be regarded as having a ‘reasonable excuse’ if these systems fail or default around the time of his making payment.

7. New Reg 42B(10) sets out the rates of default surcharge. The default surcharge is draconian given that each failure during the year is a separate default. If an employer is one day late with each payment the effective surcharge will be 4.07% of the total PAYE and NIC liability that year. Moreover, because there has to be a clear year in which an employer is not in default it would follow that if he continued to be one day late for each payment due in the second year the surcharge would reach as much as 9.96%.
8. Also, although based on the VAT surcharge rules, it is unfair to base the surcharge on the entire year's tax as any penalty is worked out based on payments the company made correctly. That strikes us as a disincentive to grow the business (and consequently the salary base) after a default has happened.
9. An employer with 250 employees all paid at the rate of £20,000pa will have a PAYE and NIC payment totalling somewhere in the region of £1.7 million each year so the exposure is substantial and, arguably penal. It is certainly not proportionate.
10. Finally, we suggest that the percentages used for calculating the surcharge could be more user-friendly. Whilst we can see how the percentages are arrived at (being based on 1/12ths), cumbersome rates for a penalty add complications to an already complicated system.

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