



TAXREP 13/14

(ICAEW REP 30/14)

ICAEW TAX REPRESENTATION

VAT: ASSISTANCE WITH ELECTRONIC FILING OF VAT RETURNS

Comments submitted on 13 February 2014 by ICAEW Tax Faculty in response to HMRC consultation document *VAT: Amendments to legislation - assistance with electronic filing of VAT returns* published on 20 December 2013

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation document [VAT: Amendments to legislation - assistance with electronic filing of VAT returns](#) published by HM Revenue & Customs (HMRC) on 20 December 2013.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. 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

4. ICAEW is a world leading professional membership organisation that promotes, develops and supports over 142,000 chartered accountants worldwide. We provide qualifications and professional development, share our knowledge, insight and technical expertise, and protect the quality and integrity of the accountancy and finance profession.
5. As leaders in accountancy, finance and business our members have the knowledge, skills and commitment to maintain the highest professional standards and integrity. Together we contribute to the success of individuals, organisations, communities and economies around the world.
6. 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

7. We agree with the Government's commitment to become digital by default, but this should be driven by business choice, namely that digital is the preferred method of communication. We do not accept this means that digital must be mandatory and the only route available. Consequently, we do not consider it necessary for HMRC to devise a convoluted method for businesses to submit VAT returns where it is accepted that they are unable to do so using normal methods.
8. If a person is unable to submit a VAT return electronically, for reasons such as age or disability, it would seem appropriate for them to be allowed to submit a VAT return under any means permitted for people included in the criteria in Regulation 25A(6) of the VAT Regulations 1995. Not to do so could be seen as discriminatory.
9. It may not be possible for some people to use either a telephone or an online method of filing their VAT returns, such as those suffering from a hearing or speech impairment. The continued ability to file VAT returns on paper should therefore remain for affected businesses.
10. A straightforward method of implementing this consistent treatment within UK VAT law could be to add a new subsection (c) to Regulation 25A(6) to exclude any business from the requirement to submit a VAT return electronically which received the written approval of the Commissioners.

11. An appealable procedure should then be introduced for any business that applied to be excluded from the requirement to submit electronic VAT returns but had its application rejected by HMRC.

RESPONSES TO CONSULTATION QUESTIONS

Q1: If the VAT Regulations 1995 are amended as described in 4.3 above, will this be sufficient to provide a means for all VAT registered businesses (except the very small number that are exempt) to file VAT returns online?

12. We agree that the inclusion of criteria in the VAT Regulations similar to those already contained in the PAYE Regulations would be helpful. However, we do not accept that all VAT registered businesses should be required to file VAT returns online.
13. Consideration should be given to extending the exemption provided under Regulation 25A(6) of the VAT Regulations 1995 to those business accepted by HMRC as being unable to file electronic VAT returns. Any such extension should be made by an additional subsection to Regulation 25A(6).
14. An appealable procedure should then be introduced for any business that applied to be excluded from the requirement to submit electronic VAT returns but had its application rejected by HMRC.
15. The existing availability to a small number of businesses of the facility to file VAT returns by telephone should be wider publicised and simplified. However, filing by telephone is not online filing, as confirmed in the Bishop Tribunal decision.
16. Paper filing should also be available to any business that is accepted as being unable to file online, for whatever reason, with an appropriate amendment being made to the VAT Regulations to provide the necessary legal support, if required. This would be consistent with the availability to file on paper within the PAYE Regulations.

Q2: Is there any additional guidance we ought to provide for businesses having difficulty filing VAT returns online?

17. HMRC should make businesses aware with appropriate publicity that there are alternative methods of submitting VAT returns available to businesses that are genuinely unable to submit them electronically. Such publicity should not be limited to the HMRC website, as most affected businesses would not have access to this facility.
18. Suitable publicity should be provided in public libraries and sent to any businesses that do not register online or fail to submit an online return.

Q3: Are there any circumstances, other than those detailed above, where we ought to consider allowing businesses to use the Filing by Telephone service?

19. There may be occasions when a business that normally submits its VAT returns electronically is unable to do so, but could submit its return on time by telephone. An example of this might be computer failure on the due date of the return.
20. When a business is unable to submit a VAT return electronically due to a problem with HMRC's systems, there should be an alternative mechanism, such as the use of a telephone service, to submit the return without the risk of any penalty or default surcharge.

21. In particular, we understand that it is not possible for a new agent to submit a VAT return online if the previous agent has not been removed from the client's electronic file. We further understand that it is not unknown for this process to take several weeks, during which a VAT return may have to be submitted.
22. We believe that alternative options to online filing should be made available for reasons of practicality and cost. For example, it seems unreasonable that a business should need to employ an agent at a possible cost of £100 or more per return to file online, in order to save an estimated £8 cost to HMRC.

Q4: What changes would we need to make to the Filing by Telephone service to meet the objectives of accessibility and convenience?

23. The present requirement to make an appointment for a telephone call to file a VAT return is unlikely to be convenient for all people who are unable to file VAT returns online.
24. We accept that it is not feasible for HMRC to offer a manned telephone service that is available 24 hours a day, in common with the online filing facility, but we believe that businesses which are disadvantaged in being unable to file online should not be restricted to a specific time slot for a telephone call. A service that is only available between the hours of 8am to 6pm on weekdays is not convenient for many small businesses, as these are their normal working hours. Such businesses are likely to need to do their paperwork in the evenings or at weekends.
25. This problem could be largely overcome if HMRC provided an automated telephone filing facility where a business could provide the VAT registration number and values for each box following suitable prompts. Such a system would also need some form of security code or question to ensure that the caller was genuine.
26. We believe that, if a business is required to file by telephone because it is unable to file online, HMRC should provide a telephone number dedicated to the submission of VAT returns that is manned at any time during normal working hours. An automated telephone facility should be similarly available at all other times. An affected business should then not then be significantly disadvantaged because of its inability to file online.
27. Such a telephone number should be provided to any business when HMRC accepts that it is unable to file its VAT returns online.

Q5: Are there any other HRA or Equality Act issues that we need to take into account in the design of the VAT return filing process?

28. The present VAT Regulations allow for VAT returns to be submitted by means other than electronically if the person concerned is a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications.
29. There is an existing exemption within the VAT Regulations for non-electronic filing of VAT returns on religious grounds, but only for bodies that have an issue with electronic communication. This could be seen as religious discrimination, as it is only available to a few select religions.
30. For example, it would appear discriminatory for a penalty to be issued to a practising member of one religion for failing to submit a VAT return electronically, where a similar penalty would not be issued to a practising member of another religion that is included within the existing exemption.

31. The religious discrimination point above would also appear to apply in relation to the beliefs of an individual, irrespective of their membership of a particular religious society and its beliefs.
32. If a person is unable to submit a VAT return electronically for other reasons, such as age or disability, it would seem appropriate for them to be allowed to submit a VAT return under any means permitted for people included in the criteria in Regulation 25A(6) of the VAT Regulations 1995. Not to do so could be seen as discriminatory.
33. It may not be possible for some people to use either a telephone or an online method of filing their VAT returns, such as those suffering from a hearing or speech impairment. The continued ability to file VAT returns on paper should therefore remain for affected businesses.

Q6: Do you have any general comments or questions about the issues raised in this consultation document?

34. The consultation document was notably silent in respect of the possibility to file VAT returns on paper. We strongly believe that this facility should remain available for any business that is accepted as being unable to file its VAT returns online. It is also cheaper for HMRC to process paper VAT returns than receiving the information by the telephone facility, as per HMRC's own calculations presented to the recent Tribunal.
35. The facility to file on paper should be available, not only for reasons such as age or disability, but also for practicality and cost reasons. Small businesses that currently incur additional costs, by using agents to file their VAT returns electronically, should be allowed to do their own filing to save money, even if that means they can no longer file electronically.
36. Libraries are becoming scarcer and small ones have limited opening hours. Businesses that may have difficulty in filing online because they live in remote areas are also unlikely to have an accessible public library for the same reason.

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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)