



ICAEW TAX REPRESENTATION

**PAYE REGULATIONS: INFORMATION (REAL TIME INFORMATION)
FINANCE BILL 2012 – DRAFT LEGISLATION**

Comments submitted on 10 February 2012 by ICAEW Tax Faculty in response to an invitation to comment on draft Finance Bill legislation *PAYE Regulations: Information* published on 6 December 2011 by HM Treasury and HM Revenue & Customs

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the draft Finance Bill 2012 legislation *PAYE Regulations: Information* published by HM Treasury and HM Revenue & Customs (HMRC) on 6 December 2011 at www.hm-treasury.gov.uk/d/real_time_information_interim.pdf.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. As noted below, we have attended many meetings on Real Time Information (of which this draft legislation forms a part) with HMRC in which have put forward comments and concerns.
4. 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

5. ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter which obliges us to work in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 136,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.
6. ICAEW members operate across a wide range of areas in business, practice and the public sector. They provide financial expertise and guidance based on the highest professional, technical and ethical standards. They are trained to provide clarity and apply rigour, and so help create long-term sustainable economic value.
7. 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.

COMMENTS

8. We have no specific comments on this legislation which is designed to facilitate the operation of Real Time Information RTI (RTI) by allowing HMRC to make regulations to require that RTI reports are cross referenced to actual payments. The proposal currently as we understand it is that where employers/payroll bureaux initiate payments of earnings to employees by BACS (known as direct BACS), the payroll software will generate a unique reference number for each payment which will be included in the BACS file and reproduced on the RTI report submitted to HMRC. This is intended to enable HMRC to link and check the information in the RTI report to payments actually made. One of the objectives of RTI is to help protect the exchequer by tightening up on employer compliance, which if undertaken in a proportionate manner should benefit the nation as a whole.
 9. However, we do have a number of concerns about RTI itself. These concerns, which are typical of the sort of problems that the PAYE system needs to deal with, are coming out of the current discussions with HMRC (for example how should leavers be treated, the decision for which was announced only on 6 February – see nds.coi.gov.uk/clientmicrosite/Content/Detail.aspx?ClientId=257&NewsAreald=2&ReleaseID=423160&SubjectId=36).
- 6). Given that the pilots begin in less than two months (April 2012) and mandate of

employers starts from April 2013, we have serious doubts about whether the timetable for implementation is realistic.

10. The employer tax system works because local HMRC staff have in the past accepted 'local agreements' with employers and/or the process has been sufficiently flexible to accommodate workarounds. As RTI will be a computerised process, it will be difficult to accommodate such workarounds. We are assisting HMRC to help ensure RTI will work for HMRC, employers, employees and third parties such as agents and payroll bureaux. As well as being part of HMRC's Customer User Group we have, just in the last two months, met or have arranged to meet HMRC to discuss, inter alia, the submission channels, leavers, agents (in particular payroll-only agents), small employers, expatriates, pensioners, education and communication, etc, etc, etc. The extensive informal consultation undertaken by HMRC is welcome, although it has highlighted the size of the task to have RTI fit for purpose by when it is made mandatory.
11. Many of our concerns are included in our response to the invitation to comment on draft secondary RTI legislation TAXREP 01/12 (accessible via www.ion.icaew.com/TaxFaculty/23813) which includes the text of our written submission in November 2011 to the Public Accounts Committee. We hope that all or most of our concerns will be resolved while the 2012 Finance Bill progresses through its Parliamentary stages but where they have not been addressed then we shall raise them as part of this process.
12. We acknowledge that the RTI penalty regime will be included in Finance Act 2013 and be subject to consultation but we should like, even at this stage, to express our concern about penalties. In common with other employer obligations, the submission of accurate RTI reports on time is likely to be underpinned by an automatic penalty regime. As evidenced by many Tribunal judgements, non- or late-filing penalties are issued automatically even where the relevant return has been filed on time. The time, effort and costs of reversing such penalties can be considerable. Should HMRC's systems incorrectly report that a duly submitted RTI report has not been submitted (eg where BACS data is unable to be matched with the associated RTI report to which it has been cross-referenced), then an automatic penalty is likely to be issued which will not be due. This will mean that the employer/bureau or agent will have to spend time in getting the penalty cancelled.
13. We do believe that it is vital to get the RTI rules and processes right first time and that penalties should only be applied once HMRC can demonstrate that its RTI systems are working correctly.

E peter.bickley@icaew.com

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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 www.icaew.com/en/technical/tax/tax-faculty/~media/Files/Technical/Tax/Tax%20news/TaxGuides/TAXGUIDE-4-99-Towards-a-Better-tax-system.ashx).