



ICAEW TAX REPRESENTATION

MOVING VAT ONLINE AND REGISTRATION OF NON-UK BUSINESSES

Comments submitted on 27 October 2011 by ICAEW Tax Faculty in response to the HM Revenue & Customs consultation document, **VAT: consultation on the next steps for moving VAT online**, published on 8 August 2011

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INTRODUCTION

1. ICAEW welcomes the opportunity to comment on the consultation document VAT: consultation on the next steps for moving VAT online published by HM Revenue & Customs on 8 August 2011 at http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_page=ConsultationDocuments&propertyType=document&columns=1&id=HMCE_PROD1_031508
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 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.
5. 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.
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/MAJOR POINTS

7. We continue to be opposed to the mandation of online filing of VAT returns, particularly for small businesses, and consider that removing the VAT registration threshold for non-UK established businesses will create a barrier to trade. Both proposals fail some of our Ten Tenets for a Better Tax System (Appendix 1).

Online filing

8. Submission of VAT returns online should not be made compulsory until such time as broadband is readily available to all parts of the UK including remote rural areas.
9. HMRC should reconsider whether it is proper to add compliance costs to some of the UK's smallest businesses in the current economic climate.
10. Businesses that have not signed up for online filing of VAT returns should continue to be sent notices to file by post until at least April 2013.

11. We suggest that HMRC should allocate resource to telephone any business that has not signed up by the end of 2012. These calls should be made in the first quarter of 2013. Such calls should be used to determine why the business has not signed up for online filing and offer help to enable them to do so. Where there are genuine reasons for not filing online, for example non-availability of a reasonable broadband connection, an alternative method, such as telephone filing, should be agreed directly with the businesses concerned. We believe that this approach will more effectively help businesses to comply than simply issuing penalty notices for non-compliance.
12. The impact assessment should include an amount towards the cost of expanding broadband coverage across the UK and the cost to individual small businesses of buying a computer if necessary and investing in appropriate software and training (especially for those who are unaccustomed to using computers, perhaps because the nature of the business does not necessitate being computer literate), and connecting to broadband where it is available.

Registration of non-UK established businesses

13. We should welcome detailed reasons as to how the decisions in the ECJ Schmelzcase (Case C-97/09, <http://www.bailii.org/eu/cases/EUECJ/2010/C-97-09.html>) are being implemented in the UK. We are concerned that will create significant burdens and will probably result in widespread, albeit inadvertent, non-compliance. In many cases, the requirement to register for UK VAT will fall upon businesses that are too small to be required to register for VAT in their own country, such as a window cleaner based in Eire but cleaning a few windows in Northern Ireland. It is unreasonable to expect such a business to be aware of its requirement to register for VAT in the UK.
14. Under the present proposals, it appears that HMRC has taken a line that discriminates against non-UK businesses. We are concerned with this approach, not only from the potential impact in the UK, but also the potential effect on UK businesses trading in other Member States if the tax administrations there follow the UK lead.
15. If the UK registration threshold is to be removed to overseas businesses, HMRC needs to provide a proper estimate of the likely compliance costs for a non-UK business carrying out a minor transaction, such as a single sale of £500. HMRC also needs to consider its own administration costs in registering and then deregistering such a business.

RESPONSES TO SPECIFIC QUESTIONS

VAT Return Filing

Q1: Are there any groups of businesses which are likely to experience real difficulty in filing online (other than those businesses mentioned above)? If so, please identify these owners, and the particular features of them which might create a need for targeted assistance into digital.

16. Many of the smallest businesses do not have offices, such as sole proprietors operating in service sectors like gardeners and hairdressers. Such businesses may not have readily available access to a computer. They may make very small amounts of profit, if any, so will be unable to afford to buy a computer or pay to use of a computer owned by a third party. We think it is wrong in principle that a business should be forced to rely on computers provided for the general public, such as in libraries and internet cafes, to file confidential financial information.
17. It is common for long-established small businesses to have manual accounting systems and no access to, or familiarity with, computers. Such businesses are often run by older people, who do not otherwise use computers and have no business need to become acquainted with their use. It is unreasonable to expect these people to obtain or use a computer solely for the purpose of submitting VAT returns when they can submit returns and make payments on time by other means.

18. We believe that it is important for HMRC to take note of the following comment from the Treasury Sub-committee's Report on online filing:

HMRC has been relatively successful at enabling taxpayers to pay many of their taxes online. However, requiring online filing prematurely runs the risks of excluding those without reliable high-speed internet access, dissuading those who are not computer literate from being tax compliant and overloading systems that have not had time to bed in. HMRC should always ensure it has robust, well-advertised alternatives in place for those who cannot submit online and publish a statement of its commitment to continue to provide a robust free filing service for basic tax return filing. (Paragraph 135)

Q2: To what extent will the support arrangements described above meet the majority of the businesses' needs? Whose needs might they not meet, and why? What alternative arrangements can you suggest that HMRC (or a third party) might put in place to meet the needs?

19. We continue to be opposed to the mandation of online filing of VAT returns, particularly for small businesses, and maintain our position that it is unreasonable to expect businesses that do not have access to a computer, and/or have no commercial reason to use one, to submit its VAT returns online.
20. Submission of VAT returns online should not be made compulsory until such time as broadband is readily available to all parts of the UK, including remote rural areas.
21. We accept that the support arrangements being suggested by HMRC will be adequate for the majority of businesses. However, there will be many businesses where these arrangements do not meet their requirements.
22. We anticipate that there will be problems for small, long established business. Such businesses are often run by elderly people with no knowledge of computers, who are less able to adapt to new ways of working than younger people.
23. We suggest that the telephone filing facility, previously offered by HMRC to Tranche 1 businesses, should be offered to the smaller business in Tranche 2, together with a better publicity package. We believe that the take-up by such businesses is likely to be greater than it was with the larger businesses.
24. Some businesses are run by people who do not regularly have access to a computer, but who nevertheless rely on access to a mobile phone with internet connectivity. Businesses which are not office based rely increasingly on iPhones for example. An app for VAT return filing would be useful for this group.

Q3: Are there any particular types of communication material that you would find helpful, and above that mentioned above?

25. We are concerned that businesses may not receive any form of reminder to file VAT returns after mandation. Those that have not signed up for online filing will not receive email reminders or hard copy VAT returns, the latter having served as a familiar reminder since the introduction of VAT in 1973.
26. HMRC should determine which businesses have not signed up for online filing. Such businesses should be sent a notice to file in good time to enable them to sign up to submit their next VAT return online by the due date. These notices should continue to be sent to all VAT-registered businesses that have not registered for online filing for each VAT quarter until at least April 2013. A leaflet explaining how to register for online filing and the consequences of failing to do so should be included with the notice to file.

Q4: Do you have any other comments or suggestions on HMRC's communication plan (bearing in mind that the business group concerned is too small for TV advertising to be cost effective)?

27. We agree that TV advertising is not appropriate. However, we believe that good publicity is essential to ensure that the smallest businesses are aware of the changes. This will probably be best achieved by writing to all affected businesses, with quarterly reminders to those not signing up and articles in the trade press magazines and money sections of national newspapers.
28. We suggest that HMRC should allocate resource to telephone any business that has not signed up by the end of 2012. These calls should be made in the first quarter of 2013. Such calls should be used to determine why the business has not signed up for online filing and offer help to enable them to do so. Where there are genuine reasons for not filing online, an alternative method, such as telephone filing, should be agreed directly with the businesses concerned.
29. No penalties for failure to file online should be imposed on any business before personal contact has been made by HMRC to establish the reason for its default, or at any time in relation to businesses where an alternative method of filing has been agreed.

Q5: Do you have any comments on the proposed legislative changes set out in the section above that achieve the mandation of Tranche 2 VAT businesses, and that impose penalties where appropriate?

30. We think that the same reasonable excuse transitional arrangements as in Tranche 1 should be made available to all Tranche 2 businesses and that these should be well publicised.
31. Paragraph 12 of the draft Amendment Regulations should be amended to exclude from penalty those businesses that have agreed an alternative method of filing with HMRC, as suggested in our response to question 4 above.

Online VAT Registration

Q6: Do you have any views on the proposed new online system for VAT registration, deregistration and variations? Do you have any comments on the proposed handling of notifications that are made other than via the online system? Do you see any barriers to using the new system - and if so, what would help overcome those? What help and support online would be most useful to customers? Are there any particular types of communication material that you would find helpful?

32. We have previously requested a special platform to facilitate application by agents for VAT registration, deregistration and variations.
33. There are similar barriers relating to online VAT registration as those already mentioned in relation to the online filing of VAT returns. We are therefore pleased to note that online VAT registration is not being made compulsory at this stage and hope that this situation will continue.
34. We understand that when an agent changes its VAT registration number, such as when two firms merge, it is not currently possible to transfer its list of clients on the HMRC website. Consequently, all clients have to be manually re-entered onto the HMRC system when such an event occurs.

Q7: Do you have any comments on HMRC being able to determine the form in which information is to be provided, rather than that form being provided for in secondary legislation?

35. We agree that it should be possible to make minor amendments to forms without the need to amend secondary legislation. However, we believe that it is important to ensure adequate safeguards

are put in place to prevent HMRC placing unnecessary additional burdens on businesses by changing forms to the extent that significant additional information would be required to complete them.

36. We suggest that any significant changes to forms should be the subject of a consultation exercise with interested parties, such as professional bodies, prior to any changes being introduced.
37. Online forms should be set up in such a way that they can be saved when partially completed. This would enable businesses to check on any information required of which they were unsure without losing all the information already entered. We suggest that any partially saved forms should remain available for a period of one month.
38. It should also be made possible for partially completed forms by one party to be completed and submitted by a third party, such as an agent. This would enable businesses to partly complete the form with basic information, leaving the more complex areas requiring specialist knowledge to be completed by the agent.
39. With the increasing use of communication devices such as iPads, it may be useful to produce apps for these devices that could be used to facilitate communication with HMRC.

Registration of businesses not established in the UK

Q8: Do you have any comments on the removal of the UK VAT registration threshold for non-established businesses? We intend to focus our communications on agents and advisers as they are most likely to pick up the type of businesses that will be affected. Do you have any suggestions on how HMRC may alert non-UK businesses to this change?

40. The justification for this proposed change is that, following the Schmelzer ECJ decision (Case C-97/09, http://www.bailii.org/eu/cases/EUECJ/2010/C_97_09.html), only businesses established in a Member State can benefit from its domestic VAT registration threshold. Looking at the conclusions of the court, we are not entirely convinced that UK VAT law does need to be changed in the manner proposed for all businesses and would welcome detailed reasons as to how HMRC reached this conclusion. We are concerned particularly that this measure will create a significant, in many cases unknown, burden on small overseas businesses.
41. In many cases, the requirement to register for UK VAT will fall upon businesses that are too small to be required to register for VAT in their own country, for example a window cleaner based in Eire but cleaning a few windows in Northern Ireland. It is unreasonable to expect that such a business that does not need to register for VAT in its country of establishment should be aware of its requirement to register for VAT in the UK.
42. An overseas business that is required to register for VAT in the UK, but which has no previous experience of VAT in its own or any other country, may require significant help to comply with its obligations. This should be made available in all common languages.
43. We suggest that HMRC uses its contacts in other tax authorities throughout the world to establish what publicity they may be able to offer to businesses in their countries regarding their potential obligation to register for VAT in the UK. There should be a common procedure agreed between all Member States of the EU regarding appropriate publicity for overseas VAT registration requirements.
44. Under HMRC's current procedure, the post code of HMRC's VAT registration unit for non-UK traders at Aberdeen has to be used by those businesses as the business post code, although there are no instructions on the HMRC website to this effect. HMRC needs to provide guidance sufficient to enable traders to comply with this requirement.

Tax impact assessment

Q9: HMRC would welcome views on our current assessment of the likely impacts of the proposed options as set out in the above table of impacts.

45. We find it difficult to see how the completion of VAT returns online will 'close the tax gap by £60m in 2012/13, rising to £90m in 2013/14'. We cannot see that it would make much practical difference and should welcome clarification of how these figures have been calculated.
46. There is no mention in the impact assessment about the cost of obtaining broadband, which falls into two parts. Firstly, there is the cost of expanding broadband coverage across the UK so that all businesses can have access to broadband to enable them to submit their VAT returns or apply for VAT registration online. Secondly, there is the cost to each business connecting to the broadband network when it is available. Thirdly, there will be costs for businesses that presently do not use computers, for example because the owners are not computer literate or because there is no commercial need, which will need to invest in hardware, software and training or pay a third party to register online. All of these costs may be considerable.
47. We are concerned that these proposals could be regarded as potentially discriminatory. Many people, particularly those of older generations who did not grow up with knowledge of or access to computers, could be disadvantaged as compared to younger generations, who, having grown up with computers, naturally tend to be much more familiar with the technology. While the segment of the taxpayer population with little or no computer knowledge will reduce over time, nevertheless such taxpayers will require significantly more assistance so the costs of supporting them could be considerable if they are not to be disadvantaged unduly.
48. We agree that the requirement to register non-established businesses with a turnover below the domestic VAT registration threshold is likely to have negligible impact on Exchequer revenues. In practice, we suspect that this will be because of widespread non-compliance because such businesses are unlikely to realise that they may have an obligation to register for VAT when they do not have such a requirement in their country of establishment. Where such a business is compliant and registers for UK VAT, costs are likely to be significant in comparison to a similar UK business and potentially disproportionate to its turnover.
49. It is stated that there will be no impact on individuals and households. However, there would be an impact if overseas businesses that supplied them decided as a result of this proposal to cease to operate in the UK.
50. The costs to HMRC of implementing and enforcing this proposal are likely to be considerable and we would question whether any revenue raised would exceed the costs of collection. These costs are likely to be particularly heavy close to the land boundary between Eire and Northern Ireland.

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27.10.11

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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 <http://www.icaew.com/~media/Files/Technical/Tax/Tax%20news/TaxGuides/taxguidetowards-a-better-tax-system.ashx>)