



EMPLOYMENT INTERMEDIARIES: REPORTING OBLIGATIONS

ICAEW welcomes the opportunity to comment on the draft secondary legislation [The Income Tax \(Pay As You Earn\) \(Amendment No X\) Regulations 2015](#) published by HMRC on 1 October 2014.

This response of 25 November 2014 has been prepared on behalf of ICAEW by the Tax Faculty.

Internationally recognised as a source of expertise, the Faculty is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. Appendix 1 sets out the ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark proposals for changes to the tax system.

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INTRODUCTION

1. We welcome the opportunity to comment on the draft statutory instrument and explanatory memorandum and explanatory note published on 1 October 2014 setting out the reporting requirements that HMRC is introducing to require an employment intermediary to make a quarterly return of specified details when the intermediary has not operated PAYE when paying workers or their employers.
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 well as having participated in previous meetings with HMRC and responded to past consultations on this topic, we attended a meeting with HMRC on 20 November 2014 in which we were able to put forward some key comments and concerns, and discuss aspects of the reporting obligations included in the draft statutory instrument.

KEY POINT SUMMARY

4. Our main concern is the enormous burden that will be faced by affected businesses given the practical and legal difficulties in complying with the reporting obligations in the draft SI. Not only will many of the proposed reporting obligations be impossible to meet (eg, not every worker will have a UTR) but some information requirements seem unnecessary (eg, reporting for three years after the last transaction).
5. We have major concerns about the security of personal data and HMRC's proposal to reject returns that include blank fields because the relevant data are not available. HMRC cannot realistically expect intermediaries in a chain to force the disclosure of data in contract, potentially by businesses that do not themselves hold and cannot obtain the data, and then devote resources to trying to enforce the contractual terms. The involvement of any non-UK intermediary or employer in a chain will involve the specified employment intermediary in trying, indirectly, to enforce UK tax law outside the jurisdiction and we would not expect a foreign court to support any action to enforce such a contract.
6. Given that there will be one quarterly return per intermediary in which all data required by HMRC relating to every worker must be included, a single missing piece of information will cause the whole return to fail. As an intermediary submitting a return may well be unable to include at least one item of data, for example a unique taxpayer reference (UTR) because the worker is not in self assessment, or a national insurance number (NINO), or a date of birth or gender because either the worker will not provide it or because the submitter of the return fears that they will fall foul of age or sex discrimination legislation, it is likely that every return submitted will be rejected. In these circumstances we believe that it is likely that the tribunals will not enforce penalties for non-compliance.
7. This legislation falls far short of complying with our Ten Tenets for a Better Tax System (see Appendix 1), especially Tenet 1 *Statutory* as we question whether Parliament would, if properly briefed, approve this legislation, Tenet 3 *Simple* and Tenet 4 *Easy to collect*.

COMMENTS ON NEW REGULATION 84G: SPECIFIED INFORMATION

8. We recommend that the words 'if any' be inserted at the end of 84G(a)(iv) because some agencies will not have PAYE references as they only pay service companies or self-employed contractors outside the scope.
9. We question why HMRC is collecting information that is both not needed and which agencies are likely to find difficult if not impractical to gather, for example title, gender, date of birth and hours worked. We believe that name and NINO or UTR or construction industry scheme (CIS) registration number would be sufficient to identify the worker, given that the aim, as we understand it, is not to tie up exact amounts with particular individuals but to collect the

information for general compliance purposes, in which case the odd error will not materially affect what HMRC is trying to achieve.

10. In this light, we recommend that HMRC takes advice as to whether insisting on the provision of dates of birth and gender complies with age and sex discrimination legislation.
11. We should welcome clarification as to the implications if the intermediary submitting the quarterly return does not provide HMRC with all the requisite information set out in 84G(b). All intermediaries are likely to have major problems collecting some of this data, particularly in the transitional phase where an education process will be required. Certain businesses may be unable to comply with the information requirements at all; for example, a worker is not engaged by the intermediary where a personal service company (PSC) is involved, so the intermediary is in no contractual relationship with the worker, so cannot require the individual to provide any personal information such as NINO or UTR. Some workers will not have UTRs as they will not be in self assessment.
12. We should welcome confirmation that, contrary to what was said at the meeting on 20 November, HMRC will not reject a return if certain fields on the return are empty.
13. We should welcome clarification of how HMRC proposes to enforce information requirements where the source of the information is outside the UK and therefore HMRC's and the UK courts' jurisdiction.
14. We consider that the agency should not suffer penalties because of a failure to provide information where a genuine but unsuccessful attempt has been made to obtain it. Failing this, the agency will need statutory powers to collect the information, although these will be ineffective outside the UK.
15. We suggest that a CIS registration number should be an acceptable alternative to a UTR.
16. We also continue to be concerned about the data security problems where information has to be transferred between one entity and another (or along a chain) to enable the recipient to provide the required information to HMRC. If any member of the chain is outside the UK, the requirement is impracticable and unenforceable. Given the data security risks that HMRC is imposing on entities in the chain, we recommend that HMRC takes advice from the Information Commissioner as to whether such a requirement can be imposed on intermediaries.
17. We should welcome clarification of how it is intended to distinguish between workers supplied to provide labour and workers supplied to provide labour as part of a contract to provide a 'composite service', for example, a client which uses non-agency subcontractors to provide personal service using the end client's materials.
18. We suggest that any online reporting system be properly tested and piloted before it goes live, in accordance with the recommendations in Lord Carter of Coles' [*Review of HMRC online services*](#) published on 22 March 2006.

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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)