

TAXREP 44/04

COMMON COMMENCEMENT DATES

*Response dated 3 September 2004 from the Tax Faculty of the Institute of
Chartered Accountants in England & Wales*

*to the consultation document published by the Small Business Service on 30 April
2004, on the feasibility of introducing common commencement dates to areas of
UK law*

CONTENTS

	Paragraph
INTRODUCTION	1-3
WHO WE ARE	4-6
COMMENTS ON THE CONSULTATION DOCUMENT	7-34

Tax Representation

COMMON COMMENCEMENT DATES

INTRODUCTION

1. The Tax Faculty is pleased to have the opportunity to contribute to the Small Business Service's consultation on common commencement dates.
2. The Small Business Service (SBS) is an agency of the Department of Trade and Industry (DTI). The consultation document *On the government's commitment to consider the feasibility of introducing common commencement dates to areas of UK law* can be found at <http://www.sbs.gov.uk/content/consultations/ccdates.pdf>
3. Our response concentrates on the tax issues relevant to the common commencement date proposals. By this we mean the taxes, duties and tax credits which are the responsibility of the Inland Revenue (IR) and HM Customs & Excise (C&E). We have also made some comments on the information available to small businesses. Beyond that, we have not commented on the non-tax aspects of the consultation as this is outside the Tax Faculty's remit.

WHO WE ARE

4. The Institute of Chartered Accountants in England and Wales is the largest accountancy body in Europe, with more than 128,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
5. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry through the Accountancy Foundation. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy (which includes taxation).
6. The Tax Faculty is the focus for tax within the Institute. It is responsible for technical tax submissions on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 11,000 members who pay an additional subscription.

COMMENTS ON THE PROPOSALS IN THE CONSULTATION DOCUMENT

7. We welcome any proposal which is likely to make it easier for businesses to deal with regulatory requirements. We note also that the results of research (mentioned in the consultation document) show that small businesses are in favour of the idea.

Tax Representation

Therefore, we support the proposal to introduce common commencement dates for legislation, and the extension of this to taxation matters.

Limitations of the proposals

8. However we note that the proposals are limited in that they refer only to secondary legislation, and moreover do not extend to EU-driven secondary legislation. We are therefore concerned that the proposals do not go far enough.
9. The consultation document appears to proceed on the basis that legislative changes affecting business are put in place by statutory instrument. This is more usual (though not invariable) for matters of employment law, social security and tax credits, National Insurance, and VAT. But for direct taxes, the commencement date is often set by primary legislation, chiefly the annual Finance Act. Having common commencement dates for all legislative changes would provide further clarity.
10. We note also that the proposals apply only to domestic law, but that 40 to 50 per cent of significant proposals emanate from Europe (paragraph 12 of the consultation document). We appreciate that there are constraints on extending the proposed common commencement date regime beyond domestic legislation. However, we recommend that this be given serious consideration. It will not aid clarity if businesses are led to expect a common commencement date regime only to find that a significant proportion of changes are outside this. Small businesses are unlikely to appreciate the distinct between regulations which are driven by Europe and those which are domestic.
11. The SBS consultation document looks only at regulations affecting business. We appreciate that this is the SBS remit. However, if government bodies such as the Inland Revenue are going to use common commencement dates, it is artificial to apply this just to business issues. The tax system affects owner-managed businesses on many fronts. Many businessmen and their advisers are also dealing with income tax and other non-business tax matters. It would be potentially confusing to have a common commencement date regime for new legislation which is judged to be business-related, but not for other changes.
12. The effectiveness of using common commencement dates will be reduced if it is applied just to certain areas of law. The consultation document makes particular mention of employment law, tax, and environmental legislation. We trust that government will also consider other areas, such as health and safety legislation, which was identified as a key area of regulatory difficulty for small businesses in the SBS's recently-published *Annual Small Business Survey 2003*.
13. Small businesses are a different population from medium and large enterprises and have different needs. In our view, the coalition of commencement dates is most likely to assist small owner-managed businesses if it applied to all the legislation likely to affect them. It does not necessarily have to apply to other business sectors or non-business user groups.

Tax Representation

The choice of common commencement dates

14. The employment law pilot introduces changes twice a year, at 6 April and 1 October. We consider that two common commencement dates a year, at the start and mid-point of the tax year, would be reasonable.
15. If changes are to be introduced at other times of the year, this should be at the beginning of a month. If small businesses or their advisers have to do apportionment calculations, it is far more onerous if the changes happen part-way through a month and apportionment then has to be done on the basis of days rather than months.
16. However, it should be noted that the beginning of a month will be differently defined for different taxes and duties. For corporation tax or business income tax, and VAT, it will usually mean the first day. For PAYE, it is the sixth day. There would need to be some flexibility, so that changes introduced at (say) the beginning of October could apply from either 1 October or 6 October, as appropriate. Similarly, changes applying from 6 April for income tax should apply from 1 April for corporation tax.

Exceptions to the common commencement date regime

17. We are concerned that unless the system of commencement dates is the rule, with only very limited exceptions where other dates are used, it may lead to a false sense of security in small businesses. They may not realise that there will still be legislation commencing at other dates, if they think 6 April and 1 October (or whatever dates are chosen) are the only dates when legislative changes will be effected. Far from providing greater clarity and awareness about changes, this could create confusion, depending on how many new regulations are outside the common commencement date regime. If the availability of exceptions means that more new legislation will be outside the new regime than within it, businesses could potentially be more confused and less prepared than at present.
18. The exceptions to the common commencement date regime should be clearly stated. Departments should be required to justify cases where they introduce changes outside the regime. Reasons like shortage of time should not be accepted unless it is clear that they are justifiable (and not due, for example, to the department dragging its feet in processing the regulations).
19. It is probably inevitable that anti-avoidance legislation will be introduced at other dates, but there seems no reason why these, and most other measures which are introduced outside the common date regime, cannot be timed to commence at the start of a month.

The time available to prepare for new regulations

Tax Representation

20. We are surprised by the comment in the consultation document (paragraph 6) that businesses usually have 12 weeks to prepare, once regulations have been made or laid and before they come into effect. In our observation, 12 weeks is highly unusual. Regulations frequently come into effect within a far shorter time period.
21. We would also point out that even if 12 weeks were available between the date that regulations were laid and when they came into effect, this is a very short period if they necessitate changes to computer programs, either by the small businesses themselves or by software suppliers.
22. We therefore recommend that government departments should be required to ensure that regulations be available to the public, either in draft or after they are laid or made (depending on the type of instrument), for at least 12 weeks before they come into effect. If there are exceptions, there should be good reasons for a shorter implementation period. As noted in the introduction to the SBS document, this would assist all parties to plan for new measures and help implement them effectively.
23. We support the idea of departments publishing an annual plan of forthcoming regulations. However, we wonder whether the revenue departments would actually be in a position to do this. Our impression is that although some regulations are known about in advance, the departments would not be able to forecast all the new regulations which will be introduced the coming 12 months. Or, they would not be in a position to publish details - the obvious example being measures introduced at Budget time.
24. The annual statement published by the DTI and reproduced at Annex D to the consultation document is quite helpful. There are two deficiencies: it does not make clear which primary legislation the regulations are made under; and it does not clearly define which groups will be affected by each new rule.

How businesses become aware of new regulations

25. The consultation document raises the very pertinent question of how small businesses get to know about legislative changes. It does not matter how streamlined a system of common commencement dates is introduced if businesses do not have easy access to information on these changes. We suspect that the majority of small businesses do not know what a statutory instrument is, or how one is laid and made. They do not check the parliamentary, HMSO, or individual departmental websites for details of new SIs, and it is not realistic to expect them to do so. Even if they did, SIs are hardly an easy read.
26. Small businesses therefore rely on someone to identify and interpret legislative changes for them. For tax matters they may rely on an accountant or tax adviser, on other services such as payroll agencies or trade associations, on government published information, or a combination of these. Small businesses tend not to have in-house tax expertise. Although they may use an accountant or tax adviser to

Tax Representation

prepare accounts and tax returns, they are likely to deal with VAT or payroll matters themselves in order to save money.

27. We are favourably impressed by the Business Link website (www.businesslink.gov.uk). The site is organised in a functional and user-friendly way. On the subject of regulations, the facility to create a personalised regulations checklist is very useful. The site also provides the option to register for email updates. The site does not at present appear to provide a calendar of new regulations and when they come into effect, and we recommend that it should do so. There is also no way of searching to see what regulations might be coming into effect on a particular day, or in (say) the next three months.
28. We note, however, that the search facility on the Business Link site is poor, and not precisely targeted. The forms and publications lists are not organised in a helpful way – they are listed by department or by title (for example, there are a lot under A which are called ‘A Guide to....’). They are not organised by subject matter and it is difficult to browse for a publication on a particular topic.
29. It would be interesting to know how many businesses make use of this site, as it would seem an ideal route for disseminating information on commencement dates (whether or not a common commencement date regime is brought in). The existing mail-out service could be used and the site improved as we have suggested above.
30. For tax matters, rather than go to a DTI site, businesses may go first to the IR or C&E websites. On the Inland Revenue site, the experience is less happy. The information is organised with reference to different taxes or aspects of the tax system. For example, there are sections on self-employment, corporation tax and employers. There is a quick link entitled ‘Small and medium businesses’ on the main ‘Business’ page of the site, but unhelpfully this goes straight to some text about opportunities to do contract work for the IR. There is certainly good information on the IR website, but it is not organised in a user-friendly way, and it would be impossible for a business user to check for the latest regulations which might apply to him.
31. The C&E website has recently been re-launched, and has many features which are not yet turned on. Therefore, at this stage we are not in a position to comment on its usefulness for small businesses, though in general the site is significantly better than the previous version, it can be customised, and provides a facility to register for emails.
32. The consultation document states at paragraph 6 that the annual publication of a statement by departments will alert business and others to changes in regulations. This will only be the case if the statements are readily accessible and well publicised. We suggest that all such statements should be brought together on one site, as well as placing them on each departmental site. The reader should then be able to sort this information in different ways – for example, to find all those

Tax Representation

applying to employers or to particular business sectors – and not just be presented with a series of rather dry departmental lists.

33. The trend at the moment is for government departments to provide information to their customers online. This is fine provided the customer uses the necessary technology. Small businesses vary considerably in their use of technology, but many do not use it at all, or if they do, they may not have broadband or modern computers, without which it becomes very time-consuming to access information on many websites. It is important that equally good information is provided in hard copy and made widely available.
34. A key requirement for small businesses is to have a single, easily accessible point of contact for the information they need.

JMM

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