3 March 2006

ICAEW REP 13/06

Steve Coad
K104 Kelsall House
c/o Coalport House
Stafford Court 1
Stafford Park
Telford TF3 3BD

By email

Dear Mr Coad

ALIGNING FILING DATES FOR COMPANIES

The Institute of Chartered Accountants in England & Wales is pleased to respond to your request for comments on the joint consultation by HMRC and Companies House to align the dates for delivering company tax returns to HMRC and for filing accounts with Companies House.

We draw attention to the statements in paragraph 6 of the attached comments that we do not support the proposal to bring forward either the tax or accounts filing deadlines and that both Option 1 and Option 2 will impose considerable burdens on all companies, their advisors and employees.

Please contact Andrew Gambier (020 7920 8643 or andrew.gambier@icaew.co.uk) should you wish to discuss any of the points raised in the attached response.

Yours sincerely

Robert Hodgkinson

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Executive Director, Technical

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ICAEW representation

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ALIGNING FILING DATES FOR COMPANIES

Memorandum of comment submitted in March 2006 by the Institute of Chartered Accountants in England and Wales, in response to the HMRC/Companies House consultation paper Aligning Filing Dates for Companies published in November 2005.

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales (the 'Institute') welcomes the opportunity to comment on the consultation paper *Aligning Filing Dates for Companies* published jointly by HMRC and Companies House.

WHO WE ARE

2. The Institute of Chartered Accountants in England and Wales is the largest professional accountancy body in Europe, with more than 127,000 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.

3. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department of Trade and Industry (DTI) through the Financial Reporting Council. 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.

MAJOR POINTS

Support for e-filing

4. We welcome the decision to develop an online filing service for companies, as a complement to the existing paper filing process.

5. We are keen to work with Companies House and HMRC in the development of the online filing service so that Government might benefit from our members' expertise.

Filing deadlines

6. We do not support the proposal to bring forward either the tax filing or accounts filing deadlines. Both Option 1 and Option 2 will impose considerable burdens on all companies, their advisors and employees.

Enquiry window

7. We support the proposal to simplify the operation of the enquiry window, which will remove current disincentives to early filing.

RESPONSES TO SPECIFIC QUESTIONS

Q1: Do you agree that providing a single online filing service for companies to file their tax return and their accounts to Companies House will be of benefit to companies? We would particularly welcome any modelling or estimation of the

likely benefits, and views on design and implementation factors that might affect these benefits, to inform our Regulatory Impact Assessment.

8. We agree in principle that an online filing service for companies to file their tax return and their accounts to Companies House may be useful to companies and would supplement the current paper filing option. With regard to the future of the paper filing option the consultation is silent, and we urge that this filing route is retained.

9. However we are puzzled by the proposal to change potentially both accounts and tax return filing dates as a result of the online filing service proposition. The deadlines, which are to change following extensive consultation as part of the Company Law Reform Bill, should dictate the design of the portal and not vice-versa. We do not believe that the significant cost and administrative burdens imposed by Option 1 or Option 2 will be outweighed by the benefits that the portal will bring.

10. We disagree strongly that aligning filing dates will be of benefit to companies. We are unconvinced that the benefits of alignment referred to in paragraph 3.7 represent genuine economic benefits for companies. In any case, the decision on how to spread the burden of regulatory compliance through the annual cycle should be left to companies to determine. We suggest that companies are satisfied with the current filing deadlines and do not wish to see them reduced further beyond the proposals in the current Company Law Reform Bill.

11. The consultation paper fails to make the case for the necessity of simultaneous filing. The paper states (p.5) that HMRC and Companies House "must first align [their] respective filing dates", while then proposing separate filing dates for public companies. The provision of separate filing dates for public companies would suggest that this option should also be extended to private companies. This approach would have two advantages. Firstly, it would require no amendment to tax filing deadlines. And secondly, it would allow HMRC and Companies House to test the assertion that aligned filing will be beneficial to companies, by observing the proportion of companies that elect to file simultaneously.

12. There are practical issues which will require special consideration in setting up an online filing portal. These include:

    - arrangements for companies filing abbreviated accounts with Companies House, which provide full accounts on a confidential basis to HMRC;
    - provision for signing accounts – actual signed accounts are required by Companies House, whereas HMRC will accept photocopies;
    - how public companies will be able to use the portal to make separate filings.

Q2: Can you suggest other beneficial ways, beyond the alignment of company filing requirements, that Companies House and HMRC could work together to offer more integrated arrangements to the benefit of companies?

13. As noted above, we believe that the development of the online portal can progress without the need to align filing dates.

14. Some of the information requested by HMRC during an enquiry is held for statutory purposes by Companies House, for example details of the ownership of a company. HMRC should be able to obtain this information directly from Companies House.

Q3: Are there benefits from the alignment of filing dates that we may not have identified? We invite responses suggesting how the benefits might be increased.

15. No comment. We do not believe that the alignment of filing dates will lead to net overall benefits.

Q4: Are there issues in relation to alignment (of filing dates at 7 or 9 months from the accounting date) which we have not identified, and which may add costs or compliance burdens? We would welcome views on the significance of transition. We would particularly welcome any modelling of transitional costs, and proposals for how they can be minimised.

16. We disagree that these proposals will be deregulatory. In consulting our members, we have identified many practical difficulties that will be caused by these proposals. These difficulties are most apparent in smaller companies and their advisors but will affect companies of all sizes.

17. The consultation does not recognise that firms and their advisors are constrained by deadlines imposed by other regulations. Bringing forward the tax filing deadline for 31 March year-end companies would interfere with the deadline for self-assessment income tax returns. Similarly, reducing the tax filing deadline for 31 December year-end companies would clash with deadlines for P35 and P11D payroll returns. Our members inform us that they are often unable to obtain information from their clients earlier, despite providing financial incentives to them to do so.

18. We also note that many companies choose to file their accounts early, while taking advantage of the full tax return deadline. Should a combined filing approach be mandated in future, these companies are likely to defer their accounts filing date, resulting in corporate information being provided to the public and Government on a less timely basis than at current.

19. Currently companies are subject to separate fines for late filing of either their Companies House or HMRC submissions. We would suggest that these separate fines could be replaced by one fine to avoid penalising companies twice for a single action.

20. We do not agree that simultaneous filing will necessarily save time or costs. In order to complete its tax return, even where the tax provision in the accounts is precisely calculated, additional work must be undertaken to finalise the tax return, including:

    - allocating income to schedules;
    - identifying certain types of item including legal fees and penalties;

- preparing a detailed profit and loss account in the case where these have not already been required for the financial statements; and
- preparing analyses of administrative expenses, legal fees, sundry expenditure, repairs, provision movements and other accounts, where applicable.

21. Much of this work requires the completed financial statements, as common late adjustments such as directors' bonuses and related party transaction disclosures may have a tax impact. Additionally, there are tax rules which require certain expenditure to have been paid within specified time limits following the end of the year in order to qualify for a tax deduction in the return. For example, interest payable to a connected party must be paid within 12 months of the year-end to qualify for a deduction. In these cases, it is not possible to submit a corporation tax return until these items have been resolved. Therefore an unintended but inevitable effect of these proposals will be to shorten certain tax legislation deadlines.

22. We welcome the announcement that the consultation will incorporate a Small Firms Impact Test. We believe the proposals fail to take account of the serious implications that these proposals will have for smaller firms providing tax and accountancy services to businesses. The very smallest firms typically have a single team of professional staff who provide all of the firm's services to their clients. Such firms can be affected significantly by changes to filing deadlines, as they have no additional resources to call upon. We also note that in smaller firms of advisors the same staff prepare the accounts for filing and then prepare and file the tax return. There is unlikely to be a saving by combining the deadline, even where they are able to meet a shortened tax filing deadline.

Q5: Are there significant difficulties with Option 1 as opposed to Option 2?

23. We object strongly to both options. However Option 1 would cause more severe difficulties for smaller firms and smaller companies than Option 2.

Q6: If we were to adopt Option 1, would it help companies and agents if we were to provide a transition period? For example, we might advance the filing date in two steps, first to 9 months and then to 7 months a year or two later.

24. We do not wish to see either Option 1 or Option 2 implemented. However if Option 1 is to be adopted, an extended transition period is likely to be necessary.

Q7: We would welcome responses on timing. We aim to make transition (to the new aligned filing date) as smooth as possible, in respect both of companies' and agents' annual cycles, and of other changes affecting them.

25. No comment. We oppose the proposal to align filing dates.

Q8: Would the proposed changes (to the enquiry window) be beneficial? We would welcome responses suggesting how the potential benefits could be increased.

26. We welcome the proposed changes to the enquiry window, which should be beneficial to companies and will remove an unnecessary disincentive to the early filing of company tax returns.

Q9: Are there any disadvantages to business from the proposed change to the enquiry window? If so, what could be done to improve the proposal?

27. No comment.

Q10: Are grouped companies likely to benefit in practice from the proposals in Chapter 5? We would welcome alternative suggestions for enabling groups to benefit from the change to the enquiry window without compromising risk assessment.

28. We note that the proposal in paragraph 5.6 to withdraw the amended enquiry window to groups where a single member of the group files late may cause difficulties for companies with more than one agent. The other agents would need to be advised of a late filing by another group company and the corresponding withdrawal of the reduced enquiry window.

Q11: Are there particular issues for clubs and unincorporated associations in relation to these proposals, which we should take into account?

29. We observe that the proposed shorter tax filing deadlines are more likely to impose costs on clubs and unincorporated associations rather than generate benefits. We understand that often such entities do not have professional advisors to assist them.

30. Many such entities have paid less attention to tax after the introduction of the 0% rate – as they do not pay dividends the non corporate distribution rate did not affect them. Some of these entities could have substantial problems now in filing at all, as those with agents may well have ceased their association during the 'no tax due' period. This group also includes flat management companies which have very similar issues to clubs.

31. Whether such non-profit organisations should be within the scope of Corporation Tax is another matter; they tend to have little taxable income and the proceeds tend to be used for the purposes of the non-taxable activity. An improved definition of trading to include a commercial profit motive, and the intention to withdraw funds for the enjoyment of shareholders/members could be effective in eliminating these organisations from the scope of corporation tax.

32. This definition would however also cover many private schools which also have neither profit motive nor fund-withdrawal motives (any such surplus is used to generate bursaries for disadvantaged students, or to cover capital expenditure.) The profit motive would also be difficult to apply to those entities, such as insurance companies, which expect to make losses on their 'trading activities' but

recover the loss and make a commercial profit on the interest arising from the retention of funds required for the trading activity.

Q12: Are there consequential implications (from the proposals in this paper) for other provisions that cause particular concern to companies and their advisors?

33. No comment. We have set out our opposition to the proposals to align filing dates in our responses to other questions.

We would welcome feedback on the partial regulatory impact assessment at Annex B. We would also welcome contributions on our thinking on the costs and benefits of these proposals, to inform the full RIA in due course.

34. We did not find the partial regulatory impact assessment to be an adequate assessment of the costs and benefits of these proposals. This may call into question the purported annual savings of £100 million.

35. The full RIA needs to consider the implications of these changes on companies' tax and accounting advisors. Companies' advisors may find it difficult to accommodate the proposed revised filing dates without incurring additional costs

36. The full RIA should also include a more thorough consideration of the "do nothing" option. We do not agree that this option can be dismissed because it fails to deliver the policy objectives. The RIA should value this option at the opportunity cost of the delivered benefits, less the saved costs of implementation.