



ICAEW TAX FACULTY REPRESENTATION

TAXREP 17/11

PAYE: REAL TIME INFORMATION

Comments submitted on 1 March 2011 by the Tax Faculty of ICAEW in response to the consultation document: 'Improving the operation of Pay As You Earn (PAYE): Collecting Real Time Information' published on 3 December 2010 by H M Revenue & Customs

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PAYE: REAL TIME INFORMATION

INTRODUCTION

1. In this document we present the response of the Tax Faculty of ICAEW to the consultation document '*Improving the operation of Pay As You Earn (PAYE): collecting Real Time Information*' and impact assessment published on 3 December 2010 by HM Revenue & Customs at www.hmrc.gov.uk/news/improve-payee.htm.
2. We are pleased to have the opportunity to respond to this consultation. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. On 15 December 2010 and on 9 and 22 February 2011 we met HMRC and were able to put forward some key comments and concerns and discuss aspects of the consultation document.
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 operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, ICAEW provides leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. ICAEW is a founding member of the Global Accounting Alliance with over 775,000 members worldwide.
6. Our members provide financial knowledge and guidance based on the highest technical and ethical standards. They are trained to challenge people and organisations to think and act differently, to provide clarity and rigour, and so help create and sustain prosperity. The Institute ensures these skills are constantly developed, recognised and valued.
7. The Tax Faculty is the focus for tax within ICAEW. It is responsible for technical tax submissions on behalf of ICAEW as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 11,000 members of ICAEW and a free weekly newswire.

MAIN POINTS

8. We believe the secret of getting the best out of RTI lies in:
 - NPS working properly and producing accurate and timely code numbers and year-end reconciliations;
 - employers being able easily to file data online and HMRC processing the data promptly and accurately;
 - taking the time to get the detail right for RTI at the design stage, including ensuring that employers are not over-burdened, and not implementing RTI until it is working properly in practice having been exhaustively tested,
 - very full stakeholder engagement by HMRC not only with employers and third party payroll providers (eg, payroll advisers/bureaux) and their representatives and software developers but also with those designing universal credit,

- providing a workable and cost-effective route into the system for the many small employers who do not use BACS or who have no broadband access, and
 - providing a cost-free bank account for the many people who do not currently have a bank account (eg, around 5% of low-income households and 3% of average-income households who have no bank account) and therefore cannot be paid by BACS.
9. The testing period will start with the 'easy' employers, ie, those who use BACS, and progress onto the more 'difficult' employers, ie, those who do not. It is the latter category for whom RTI workaround processes will need tailoring, and designing and testing RTI to fit this category is likely to take longer than expected.
 10. Given the foregoing and HMRC's IT history, we consider that the timetable for implementing RTI – final specification for payroll developers by the end of March, testing from April to October 2012 and mandating the first batch of employers in January 2013 – is far too optimistic and can at best be described as the product of hope rather than experience. It needs to be reviewed as a matter of urgency. If testing is to be completed only by October 2012, and the system is then declared robust, then following the Carter principles mandation of employers should not start until October 2013 at the earliest. Many of the comments in our response TAX 36/10 made on 23 September 2010 to HMRC's earlier consultation document published on 27 July 2010 (available via www.ion.icaew.com/TaxFaculty/20708) continue to apply. We therefore recommend that RTI should not be mandated for employers until the conditions in the bullets above have been met.
 11. We are concerned that PAYE should do what it was designed to do, namely ensure that employees and pensioners/annuitants pay more or less the right amount of tax in-year with only small over- and underpayments. Although we acknowledge government's wish to integrate RTI with the new universal credits, we should not like this objective to distract the designers from NPS/RTI's main function of enabling payrolls to collect on behalf of government the right amount of tax and NIC in-year. It would be a matter of concern if the need to integrate the proposed universal credit led to a re-design of a longstanding and stable system and made it create unreasonable amounts of extra work for HMRC and employers and run into difficulties (we think back to the failed attempt to run working tax credits through payroll and trust that lessons have been learned).
 12. We think that NPS and RTI should, ideally, work with minimal HMRC manual intervention. The software needs to be able to cope with all possible different scenarios. The defaults need to be not only the right ones but well publicised, so that taxpayers/agents/employers can request – or, looking forward, in appropriate cases self-serve – the appropriate 'flags', for example whether other income is coded out or dealt with under SA, or how allowances are allocated where there are multiple sources. This is particularly crucial when issuing code numbers for taxpayers in a taper band for age allowance or personal allowance at £100,000, and we suggest that outside-the-box policy thinking is needed here, for example, the abolition of tapered personal allowances, perhaps compensated by changes to the amount of age allowance or tax rates. If HMRC is successfully to computerise and automate even more of the PAYE process, then it must think in computer terms when designing both policy and processes.
 13. We cannot overstate the importance of fully engaging with stakeholders – particularly employers, software houses and payroll bureaux – continuously throughout the development of RTI and from the very earliest stage in order to develop systems that will work in the real world. Exhaustive scenario testing with stakeholders will be critical to the chances of the success of RTI.
 14. There are some serious current difficulties that we believe need to be resolved before NPS or RTI can work as intended. For example:
 - HMRC is too slow in processing information returned by employers whether P35/P14, P45, P46, P11Ds, in-year changes, etc, even where that information is returned online;

- benefits-in-kind and expenses which are allowable against employment earnings need to be reflected in code numbers earlier – this is likely to necessitate changes to processes and new ways of capturing this information, for example, perhaps forms P11D should include only matters that will not be subject to a claim for deduction against earnings rather than such claims having to be made by employees;
 - some of the default settings in NPS do not result in the right codes being issued and/or are little known outside HMRC, for example HMRC's restriction of underpayments that can be coded out to 50% of liability and how the £2,000 limit operates;
 - NINO allocation and confirmation is presently too slow;
 - processing of Form A1 certificates in Newcastle for EEA employees is currently taking over three months, even in simple cases;
 - if an automated system is to work then 'local agreements'/'Spanish practices' will need to be eliminated or built into the system as an option. Doing away with such practices is likely to necessitate rectifying deficiencies in the law that make such easements necessary. This is a very significant issue and should not be underestimated. Failure to deal with it appropriately will give rise to unfairness which may trigger behavioural change, political pressures and/or legal argument.
15. The large number of employee records means that timely and accurate processing and issue of NINOs and code numbers are essential. Even a 99% success rate in coding leaves approximately 600,000 employee records incorrect. 600,000 is a large number of taxpayers/NIC contributors. This probably arises from the number of non-matched items which we understand runs at the rate of approximately 2 million per year.
16. We have previously raised the issue of incorrect NINOs and the likely large increase in the number of non-matched items when processing of returns is weekly or monthly rather than annual, but we have been assured by HMRC that the early submission of deductions data will make it easier for HMRC to rectify incorrect NINOs promptly. Given the scarcity of clerical resource after the slimming down of HMRC, we have very grave doubts about the department's ability to process and rectify promptly the very large number of non-matched submissions. Whereas there is currently a backlog of only several million non-matched items from earlier years, arising from annual P14 processing spread over the seven months from May to December each year, RTI will presumably require real-time allocation of deductions to accounts, leading to the generation of millions of current non-matched items immediately upon its introduction, even before some of the non-matched items from the last tax year have been identified, let alone investigated and rectified. The backlog will then increase week by week as people with incorrect NINOs move job and create even more non-matched records with new employers.
17. As noted above, we also cannot see how employers will be able to submit employee data with appropriate, accurate personal identifiers where the employees come from overseas and either have to wait several months for a NINO to be issued or have no obligation to apply for a NINO because they are not subject to UK NICs. It is not clear how HMRC will ensure that the UK employer has, from the first payday (which is the planned BACS filing date) a unique personal identifier for every employee, including foreign secondees who are subject to PAYE but not NICs.
18. With regard to RTI, there are some fundamental questions that need to be resolved, including how to cater for employers:
- who do not use BACS – a sizable number of employers although covering a not much larger number of employees,
 - whose telephone exchanges either do not offer broadband or are too far away to provide a usable signal,
 - who do not have a computer or do payrolls manually,
 - who are elderly and have never used a computer, and/or disabled and are unable to use one,

- with a foreign element (eg, overseas employers with no access to BACS because they can't open a UK bank account, or employees with no NINO) where data flows are less immediate, or
 - who wish to query the correct treatment of particular payments with technically-qualified HMRC advisers before submitting data because they may be subject to penalty for underpaying PAYE and NIC each month.
19. These are significant issues. Forcing compliant taxpayers into this regime when they are unable to meet the requirements will cause significant unjustified pressures resulting in considerable admin burdens and associated costs. We are seeing the beginning of this with the current legal cases against e-mandation by elderly and disabled but historically compliant taxpayers.
 20. Consideration needs to be given to this in advance of any imposed solution. Just as taxpayers and agents are expected to put up with continuing imperfections in HMRC's delivery mechanisms and customer service, so government needs to recognise and appreciate those ordinarily-compliant citizens who struggle to adapt to the new e-world. Taxpayers need help and encouragement to try and meet the new requirements, not penalties for getting it wrong.
 21. Whilst we accept that the sole income of many of those in receipt of social security benefits is employment income, we question whether RTI really will enable computation of universal credit in real time given that NPS/RTI covers only employment income. The system will only issue correct codes and provide the correct income information for assessing universal credit if all sources of income (including self-employed, property, investment and foreign) are integrated. However, unless other means of collecting this data are used, this information will not be available until returned under self assessment, which can be up to 21 months after the end of the year. Again, we believe that radical thinking will be needed if the automation of universal credit within the RTI system is to work. The mechanics of calculating universal credit will need to have regard to the information available (or required) within RTI/NPS and this will need detailed consideration from the very earliest stage if the potential benefits are to be maximised.
 22. We should welcome clarification of how it is envisaged that RTI will reduce employers' compliance costs. Instead of submitting a year-end return, the employer who pays all staff monthly will need to submit at least two detailed reports per month, one on payday and one when paying over the tax/NIC to HMRC, together containing over 100 items of data. The final report of the year will have to be submitted by 22 April, which is nearly one month sooner than the P35/P14 submission. Added to this, employers have to incur costs in buying software to submit RTI data and redesigning processes and training those responsible for compiling and submitting the data (or pay third parties to do so). Those employers who currently do not use BACS will have to incur significant costs on a BACS licence, BACS software and bank charges. Even if they appoint an agent, that agent's costs will still be extra costs to be passed on with an added profit margin, and the bank charges will be inescapable.
 23. We should welcome clarification of how the penalty regime will interact with RTI. The Construction Industry Scheme (CIS) requires monthly reporting on an almost real time basis and the regime is not reliable. Recent reports from members include submitting returns, receiving acknowledgments and then being told that no return has been received, and demands for returns for schemes that have been put on hold for six months so no returns needed (the request for putting on hold is dealt with by telephone so there is effectively no proof), resulting in penalty notices and time spent getting them cancelled. We recommend that pending the bedding down of RTI any penalties that are issued be prepared manually and that a Ministerial assurance be given that the penalty regime will be administered with a light touch.

COMMENTS AND ANSWERS TO SPECIFIC QUESTIONS

Chapter 5 – Real time information: detail

Could this new process allow the phasing out of the need for an end of year reporting process?
(5.5)

24. Para 5.3 proposes a two stage process, so that some details (namely items 1-73 in Annex B) are submitted to HMRC every payday, which may be five times in a month, and other particulars (items 74-102) including corrections and adjustments are notified to HMRC on a monthly basis when accounting for PAYE/NIC. Provided all necessary adjustments can be processed by the employer by the 19th/22nd of April, rather than the current deadline for submitting forms P35, then no annual report to HMRC will be needed – in effect the accumulated data concluding with that on the RTI report for 19th/22nd April would provide all the data that is required (although employees will still need an annual summary for their tax returns and employers will inevitably need a facility to correct data for a closed year because mistakes always happen or data arrives late in the payroll department).
25. We have two concerns here, first the effective bringing forward of the year-end deadline, and secondly who has responsibility for the figures.
26. Whether this earlier deadline is possible to achieve depends on a variety of factors, including the capability of employers and their systems and circumstances, for example whether there are overseas employees, and the ability of different departments within the business to communicate and collate all the necessary data by the new earlier deadline.
27. The main difficulty in meeting the new year-end deadline will be for those employers who
 - have overseas employees, and/or
 - are not technologically up to date and/or
 - presently rely on their accountants/advisers to compile the annual return forms P35 and P14/P60 and sort out any errors whilst so doing.
28. Whilst it is right to say that most employees are paid by BACS and one can probably assume that employers who pay by BACS are likely to be big enough to have the technical capability to meet a 19th/22nd April deadline, leaving aside difficulties in collating all the information especially if there is any foreign element, this is a minority in number of employers. The number of employers who rely on third parties to undertake payroll on an on-going basis or assist with year-end filing obligations is by no means a small minority, which includes employers who still do payrolls by hand. The number of employers which need external help is likely to increase with the advent from October 2012 of National Employment Savings Trust and other workplace pension reform obligations, and a shortened deadline may well prove impossible to meet.
29. The phasing out of annual reporting to HMRC will remove the obligation for a responsible official within the employer to make a declaration such as is made on form P35. At present, payroll bureaux and advisers who undertake payroll calculations on behalf of clients and prepare the end-of-year returns obtain client sign-off on forms P35 before these returns are submitted, because PAYE remains the responsibility of the clients as employers even if they use a third party to undertake calculations and prepare returns (we are thinking here of items 97-100 in Annex B which include free of tax payments, payments to and by third parties, et al). We consider that there should be an annual declaration to be made by 19 May which would also enable Month 13 adjustments not already reported to be made. Failing that, we should welcome clarification of what declarations employers will make if there is no form P35 and on what data penalties/prosecutions for false or incomplete declarations will be based.

Is monthly submission of information about employer-level adjustments (as suggested above) the most efficient approach for employers? (5.5)

30. Monthly rather than by payday submission is probably best for employers if these are the only choices.
31. We would note that apparent variances between monthly figures will arise where weekly paid employees have five rather than four paydays in a month which HMRC will need to take into account if using variations in tax/NICs receipts to measure risk. Businesses vary in the regular payday they choose, so it may not be immediately clear to HMRC's system whether a month ought to have four or five paydays, and in small businesses the payday may even be flexible and unpredictable.

Alternatively, would it be possible to send details of these adjustments at the same time as the real time information about employee deductions? (5.5)

32. Some of the employer level information would be impossible to submit on payday, for example items 97 and 98 on free-of-tax payments and vouchers and benefits which we should have thought would normally relate to the period for which an employee has been paid, which in many cases is unlikely to have ended by payday. HMRC must also allow for the time it might take for the information to reach that part of the business – or third party – responsible for submitting the RTI data.

Is the data contained in Annex B already held in payroll systems? (5.6)

33. We would have thought that much is but some will not be. For example, NINOs are not necessarily held by employers or known by employees when they start working; similarly dates of birth. The latter can be checked fairly easily and should become part of the routine, but the latter is in the hands of HMRC's and DWP's NINO issuance and verification processes.
34. We welcome HMRC's intention in para 1.6 that RTI should involve only data already collected and recorded by employers for the purposes of PAYE or to satisfy other existing legislative requirements, but HMRC needs to take into account timing issues (see answer to next question).

If certain items are not currently held, would they be easily obtainable? (5.6)

35. It takes a long time to obtain a NINO, and those who do not have a NINO have to attend an interview at a Jobcentre Plus office. In the case of short-term or itinerant employees, the job can have ended months before the NINO is obtained. We note HMRC's undertaking in para 5.17 to provide a NINO verification service and trust that this will cover all employees including foreigners and that it will provide NINOs to employers in real time.
36. Incidentally, we would note again that an employee can have a PAYE liability without a NIC liability. An employee not subject to UK NIC liability has no right to a NINO. Therefore, HMRC should not reject files without a valid NINO as it may be that there is a valid reason for the employee not to have one. We should welcome clarification of the identifier that employers should use in such circumstances.
37. Dates of birth can be difficult to verify for an employer if the employee does not want the employer to know it.
38. Data may be held by the employer but not in payroll or the part of the organisation that would be submitting RTI. It may even need to be obtained from overseas. HMRC needs to bear in mind that it can take time for information to be received by payroll from other departments within the business, especially where data has been obtained from other locations or where

there is an overseas element to the payroll. It also takes time to obtain data from third parties – required for items 98 and 99 in Annex B. The deadlines for submitting RTI and any penalty regime that is put in place for late submission of RTI data need to take into account practical difficulties so that penalties are not levied which then have to be unwound, which takes time and incurs costs for employers and HMRC.

Do you envisage any difficulty in incorporating new data into your payroll system? (5.6)

39. Sufficient lead time will be needed for employers – and software providers where applicable – to amend their processes and/or software. This will cost time and money. See also final paragraph of answer to previous question.

Do you have any other comments on the data items specified in Annex B? (5.6)

40. Items 12 (starting indicator) and 17 (starting date): given the existence of item 17, is there a need for 12, or is it to cover for employees who have been dormant (ie have left but have not been given a P45 as they may be rehired in the future – see item 73 (no payment but employee still live)) and who later return?
41. Item 40 (last payment) – we assume this means final payment. Similarly to items 12 and 17, we question the need for item 40 given the existence of item 32 (date employment etc ended).
42. Item 41 (payment after date of leaving) needs to be expanded – see question on para 7.5 below. We suggest that in addition to this indicator, employers should insert both a starting and leaving date on the same report (ie, to ensure that NPS does not treat the payment as deriving from a new employment).
43. Item 44 (number of paid hours worked) – unlikely to be known for salaried employees, but presumably only relevant for universal credit purposes and therefore unnecessary for the majority of employees.
44. Item 50 (benefits taxed via payroll) – we should welcome confirmation that no P11D or similar end-of-year return of benefits-in-kind included within this item will be required to be made by employers to HMRC.
45. Item 66 (NI category letters) – is this per employee or employer? If employer, then four NIC category letters may not be enough, for example, a shipping company with home trade and foreign trade vessels with officers in a salary-related pension scheme, a couple of married women, directors with deferment, the NIC holiday and Table Letter X for some foreign mariners may need six or seven letters.
46. Item 68 (NI primary) – we suggest adding an indicator for NIC Holiday.
47. Items 69-71 – there is no mention of the NIC Primary (or Secondary) Threshold.
48. Item 74 (frequency of payment to HMRC – monthly, quarterly, annual) should be expanded for annual schemes to show in what month the payment of tax/NICs is normally made in order that HMRC does not unnecessarily pursue non-payment in the other months.
49. Item 97 (free of tax payments) – what about the NIC equivalent? There are many employees outside NIC because they have certificates of coverage or are otherwise exempt. Also, what about employees on a UK payroll working overseas who pay NIC but no tax? How will the system deal with employees on a UK payroll who have neither PAYE nor NIC liabilities because they have been away for more than 52 weeks and will be away for at least a complete tax year, but whose family circumstances are such that they will qualify for universal credit and therefore need to be in the system?

50. Items 98 (third party payments) and 99 (third party employees) – we question the practicality for many employers of including these items by the envisaged due date for RTI submission.

Which of the three methods for collecting the payments would you prefer? (5.10)

51. We think that employers would prefer to instigate payments themselves.
52. We should welcome clarification of what tolerances will be allowed between what is paid and the RTI reported.

Is there a better way of collecting these payments and should the current choice of cheque or electronic payment be retained? (5.10)

53. *Collection:* See answer to preceding question.
54. *Current choice:* We think that the present choice of cheque or electronic payment should be retained; the banks' intention to abolish cheques is retrograde. Paying by BACS is expensive for a small employer; writing out a cheque or counting out banknotes and putting either of these with a payslip in an envelope is the simplest way of making a payment. Casual and itinerant employees will generally be paid in cash, and many are unlikely to accept cheque payment, let alone BACS transfers. This is especially so for the tens of thousands of Eastern European harvest casuals who are highly unlikely to have a UK bank account.

Should HMRC continue to allow payments to HMRC on a quarterly or annual basis? (5.10)

55. Yes. These easements were brought in to meet a need and the need will still exist.
56. We suggest that for annual PAYE schemes indicator number 74 in Annex B should be expanded to show in what month the payment of tax/NICs will be made in order that HMRC does not unnecessarily pursue payment in the other months.
57. Better guidance on the current conditions attaching to annual PAYE schemes is needed.

Is changing the movements process in this way preferable to retaining the current process? (5.17)

58. We are content with the proposals but should welcome clarification of how a new employer will be notified as to what code number he should use – will there be a real time code notification process that the new employer can use to obtain the data or will he have a right to see the employee's final payslip from his old employer?
59. With reference to para 5.13, we should welcome clarification as how long after leaving and the end of the tax year employers will have to issue the 'final' tax/pay statement to the ex-employee and submit the P9D/P11D to HMRC.
60. With reference to para 5.17 which says that 'it is hoped' to offer employers a NINO verification service, it presently takes too long for HMRC to supply employers with NINOs for new employees and it is difficult for employees who need a NINO to obtain speedy appointments with JobCentre Plus. A real time NINO trace and identifier is needed. An example of where NINOs are needed quickly is where Lithuanians visit the UK for a week before Christmas to pick carrots: at present they have left the UK long before a NINO is provided and in the meantime the employer has no identifier, and little chance of following up any queries successfully. Another example is where an employee is aged under 16. In the USA it is compulsory for individuals to have the US equivalent of a NINO if one is to work and we suggest that consideration might usefully be given to introducing a similar requirement in the UK. For this to function properly would necessitate HMRC being able quickly to advise

NINOs to employers, but a requirement for an individual to have a NINO in order to work should not be linked to whether the individual has a work permit.

61. Also where a UK employer has foreign employees on the payroll, it takes too long to obtain form A1 (formerly E101).
62. We would also note that it is sometimes unclear that an employee has left, for example cases where there is extended unpaid holiday or sickness leave or disciplinary proceedings are in progress.

Is there a better way to structure the movements process? (5.17)

63. See answer to previous question.

Do you have views on the appropriate tax code to operate in the case where an individual's identity details failed a verification test? (5.18)

64. Traditionally the default code has been BR but this is to be changed to OT from 6 April 2011. Neither gives relief for personal allowances but OT has the benefit of being less likely to give rise to an underpayment which can be an unwelcome surprise where the employee is a higher rate taxpayer. However, by the same token, deducting basic rate tax without allowances would be a heavy and unwarranted burden for minimum wage workers: we would suggest that the present system of using 647L Wk1 for most workers without a P45 has stood the test of time and should be retained. See also our suggestion about NINOs in answer to question before previous question.

Chapter 6 – Channel choice

Are there any specific reasons or barriers why you do not use BACS to pay your employees and could you detail these? (6.9)

65. Employers do not use BACS because of the expense and, depending on the bank/building society at which the employer banks, burdensome processes. Billpay works just as well as BACS and is less inconvenient, less expensive (there is a fee to use BACS) and more flexible. Employers have their own individual reasons for paying employees in the way they do, mainly convenience, and are unlikely to welcome having to deal with payroll in a different way or being forced into procedures that provide no obvious benefit to the business. In addition, members report that many smaller clients cannot use BACS to pay employees because their banks require an overdraft facility equal to the value of net pay and many small businesses are unable to obtain such a facility. Furthermore, a not insignificant number of low-income workers have no bank account, so employers couldn't pay them by BACS even if they wanted to do so.
66. Solutions will be needed for employers who pay other than by BACS, ie:
 - by billpay or other electronic means, or cheque, or cash, or
 - which use bureaux or advisers to calculate payroll and which are told by those third parties how much to pay and by when, or
 - which effect the payment by a book transfer, for example to a director's loan account.
67. We note that the condoc suggests that HMRC will allow alternative methods of transmitting the RTI information for those who do not pay employees via BACS and we trust that this will not be only a temporary measure. However, any method of transmitting the RTI which is not linked electronically to the payment will not be meeting the objective of RTI which is to provide HMRC with an integrated record of what has been paid and what should have been paid.

68. If BACS is going to be mandated for all (which we do not recommend as it is too expensive and impracticable – see comments above about workers with no bank account or no UK bank account) then we feel that HMRC must pay full compensation to small businesses to help defray the additional costs of complying with RTI. There are those who are disabled and unable to comply with e-mandation, and others without reliable e-access, and the elderly employing a carer for whom this is a very difficult, if not insurmountable threshold. Their only means of compliance is to give this task to others. For small amounts (eg, the part-time employee in the shop) this is a disproportionately expensive burden.
69. Para 3.10 says that HMRC will bear the costs of extracting the RTI information from BACS. We should welcome clarification of what this means.

It would also be helpful if you would provide volumes (e.g. number of employees and frequency of payment) around the circumstances outlined above. (6.9)

70. We can provide the following statistics for, first, some large employers:
- 108,000 employees/pensioners all paid by BACS;
 - Out of 63,169 employees/pensioners 189 paid by cheque and 62,980 via BACS;
 - 47,000 employees all paid by BACS;
 - Out of monthly payroll of 24,000, 15 paid by cheque and the rest by BACS. Out of the weekly paid payroll of 1,400, 30 paid by cheque and the rest by BACS. Cheque payments used because for weeklies who stay for a short time it can be impossible to obtain bank details and some monthlies have used the fact that some weeklies are paid by cheque as a precedent also to be paid by cheque. Intend shortly to withdraw option for anyone to be paid by cheque;
 - 21,500 employees all paid by BACS;
 - 10,000 employees all paid by BACS;
 - 5,000 employees all paid by BACS;
 - 800 employees of whom less than 1.5% are paid by wire transfer rather than BACS (for everyone else) – wire method used probably due to non-UK bank accounts being used.
 - 600 employees all paid by BACS.
71. However a sample of our practising members suggests that that many employers for whom our members do the payroll calculations do not pay their employees by BACS. A quick poll produced the following answers from five member firms which do payrolls for clients:
- 25% out of 75 payrolls are paid by the firm using BACS. Of the remainder, around a third pay employees by cheque and the balance primarily through internet banking or similar (with some BACS). Largest client does not use BACS and 2 clients do not have computers. (*London office of major Group A firm*);
 - 18% out of 400 payrolls pay employees by BACS (*regional office of major Group A firm but thought to be representative of all its offices*);
 - 8% of client employers pay by BACS (*regional office of firm with multiple offices*);
 - 8.6% out of 23 payrolls pay by BACS (*sole practitioner/consultant*); and

- None out of 7 payrolls pays by BACS. Of the client payrolls, A pays both members of staff by cheque, B pays using online billpay/banking (single employee company), C makes credits to director's current account (one director-employee), D makes credits to director's current account (one director-employee) with other person paid by cheque, E makes payments by quarterly standing order to one employee and monthly cheque to another employee and F pays monthly by standing order (one director-employee). Another client for whom payroll is not done by adviser uses either CHAPS or billpay/online banking. (*sole practitioner/consultant*).

Do you envisage any difficulties with providing information on a payment by payment basis through the proposed internet channel? (6.9)

72. Leaving aside involuntary employers, ie those who have under central government 'care in the community' initiatives in recent years been provided with their own budgets to pay for care – 'care and support employers' – and employers of domestic help, there are a number of employers who will have difficulties providing the information at all via internet, let alone on a payment by payment basis. There are those rural employers whose telephone exchanges do not provide a useable broadband signal. For these, any suggestion of going each week to the nearest internet café or public library is simply not practical, for reasons of confidentiality and because in a remote region the nearest place with a decent broadband signal and a public library or internet café may be over 50 miles away, with the trip to file the payroll data taking an hour or two out of the working day. There are others who do not have a computer, perhaps because they have no use for computers in their business and so are unlikely to have taken the trouble to learn how to use a computer, for example those in hands-on occupations such as farmers and craftsmen, or are precluded from using such things because of their religious beliefs. See above for our other comments regarding the elderly and disabled.

Do you envisage any difficulties meeting the requirement to provide information on, or before, payment is made to the employee? (6.9)

73. Sometimes employees might receive a payment that is out of the ordinary, for example an advance on salary. Even where an employee is normally paid by BACS, such an advance might be made by cash, cheque or non-BACS electronic transfer. We should welcome clarification as to whether, in such cases, this will be treated as 'payment' to the employee.
74. We foresee some difficulties in meeting the requirement to provide information on or before payment is made to the employee. For example, payday may be a non-banking day for those not paid by BACS. However, the RTI data cannot be filed until a few days later. We therefore suggest that there be flexibility, at least in the early stages when RTI will not be integrated with NPS or any other HMRC systems so the data will not be processed in real time, and that filing need not be required until say 7-14 days after payday. After all, the aim is surely to provide a check only that the correct amount of deductions has been remitted and that the employee's income has not fluctuated to an extent that affects benefit entitlement.
75. We should welcome clarification of how HMRC will penalise employers who submit their RTI data late.
76. We should welcome clarification of how it is intended that employers will identify employees, and therefore return RTI data, with no NINO.
77. Where a first employee is taken on, or maybe a sole trader incorporates, and a PAYE scheme is first set up, it can take some time for the new scheme to be registered. It may therefore not be possible to make an RTI submission and we should welcome clarification of how the RTI regime will accommodate such situations.

78. Where a payroll has to be reversed and rerun, perhaps because payroll (or the third party payroller) is informed late of a change in employee details, then this can be after the payment date. We should welcome clarification of how the RTI regime will accommodate this.

Do you agree with the relaxation provision set out in paragraph 6.6? (6.9)

79. We welcome the relaxation but note that it is intended to run only to 2018 and covers employers of fewer than 50 employees. This relaxation needs to run indefinitely and cover any size of employer.
80. Two reasons why employers that use third parties to calculate payroll pay their employees themselves are, first, that it saves having to pay the third party to make the payments and, secondly, it enables the employer to keep control of his own money. In the absence of the relaxation, payment of the employees would be done by the third party that calculates the payroll. Integrating the payment with the calculation of payroll would increase compliance costs (ie fees) and imposing on the third party the obligation to pay the employees on behalf of the employer would change the nature of the relationship between employer and third party payroll calculator into a fiduciary relationship similar to that of a bank. We consider that it is wrong for government to impose this requirement on employers.
81. We should welcome confirmation that the relaxation will be available for agents where the agent pays the employees other than by BACS.
82. We should welcome clarification of the third bullet in para 6.6, in particular confirmation that the relaxation will not be inapplicable where the employer uses internet banking or telephone banking or where the third party emails the employer with the payment information.
83. We should welcome details of HMRC's estimate of how many employers will fall within the relaxation.

If you do not agree with the relaxation set out in paragraph 6.6, please specify your reasons and provide some alternative ideas. (6.9)

84. See answer to preceding question.

Do you think the current exemptions from online filing would still be needed under an RTI system? (6.9)

85. Yes. The exemptions, some of which are covered in the categories of employer cited in the answer four questions before this one (question about difficulties with providing information on a payment by payment basis through the proposed internet channel), were provided to meet certain needs and those needs will still exist.

Would employers that are currently exempt from online filing be prepared to send paper returns on a payment by payment basis? (6.9)

86. Submitting paper returns on a payment by payment basis, for example weekly, would be extremely burdensome. We also question whether some categories of employers who are exempt from online filing, especially care and support employers, are able to cope with their employer obligations as they are, let alone with the addition of RTI and workplace pension reform obligations.

Chapter 7 – Scenarios – what will happen in practice

Would the change outlined at 7.4 above solve the overlapping pay period problem? (7.5)

87. The proposals in paras 5.13 and 7.4 are that an employer taking on a new employee would use the code number shown on the new joiner's final payslip and the previous employer making a payment after an employee has left would use the same code. This would be instead of using codes such as OT or BR for new joiners or for payments made after an employee has left depending on whether form P45 has been issued.
88. At present some employers do not issue forms P45 until all payments to ex-employees have been made. This enables such payments to be made using the existing code, which is the solution envisaged in para 7.4. However, the absence of a P45 means that the employee in his new job is likely to be on an emergency code.
89. The code that employers are supposed to apply to employees who are paid after a P45 has been issued, ie presently BR, will be OT from April 2011, which whilst intended to prevent higher and additional rate taxpayers from enjoying a cash flow advantage, will give rise to possibly excessive over payments of tax for basic rate taxpayers, who if they are in another job are presently unable to recover it by way of an in-year repayment claim. The solution in para 7.4 is likely to have a similar impact, but is probably better than making previous employers operate a OT code for payments made after employees leave as having the option to arbitrage between code numbers may entice some employers not to insert a leaving date when an employee leaves.
90. Where the code number applied to such a payment is likely to give rise to an excessive over- or under-payment then we suggest that employers should be able to operate a bespoke code having agreed such with HMRC in conjunction with the ex-employee before making the payment.
91. An indicator will be needed on RTI to indicate a payment made to an employee for whom a leaving date has already been returned. This could best be by providing a special indicator for employers to set. Otherwise, we suggest that employers should insert starting and leaving dates which are the same (eg the date the payment is made) to ensure that NPS does not treat the payment as deriving from a new employment.

Would employers be content to submit RTI about one-off corrections to pay in between regular pay runs or would it be easier to process these at the next regular pay run for the individual? (7.8)

92. This is a matter on which opinions differ depending on the processes used by individual employers. If the rule is that RTI data is submitted when a payment is made, then we think that on balance it is likely to be easiest and less likely to lead to employers forgetting the submission of RTI data on corrections =when a one-off payment is made.

HMRC would be interested in hearing views on how changes of works numbers could best be notified under RTI (and how the reasons for change could be best captured). (7.12)

93. Perhaps a tick box is needed if the works number has changed, with a code for the reason (if it is felt necessary for HMRC to know why it has changed) representing a list of standard categories that employers can select from, and some limited white space for employers to provide the reason if it is not on the list.

Do you have any views on the impact assessment that was published alongside this document. (7.15)

94. Given the extra work for employers involved in submitting data on every payday and when accounting for tax/NICs, we should welcome detailed clarification of how it has been calculated that employers will receive any benefit whatsoever from RTI, let alone benefits valued at £360 million per year. We believe there will be serious disadvantages to the many employers who currently do not pay by BACS, or who employ lots of casuals, or foreign workers, and that there will be new compliance costs for all employers. More generally, we

have expressed concern inter alia in our representations on the draft Finance Bill clauses that impact assessments need more work and be based on research before they can become an important and respected tool in policy evaluation.

95. We are concerned about the move to RTI because in common with other HMRC initiatives, for example iXBRL, RTI is likely to result in additional workloads which do not appear to produce any savings or efficiencies for employers or their advisers. We would also note that many small payrolls may not operate quite how HMRC thinks they do, although there is no loss of tax or NI or any timing issues. The small payrolls are often making payments to HMRC quarterly or annually so the payroll is done at this interval as well. For example, in the case of a payroll where the tax code for a sole employee is, say, 600L, there may be twelve payments made to the employee by standing order of £500 each month. The payroll paperwork only needs dealing with annually. Real time information would represent an almost twelve-fold increase in work load. A similar issue applies for the quarterly payrolls.
96. The cost of a single payroll run comprises fixed time per run plus extra time changing codes, printing schedules and payslips etc. It is more time-efficient and hence less costly for clients if as many payroll periods as possible are dealt with together. A three-monthly payroll typically takes a practitioner almost the same amount of time each quarter as doing any one of three months of payroll. For small employers the extra costs of having to submit information to HMRC monthly – or weekly – would be very unwelcome.
97. So far as concerns advantages for individuals, para 2 on page 8 of the impact assessment and para 3.14 of the condoc envisage that the need for contact with HMRC will be reduced. We should welcome clarification of how RTI by itself will make the taxation of, for example, pensioners any more accurate than at present – this is something that needs to be sorted out as part of getting NPS to work properly.

Chapter 8 – Timetable for implementation

HMRC would be interested in views about whether this timetable is achievable and the issues you might foresee in meeting it. (8.3)

98. We do not consider that the timetable for implementation is realistic. Our main concerns are:
 - whether it will be possible to write a final software specification by the end of March 2011 – as envisaged in para 1.8 – when there are still unresolved policy issues,
 - whether HMRC's existing systems including NPS and staff numbers will be sufficiently robust to cope with the volume of data that will be sent, and,
 - more particularly, the extremely short time frame that is being proposed in para 8.3 for implementing the proposals. Experience of iXBRL software suggests that software houses may not have a system ready with employers and agents trained and running it in the timescale now envisaged.
99. Given past experience of employers with HMRC's IT, for example the difficulties with employer on-line filing in its early years (which for smaller employers were only partially ameliorated by staging and the incentive payments) and continuing problems with NPS, and the need for capacity testing for at least a year before implementation, as so rightly recommended by Lord Carter in his report dated 22 March 2006: '*Review of HMRC Online Services*' which to date we do not think has been honoured, we cannot see that RTI can be brought on-stream properly before mid-2013.
100. As noted in our response submitted in September 2010 to the previous consultation published in July 2010 by HMRC (TAXREP 36/10 - see via <http://www.ion.icaew.com/TaxFaculty/20708>) we also think that RTI should not be introduced until:
 - NPS works properly and all the data has been cleansed and it can accurately produce code numbers and timeous year-end reconciliations; and

- online filing can be done easily by employers and all data submitted is processed quickly and accurately by HMRC.

We acknowledge the work that HMRC has been undertaking to improve NPS and turnaround times for processing data and the quality of data, but the output from NPS suggests that there is still work to do in these areas. We have major concerns about the NINO issue and about employees who cannot be paid by BACS, problems which will not be solved quickly.

101. We welcome the fact that the timetable in para 8.3 envisages testing period with volunteer PAYE groups, with adjustments being made and then migration of a further group of volunteers but think that the time needed to design and build the system, if it is to accommodate non-BACS employers, has been underestimated.
102. As well as designing the process for the model employer who uses BACS and is fully computerised with a compatible system that can feed the RTI straight into BACS, the product designers within HMRC and software developers will need time to work up solutions for the non-straightforward employers such as those who do not use BACS or even computers, and those who use bureaux and other third parties to calculate payroll but pay their employees themselves.
103. There are also employees who do not fit into the standard pattern, for example casual workers paid in cash, outbound expatriate employees who may be subject to payroll deductions in the host country, with or without a double tax credit, and/or may be liable to foreign social security contributions and/or are paid into by way of their overseas bank account, and inbound expatriate employees who fall within the UK tax rules but have no obligation to apply for a NINO and/or have no UK bank account, or a combination of these factors. These types of employee and other factors that we feel should be taken into account if RTI is to work are set out in TAXREP 36/10.
104. We therefore question whether a system seeking to cover such a wide range of possibilities can be designed by the end of March 2011 – ie in one month – let alone be ready for testing by the non-standard employer by the proposed test start date of April 2012. Despite the government's wish to start universal credits as soon as possible, we recommend that the proposal to mandate employers to use RTI (presently envisaged to be from January 2013) only be put into effect if RTI is properly ready and robust (ie, tested in live for a full year, as envisaged by Lord Carter).
105. We also note that the proposed mandating period for employers runs from January 2013 to October 2013. Whilst we acknowledge that from HMRC's viewpoint mandating employers from non-April dates will help spread the load and hopefully enable HMRC better to help and support employers who experience difficulties, it would be much simpler for employers if they are mandated into RTI from the beginning of a tax year. We should also welcome clarification of how in practice it will be possible for software providers to be able to design and bolt on RTI software to existing systems for employers who are mandated from January 2013 if the way the system works is still being adjusted between October 2012 and January 2013.

PCB

1.3.11

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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/en/technical/tax/tax-faculty/tax-guidance-notes?utm=widget>).

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