

LOW INCOMES TAX REFORM GROUP

HM Revenue & Customs Equality Impact Assessment - Implementation of compulsory online filing for VAT, Corporation Tax and Employers' Annual and in-year PAYE returns RESPONSE TO CONSULTATIVE DOCUMENT

1. Executive Summary

- 1.1. As we understand it, HMRC will be the first Government agency to require the ordinary citizen to use IT to meet his/her compliance obligations. If this is so, it is incumbent upon HMRC to set the standard for the future, leaving no stone unturned in its equality impact assessment.
- 1.2. Given the issues we have raised below, we still question whether the world is ready for compulsion and reiterate the recommendations of the Lords Select Committee in 2007 that – for smaller employers in particular – there should continue to be a paper-filing facility for some beyond 2010.
- 1.3. In this context, HMRC have to recognise that age is a factor and provide exemptions or additional support for older people who have not got to grips with IT.
- 1.4. The argument for deferral of compulsion is further reinforced by the lack of adequate HMRC guidance on how to determine employment status; until you can determine who is an employee, you cannot determine the obligation to operate PAYE and account for it online.
- 1.5. HMRC's support for online filers needs to be tailored. Hitherto, inadequate support has been available for those with special requirements and it is imperative to address the issue of third party assistance (eg telephoning on behalf of someone lacking in language skills). HMRC's frontline staff must also receive adequate training on how to deal with enquiries from people with particular needs.
- 1.6. As with any change in policy, HMRC must ensure that their systems are robust and are fully tested in advance. They must provide adequate guidance to the affected customers and there is no substitute for 'following the customer journey' as part of the test. Any move towards withdrawing HMRC online filing products in favour of third party software must take into account equality issues and not abdicate responsibility to the commercial providers.
- 1.7. People need to be informed about the ability to opt out of online filing due to religious beliefs, and this must, of course, be done without that person being directed to online

reference material. HMRC must also recognise that people with such beliefs should not be asked to have a third party file online for them and staff should be trained accordingly.

- 1.8. Suggesting that a disabled person should ask a friend for help in meeting their obligations seems to be in direct contravention of HMRC's responsibilities under the Disability Discrimination Act (DDA), as it places an extra hurdle in that person's path. It also fails to respect their privacy in conducting their affairs and raises data protection issues, for example if they have to share employees' personal information with the friend who is helping them.
- 1.9. Furthermore, there are security issues surrounding use of public computers or making use of IT facilities offered by a friend or acquaintance. The taxpayer cannot be certain that the equipment is secure; for example that their keystrokes are not being recorded by software installed on the computer.
- 1.10. Given the Government's recent announcement of its intention to introduce a scheme assisting certain families with Home Access to IT, HMRC should be pushing for this scheme to be extended to households where those on a low income with special needs require access to IT to meet tax obligations.
- 1.11. HMRC could do more to support those for whom language is a barrier by providing key messages, such as how to access further help, in the major migrant languages.
- 1.12. HMRC should be concerned about other groups not yet identified in the consultation and here we identify carers, who may be short of time and for whom visiting an enquiry centre is all but impossible in the context of their caring responsibilities. For this group and for some disabled people, HMRC will have to provide a well-publicised home visit service if there is no exemption for them from filing online.

2. Introduction

2.1. About us

- 2.1.1. The Low Incomes Tax Reform Group (LITRG) is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes.
- 2.1.2. The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

2.2. Our response

- 2.2.1. Our response to this consultation paper is primarily aimed at issues which affect those on low incomes and, apart from where any comments would be applicable to all compulsory online documents, relates to employers' returns.

3. General comments

- 3.1.1. It is worth noting that the implementation of compulsory online filing of PAYE returns appears to mark the first occasion in public life where the ordinary citizen is being required to use IT. If this is indeed the case, HMRC shoulder a very high burden of responsibility to ensure beyond a shadow of doubt that they have fully met all possible equality issues.
- 3.1.2. The House of Lords Select Committee on Economic Affairs said in its 2007 Budget Report¹ when considering mandatory online filing (para 265): ‘there would be some people who would remain IT-illiterate or who for whatever reason would be unable to use the service and there would be costs involved’. The Committee therefore expressed concern that a move towards compulsory e-filing was premature and made recommendations at paras 273-6 in relation to small businesses and employers which favoured better marketing of online services and allowing the smallest employers to continue paper filing in 2010 and beyond. We believe the Committee’s concerns remain valid and therefore reiterate its recommendations.
- 3.1.3. The difficulties of implementing compulsory online filing are significant bearing in mind that a survey² in 2003 indicated that only 60% of small businesses employing less than 10 people used the internet and another survey³ in 2006 found that an average of 50% of those employing 10-49 people used the internet to interact with public authorities.
- 3.1.4. Whilst it is right (para 4.4) that this EQIA should be primarily concerned with individuals and micro/small business, it is interesting to note the increasing trend for HMRC and tax law to ‘look through’ business entities to the individual taxpayers involved in the business. This could have equality implications by removing the ‘corporate veil’.
- 3.1.5. We think it is also incumbent upon HMRC to provide clarity as to who is and who is not an employer. LITRG has demonstrated to HMRC in the last few months how “rough and ready” the HMRC Employment Status Indicator is. It has a tendency to indicate that many workers who might be regarded as “self-employed” in ordinary circumstances are in fact employees; for example, a range of workers operating in a domestic environment.
- 3.1.6. Until you can determine who is an employee, you cannot determine the obligation to operate PAYE and account for it online.

3.2. *HMRC support*

- 3.2.1. Throughout the EQIA there are references to self-assessment (SA) online filing and what can be learned from the experiences to date for these new online filing customer groups. Some caution must be taken in this approach as, apart from SA not being a fully mandatory online obligation, there are considerable differences in the way it operates from employers’ returns which have a wider range of, and potentially more frequent, filing requirements. In this context, HMRC’s recent consultations on late filing/payment penalties and interest on late-paid tax could potentially lead to requirements for more in-year returns from employers; an entirely different proposition to annual SA filing.

¹ See <http://www.publications.parliament.uk/pa/ld200607/ldselect/ldconaf/121/121i.pdf>

² Office for National Statistics – 2003 e-commerce survey of business Table 1

³ Office for National Statistics – 2006 e-commerce survey of business Table C15

- 3.2.2. The support services historically available for help on PAYE/NIC have mainly been by telephone and internet and probably less geared up to help those identified as likely to suffer negative impacts. This is also true in trying to establish, at short notice, employment status.

3.3. ***Assistance from third parties***

- 3.3.1. At several points in the EQIA it is suggested that one way of being able to comply with online filing is to use the services of a third party. Bearing in mind that all the documents to be filed are likely to be subject to a penalty if filed late or incorrectly and that the responsibility remains with the taxpayer for their correct and timely submission, using colleagues, friends or family does present drawbacks.
- 3.3.2. For example, HMRC's new guidance on penalties for inaccurate returns states: 'A person cannot simply appoint an agent and deny responsibility for their tax affairs. The person still has a duty to take reasonable care, within their ability and competence, to make sure that what they are signing for is correct.'¹ How does obtaining assistance from a friend when filing a return online sit with this guidance, particularly when HMRC suggest that when engaging the services of another the taxpayer should make a judgement as to their competence to assist? The manuals go on to state: 'A person who asks a lay colleague, or someone they meet in the pub, for advice is not taking reasonable care.' The charging of penalties will need to be handled very sensitively in terms of applying judgements as to what is deemed a 'failure to take reasonable care' where a 'friend' is asked to help in the completion of online returns. The penalties guidance may need to be altered accordingly.
- 3.3.3. Where online access is provided by colleagues, friends and family this would also raise data protection issues (see para 6.5ff). Furthermore, there are security issues surrounding use of public computers or making use of IT facilities offered by a friend or acquaintance. The taxpayer cannot be certain that the equipment is secure; for example that their keystrokes are not being recorded by software installed on the computer.

3.4. ***Systems testing***

- 3.4.1. We are not convinced that HMRC have to date followed Lord Carter's recommendation that any new online system should be **robust** and capacity tested fully over a 12-month period and trust that the timescale in which compulsory filing is to be introduced will enable this to take place. Indeed, the revised version of HMRC's IT Accessibility Equality Impact Assessment anticipates that transferring online services to a new, more accessible, portal will 'take some time'.
- 3.4.2. This also, of course, assumes that HMRC will continue to provide online filing software themselves. Any move towards withdrawing HMRC online filing products in favour of third party software must take into account equality issues and not abdicate responsibility to the commercial providers.

3.5. ***Potential Impacts***

- 3.5.1. We believe that within each strand of diversity there are potential impacts. A proportion of IT-illiterate people will be found in each strand who may be running their own business or who, though not in business, may be deemed to be employers. An

¹ HMRC Manuals: CH84540

example of the latter is ‘accidental’ employers: those in receipt of direct payments or paying for help in the home but not necessarily able to afford professional assistance with the paperwork and filing obligations.

- 3.5.2. One area where we believe there will be negative impacts from a compulsory filing obligation is on older people. A recent survey¹ indicates that 70% of people over the age of 65 have never used the internet. Amongst the many people continuing to work beyond 65 (either because they wish to remain active or need to supplement inadequate pensions), there could be a significant number who are running their own business or who are employers.
- 3.5.3. The question is raised, therefore, as to whether 100% compulsory online filing is achievable, especially for non-business individuals. If it is to be achieved, much will depend on support from HMRC and other third parties, particularly voluntary sector organisations. Even so, some exemptions or other mitigating actions will be needed to ensure that those who truly cannot comply are not penalised.
- 3.5.4. In response to the specific questions posed by the EQIA we comment below.

4. Key Question 1 – Religion and belief

We have no specific evidence of any other groups whose religion or belief may prohibit them from using the internet. However, followers of certain faiths may strictly observe a Sabbath day, or religious holidays which do not coincide with recognised national holidays. Such factors would need to be taken into account – for example in failure to meet a deadline – if taxpayers are prohibited from using the internet at those times.

- 4.1.1. As regards impacts on those who have been identified, the steps outlined should ensure that their beliefs are not compromised generally. However, we question how those entitled to claim exemption can ascertain that they are so entitled, given that the internet is where the information is most readily accessible. For PAYE what information is currently given, and when, which would enable them to find out that they can apply to be excluded?
- 4.1.2. In addition – expanding on the point made at 3.3.1 above – a religious group such as that envisaged may have little or no contact outside of their own group and therefore it is unlikely that there would be a third party to file for them or that they would allow someone to do so. HMRC contact and enquiry centre staff therefore must not make such suggestions which may cause offence.

5. Key Question 2 – Language

5.1. *Languages other than English and Welsh*

- 5.1.1. We agree that it would be a disproportionate use of public funds to make online services available in languages other than English and Welsh, but solutions need to be readily available to support those for whom English or Welsh is not their first language. Para 5.10, second bullet, refers to HMRC’s translation services which can be provided for any language. However, HMRC must acknowledge that this service is not widely publicised; for example, a visitor to HMRC’s website will struggle to find

¹ Office for National Statistics - Internet Access 2008

any information about it even in the 'contact us' section. Without proper dissemination of information about available services, customers will continue to be disadvantaged.

- 5.1.2. However HMRC can do more by providing key messages, such as how to access further help, in the major migrant languages.

6. Key Question 3 – Disability

6.1. *Working with other Government Departments*

- 6.1.1. HMRC are right to be concerned about the impact of online filing on people with disabilities particularly as, since Lord Carter presented his report, new and anticipated legislation has brought further groups within the three heads of duty currently being considered. Those in receipt of direct payments are mentioned in your report and we understand are the subject of further consideration at this time. On 21 July, the DWP published a green paper on welfare reform¹, a key focus of which is to get more people with disabilities into work; not necessarily as employees but potentially as self-employed or running small companies.

- 6.1.2. HMRC have not always been immediately aware of new initiatives by other government departments. It is hoped that moves towards cross-departmental working will therefore mean that in future holistic consideration is given to the impact of such initiatives at the outset.

6.2. *Affected groups*

- 6.2.1. Para 5.14 of the EQIA outlines the groups considered most likely to be affected by the move to online filing. We do not think this analysis goes far enough:
- One further grouping would be those with memory impairment (covering seizure or psychiatric disorders) who may have poor concentration and navigational skills.
 - Visual loss covers a wide range of visual impairment from blindness, colour blindness or just poor vision.
 - Arthritis is only one of the physical problems that impact on the ability to use a computer and a wider definition to encompass those with muscle weakness, limitations in muscular control and sensations and missing limbs would be more appropriate.
- 6.2.2. It is in respect of the above that lessons may be learned from feedback as to the positive or negative experiences of all these groups using SA online and the new tools developed for it. But again, as can be noted from the revised version of HMRC's IT Accessibility Equality Impact Assessment, there are many issues still to be addressed within the website design itself. As noted above, if HMRC's own portals (for example, the Employer CD-ROM covering a small number of employees) are to be withdrawn in favour of third party software, HMRC must still retain overall responsibility in terms of ensuring equality issues have been adequately addressed.
- 6.2.3. It is evident from the comments in 5.17 that whatever the likely number, HMRC needs more data both to identify the scale of those likely to be affected and their particular needs so as to comply with their duty under the DDA.

¹ *No one written off: reforming welfare to reward responsibility* – See <http://www.dwp.gov.uk/welfarereform/>

- 6.2.4. This assessment should also acknowledge that people with disabilities rarely fall within discrete groupings and are quite likely to have multiple challenges, perhaps within the strands of disability or within diversity generally.
- 6.2.5. We have also brought to HMRC's attention in the last year numerous examples of where HMRC processes of identification of telephone callers and their rights to act on behalf of such people are not working appropriately. We have asked for this to be given urgent attention.

6.3. ***Use of the internet and HMRC support channels***

- 6.3.1. Turning to the first bullet point under 5.18, whilst it is true that many people with disabilities benefit from their use of the internet, this does not necessarily mean they would wish to use it for transactions, particularly where these involve sensitive personal information.
- 6.3.2. The data detailed in Annex H does not address this point, but although current data is not available, in May 2004, research¹ indicated that the proportions of internet usage amongst people with disabilities were fairly similar to those found for the general population in National Statistics internet use surveys. The latest of these (issued 26.8.2008) indicated use by the general population of email at 87%, finding information on goods and services 84% and banking 49%.
- 6.3.3. The internet is therefore more likely to be used for communication, information gathering or as a recreational facility and we believe HMRC may have over-estimated the extent of internet use where this is for banking or similar transactional activity.
- 6.3.4. To a great extent, reducing the impact on people with disabilities will require accessible and supportive helplines and more accessible personal support in their own surroundings, as many are not able to visit enquiry centres even where these are close by. The availability of home visits must therefore be widely publicised so that those in need can make use of the service.
- 6.3.5. As noted in Annex A, Lord Carter recommended working with public and voluntary associations to ensure that access to the internet and appropriate assistance with using IT is available locally. How is this recommendation to be taken forward? In the context of this EQIA, disability organisations representing affected groups would need to be involved to help identify specific needs. We would be pleased to work further with HMRC to develop such support channels, co-ordinating with other voluntary organisations.

6.4. ***Specialist and outdated equipment***

- 6.4.1. The third bullet at point 5.18 refers to the 'products available on the market' to help users with certain disabilities in using a computer and says that 'These customers would probably experience similar problems in using a pen to complete a paper return'. It does not, however, acknowledge that there is an extra cost to specialised equipment, which would perhaps not be necessary if the customer were to continue paper-filing.

¹ Does the Internet open up opportunities for disabled people? – Joseph Rowntree Foundation May 2004

- 6.4.2. Para 5.20 states that 'There is little we can do, from a technical viewpoint, where the primary problem is the disabled user's own outdated equipment.' It goes on to offer a range of solutions, regarding which we highlight some data protection concerns below.
- 6.4.3. We appreciate that HMRC might not be able to directly provide solutions, but there may be areas where HMRC can be of influence. For example, could HMRC examine whether any other bodies offer grants to equip disabled people with computers or training to improve their IT skills? HMRC could then highlight these opportunities to customers who enquire about support channels.
- 6.4.4. HMRC could also ask policymakers to examine the potential for extra grants and/or tax reliefs to improve IT availability amongst certain groups (such as disabled and older people). For example, HMRC could be instrumental in pressing the case for extension of the proposed Home Access scheme¹ to disadvantaged groups who do not have children.

6.5. ***Data protection and confidentiality***

- 6.5.1. Para 5.20 of the EQIA suggests that one solution for disabled people may be to 'file online – either through a friend or family member's computer (with the friend or family member inputting the details, if their computer is not configured for the disabled customer's use)'. If examined in the context of an employer's responsibilities under the Data Protection Act, this suggestion does not seem to be practicable.
- 6.5.2. For example, an employer will have to pass on employees' personal details to their friend or family member to input into data for filing of returns. A P46, say, includes the employee's name, date of birth, address, National Insurance number, and so on – all of which is sensitive personal data. Guidance offered by the Information Commissioners Office² gives a series of warnings of how small employers can fall foul of data protection law. Have HMRC therefore properly assessed the impact of data protection law and confidentiality of employees' data when suggesting disabled or other employers ask a friend to help with filing of returns?
- 6.5.3. Not only is employees' information being disclosed to the suggested friend or family member, but it may simply be that the disabled person does not wish to share the details of their business with acquaintances. HMRC enquiry centre and helpline staff must therefore be prepared to take account of this wish and not be seen to be forcing the disabled person to disclose such information to third parties, but offer alternatives such as a home visit by an HMRC employee with a laptop.

7. **Key question 4 – Other potential areas of discrimination**

7.1. ***Carers***

- 7.1.1. We believe that one group omitted from consideration in this assessment is carers, ie those who look after a relative or child with a disability, foster carers and so forth. Carers may work on a self-employed basis as well as carrying out their caring responsibilities and may in turn be employers or have to register for VAT. They may

¹ See *Extending Opportunity – Final Report of the Minister's Taskforce on Home Access to Technology*, July 2008 (<http://tinyurl.com/48q5aq>)

² See *Quick Guide to the Employment Practices Code: Ideal for the Small Business* (<http://tinyurl.com/2e2ycl>)

be short of time in which to fulfil tax compliance obligations but not be able to afford professional assistance. It may be that local authorities, possibly subsidised by HMRC, should give such people funds to be able to get help.

- 7.1.2. The impact of compulsory online filing on people in this situation needs consideration. HMRC must be satisfied that the changes do not lead to additional pressures on their time and resources. Additional costs of living which come with supporting those they care for may, for example, mean that they have limited funds with which to equip themselves with necessary computer equipment to file online from their home. Caring responsibilities may make it impracticable to visit an HMRC enquiry centre or other third party source of assistance.
- 7.1.3. Whilst the numbers concerned may be relatively small, the same consideration needs to be given to this group; again, home visits by an HMRC officer with a laptop might be one solution to meeting their needs.

LITRG
17 October 2008