

HM Revenue and Customs Consultation
VAT: consultation on the next steps for moving VAT online
Response from the Low Incomes Tax Reform Group ('LITRG')

1. Executive Summary

- 1.1. Encouraging businesses to move to digital channels, where they are able to do so, is welcome provided it does not increase compliance burdens. But we are concerned that, in contrast to the parallel 'Digital by Default' consultation, this consultation makes no reference to the statement by the Minister for the Cabinet Office that 'those Groups less likely to access the internet will not be left behind'¹.
- 1.2. HMRC's limited mitigation strategy for those who have already been 'left behind' in 'Tranche 1' mandation has been inadequate and LITRG has been supporting several small business owners in their appeals against VAT online filing notices. These appellants are awaiting the outcome of this consultation and are representative of those who have been unable to move to digital channels for one or more of the following reasons:
- lack of capability (through age, disability² or other circumstance),
 - inadequate internet or broadband access,
 - affordability.

¹ Response to the report by the Government's digital champion, Martha Lane Fox by the Minister for the Cabinet Office (November 2010)

² As defined in Equality Act 2010

- 1.3. Across HMRC, the digital strategy should be aligned. Therefore, this response must be read together with our response to the Digital by Default consultation. We set out in section 5 of that paper the range of options we think HMRC should offer.
- 1.4. The difference for VAT (and indeed PAYE) is that some are already mandated to transact online. Consequently, **exceptions to cater for disadvantaged groups must be given in statute**. We would only support extension of statutory mandation (which would bring the smallest businesses and hence even more of the disadvantaged groups we represent into its scope) if these exceptions are given in law.
- 1.5. We believe that HMRC are already failing in their duties under the Equality Act 2010 in respect of those groups identified above. We stress that it is impossible for many small businesses, even some small companies, to be viewed separately from their proprietors. Effectively, the digital exclusion issues of the proprietor are those of the business itself.
- 1.6. Whilst other alternatives might be offered (again, see section 5 of our Digital by Default response discussing the options and necessary safeguards), retention of paper for some is essential. Indeed, it is the easiest option – it is familiar and convenient; and it is, after all, already retained for some with certain principled objections to online filing. Taxpayers should be able to self-assess their need.
- 1.7. We therefore recommend that, as a matter of urgency, HMRC issue draft legislation for consultation covering the exceptions we have identified. It is unacceptable that taxpayers should have to rely on HMRC concession or practice, or to have to plead difficulty under the ‘reasonable excuse’ provisions¹. This legislation must be coupled with unfettered appeal rights on HMRC refusal to allow the exceptional treatment.
- 1.8. We would be pleased to make further contributions as this work develops.

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.

¹ Such an approach would mean that the businesses would have to appeal each time they fail to file online. This is onerous for them, and runs the risk of their cases being passed to DMB for distraint action (as has happened with some appeal cases). An exception, once granted, should remain in place indefinitely, with an onus should be on the business to inform HMRC of a material change of circumstances.

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 to this Consultation – overview**

2.2.1. Our response to this consultation is in addition to and supplemented by that of our CIOT colleagues. The CIOT are focusing mainly on how the proposals will affect agents and their clients; whereas LITRG's focus is on the entirely unrepresented taxpayer in the small business sector and particularly disadvantaged groups within it, who are struggling to cope with HMRC-related matters alone.

3. **Compulsory online filing of VAT Returns**

3.1. We believe that HMRC are failing in their duties under the Equality Act 2010 by imposing blanket online filing requirements without allowing exceptions for those who find it excessively difficult¹ or even impossible to meet this requirement.

3.2. To rectify this, the law must be changed. It is unacceptable for taxpayers to have to rely on HMRC concession or non-statutory practice to work around a statutory obligation. We outline below (section 4) how this might work.

3.3. Indeed, there are already exemptions from filing VAT returns online (for religious reasons and insolvency). Why should the paper channel preserved for them not be extended to these other groups?

3.4. We do not think that the special arrangements for those Tranche 1 businesses which had difficulty in filing online were satisfactory, although HMRC have stated at paragraph 2.15 the consultative document that they were. Indeed, from our engagement with some of those businesses, we are aware of problems - problems which we know from our research will become more prevalent with Tranche 2 unless those arrangements are improved.

3.5. These problems included:

- No clear parameters as to which taxpayers would be considered eligible to use the alternative service. This decision was left to HMRC and, being a non-statutory alternative to a statutory obligation, left the taxpayer in an uncertain and powerless position on HMRC refusal.
- Poor signposting and HMRC staff awareness of alternatives to online filing.

¹ When looking to introduce or alter the obligations of citizens relating to tax administration the government should bear in mind the concepts of "virtual impossibility" or "excessive difficulty" established at an EU level in respect of various areas of domestic legislation. It has been used in a number of cases in connection with the principle of effectiveness and rights of taxpayers, mostly in relation to repayments of tax.

- Taxpayers being told that the telephone filing alternative was only a pilot which could be withdrawn after a year.
- Availability of the line in limited hours only, resulting in a more restrictive service than that available to those able to file online at any time of their choosing and convenience.
- Cost to the taxpayer of having to dial a chargeable telephone number (particularly expensive from mobile phones) compared to the free online service for those able to 'go digital'.
- Proposals to offer a 'call back' facility, but again this did not allow taxpayers to file at their leisure and could result in missed deadlines and associated disputes if the HMRC operator failed to telephone at the specified time, or if the taxpayer was called away on other business or emergency, for example.
- Inability of the taxpayer to check the figures they had submitted, therefore not putting them in a comparable position to those filing online or formerly filing on paper – ie, there was no protection for transposition errors in the process.
- People with social or communication disabilities may not be able to use a telephone.
- Even if a 24-hour automated telephone system were introduced, it may not reliably capture numbers said in a multitude of different accents or by people with impaired speech and a push-button option might not be suitable for those with limited manual dexterity. Again, this could result in transposition errors.

3.6. We are supporting a number of small businesses in their appeals to the First Tier Tribunal which have been unable to file their VAT returns online, the requirement leaving them struggling to comply and even having to consider closing down businesses which are otherwise viable or which are providing services essential to rural communities.

3.7. The numbers within this category may be 'small' when considered against the overall number of VAT-registered businesses. But it does not matter how few are affected, it would breach HMRC's 'Your Charter' commitments (not to mention Equality Act obligations) to:

- impose sanctions on them
- require them to argue repeatedly that they have a reasonable excuse for not filing online
- expect them to seek assistance, either from a professional representative or informal helper (see also section 4 of our Digital by Default response) or indeed rely on employees who might not be trained in VAT matters or who are not otherwise privy to details of the accounts of the business
- force them to use a second class service compared to those who are able to file online.

4. The way forward

4.1. *Assisted into digital – help for those who can make the move to online filing*

4.1.1. We welcome the proposed 'assistance to digital' strategy to provide appropriate support the shift to moving additional transactions to digital channels. Assistance is helpful to many, and we have no desire to perpetuate a digital divide which can be breached. But we remain of

the firm view that for some the move will be impossible and a paper alternative remains essential.

4.1.2. Our recommendations for an appropriate and comprehensive system of support are outlined in our Digital by Default response (section 5).

4.2. ***The differences for VAT – statutory mandation***

4.2.1. The difference for VAT (and indeed for PAYE) is that there is already a statutory obligation to file online for some, and that HMRC plan to extend this obligation to all VAT-registered businesses and for other VAT compliance requirements.

4.2.2. Exceptions must be provided for in statute for those who face barriers to 'digital inclusion' because of:

- lack of capability (through age, disability¹ or other circumstance),
- inadequate internet or broadband access,
- affordability,
- or indeed a mixture of the above.

4.2.3. Furthermore, we would only support extension of statutory mandation (which would bring the smallest businesses and hence even more of the above disadvantaged groups into its scope) if further exceptions are given in law.

4.2.4. We would expect HMRC to consult on the wording of draft legislation to cover these exceptions. That draft must include unfettered² appeal rights against any refusal to grant exceptional treatment.

4.2.5. Once granted, the exception should remain in place indefinitely, but it could be accompanied by an obligation on the taxpayer to notify of a material change in circumstances which means they are able to move online in future. Once notified, there could be a reasonable transitional period following which the exception is removed.

¹ As defined in Equality Act 2010

² By 'unfettered', we would mean an appeal right of the type given, for example, in Finance Act 2007, Schedule 24 para 17(2):

'On an appeal under paragraph 15(2) the appellate tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.'

We would not support a fettered appeal right such as those given in other parts of the same schedule, where the Tribunal is only able to overturn or vary HMRC's original decision where it was 'flawed'.

- 4.2.6. The form of the exceptional treatment required should for the taxpayer to choose – a self-assessment of their needs. For some, the telephone-filing or intermediary options might be acceptable, subject to addressing the issues and safeguards we have noted both above and in our Digital by Default response. But for others, retaining a paper alternative will be essential.

5. Consultation questions

We have only answered those questions where we have specific comments to make.

5.1. *Compulsory Online filing of VAT Returns*

Q1 Are there any other groups of businesses which are likely to experience real difficulty in filing online (other than those businesses mentioned above)? If so, please identify these groups/owners, and the particular features of them which might create a need for targeted assistance into digital.

Q2 To what extent will the support arrangements described above meet the majority of these businesses' needs? Whose needs might they not meet, and why? What alternative arrangements can you suggest that HMRC (or a third party) might put in place to meet those needs?

- 5.1.1. Incapacity, disability, remote location, age and affordability are all reasons for taxpayers to have difficulty in filing online. There is likely to be a higher incidence of these factors for small businesses and there may well be a combination of factors, such as age and disability combined with remote location. We note for example that the farming community comprises a large number of older persons¹.
- 5.1.2. The disadvantaged groups identified who cannot reasonably be expected to file online may quite simply require a paper alternative. If a paper alternative were not available then bespoke solutions would be required from HMRC to meet the needs of these groups, as we have outlined in our response to the Digital by Default consultation (section 5).
- 5.1.3. But given that the paper channel has to remain open for those with religious objections to online filing, the simplest option seems to be to leave it open for others.
- 5.1.4. Affordability issues are often a barrier to filing online, for example the cost of acquiring a computer, or having sufficient time to file online particularly where access is slow or poor. Ring-fenced funding to support these businesses would be the best way forward with HMRC

¹ See for example Farm Business Survey data
<http://farmbusinesssurvey.co.uk/DataBuilder/Default.aspx?module=UGExampleFarmersAgeType> and DEFRA research
<http://archive.defra.gov.uk/evidence/economics/foodfarm/reports/documents/Entry.pdf>

working in partnership with key voluntary organisations to improve interaction of these businesses with HMRC.

- 5.1.5. A strong advantage of paper filing over other alternatives is that the taxpayer writes the data on the form himself or herself (or his or her agent does so) and can then check the whole document before dispatch. It is not so easy for the taxpayer to carry out so thorough a check when dictating information to a telephone helpline operator, or handing a paper form to an intermediary who then submits it to HMRC digitally. For that reason it is essential that procedures are put in place to double-check the accuracy of any document that is being transmitted to HMRC second-hand, and that the taxpayer is safeguarded from the consequences of any errors in transposition that are not of the taxpayer's own doing.

Q3 /4 Are there any particular types of communication material that you would find helpful, over and above that mentioned above? Do you have any other comments or suggestions on HMRC's communication plans (bearing in mind that the business group concerned is too small for TV advertising to be cost effective?)

- 5.1.6. Communications need to be directly by post, publicised in the Press where appropriate or using intermediaries such as specialist voluntary organisations representing disabled people, older people etc.
- 5.1.7. Many small businesses use agents to prepare their business accounts but often prepare their own VAT returns. This suggests that in some cases communications could be routed through those agents, but it should not be assumed that the agent would be prepared to do this or that the taxpayer would want VAT correspondence routed through the agent.

Q5 Do you have any comments on the proposed legislative changes set out in the sections above that achieve the mandation of Tranche 2 VAT businesses, and that impose penalties where appropriate?

- 5.1.8. As already stated, we advocate extension of the statutory exemptions to include those who are unable or would find it excessively difficult to file online. We feel that the penalties for failure to file online are inappropriate and disproportionate for those disadvantaged groups.

5.2. Online VAT registration for businesses

- 5.2.1. We welcome the new online service for VAT registration, deregistration and variation of business details.
- 5.2.2. We support the decision not to mandate VAT registration in this way (as noted at para 3.7 of the consultation document).

Q6 Do you see any barriers to using the new system – and if so, what would help overcome those?

- 5.2.3. The same barriers faced by digitally excluded groups for other online compliance purposes apply, as do the same solutions.

Q8 Do you have any comments on the removal of the VAT UK Registration threshold from non-established businesses?

- 5.2.4. The UK has no option but to comply with EU law and we note that this change is a response to recent Court of Justice case law (*Ingrid Schmelz* Case C-97/09). However, we suggest that the UK should consider asking the Commission to review this requirement as it has a disproportionate effect on small businesses which would have to register for VAT even if they had a single taxable transaction elsewhere.
- 5.2.5. Similarly, we note that a supplier in another EU country might be reluctant to supply a UK resident because it would not be worth registering in the UK for an occasional transaction. We understand the original reason for the provision but with the greater co-operation available between member states we do not think these provisions are needed any longer.

5.3. ***Tax impact assessment***

Q9 HMRC would welcome views on our current assessment of the likely impacts of the proposed options as set out in the table of impacts

- 5.3.1. Under equality impacts, the consultation says: 'It is HMRC's initial assessment that the number of VAT customers with a disability that will impair their ability to use the online portal will be low. In most cases the business in which they are working will consist of more than one individual, one of whom might need additional support or alternative support but the rest will not.'
- 5.3.2. We have a number of issues with this statement.
- 5.3.3. We stress that it is impossible for many small businesses, even some small companies, to be viewed separately from their proprietors. Effectively, the digital exclusion issues (age, disability and so forth) of the proprietor are problems for the business itself. It is unreasonable to assume for small business that an employee (if there is any) would have sufficient expertise or time to file online, or that the proprietor would necessarily want to share particulars of the business turnover and other confidential information with the employee or to have to rely on the employee and be subject to penalties in the case of default.
- 5.3.4. The appendix to our Digital by Default response gives supporting evidence regarding digital exclusion. This shows that certain disabilities, old age (and likely lower levels of computer literacy), remoteness from any reliable broadband connection, and the cost of acquiring necessary equipment and online subscriptions (adapting computers in order to overcome disabilities can be extremely costly) can be significant barriers to digital inclusion.
- 5.3.5. The issue of digital exclusion due to older age may reduce over time, but we think it will be a long time before the problem is completely eliminated. Indeed, it may never be entirely eliminated as digital inclusion is not static. It cannot be assumed that once a person has joined the digital club that their membership is for life; so although a person might be

digitally included at one point, if they fail to keep up to speed, they might find themselves excluded later.

- 5.3.6. The research conducted by HMRC for the Small Firms Impact states that research conducted in 2008 showed that 'around 90%' of the smallest VAT businesses and employers had 'access to a computer at work or home'. That still reflects that there is a good number who would continue to require the facility of filing on paper by reason of not having a computer at all. It should also not be assumed that just because a person has 'access to a computer' that this means they are capable of using it to comply with VAT obligations online. As we have demonstrated above, people may be prevented from so doing, for example by reason of disability or by lack of expertise.
- 5.3.7. For instance, in one case we are aware of, the taxpayer has severely restricted manual dexterity due to the long term effects of rheumatoid arthritis. Although he does indeed use a computer for various personal matters – looking things up on the Internet and so forth – he restricts himself to using it where no harm can be done if he makes a mistake. He would not feel confident filing his VAT return online.
- 5.3.8. We have also previously commented that because there is an exchange of sensitive data in a VAT return and the initial set up, it is not access to a computer that is required but access to a computer **that is fully secure**. That tends to rule out any computer belonging to a third party other than those where the computer is automatically securely cleared down after log out. We note that there has already been one reported case of a fraud perpetrated by user of a computer in an Internet cafe who was able to use the 'back' button of the computer to access sensitive bank information.
- 5.3.9. Businesses often require the same level of security as HMRC. How many business transactions do HMRC allow their staff to undertake on their computers at home? The answer is none.

LITRG

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