

HMRC – The Income Tax (Pay as You earn) (Amendment) Regulations 2014

Response from the Low Incomes Tax Reform Group ('LITRG')

1 Summary

- 1.1 We welcome the opportunity to contribute to the proposed amendments to the regulations.
- 1.2 We acknowledge and are pleased to note that HMRC will continue to monitor the operation of Real Time Information (RTI), and in particular the interaction with Universal Credit (UC).
- 1.3 We are concerned about the interaction with UC, in particular the impact on UC claimants of the relaxation in reporting payments. This has the potential to cause serious hardship for low paid individuals who rely on UC to supplement their income, and should be closely monitored.
- 1.4 We see some unfairness in the arbitrary enforcement for new employers to immediately file under RTI.
- 1.5 We welcome the tolerance limit of £100 introduced by regulation 67L. However we would still like to see 'light touch' on penalties as RTI continues to bed in, with some employers still finding it difficult to meet the extra demands of more frequent reporting.
- 1.6 We recommend some changes to the wording of amended regulation 67B paragraph (1A) to make the deadline for submission date clearer.
- 1.7 New regulation 9 seems to omit care and support employers and we ask for clarification on this.

- 1.8 The updated guidance and notification of the extension to the Full Payment Submission deadline needs to be more clearly signposted on HMRC's website so that those who qualify for the relaxation are made aware of it and able to find clear and detailed guidance.
- 1.9 Such guidance needs to be clear, especially where over the year the 9 employee rule may be exceeded.
- 1.10 Alternative, offline, methods advising of the relaxation also need to be considered – bearing in mind that one of the main reasons employers may use the relaxation is due to their digital exclusion.
- 1.11 We note there are no plans to consolidate the regulations. However we would like to see this done due to the additional complexities faced from this latest round of amendments.
- 1.12 We also take this opportunity to suggest an enhancement to HMRC basic Payroll Tools, which may encourage more use of it, especially for those coming to RTI for the first time and those with limited budgets who see a free payroll option as essential due to the costs of bought software and computer equipment.
- 1.13 Section 3 of this response expands on the above points.

2 About Us

- 2.1 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. Everything we do is aimed at improving the tax and benefits experience of low-income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 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.

3 General comments

- 3.1 We welcome HMRC's recognition that RTI has not been an easy transition for everyone. However we think that where HMRC state in the explanatory note that the 'vast majority'¹ of

¹ Para 7.2 <http://www.hmrc.gov.uk/drafts/em-payee-oob-ag.pdf>

employers find RTI reporting easier than expected, it can be misleading as to the true impact of RTI on smaller employers. The independent research report¹ and the number of respondents to the 'on or before' survey seems to us to be unrepresentative of the employer base in the UK. This is particularly so if an employer has not yet embraced RTI, as they are unlikely to have taken part in the surveys at all.

3.2 This may be illustrated by the fact that there are nearly 1,000,000 micro employers in the UK, according to the 2013 report from Department of Business Innovation and Skills² but no statistics to show how many of these embraced RTI either at all, or to what extent. It is likely that a large number of these will be the ones who may have to take advantage of the relaxation.

3.3 ***Micro employers in existence at 5 April 2014***

We note that new regulation 67B (1A) in its final sentence says '...that employer may instead deliver to HMRC the information specified in Schedule A1...*on or before making the last relevant payment in that month*' (our italics). While we can agree that this is helpful in that the micro employer need only make one submission in the month, we do think that the wording as it stands may cause problems.

For example, consider an employer that pays its staff every two weeks. It pays staff on 8 January (no submission needed because it will pay later in the month); it pays staff on 22nd of the month (no submission needed because it will pay again on 5 February). For some reason no payment is made on 5 February. This could be because no work was carried out and no pay was due – or it could be a simple error on the part of the employer. As the draft legislation stands, this employer will not have complied: he should have made a submission on 22 January as that was the last relevant payment in the month – even though he thought there would be another payment.

Accordingly we believe it would be fairer for the wording to be changed to '...that employer may instead deliver to HMRC the information specified in Schedule A1...*on or before the last day of the tax month*'. This would enable such employers to comply.

3.4 ***Universal Credit (UC)***

We acknowledge that HMRC state they have worked closely with DWP³ in developing this package and would urge that this close dialogue continues. The 1,000,000 employers referred to in 3.2 above employ nearly 4,000,000 employees. Some of these may be current or future UC claimants. Although we welcome the relaxation from an employer perspective, any relaxation of the 'on or before' rule could adversely affect the UC award of their employees. We would recommend that as well as continuing to work together, HMRC and

¹ <http://www.hmrc.gov.uk/research/report264.pdf>

² https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/254552/13-92-business-population-estimates-2013-stats-release-4.pdf

³ <http://www.hmrc.gov.uk/news/news091213.htm>

DWP should also work with other professional bodies and external organisations such as ourselves.

3.5 If an employer makes a late submission, it may have a significant impact on the amount of UC a person receives where the wages are paid in one UC assessment period and reported in a later one. This can happen even if the employer is only one day late reporting to HMRC. There is an example of the effect this would have on UC payments in the December 2013 report by HMRC on the impact of 'on or before' reporting¹. It is clear that even a claimant who works the same number of hours and gets the same amount of pay each time could be subject to large fluctuations of UC from this issue. This will have serious consequences for UC claimants not only because it is extremely confusing, but also from a budgeting perspective.

3.6 It is not clear to us when the burden to self-report may be triggered when an employer submission is made late. There needs to be clear guidance for DWP staff, claimants and employers on what happens when an employer reports late. This needs to include a clear explanation for claimants on what is expected of them and whom they should contact and when. Thought also needs to be given to what information a claimant will receive on their UC award notice.

3.7 ***New employers***

The consultation says 'All employers starting to operate PAYE from 6 April 2014, regardless of size, will need to report each time they pay their employees'. We think that there may be cases where this will be unfair, especially for unrepresented employers and more so for vulnerable ones such as care and support employers. For example if a new care and support employer registers with HMRC to pay their carer, on say 2 April 2014, but their neighbour in exactly the same situation does not do this until the 8 April 2014, then the second one will face a much greater task to run her payroll than the first because the first qualifies for the concession whilst the second does not. Whilst we can see the rationale that brand new employers are working off a complete blank canvas so then should just be able to cope with 'on or before' from the outset, we think there should still be more flexibility for those who may genuinely need it.

3.8 ***Care and support employers***

The new regulation 142(2) (as substituted by regulation 9 of the draft PAYE legislation) seems to omit those employees of care and support employers who would have been covered by regulation 67D (1)(d). Is this intentional, and if so what is the rationale of including employees within regulation 67D(1)(a) (religious objection to using online communications) and regulation 67D(11) (digitally excluded individuals) but not employees within regulation 67D(1)(d)?

¹ <https://www.gov.uk/government/publications/real-time-information-rti-assessment-of-impact-of-on-or-before-reporting>

3.9 **Guidance**

The guidance on the relaxation, in particular the reference to the nine employees limit, needs to be clearer where more than nine employees are employed over the course of, or during, the year. The Regulations¹ state the 'count' is done on the 6 April, but it is not clear from the current guidance that it is therefore possible to go over this limit *during* the year as long as by the following 5 April the nine employee limit is not exceeded. This clarification will be especially important to the likes of seasonal employers such as farmers. We recommend HMRC show examples of acceptable ways to count the employees.

3.10 At present the updated relaxation is featured on HMRC's website at <http://www.hmrc.gov.uk/payerti/reporting/when-to-report.htm#3>. However the updated relaxation is featured only when you scroll down the page. To ensure micro employers receive this message at the earliest opportunity we would recommend making this the first message on any webpage where the relaxation may form part of the guidance and will be important and useful to a micro employer.

3.11 The webpage referred to at 3.11 above should be rewritten. As it stands there is some conflicting information, in that although there is an 'important update' box on the page, later guidance mentioning the original relaxation date of April 2014 is given on the same page.

3.12 In addition to this HMRC must identify those who do not have digital access and therefore cannot review the website, and make them fully aware of their entitlement to the relaxation via other means (letter, flyer or telephone).

3.13 **General RTI points – HMRC Basic Payroll Tools**

To assist with the submission of RTI using HMRC's basic PAYE Tool program we think it may be of use if this was made an 'online' service. That way if the employer/payroll operator was itinerant then they could access the program from any computer. This may also assist those who find the affordability of computer hardware and purchased payroll software to be prohibitive in fully embracing online filing. An online version would mean employers could access from libraries and other venues encouraged by the government's digital strategies. We do not imagine this is outwith the realms of possibility as there must be some kind of online presence at the moment given that the information is sent online via the program, and also updates are received by the programme.

Low Incomes Tax Reform Group
24 January 2014

¹ <http://www.hmrc.gov.uk/drafts/oob-payee-consultation-regs.pdf>