



Low Incomes
Tax Reform
Group

A voice for the unrepresented

VAT: amendments to legislation – assistance with electronic filing of VAT returns
Response by the Low Incomes Tax Reform Group to summary of responses to consultation and
draft amending regulations

1 Executive summary

- 1.1 We are in broad agreement with the policy objectives set out in paras 2.7 to 2.9 and 2.14 of the responses summary, and welcome this opportunity to consult on the draft regulations intended to put them into effect.
- 1.2 We are very pleased to note the extent to which this constructive consultation response proposes to implement the changes which we have recommended, following the helpful discussions we have had with officials. This is a sensible and rational outcome which gives HM Revenue & Customs (HMRC) a sound basis for its future digital support strategy.
- 1.3 We do not believe that the draft regulations achieve the policy aim of allowing telephone filing where it is not reasonably practicable for the taxpayer to file online, because they assume (without expressly saying so) that telephone filing is a form of electronic filing, a proposition which the judge in *LH Bishop* did not uphold. To give effect to HMRC's policy intention (which we support), the possibility of telephone filing would have to be expressly introduced to reg 25A(4), or there would have to be a specific provision deeming telephone filing to be a form of online filing for the purposes of these regulations.
- 1.4 In other respects we think the draft regulations broadly achieve their intended purpose. It is important that HMRC officials have regard to human rights principles in deciding who should be able to use the telephone filing service or file on paper, and the statutory right of appeal is welcome so as to provide essential judicial oversight of such decision-making.

2 Who we are

- 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 HMRC 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.

3 General observations

- 3.1 In this summary of responses, HMRC propose that businesses will be permitted to file their VAT returns by telephone where they satisfy HMRC that it is not reasonably practicable for them to file electronically due to their age, disability, remoteness of location, or any other reason. If for any of those reasons it is not reasonably practicable for them to file either electronically or by telephone, they will be permitted to file on paper. Any business aggrieved by HMRC's decision to refuse telephone or paper filing will have a right of appeal.
- 3.2 HMRC have also proposed to improve the telephone filing service by making it possible for taxpayers to ring HMRC rather than making an appointment for HMRC to ring them, by providing a dedicated line, and by providing a service outside of normal working hours. The service will be more widely publicised and guidance provided.
- 3.3 As we said publicly when this summary of responses was published, this is a sensible and rational outcome to an open consultation which gives HMRC a sound basis for their future digital strategy. During the consultation period, LITRG and CIOT colleagues held discussions with senior HMRC officials and we are pleased to say that the outcome of the consultation is very much in accordance with the views we expressed, and with the view taken by others who responded in writing.
- 3.4 It is vital that the process for applying for telephone or paper filing and requesting a decision on reasonable practicability is simple and straightforward and does not simply introduce new problems in place of the old. The same is to be said about the process for appealing against an adverse decision – it must be simple and swift for the appellant, given that returns need to be filed by strict deadlines. In practice this means that the internal review teams are geared up to make timely decisions based fairly on evidence provided by the taxpayer, as not all (possibly few) appeals will go straight to the tribunal in the first instance.
- 3.5 It is also essential that the veil of secrecy that has hitherto surrounded the telephone filing easement is well and truly lifted, and both telephone and paper filing and the terms on which they are offered are properly publicised in future. We remain willing to help in any way we can with the way in which the telephone and paper filing services are publicised, and in drafting the guidance mentioned at para 2.11 and 2.16 of the consultation document.

4 Do the draft regulations achieve HMRC's policy intention?

4.1 Telephone vs electronic filing

4.1.1 We do not believe that the draft regulations achieve the policy intention set out in paragraphs 2.7 to 2.9 and 2.14 of the summary of responses. The reason is that the regulations assume telephone filing is a form of electronic filing, when the judgment in *LH Bishop* makes it clear that it is not, but rather a concessionary alternative (see *inter alia* paras 475, 498 and 511 of the judgment). That was one reason why the judge found that the telephone filing alternative offered to the appellants was unlawful – because the regulations (reg 25A(4)) allowed only for electronic filing and paper filing, and not filing by telephone (para 499). Therefore (para 514):

“the telephone filing concession in the form in which it was given was not a concession which HMRC had as a matter of public law power to give.”

4.1.2 In addition, the judge branded HMRC's arguments in favour of the proposition that telephone filing was some form of electronic filing as “quite extraordinary” and “obviously wrong” (para 470).

4.1.3 Despite this, the amending regulations seem to assume (as per the explanatory note) that telephone filing is a form of electronic filing. Accordingly, they neither contain a specific provision deeming telephone returns to be a form of electronic return, nor give HMRC express power to use a telephone return system, one or other of which would be necessary if the regulations as amended were to achieve the policy intention of giving HMRC power to offer telephone returns.

4.1.4 By far the easiest way to do so would be to amend reg 25A(4) so that it read:

“25A(4) In any case where an electronic return system is not used, a return must be made *by telephone or by using a paper return system . . .*”

with italics representing the words that need to be inserted. That would require some amendment to the new para 25A(6)(c) to ensure that a person who satisfied HMRC that it was not reasonably practicable for them to file online could be permitted telephone filing, or paper filing, if neither online nor telephone filing were reasonably practicable. While, as drafted, the new reg 25A(6)(c) has the effect of permitting paper filing if electronic filing is not reasonably practicable, it still does not expressly or impliedly permit HMRC to offer telephone filing.

4.2 Other aspects of the draft amending regulations

4.2.1 In other respects we think the draft amendments achieve their purpose. The formulation of “reasonable practicability” is in our view the right one to use.

4.2.2 We are pleased to see ‘any other reason’ added to ‘age, disability or remoteness of location’ as the grounds on which it might be considered not reasonably practicable for a person to file electronically. This is clearly in deference to the judge's findings at para 696 of *LH Bishop*. ‘Any other reason’ would include any other grounds on which a breach of the taxpayer's Convention rights could be sustained, and it is important that guidance to officials should require them to take full account of such rights when making decisions on those grounds.

The new reg 25A(6)(c) in effect creates a specific exemption for age, disability, remoteness, etc, the previous absence of which from the VAT regulations for anyone other than those with a religious objection to the internet or insolvent businesses was rightly criticised in *LH Bishop*. However, it makes the benefit of the exemption dependent upon the exercise of a discretion and the making of a direction by HMRC. That would be unacceptable were it not for the statutory appeal right provided by VAT Act 1994, section 83(zc) (see para 2.9 of the responses summary) which should provide a recourse against any wrongful exercise by HMRC of their discretion or wrongful refusal to issue a direction. The wording of the draft legislation requires HMRC to consider whether requiring a taxpayer to file online or by telephone would breach their human rights on grounds of age, disability, remoteness of location, or any other reason. We have every confidence that HMRC will do so to the best of their judgment, but the statutory appeal route is essential given that the exercise of discretion on human rights principles does require judicial oversight.

5 Conclusion

- 5.1 In conclusion, we would echo our CIOT colleagues' observation that getting the legislation right is only part of the solution – it is also necessary that the procedures should not be unduly burdensome, and HMRC would do well to adopt a policy of when in doubt, err in favour of the taxable person.

LITRG

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