RTI post-implementation review
Comments from the Low Incomes Tax Reform Group (LITRG)

1 General

1.1 There are two main groups affected by Real Time Information (RTI) whose interests could potentially clash. Employers, particularly small employers, might see the imposition of strict deadlines (FPS to be submitted 'on or before' payment) and the prescribing of electronic means of reporting as administrative burdens they could do without and which present particular difficulties in certain circumstances (eg promptly reporting payments made to bar staff after closing time, or to gang labourers in a field on completion of a task). Employees on the other hand, particularly those claiming universal credit (UC), will benefit from knowing that their pay and deductions are regularly reported to HM Revenue & Customs (HMRC) and readily accessible by the Department for Work and Pensions (DWP) for the purpose of assessing their UC entitlement.

1.2 Prompt reporting is particularly important for employees claiming UC because of the time-sensitive nature of that benefit. Where an employed earner is paid by an RTI employer, the UC regulations require DWP to use the RTI data reported to HMRC in an assessment period (the calendar month beginning with the date of claim, and each successive month during the currency of the claim) to work out the employee's UC entitlement for that period. It follows that if the information is reported a day or two late, so that information about a payment made in one assessment period does not appear on HMRC's systems until the next assessment period, the employee could be paid too much UC for the first period in which it might appear that they have not been paid at all by their employer, and too little for the second period in which they seem to have been paid twice.

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The initial ‘light touch’ in not enforcing deadlines too strictly has been generally helpful for smaller businesses in the early days of RTI, and has not put employees at a disadvantage in that very few are yet claiming UC. Nonetheless as UC comes on stream in more areas and for broader sectors of the working population, it will become increasingly important that employers adhere strictly to deadlines when reporting pay and deductions.

2 Digital exclusion

2.1 The risk in introducing a system that requires electronic reporting is that significant numbers may be unable to comply through not having the requisite digital access, skills or equipment. The PAYE Regulations (SI 2003/2682 as amended) contain exceptions from electronic reporting for (among others) care and support employers (reg 67D(1)(d)) and those employers to whom a direction has been given under para (11) (reg 67D(1)(e)). A direction may be given under reg 67D(11) where the HMRC Commissioners are satisfied that:

(a) it is not reasonably practicable for an employer to make a return using an approved method of electronic communication; and

(b) it is the employer who delivers the return (and not some other person on the employer’s behalf).

2.2 The wording of the legislation seems balanced and appropriate and the test of ‘reasonable practicability’ is the right one if properly applied. In our view, the more detailed specification developed for exemption from the VAT online filing obligation (in which we were closely involved) provides some useful criteria for determining whether the ‘reasonable practicability’ test is fulfilled (VAT Regulations 1995 (SI 1995/2518) reg 25A(6)(c)):

> “A person . . . for whom the Commissioners are satisfied that it is not reasonably practicable to make a return using an electronic return system . . . *for reasons of disability, age, remoteness of location or any other reason* . . . is not required to make [an electronic return]”. (italics supplied)

2.3 The three categories mentioned (disability, age and remoteness of location) featured in the leading case *LH Bishop Electrical Co Ltd & Others v HMRC Commissioners* [2013] UKFTT 522 (TC) where the Tribunal held that regulations prescribing online filing of VAT returns without regard for the difficulties experienced by three of the appellants who exhibited those attributes were unlawful and a breach of those appellants’ human rights. In line with the judgment, the amended regulations added ‘or any other reason’ to indicate that there could be other grounds on which a person’s human rights could be breached by such a requirement – the categories of possible breaches were not closed – and HMRC must be alert to such instances in the future in all situations where electronic communication would otherwise be mandatory.

2.4 As for care and support employers, we were also closely involved in developing the terms on which they were to be excepted from the obligation to file electronically, and the paper form they are required to complete has proved to be widely used, although its length and complexity has come in for criticism (see HMRC research report *Understanding the Care and Support Employer* (May 2012)). We can probably assume that as more of the computer literate generation reach the stage of being care and support employers, the need for the paper form will decline and more of them will be content to file electronically. We are already finding that the Basic Payroll Tool (BPT) which we make available on our website http://disabilitytaxguide.org.uk/ is increasingly popular among this sector of the population, and for that reason we hope and trust that HMRC will continue to make available this useful tool.

3 RTI and tax credits

3.1 Since April 2014, HMRC have been using RTI to finalise some tax credit claims. Early experience has shown that it is important not to place too much reliance on RTI figures when checking income for tax credits purposes. RTI figures show the P60 data used for income tax purposes, but not all of those figures are correct for tax credits. For example, while the RTI data will show statutory maternity, paternity and adoption pay for employment taxes, only the first £100 of each weekly payment counts as tax credits income. Also, the RTI figures will not generally show deductible items such as gift aid donations or personal or stakeholder pension contributions made by the employee/claimant. And RTI figures will only show income from employment and certain pension income, not from self-employment or any other source.

3.2 It is not unknown for the claimant to report the (correct) income figure but for HMRC's systems to override that in favour of the RTI data, which (as shown) may be correct for income tax purposes but does not necessarily tell the whole story for tax credits.

3.3 RTI offers HMRC potential to reduce the incidence of over and under payment of tax credit awards by checking income and employment information during the tax year, not just at the end of the tax year. Exploiting the data for this purpose could lead to HMRC amending tax credit awards and payments and so, again, it would be important not to place too much exact reliance on RTI data for this purpose. For example, an indication in RTI data that a person has been paid a higher amount in one pay period should not necessarily be extrapolated to give an indication that their annual household income will be increased overall. Similarly, the absence of a payment in RTI data does not necessarily indicate that the claimant is no longer in remunerative work. However, this information offers a guide and could be used to prompt the claimant to check whether their relevant household circumstances have changed to the point they need to notify HMRC to amend their award.

4 Concluding remarks

4.1 RTI has not yet achieved full functionality. When (if) it does so, it will have the potential to work well for many low-paid employees, not only in terms of greater accuracy in recording the data needed for their tax, National Insurance contributions, tax credits and UC needs, but also in its capacity to show at a glance if something is going wrong with the deduction of PAYE by their employer or pension provider. Many instances of under-deductions in the past have arisen from employer or pension provider error, and HMRC – despite their own regulations (reg 72 of the PAYE Regulations) which require them to pursue the employer/pension provider for such under-deductions – have tended to pursue the employee or pensioner instead. If full use were made of RTI functionality, the problem would not arise as HMRC would be able to see, in real time, whether sufficient was being deducted from pay and take immediate action to correct any error.

4.2 There are other ways in which HMRC can use RTI to benefit the low-paid employee or pensioner, and we trust that the post-implementation review will spend time considering the following uses to which RTI functionality could be put:

- to provide intelligence to enforce National Minimum/Living Wage legislation;
- to prepopulate the PTA or issue simple assessments in order to eliminate self assessment tax returns for some taxpayers (particularly pensioners) sooner than might otherwise be the case;
- when RTI data indicates cessation of employment part way through the tax year, to trigger an immediate review to see whether a PAYE refund is due if there is no indication that a new employment has begun within a certain period of time, so in-year PAYE refunds can be dealt with more quickly and efficiently. This could be particularly pertinent to migrants returning to their home country part way through the year, for example;
- where no RTI returns are received from known employers, to prompt HMRC to look more closely at the employer as a whole and so potentially spot non-compliant or exploitative employers sooner rather than later.

4.3 To conclude, we would strongly urge HMRC to carry forward any learning identified during the post-implementation review to the next major project on the horizon, Making Tax Digital, particularly in the quarterly reporting to be expected of businesses, and other major IT projects in the future.

5 About Us

5.1 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.

5.2 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.

5.3 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.

LITRG

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