

# Tax Representation



**TAXREP 15/10**

## **MEETING THE OBLIGATIONS TO FILE RETURNS AND PAY TAX ON TIME**

### **DRAFT LEGISLATION AND COMMENTARY**

*Memorandum submitted on 3 March 2010 by the Tax Faculty of the Institute of Chartered Accountants in England and Wales in response to a consultation document and draft legislation published on 9 December 2009 by HMRC.*

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## MEETING THE OBLIGATIONS TO FILE RETURNS AND PAY TAX ON TIME

### DRAFT LEGISLATION AND COMMENTARY

#### INTRODUCTION

1 We welcome the opportunity to comment on the proposals published by HMRC on 9 December 2009 at <http://www.hmrc.gov.uk/pbr2009/venture-capital-1260.pdf>.

2 We also welcomed the opportunity for us to discuss these proposals with HMRC.

3 Details about the Institute of Chartered Accountants in England and Wales and the Tax Faculty are set out in Annex A. Our Ten Tenets for a Better Tax System which we use as a benchmark are summarised in Annex B.

#### BACKGROUND TO THE DRAFT LEGISLATION

4 The Finance Act 2009 included provisions to create an aligned penalty regime for those who do not meet their obligations to submit returns and pay the tax they owe on time. The new penalties in FA 2009 apply to income tax, corporation tax, PAYE, Construction Industry Scheme, inheritance tax, petroleum revenue tax and stamp duties.

5 With the exception of PAYE, the new penalty rules have not yet been introduced and will be phased in as and when the necessary changes are made to HMRC's computer systems.

6 It was stated in the Explanatory Notes to the 2009 Finance Bill that provisions to bring the other taxes within the regimes would be included in the Finance Bill 2010. This consultation document now implements this proposal and will bring the remaining taxes and duties administered by HMRC into the same late filing and late payment penalty regimes, namely VAT, IPT, aggregates duty, climate change levy, landfill tax & Excise Duties.

7 The draft legislation amends the late filing and late payment penalty regimes in Schedules 55 and 56 referred to above. The draft legislation brings the relevant taxes into the existing schedules primarily by inserting the relevant filing and payment obligations into these two tables. The draft legislation then introduces new penalty models that will apply to these taxes, and refers back to the tables to define when and how each model will apply.

8 There are two penalty models depending on the frequency with which returns must be submitted, as follows:

- penalties for returns and payment periods that are between six and two months (including VAT and Environmental Taxes).
- penalties for returns and payment periods that are less than two months long (such as some Excise Duties).

## GENERAL COMMENTS

### Drafting of the clauses

9 The drafting of the clauses make it difficult to see exactly what is proposed, as the technique adopted is to amend the existing FA 2009 provisions. In order to aid clarity we recommend that the FA 2009 provisions should either be replaced by amended schedules that in effect consolidate these rules or that HMRC makes available separately the FA 2009 legislation as amended by these provisions.

10 Given that the outcome of the powers review is now reaching a conclusion, we recommend that consideration is given to consolidating all of these provisions within a rewritten Taxes Management Act.

### Start dates

11 The draft legislation provides for start dates to be introduced by way of Statutory Instrument. Please confirm when it is expected that these new provisions will be introduced and that draft commencement orders will be laid in advance.

### Are the penalties reasonable?

12 Our particular concern relates to the VAT rules. We are concerned that for many small businesses the penalty structure may not be reasonable or proportionate as compared to the existing penalty rules, particularly if any applicable VAT was paid on time.

13 Where a return is late, the penalty will be £100 and a 12 month penalty period is created. If there is a further late filing in the penalty period, the penalty will be £200 and the penalty period is extended to a further 12 months. Two further late filings will see the penalty increase to £300 and £400. If a return is not made within six months, there will be a penalty of the greater of £300 and 5% of any VAT shown on the return and a similar penalty if the return is not made within 12 months.

14 Penalties could mount up very quickly where businesses are submitting monthly VAT returns, for example in VAT repayment cases or where monthly returns are submitted at the request of HMRC. Small businesses are unlikely to have an in-house accountant: they are much more likely to have a part-time bookkeeper, so it would be easy for deadlines to be missed and for the business to struggle to escape out of the penalty cycle.

15 We request that these concerns are given further consideration.

## DETAILED COMMENTS ON SCHEDULE 1 – PENALTIES FOR FAILURE TO MAKE RETURNS

### Para 1

16 This includes what now appears to be the standard approach of allowing the Treasury to amend the rules by Order in what appears to be almost any way it sees fit. We are opposed in principle to this approach. Please confirm:

- the circumstances in which these powers will be used;
- that they will not be used to amend the rules so as to put taxpayers at a disadvantage; and
- that there will be suitable reassurances on this point when the Bill passes through its Committee stages?

The Tax Faculty of the Institute of Chartered Accountants in England and Wales

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Meeting the obligations to file returns and pay tax on time

17 Para 4  
We understand that this change, which does not relate specifically to the extension of the FA 2009 changes under consideration, is designed to clarify the operation of the existing FA 2009 penalty provisions in para 6 of Sch 55 where a person deliberately withholds information in respect of occasional and annual returns . We welcome this clarification. We think that the clarity of para 6 of Sch 55 would be improved further if sub-para 6(5) were moved so that it follows after 6(1). If it was moved the opening words in sub-para 6(5) 'In any other case' would then need to be deleted.

18 Para 5  
Para 5 makes a similar clarification in respect of returns due under the construction industry scheme as that made by para 4 above. Again, please confirm that our understanding of the purpose of this amendment is correct.

19 Para 6, inserting new para 13F  
The penalties for returns of periods of less than two months appear more severe than those for returns for periods between two and six months. Please clarify the reasons for this.

#### **DETAILED COMMENTS ON SCHEDULE 2 – PENALTIES FOR LATE PAYMENT OF TAX**

20 Para 5  
This para rewrites para 6 of Schedule 56 which applies for PAYE and the CIS scheme. It appears to extend the scope of the late payment penalty provisions to include late payment of NIC and also student loans. We understand when we met with HMRC that the existing wording of the FA 2009 was considered to include NIC and student loans, but it was decided to add these to put the matter beyond doubt. Please confirm that our understanding of this is correct?

FJH  
3 March 2010

## ICAEW AND THE TAX FACULTY: WHO WE ARE

1. The Institute of Chartered Accountants in England and Wales (ICAEW) is the largest accountancy body in Europe, with more than 130,000 members. Three thousand new members qualify each year. The prestigious qualifications offered by the Institute are recognised around the world and allow members to call themselves Chartered Accountants and to use the designatory letters ACA or FCA.
2. The Institute operates under a Royal Charter, working in the public interest. It is regulated by the Department for Business, Innovation and Skills through the Financial Reporting Council. Its primary objectives are to educate and train Chartered Accountants, to maintain high standards for professional conduct among members, to provide services to its members and students, and to advance the theory and practice of accountancy, including taxation.
3. The Tax Faculty is the focus for tax within the Institute. It is responsible for tax representations on behalf of the Institute as a whole and it also provides various tax services including the monthly newsletter *TAXline* to more than 10,000 members of the ICAEW who pay an additional subscription.
4. To find out more about the Tax Faculty and ICAEW including how to become a member, please call us on 020 7920 8646 or email us at [taxfac@icaew.com](mailto:taxfac@icaew.com) or write to us at Chartered Accountants' Hall, PO Box 433, Moorgate Place, London EC2P 2BJ.

## THE TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

***These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99; see [www.icaew.co.uk/index.cfm?route=128518](http://www.icaew.co.uk/index.cfm?route=128518).***