



HM Revenue
& Customs

Record keeping and reporting requirements for intermediaries

Summary of responses
January 2015

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1. Introduction

- 1.1 This document responds to the technical consultation ‘Draft legislation: Draft Statutory Instrument – the Income Tax (Pay As You Earn) Regulations 2003’, published in October 2014.
- 1.2 HM Revenue and Customs (HMRC) is grateful to all those who responded or participated in meetings for taking the time consider the draft legislation, as well as for any responses to previous consultation documents on this subject.

Background on the consultation

- 1.3 The government has been clear in its commitment to reduce tax avoidance. To that end, HMRC published 2 consultations in 2013 and 2014 on tackling the use of employment intermediaries to facilitate false self-employment of workers in order to avoid employment taxes and offshore employers to employ UK workers who are working for UK based companies. Following these consultations Finance Act 2014 legislated to strengthen the Agency rules.
- 1.4 These consultations included the need for employment intermediaries to report new information to HMRC, in order for HMRC to ensure compliance with the new rules.
- 1.5 The 2 consultation response documents, published in October 2013 and March 2014, set out the government’s overarching plans for record keeping and requirement reporting for intermediaries. HMRC published a technical consultation on draft regulations in October 2014 which set out the detail of these requirements. This consultation closed on 25 November and was supplemented by meetings with key stakeholders.

Structure of the consultation response

- 1.6 The remainder of the consultation response is divided into 3 sections:
 - Chapter 2 sets out a summary of the responses to the consultation and the Government’s overarching response
 - Chapter 3 sets out the next steps
 - Annex A sets out the list of respondents

2. Responses

Summary of responses

- 2.1 HMRC received responses from a number of businesses and professional bodies.
- 2.2 While most respondents recognised the need for some form of reporting requirement, they raised a number of concerns with the draft regulations. The main areas of concern are set out below.

Extent of information

- 2.3 Nearly all respondents raised a concern about the extent of the information HMRC were asking for, noting the additional burden this would place on businesses and asking for clarity on the process if all the information could not be obtained. A number of respondents noted small and medium enterprises as a particular group who may be negatively impacted.
- 2.4 Most respondents suggested that some of the information being requested was either unnecessary or could be difficult to obtain. There was a general feeling among respondents that some workers might be reluctant to share personal information. There was also an overarching concern about whether an intermediary would successfully be able to gain the relevant information when there was more than one intermediary in the chain and what the penalty regime would be if information was absent.
- 2.5 One respondent asked for guidance on why the information was needed and how it would be used in order for intermediaries to be able to persuade workers to provide the relevant information.
- 2.6 A number of respondents also noted that some of the information may not exist in all cases. This concern was specifically raised in relation to hours worked, where there can be cases of workers being paid based on different criteria.
- 2.7 A number of respondents raised concerns over the sensitivity of the data and the potential implications for commercial risk or discriminatory claims. Some respondents also raised security concerns, particularly around data storage.

- 2.8 Several respondents also highlighted their view that asking an intermediary to provide a nil return for 3 years after a worker had ceased work was onerous and excessive.
- 2.9 A number of respondents also made suggestions regarding how the return requirement sat alongside information being provided through Real Time Information (RTI) for pay-as-you-earn (PAYE) workers. Some respondents suggested that the information being requested should be aligned to that in RTI, or that workers already subject to RTI should be excluded.

Clarification and technical issues with how the return will work, including the implications for Personal Service Companies (PSCs)

- 2.10 Many respondents raised a number of specific questions relating to particular parts of the regulations. Some respondents suggested that HMRC could provide more clarification in the guidance, which will accompany the changes. The points raised included questions such as how the regulations work for intermediaries outside the UK, how they work when there exists more than one intermediary in the chain (as noted previously) and how intermediaries should determine an end date for a worker's engagement if they had had multiple employments with the intermediary.
- 2.11 A number of respondents mentioned PSCs specifically and asked for clarification on whether they would also need to follow the new reporting requirements. One respondent noted that they had expected to see a reduced version of the reporting requirements for PSCs and another noted the difficulties that can exist in correctly distinguishing PSCs.

Timing and consultation process

- 2.12 In addition to the above points, a number of respondents noted that they felt they had not had sufficient opportunity to influence the design and shape of this policy. Some respondents also raised a concern with the time available to implement the changes.

HMRC response

- 2.13 HMRC has considered the response to this consultation carefully and will set out its response below.

Extent of information

- 2.14 HMRC believes there is a need for a new record keeping and return requirement. This will allow us to police compliance with the new strengthened Agency rules, ensuring a level playing field between compliant and non-compliant Agencies.
- 2.15 However, we recognise the genuine concerns raised by respondents regarding the extent of information being requested as part of the reporting requirement and the difficulty that some intermediaries will have in obtaining all of the information requested.
- 2.16 After listening to feedback we have made a number of changes to the reporting requirements which reduces the amount of information intermediaries need to report. These changes remove the need to report worker title, hours worked, passport number, National Identity Card Number and, where a NINO is provided, the need to report date of birth and gender.
- 2.17 We have also changed the regulations so that, although we require details of employed workers (other than those of the intermediary with the filing obligation), we only require the intermediary to tell us about payments for the self-employed workers and others they have engaged where PAYE has not been operated including those engaged through offshore intermediaries.
- 2.18 Furthermore, we have reduced the time frame for making nil returns from 3 years to 1 year.
- 2.19 We believe this provides the right balance between keeping the additional burdens imposed on businesses to a minimum, while still successfully enforcing the new Agency rules. We also hope this will resolve many of the concerns raised regarding discriminatory, sensitivity and commercial risks. A list of the information that will need to be returned is included in para 2.28.
- 2.20 A number of stakeholders raised a concern that the return would be rejected if some of the information was absent, resulting in late filing penalties. We can clarify that this is not the case, the return will continue to be processed, although there will still be a penalty regime for incorrect returns.
- 2.21 HMRC believes the information being requested is reasonable and expects all intermediaries to comply with the new rules.

Clarification and technical issues with how the return will work, including the implications for incorporated businesses such as those commonly referred to as Personal Service Companies (PSCs)

- 2.22 HMRC understands the need for clarity on a number of specific points about how the rules will work and the need for the guidance to be comprehensive. We plan to publish draft guidance shortly and would welcome any comments from stakeholders which will help to shape the final guidance.
- 2.23 A number of respondents raised questions relating to intermediaries based outside of the UK and intermediaries in a chain. On the first of these points, the measure places the requirement to complete a return on the intermediary in the UK closest to the client and requires them to tell HMRC about workers they are supplied with including from any offshore intermediary. An intermediary outside the UK is outside the UK tax jurisdiction for this - although if they are supplying workers to a UK client, without a UK intermediary, that client can have reporting and tax obligations under existing tax legislation. On the second point, we can confirm that we expect the intermediary closest to the end client to provide the return for all workers, regardless of whether they work directly for that intermediary or not. We recognise this will create additional difficulties for some intermediaries who will have to require information they need from those who supply them, but believe that with the revised and shortened requirements, this is a reasonable request.
- 2.24 Respondents also asked for clarity on PSCs and we will ensure the guidance sets out the implications of the rules for PSCs clearly. Where the PSC has only one individual providing services to an end client the PSC will not be a specified intermediary and will therefore have no filing responsibility. A PSC however will appear on a different intermediary's return where their services have been provided by that intermediary to an end client. If the PSC subcontracts to another PSC or where more than one worker of the PSC provides services to an end client they will be caught by the legislation as a specified employment intermediary and would need to file a return.
- 2.25 We hope this provides some clarity for those concerned.

Timing and consultation process

- 2.26 Lastly, a number of respondents raised a concern over the time available to prepare for the change. HMRC understands that businesses need time to prepare for any changes. That is why, in the consultation response document published in March 2014, the government announced that the reporting requirements would not come into effect until 6 April 2015.
- 2.27 HMRC published draft regulations in October 2014 and have published the final list of requirements alongside this response document. We are happy to work with software developers and businesses to provide any further guidance or support needed in order to prepare for the changes.

Final list of requirements

- 2.28 For clarity, the information that an intermediary will need to include in their return is set out below:
- intermediary name and address
 - PAYE number and PAYE reference
 - reporting period from and to
 - is this a NIL return – Y/N
 - have you ceased operating – Y/N
 - worker name
 - worker National Insurance Number
 - where no NINO is available: Date of Birth and Gender
 - worker UTR (where self-employed or in partnership)
 - worker address and postcode
 - worker engagement details
 - worker UTR (where self-employed or director)
 - start date and end date of engagement
 - amount paid for the workers services (currency and inclusive of VAT) (only for the self-employed and others they have engaged where PAYE has not been operated)
 - has income tax been deducted from these payments
 - name of party paid by intermediary for workers services and address
 - Companies House registration number of party paid by intermediary for worker's services (if applicable)

3. Next Steps

- 3.1 After listening to feedback, HMRC has decided to make a number of changes to the regulations which were published in draft in October 2014. The final list of requirements is set out in this document and a technical specification has been published alongside this response document. This can be found on the GOV.UK website.
- 3.2 The government intends to lay the regulations before Parliament shortly. Draft guidance will also be published and shared with stakeholders and HMRC would welcome any comments on this.

Annex A: List of consultation respondents

The following representative bodies and firms responded:

Adecco
APSCo
The Association of Independent Professionals and the Self Employed
The Chartered Institute of Taxation
David Kirk & co
Deloitte
Freelancer and Contractor Services Association
The Institute of Chartered Accountants for England and Wales
The Institute of Interim Management
KPMG
The Recruitment and Employment Confederation
Safe Computing