



HM Revenue  
& Customs

# VAT: Amendments to legislation - assistance with electronic filing of VAT returns

## **Consultation document**

Publication date: 20 December 2013

Closing date for comments: 14 February 2014

<b>Subject of this consultation:</b>	Amendments to VAT Regulations to clarify the assistance available to VAT registered businesses that are required to file their VAT returns online but have difficulty in doing so.
<b>Scope of this consultation:</b>	To seek views on: <ul style="list-style-type: none"> <li>• factors to take into account in amending the VAT Regulations;</li> <li>• improving guidance for businesses having difficulty filing VAT returns online;</li> <li>• the accessibility and convenience of the Filing by Telephone service.</li> </ul>
<b>Who should read this:</b>	Any VAT registered business, particularly those that have difficulty filing their VAT returns online and groups who represent such businesses.
<b>Duration:</b>	8 weeks, from 20 December 2013 to 14 February 2014
<b>Lead official:</b>	John Bryning, HMRC.
<b>How to respond or enquire about this consultation:</b>	Responses and queries about the content or scope of the consultation should be sent to:  John Bryning, HM Revenue & Customs, Indirect Tax Process Team, 1 <sup>st</sup> Floor, Regian House, Liverpool L75 1AD. Tel 03000 540786 E-mail <a href="mailto:john.bryning@hmrc.gsi.gov.uk">john.bryning@hmrc.gsi.gov.uk</a>
<b>Additional ways to be involved:</b>	Responses to this consultation should be submitted in writing. However, if a meeting would be helpful, please contact John Bryning at the above address who will consider your request.  This document is available in other formats on request, Please contact John Bryning at the above address.
<b>After the consultation:</b>	A response document will be published in the spring.
<b>Getting to this stage:</b>	All VAT registered businesses (apart from those excepted on religious grounds and those subject to insolvency procedures) must file their VAT returns using an approved means of electronic communication. This mandatory requirement was introduced in law on 1 April 2012. Prior to this, following a consultation exercise, HMRC established procedures to help businesses that required assistance to file online. However, following a Tribunal decision, the Government is carrying out a review to ensure that: <ul style="list-style-type: none"> <li>• the law provides a means by which all VAT registered businesses that are required to do so can file using an approved means of electronic communications; and</li> <li>• HMRC's guidance to businesses who have difficulty in filing online is clear and appropriate options are available to businesses.</li> </ul>
<b>Previous engagement:</b>	Consultation Document published 8 August 2011 titled VAT: consultation on the next steps for moving VAT online.

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**On request this document can be produced in Welsh and alternate formats including large print, audio and Braille formats**

# 1. Online filing of VAT returns

## Why is online filing mandatory?

- 1.1 In March 2006 Lord Carter of Coles recommended, as part of his strategy to promote wholesale adoption by businesses of online services, that HMRC should:
- make online filing / electronic payment of VAT compulsory for existing VAT businesses with an annual turnover of £100,000 or more, plus all newly registering businesses (regardless of turnover); and
  - review the case for mandating the remaining VAT businesses (that is, those existing businesses with a turnover under £100,000) by 2012.
- 1.2 Since 2006, HMRC has been implementing Lord Carter's recommendations for VAT returns and Pay As You Earn submissions and Corporation Tax returns. This has been done as a way of both transforming HMRC's services and of realising the benefits that online channels offer for both HMRC and businesses alike.
- 1.3 In VAT, regulations were introduced on 1 April 2010 to mandate online filing for those existing businesses with a turnover of £100,000 or more and all newly registered businesses. With very limited exceptions, all remaining businesses were legally mandated to file their VAT returns online from 1 April 2012.

## HMRC and the Wider Government Digital Agenda

- 1.4 Since the original recommendations from Lord Carter, the UK has increasingly become a digital nation. People expect high quality, effective digital services with public services delivered online. Digitising transactional services saves people and businesses time and money by making transactions faster, reducing the number of failed transactions and simplifying the end-to-end process.
- 1.5 The Government is committed to becoming digital by default, offering high-quality, responsive, convenient and up-to-date services. By digital by default, we mean digital services that are so straightforward and convenient that all those who can use them will choose to do so whilst those who cannot are given digital support to ensure that they are not excluded.
- 1.6 Action 8 of the Government Digital Strategy states that everyone who can use digital services independently will be encouraged to do so. Action 9 states that people who are offline will use assisted digital support. Assisted digital support is simply a way of describing the support, help and encouragement government will provide to customers who struggle to get online. It may also incorporate an element of learning so that people are encouraged to use digital services independently in future.

- 1.7 A cross-government team has been set up to lead and coordinate the Government's work on digital inclusion. Working closely with the charity Go ON UK, this team's work will empower and support individuals, small businesses and voluntary groups to get online and benefit from the financial, social and well-being advantages that being online can offer. Recognising the importance of digital inclusion, a new action has been included detailing how government will collaborate with partners across public, private and voluntary sectors to help people go online. HMRC are committed to supporting this work.

## 2. Help for businesses filing VAT returns online

- 2.1 Being in business brings a range of responsibilities in addition to the normal day to day operation of the business. When a business becomes VAT registered, it is responsible for managing its VAT affairs and must therefore be prepared to comply with a range of requirements in order to account for VAT correctly. While HMRC wants dealing with tax to be as simple and straightforward as possible, it is important that those requirements are followed as consistently as possible by VAT registered businesses to ensure a level playing field.
- 2.2 As part of those responsibilities, businesses are legally obliged to file their VAT returns by electronic means unless one of the limited exemptions in regulation 25A(6) of the VAT Regulations 1995 applies. Those exemptions relate only to businesses which are:
- subject to insolvency procedures; or
  - run by people who are practising members of religious societies or orders whose beliefs are incompatible with the use of electronic communications (that is, forbid the use of computers).
- 2.3 The VAT return itself is relatively simple to complete. It contains only 9 boxes of numerical information, and many businesses will not be required to complete all boxes. The vast majority of businesses are able to complete their return with few problems and the online channel makes the process simple, secure and offers a level of assurance that the boxes have been correctly completed.
- 2.4 The vast majority of businesses have found it easy to make the transition from paper filing to online filing. However, very small numbers of businesses have contacted HMRC to explain their difficulties in filing VAT returns online. In such circumstances, we advise businesses of a range of digital assistance options to help them to meet their legal obligations.

### **What digital assistance is available to businesses?**

- 2.5 HMRC recognises that, in a few cases, businesses may not be able to file online themselves. In such cases, a number of support options are available to them. For example, if the business does not own a computer, we advise that they can access one by:
- using public libraries;
  - using computers owned by friends or family; or
  - using the services of an agent.

## **Filing by Telephone**

- 2.6 Where businesses are unable either to file online themselves or to use one of the support options highlighted in paragraph 2.5, they may be entitled to use the Filing by Telephone service.
- 2.7 This service, which operates between 8am and 6pm Monday to Friday (excluding bank holidays) is offered by appointment only. An HMRC Filing by Telephone adviser calls the business at a previously arranged date and time to obtain the details to be included in its VAT return and enters them in the online system on the business's behalf. This process is explained in more detail in Annex A.

## 3. Reasons for change

3.1 On 30 September 2013, the First Tier Tribunal released its decision in joined appeals lodged against the requirement to file of VAT returns online by a number of VAT registered businesses (ref: TC 02910t: L.H. Bishop Electrical Co. Ltd. A F Sheldon t/a Aztec Distributors).

3.2 The Tribunal judge held that the failure of the VAT Regulations 1995 to take account of a person's ability to comply on account of:

- age,
- disability
- computer illiteracy (linked to age) or
- remoteness of location –

was a breach of the European Convention on Human Rights (ECHR).

3.3 The judge also held that the Filing by Telephone service (see paragraphs 2.6 and 2.7 above) was an unlawful concession that had not been properly published and that the availability of this service to appropriate businesses could therefore not heal the aforementioned human rights breach.

3.4 Having carefully weighed up the options, the Government has decided to clarify the legal position beyond any possible doubt. In addition, in light of comments made in the judgement, we consider that we should look again at our communications on VAT online filing to make them clearer and to ensure that businesses who find it difficult to file online are clearly advised of the options available to them.



## 4. Proposals for change

### 4.1 The Government intends to:

- 1) Review the VAT Regulations 1995 to ensure beyond doubt that they provide a means for all VAT registered businesses (except the very small number that are exempt) to file VAT returns by approved electronic means.
- 2) Publish guidance, setting out:
  - what VAT registered businesses should do if they are having difficulty filing VAT returns online;
  - the circumstances in which HMRC will consider allowing businesses to use the Filing by Telephone service and the process to be followed by businesses who consider that they need to file by telephone.
- 3) Consider changes to the Filing by Telephone service to ensure that it meets the needs of businesses that are unable to file returns online using the current approved forms of electronic return system without the assistance of others.

### Review of the VAT Regulations 1995

- 4.2 We will review the VAT Regulations 1995 to determine what, if any, changes are required, in particular to ensure beyond doubt that there is a firm statutory footing for all methods of filing VAT returns by electronic means, including the Filing by Telephone service.
- 4.3 We need to consider further how the Regulations could be amended. One option we will consider is to align, to the extent necessary, the VAT provisions with those already adopted for the online submission of PAYE real time information (RTI). The relevant provisions, which are set out in regulation 67D of the Income Tax (Pay As You Earn) Regulations 2003 enable HMRC to allow employers that meet certain criteria to file RTI submissions in a different way. More detailed information on those criteria and the process to be followed is then set out in published guidance. The relevant extracts from the PAYE regulations and guidance are at Annex B.
- 4.4 From a VAT perspective, this might mean that, where a VAT registered business satisfies HMRC that it is unable to file returns online using one of the current approved forms of electronic return system without the assistance of others (for one of the reasons set out in para 3.2 above) HMRC could allow that business to use the Filing by Telephone service to file its VAT returns online.

**Question 1: If the VAT Regulations 1995 are amended as described in 4.3 above, will this be sufficient to provide a means for all VAT registered businesses (except the very small number that are exempt) to file VAT returns online?**

## **Improved guidance for VAT registered businesses**

4.5 We will set out in published guidance what VAT registered businesses should do if they are having difficulty filing VAT returns online. We will also clarify the circumstances in which HMRC will consider allowing businesses to use the Filing by Telephone service and the process to be followed by businesses that consider that they need to file returns by telephone. We consider that such businesses are likely to be those that rely on one individual (e.g. a sole proprietor) to fulfil their VAT obligations and that one individual is likely to have one or more of the following characteristics:

- a disability which prevents him or her from using computers;
- an inability, because of his or her remote location, to access a reliable internet connection, including 'dial up';
- elderly and unable, because of his or her age, to use a computer to file online

**Question 2: Is there any additional guidance we ought to provide for businesses having difficulty filing VAT returns online?**

**Question 3: Are there any circumstances, other than those detailed above, where we ought to consider allowing businesses to use the Filing by Telephone service?**

## **Review of current Filing by Telephone arrangements**

4.6 Paragraphs 2.6, 2.7 and Annex A set out how the Filing by Telephone service currently operates. We intend to review the service to ensure it is accessible to, and convenient for, businesses that we accept need to use it.

**Question 4: What changes would we need to make to the Filing by Telephone service to meet the objectives of accessibility and convenience?**

**Question 5: Are there any other HRA or Equality Act issues that we need to take into account in the design of the VAT return filing process?**

**Question 6: Do you have any general comments or questions about the issues raised in this consultation document?**

## 5. Tax Impact Assessment

In line with the Government's Tax Consultation Framework, this chapter sets out HMRC's current assessment of the impacts of the proposed changes under consideration.

Exchequer impact (£m)	2013-14	2014-15	2015-16	2016-17	2017-18
	-	nil	nil	nil	nil
	This measure is not expected to have an Exchequer impact.				
Economic impact	This measure is not expected to have any economic impact.				
Impact on individuals and households	The changes will benefit the small proportion of individuals (and households) that may have had difficulty in filing VAT returns online.				
Equalities impact	The proposed changes will enhance HMRCs VAT return filing service by improving accessibility of offering alternative channels.				
Impact on businesses including civil society organisations	This measure is expected to have a negligible impact on businesses and civil society organisations. A maximum of around 1,000 taxpayers are expected to be affected by the measure, and any one-off familiarisation costs or ongoing costs are expected to be negligible.				
Operational impact (£m) – [HMRC or other]	Provided access to alternatives to electronic filing is restricted to businesses who are unable to file online, there will be no significant operational impact.				
Other impacts	n/a				

## 6. Summary of consultation questions

**Question 1: If the VAT Regulations 1995 are amended as described in 4.3 above, will this be sufficient to provide a means for all VAT registered businesses (except the very small number that are exempt) to file VAT returns online?**

**Question 2: Is there any additional guidance we ought to provide for businesses having difficulty filing VAT returns online?**

**Question 3: Are there any circumstances, other than those detailed above, where we ought to consider allowing businesses to use the Filing by Telephone service?**

**Question 4: What changes would we need to make to the Filing by Telephone service to meet the objectives of accessibility and convenience?**

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**Question 6: Do you have any general comments or questions about the issues raised in this consultation document?**

## 7. The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 1 of the process. The purpose of the consultation is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

### How to respond

Responses should be sent by 14 February 2014, by e-mail to [john.bryning@hmrc.gsi.gov.uk](mailto:john.bryning@hmrc.gsi.gov.uk) or by post to:

John Bryning  
HM Revenue and Customs  
Indirect Tax Process Team  
1<sup>st</sup> Floor  
Regian House  
James Street  
Liverpool L75 1AD

Telephone enquiries 03000 540786 (from a text phone prefix this number with 18001)

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC Inside Government](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles. [If you wish to explain your choice of consultation period, this is the place. Also, if you are holding additional meetings or using alternative means of engaging, please mention this here].

The Consultation Principles are available on the Cabinet Office website:  
<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

Amy Burgess, Consultation Coordinator, Budget Team, HM Revenue & Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

Please do not send responses to the consultation to this address.

## Annex A: The Filing by Telephone service

Initially, the business needs to be registered and enrolled for the VAT Online service (we do this once only, in the first call). We then arrange a later telephone appointment to take the VAT return figures for the first online return.

Once the registration and enrolment phone call is over, the business is sent an authorisation code through the post in an envelope marked **Government Gateway**. This code should be kept safe, and the business must have it ready when we contact them for their next appointment.

An adviser will phone the business at the agreed date and time.

- Where the call is not answered, the adviser will make two more attempts (within an hour of the appointment time) before abandoning the appointment.
- Where the person responsible for submitting the return is not available, a new appointment will be made but, if this results in a late return, the business is responsible and may be subject to a penalty.
- If our adviser has been unable to get through at the appointed time, he or she will try two more times within 24 hours. However, the business is ultimately responsible for filing its return and if for whatever reason it cannot make the appointment we ask it to ring the helpdesk to agree a new time.

As before, the adviser will identify him or herself, and then ask some standard security questions to confirm that he or she is talking to the right person. This call should last no more than 15 minutes, during which the adviser will file the businesses VAT return online on behalf of the business, using the figures supplied over the phone.

To ensure accuracy, the adviser will repeat back every figure provided, and will do this until the business is content that the correct figure has been keyed in. For further reassurance every call is recorded, as is the adviser's online activity. This means that, if the adviser wrongly keys in a figure, HMRC has the ability to review the event and fix any errors. The business is not be penalised for any keying in errors.

Once the return has been filed, the adviser will remind the business about payment. If the business has asked to pay by telephone, arrangements will be made to transfer the call to a payment adviser.

We will post a copy of the filed VAT return to the business. The adviser will send this to the place at which the business is registered for VAT. The adviser will finish the call by checking whether the business wants to file online, using the telephone service, for its next return. If so, the adviser will arrange for an appointment to be made when the next return is due.

# Annex B: Extract from PAYE Regulations and guidance

## Regulation 67D of the Income Tax (Pay As You Earn) Regulations 2003

*"(11) Where the Commissioners for Her Majesty's Revenue and Customs 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)*

*they may make a direction specifying that the employer is not required to make a return using an approved method of electronic communication."*

## Guidance for employers exempt from filing or unable to file online

As part of operating PAYE, almost all employers must report their payroll information online using a Full Payment Submission (FPS) for each pay period.

There are, however, a small number of employers who may be:

- exempt from submitting this information online
- unable due to exceptional circumstances to submit this information online

This guide explains under what circumstances you would be considered exempt from or unable to send your payroll information online. If you are exempt you can still choose to file online, due to the speed and convenience this option offers.

## Who is exempt from online filing?

The following groups have the option of sending their payroll submissions to HM Revenue & Customs (HMRC) either online or on paper. If, after reading this information, you believe you may be exempt from reporting your payroll information online and wish to file on paper, then you need to write to HMRC with full details for your application to be considered. Details of how to contact HMRC are at the end of this guide.

### **Religious grounds**

Practising members of religious societies or orders whose beliefs are incompatible with the use of electronic methods of communication are exempt from online filing requirements.



## Provision of care or support services at or from the home

For those employing someone providing care or support services at or from their home, the following conditions must be met:

- the care or support services must be provided to the employer or a member of their family
- the recipient of the services must have a physical or mental disability, or be elderly or infirm
- the employer must be filing their return themselves, not having someone else (such as a relative or accountant) file it on their behalf

## Who is considered unable to file online?

In exceptional circumstances, where HMRC is satisfied that either of the following applies, they will provide an alternative channel for these employers to submit their PAYE returns:

- you will have significant difficulty in using an online channel
- you are unable to use an online channel

## What does HMRC mean by exceptional circumstances?

HMRC expects all employers - other than care and support employers and those with religious objections - as mentioned above, to submit PAYE in real time online.

However there may be a small number of employers for whom HMRC accepts that it will be difficult to meet this online obligation. Employers:

- with a disability which prevents them from using computers
- who cannot access an internet connection, including 'dial up'
- who are elderly and are unable to use an online channel because of their age

If you think you meet the above criteria, you should contact HMRC. They will send you information about:

- how you can best access an online digital channel
- responding to HMRC if - **having followed their advice** - you still have difficulties accessing an online channel

Each case will be considered on its own merits. HMRC will therefore expect you to demonstrate why you are unable to use an online channel to submit your returns to HMRC **and** why you cannot use a third party to submit PAYE in real time on your behalf.

Where HMRC is satisfied that the above criteria are met, you will be offered an alternative channel to deliver that information for a limited period. HMRC's intention is that this option will only remain in place until **April 2017**.

During this period HMRC will review each case and expect employers to take steps to ensure that, once the period comes to an end, they will be able to submit their PAYE in real time to HMRC online or will have arranged for a third party to do so on their behalf.

## Guidance on paper filing

Employers exempt from filing or unable to file payroll information online will start operating PAYE in real time **from April 2014**. The paper process guidance for these employers will be made available nearer the time. Exempt employers can, however, choose to send PAYE information online before then, if they wish.

Employers not currently filing online can now only obtain copies of form P11 by telephoning the Employer Orderline.