



HM Revenue  
& Customs

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

**Summary of Responses and technical  
consultation on draft amendments to  
Regulations**  
22 April 2014

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# 1. Introduction

- 1.1 Following recommendations by Lord Carter of Coles in 2006, HM Revenue and Customs (HMRC) introduced changes to the way in which businesses are obliged to submit their VAT returns. 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.
- 1.2 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. Such options include using public libraries, using computers owned by friends and family, using the services of an agent or, if none of these options are appropriate, using a Filing by Telephone service (“telephone filing”).
- 1.3 However, following appeals against the requirement to file online, the First-tier Tribunal (in the case of L.H. Bishop Electrical Co. Ltd. A F Sheldon t/a Aztec Distributors) ruled 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 locationwas a breach of the European Convention on Human Rights (ECHR).
- 1.4 The judge also held that telephone filing is an unlawful concession that has not been properly publicised and, as such, its availability to certain businesses could not cure the aforementioned human rights breach.
- 1.5 As a result of these findings, the Government decided to consult with a view to amending the law. HMRC published a consultation document (*VAT: Amendments to legislation - assistance with electronic filing of VAT returns*) on 20 December 2013 which concentrated on legislating for telephone filing as an alternative form of online filing for certain taxpayers for whom HMRC accepted that it was not reasonably practicable to file online in the way currently required. The closing date for responses was 14 February 2014

## 2. Responses

- 2.1 A total of 30 written responses were received, of which 12 came from representative bodies. A full list of the respondents can be found on page 16. For reasons of privacy some respondents asked for their names not to be disclosed
- 2.2 We would like to thank all of the respondents for taking the time to participate in the consultation. Their comments have helped to inform the policy making process. The key points from those who responded are set out below.

### Question 1:

**If we decide to amend the VAT Regulations 1995, one option we are considering is to align them with the relevant provisions of the Income Tax (Pay As You Earn) Regulations 2003 Regulations, which concern the online submission of PAYE real time information. 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?**

- 2.3 Most respondents felt that amending the VAT Regulations to allow certain businesses to file by telephone would not adequately address the findings of the Tribunal. It was felt that some businesses now unable to file online (for reasons of age, disability or remoteness of location) might also be unable to file by telephone. As such, the proposed amendment would not provide a statutory exemption from online filing for everyone who might fall into one of the affected categories.
- 2.4 One respondent pointed out that the PAYE Regulations referred to in the Consultation document require HMRC to 'make a direction' to allow a business to make a return other than by using the approved means of electronic communication; if this would also be the case for VAT, the amendment would only be sufficient if such a direction could be obtained quickly and easily by any business having difficulties with online filing.
- 2.5 Another respondent felt that there might be other difficulties that affect people who are neither disabled, old nor geographically remote, but whose human rights are nevertheless breached by being made to file online.
- 2.6 Some queried whether telephone filing is a method of online filing and many felt that, rather than legislating for telephone filing, the exemptions should be widened to allow for paper filing. Furthermore, it was suggested that any amendments to the law to provide for telephone filing should contain a right of appeal.

## *HMRC response*

- 2.7 HMRC is publishing at Annex A draft amendments to the VAT Regulations. These will clarify that telephone filing is an alternative form of electronic filing that will be available to businesses that satisfy HMRC that they meet certain criteria. At paragraph 2.14 below we set out the criteria that HMRC will apply.
- 2.8 HMRC accepts that there may be a very small number of businesses for whom it is not reasonably practicable to file their VAT return either online as currently provided for or using telephone filing. The amendments to the VAT Regulations will therefore provide that businesses that satisfy HMRC that they meet certain criteria will not be required to file their VAT returns using an electronic return system. Those criteria will be that it is not reasonably practicable for them to use either the current method of electronic filing or telephone filing on account of:
- age
  - disability
  - remoteness of location, or
  - any other reason.
- 2.9 At present, a business that disagrees with the requirement that it file its VAT returns online has no right of appeal against this, although it can appeal against a penalty resulting from continuing to file on paper. HMRC proposes that, where it decides that a business does not meet the criteria for exemption from electronic filing (set out in paragraph 2.8 above), that will be an appealable decision under section 83 (zc) of the VAT Act 1994.

## **Question 2:**

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

2.10 Most respondents commented that additional guidance needs to be widely publicised. Those unable to file online as currently required (for reasons of age, disability or remoteness of location) should be made aware of the right to use alternative channels and how to apply to use such channels. Some felt that guidance should be made available in paper format.

#### *HMRC response*

2.11 HMRC agrees that detailed guidance must be made available. Such guidance will set out the processes for filing online as currently required, for telephone filing and for filing on paper along with the criteria to be considered by HMRC for allowing businesses to file online by telephone or by paper.

## **Question 3:**

### **Are there any circumstances, other than those detailed above, where we ought to consider allowing businesses to use telephone filing?**

- 2.12 There were a number of suggestions in response to this question:
- computer problems, security or access issues, where electronic filing using HMRC's systems is not possible;
  - where a business restricts the number of people who can submit the VAT return - their absence due to illness, travel problems or other factors can prevent the authorised member of staff from submitting the return online;
  - where natural disasters (e.g. floods) prevent online filing, they should be able to obtain a direction from HMRC allowing them to file by another method;
  - persons unable to afford computer equipment and the cost of connecting to the internet;
  - small businesses for example, micro businesses (those with nine or fewer employees);
  - those with poor understanding of English;
  - those with a sensitivity which prevents them using computer equipment.
- 2.13 Other respondents reiterated earlier views that those unable to file online should be permitted to file on paper.

## *HMRC response*

2.14 HMRC intend that a business that wishes to file online by telephone will have to satisfy HMRC that it is not reasonably practicable for it to use the current online method of electronic filing on account of:

- age;
- disability;
- remoteness of location; or
- any other reason.

HMRC considers that these criteria should be sufficient to cover all cases where there is a demonstrable need for telephone filing. HMRC will use an existing power to make a direction specifying the details of when businesses may or may not use telephone filing.

Existing provisions already give HMRC discretion to mitigate penalties (including to zero) where businesses are unable to comply with their obligations for reasons such as natural disasters, floods, or computer failure.

### **Question 4:**

#### **What changes would we need to make to telephone filing to meet the objectives of accessibility and convenience?**

2.15 Some respondents provided positive views about the current service. They did not believe that any changes were necessary and praised the level of service provided by HMRC staff. Others suggested a number of ways in which the current service could be improved to make it more accessible and convenient. Such changes could include:

- a telephone service operated entirely on a voice recognition principle;
- a specific permission referenced to the VAT registration number of a business which allows it to make a booking by telephone (potentially using a touch tone keypad or some similar device within the telephone);
- a commitment to answer calls quickly;
- the use of 0800 freephone numbers;
- a properly publicised service;
- consideration of use of mobile telephones and other mobile devices;
- use of a dedicated telephone service to allow users to contact HMRC at their convenience;
- consideration of an automated service;
- publication of details on HMRC website to ensure wider publication;
- extended hours of availability including weekends.

## *HMRC response*

- 2.16 HMRC is pleased that some respondents expressed their satisfaction with the current service. HMRC does, however, intend to introduce a number of features to make the telephone filing service more accessible. These include:
- introducing the option for authorised telephone filers to call HMRC to file their return, rather than make an appointment for HMRC to call them;
  - making the service available outside of normal working hours;
  - a dedicated line to ensure that calls are dealt with by telephone filing experts and answered promptly.
- HMRC will publish guidance setting out the details of the telephone filing service.

## **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?**

- 2.17 Some respondents again suggested that amendments to the VAT Regulations should provide all businesses with a choice of electronic filing or paper filing. They felt that, by doing so, Human Rights Act or Equality Act issues would be addressed in the most effective way. For example, one respondent felt that some people (e.g. those with hearing or speech impediments or learning difficulties) would find it difficult, or impossible, to use any form of electronic filing system and so would require an alternative means of filing, such as paper.
- 2.18 Another respondent pointed to the provisions of Articles 8 and 14 of the European Convention on Human Rights (ECHR) (right to respect for private and family life and right not to be discriminated against). In respect of both articles, it was felt that, in the light of comments made by the judge in the Bishop Tribunal case, a deaf person for example should not be compelled by law to ask a friend or family member to file by telephone on his or her behalf. Although the respondent accepted that deafness is not confined to the elderly, nevertheless it was felt that quality of hearing often reduces with old age to the extent that holding a telephone conversation becomes difficult. Generally, it was felt that the VAT return filing process should reflect the fact that there are some individuals who are required to file VAT returns for whom filing online (whether or not that is expanded to include filing by telephone) is at least difficult, and in some cases impossible.



*HMRC response*

- 2.19 HMRC has taken into account the points made in response to this question in drafting the legislative changes described in paragraphs 2.7-2.9 and 2.14 above.

**Question 6:**

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

- 2.20 Many respondents agreed that an overall strategy which helps businesses to use online services is a positive initiative. They pointed out that electronic filing is an efficient and effective way of filing VAT returns and should continue to be so. However, it was also felt that exemptions from online filing should be widened to allow those who have difficulty in filing online as currently required to file their returns in another way. That preferred way is paper which several respondents suggested is more cost effective than telephone filing.
- 2.21 Several respondents expressed reservations about the feasibility of the published digital assistance options - particularly using computers owned by friends and family or using public libraries. In light of the comments made in the *Bishop* Tribunal case, it was felt that it was inappropriate to continue to advise businesses to use these digital assistance options.
- 2.22 One respondent suggested that one of a number of conditions should be met before a person is permitted to file their VAT return by alternative means. Such conditions would focus on providing proof that they reside in a postcode area with no broadband access or that they certify that no business activity is conducted using a computer. For those unable to use a computer for other reasons, a local GP should provide some form of certification.
- 2.23 Another respondent suggested there are inconsistencies in the digital default policy in that, from April 2014, there has been a paper option in the PAYE RTI because of lack of access to a computer or broadband connection as well as for those exempted on religious grounds.
- 2.24 One respondent questioned information shown within the Tax Impact Assessment (section 5 of the consultation document) which states that there will be 1,000 businesses affected across the whole of the UK.

*HMRC response*

- 2.25 HMRC is pleased that respondents welcome its strategy to encourage taxpayers to use online services and that some respondents acknowledge the quality and efficiency of the current online system for filing VAT returns.
- 2.26 The overarching strategy of assisting taxpayers to use online services remains for all HMRC regimes. For certain tax regimes such as PAYE where it is accepted that it is not practicable for certain persons to file online or where an exemption applies, taxpayers may file on paper. As PAYE declarations entail considerably more information than VAT returns, it would not be practical to introduce an option to file by telephone. In essence though, the strategy for VAT (assisting businesses unable to file online) is the same as that for other tax regimes administered by HMRC.
- 2.27 HMRC continues to estimate that fewer than 1,000 businesses (out of a total VAT registered population of nearly 2 million) will be affected by the issues raised in the consultation document. Fewer than 150 businesses are currently authorised to use the telephone filing service.

## 3. Consultation on draft amendments to Regulations

- 3.1 At Annex A, HMRC is publishing draft Regulations amending the Value Added Tax Regulations 1995 (S.I. 1995/2518) and a draft explanatory note for a short technical consultation. **HMRC would welcome comments, in particular on whether the draft Regulations achieve the policy intention set out in paragraphs 2.7-2.9 and 2.14 of this Responses Document.**

### How to respond

Responses should be sent **by 24 May 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:

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: Draft amendments to Regulations and Explanatory Note

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## STATUTORY INSTRUMENTS

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**2014 No. 0000**

### **VALUE ADDED TAX**

#### **The Value Added Tax (Amendment) (No. 2) Regulations 2014**

<i>Made</i>	- - - -	<i>2014</i>
<i>Laid before the House of Commons</i>		<i>2014</i>
<i>Coming into force</i>		<i>1st July 2014</i>

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations in exercise of the powers conferred by section 25(1) of, and paragraph 2(1) and (11) of Schedule 11 to, the Value Added Tax Act 1994(1); sections 132 and 133 of the Finance Act 1999(2) and sections 135 and 136 of the Finance Act 2002(3).

#### **Citation, commencement and effect**

1. These Regulations may be cited as the Value Added Tax (Amendment) (No. 2) Regulations 2014.
2. These Regulations come into force on 1st July 2014 and have effect in relation to returns required by regulation 25 of the Value Added Tax Regulations 1995(4) made for any prescribed accounting period which commences on or after that date.

#### **Amendment of the Value Added Tax Regulations 1995**

3. Regulation 25A of the Value Added Tax Regulations 1995(5) is amended as follows.

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- (1) 1994 c. 23; section 96(1) defines "the Commissioners" as meaning the Commissioners of Customs and Excise and "regulations" as meaning regulations made by the Commissioners under the Act; paragraph 2(1) of Schedule 11 was amended by section 24(1)(b) and (5) of the Finance Act 2002 (c. 23). The functions of the Commissioners of Customs and Excise were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that a reference to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
  - (2) 1999 c. 16; section 132 was amended by paragraph 156 of Schedule 17 to, the Communications Act 2003 (c. 21). Section 50 of the Commissioners for Revenue and Customs Act 2005 (c. 11) provides that a reference in an enactment to the Commissioners of Customs and Excise shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.
  - (3) 2002 c. 23; section 135 was amended by paragraphs 94 and 95 of Schedule 4 to, the Commissioners for Revenue and Customs Act 2005 (c. 11) and by section 93 of the Finance Act 2007 (c. 11).
  - (4) S.I. 1995/2518; regulation 25 was amended by S.I. 2000/258, 2000/794, 2004/1675 and 2009/2978.
  - (5) Regulation 25A was inserted by S.I. 2009/2978 and amended by S.I. 2010/559 and S.I. 2012/33.

4. In paragraph (3) after “system” insert “that that person is required or otherwise authorised to use”.

5. In paragraph (6), at the end of sub-paragraph (b) insert—

“, or (c) for whom the Commissioners are satisfied that it is not reasonably practicable to make a return using an electronic return system (including any electronic return system that that person is authorised to use) for reasons of disability, age, remoteness of location or any other reason”.

6. In paragraph (10)—

(a) after subparagraph (b) insert—

“(c) authorise only certain categories of persons to use the electronic return system.”;

(b) after sub-paragraph (b) insert “or (c)”.

*Name*

*Name*

DATE 2014

Two of the Commissioners for Her Majesty’s Revenue and Customs

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend Part V (accounting, payment and records) of the Value Added Tax Regulations 1995 (S.I. 1995/2518) to (1) reflect the fact that the Commissioners are to direct a new form of electronic return system (telephone filing) the use of which will be restricted to specified categories of taxpayers that are authorised to use it and (2) provide for an additional category of excepted persons who will be authorised to use the paper return system.

Regulation 4 makes it clear that a person who is required to use an electronic return system must use a form of electronic return system that that person is required or otherwise authorised to use.

Regulation 5 amends regulation 25A to provide for an additional category of persons who are not required to make a return using an electronic return system, namely persons for whom the Commissioners are satisfied that it would not be reasonably practicable to make a return using an electronic return system (including telephone filing if they are authorised to use that form of electronic return system) for reasons such as disability, age or remoteness of location.

Regulation 6 makes it clear that the Commissioners can issue a direction under regulation 25A(8) that authorises only certain categories of taxpayers to use a specific form of electronic return system such as telephone filing.

A Tax Information and Impact Note covering this instrument will be published on the HMRC website at <http://www.hmrc.gov.uk/thelibrary/tiins.htm>.

## Annex B: List of stakeholders consulted

Action on Disability and Work UK  
Derek Allen  
Association of Accounting Technicians  
Association of Taxation Technicians  
J Bennett Joinery  
L.H. Bishop Electric Company Ltd  
Chartered Accountants Ireland  
Chartered Institute of Taxation  
CLA  
Martin Hancock  
Mike Harrison  
Kenneth MacKensie Hillcoat  
The Institute of Chartered Accountants in England and Wales  
The Institute of Chartered Accountants of Scotland  
JMV Developments Ltd  
David Jones APT  
Keep Me Posted campaign  
W.G. Lee  
Lloyds Banking Group  
Low Incomes Tax Reform Group  
National Farmers Union  
Oldales Lettings & Management  
Royal Mail Group  
Abhimanyu Singh  
TaxAid  
WB Accountancy & Bookkeeping  
Withers LLP