



## **COMPLIANCE COST REVIEWS**

### **Supplementary reviews**

In addition to the 12 compliance cost reviews completed within the 2006-07 programme, a further two RIAs with minimal impact on business were subjected to short evaluations to ensure that the impact actually was minimal. This document contains a summary of the contextual background and main compliance cost learning points.

The two RIAs were:

- The National Insurance Contributions and Statutory Payments Bill (2003)
- Rewrite of PAYE Regulations - The Income Tax (Pay As You Earn) Regulations 2003

### **The National Insurance Contributions and Statutory Payments Bill (2003)**

The aim of the policy change was to modernise the administration of NI through further alignment with the operation of tax to reduce burdens on business. The RIA covered five measures. The impacts on compliance costs, as assessed in the RIA, were:

- A) The ability to withhold securities (usually shares) to pay employee National Insurance (NI) arising on security based payments for existing

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and former employees - The costs to employers will be very small and in most cases there will be no additional cost.

- B) Allowing employers and employees to jointly elect or agree for the employee to pay the employer NI due on convertible and restricted securities - The RIA commented that it is difficult to estimate the cost to the employer of implementing a joint agreement. Any costs will primarily be associated with drafting a suitable agreement, asking employees to enter into these agreements and ensuring the secondary NICs are recovered from the employee correctly. An employer may incur initial costs for seeking professional advice on preparing a form of election and obtaining Inland Revenue approval and it is estimated this service may cost around £3,000. However, IR made a model form of election available for free on its website to help reduce these costs. The RIA anticipated a take up of around 500 applications a year based on previous NICs elections.

It was predicted that the remaining measures (the alignment of debt recovery for self-employed NI with other NI and tax underpayments, the alignment of employer compliance officers' powers following the merger of the then Inland Revenue and Contributions Agency and the introduction of a compliance regime for SSP and SMP, which replaced criminal offences with civil penalties) would be invisible to businesses.

Due to invisibility of the changes to employers, the review of this RIA has been restricted to the reasons why the measures may have had little impact on employers who operated employee share schemes (the target group for measures A and B).

In practice, for those employers who had not designed their share schemes to account for the appropriate withholding, it is unlikely that they would be aware of the change in legislation.

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For measure B, the smaller and start up companies who took advantage of the legislation allowing elections and agreements for options, are unlikely to have operated restricted or convertible schemes (restricted and convertible share schemes are associated with employers who have sophisticated remuneration policies or, who have an overseas parent where restricted shares are a common form of employee reward). The exception to this would be small (in employee numbers) companies based in the City who may adopt sophisticated remuneration policies which may include restricted or convertible securities.

Additionally, legislation introduced with effect from 16 April 2003 allowed for an employer and employee to elect, in the case of restricted stock, to pay tax and NI on acquisition, at the unrestricted value at acquisition, giving the employer certainty of the employer NI cost; one of the main reasons why an employer would enter into a “NI transfer” election or agreement, other than the transfer of the cost. Employers and employees who entered into such elections were prevented from entering into elections to transfer the employer NI to the employee.

Based on this it seems likely that the estimate of 500 applications for measure B was too high.

The learning points for improving the RIA process are:

- HMRC should ensure that its guidance on when to do an RIA and when not to is up to date, covers composite RIAs, and is being used.
- In future could legislative “tidying up” be incorporated into an over arching tax law re-write RIA?
- Even where costs and benefits are negligible, it is useful to have an assessment of the change in business activities required by the legislation to help businesses to plan for implementation if they are affected.

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- HMRC needs to ensure when it is drafting RIAs that the interaction between the proposed legislation and existing legislation is fully considered.

### **Rewrite of PAYE Regulations - The Income Tax (Pay As You Earn) Regulations 2003**

The aim of the Tax Law Rewrite project is to rewrite all of the UK's primary direct tax legislation so that it is clearer and easier to use, without changing the underlying policy. In response to requests from users and representative bodies the PAYE Regulations were also rewritten.

The relevant RIA was published in November 2003 and is available on the HMRC website. The impacts on compliance costs, as assessed in the RIA, were:

It was thought that employers and other PAYE operators, tax practitioners, employees and Inland Revenue would be the main groups affected. It was thought that there would be no major impact on any of these, but that Tax Practitioners would be likely to benefit most, as they use the legislation in the course of their work. The rewrite was expected to lead to fewer errors, misunderstandings and disputes.

Feedback on the RIA from trade bodies suggests that the impact of this measure was minimal. There may have been some minor one-off costs of familiarisation etc, but trade bodies did not raise any concerns with this aspect of the change.

The learning points for improving the RIA process are:

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- The RIA could have been more precise about business implications. For instance most employers and employees will only look at the HMRC guidance, which is based on the regulations, rather than looking at the regulations themselves. So cleaning up the underlying regulations but not the guidance will only have a marginal impact. This could have been brought out more explicitly in the RIA.
- Regulations are only examined for references purposes, for example when there is a dispute or complication and the guidance needs to be verified. The RIA does not really draw out what these circumstances might be.
- The RIA lists four types of person who might view the regulations, and explains to some extent, which types are more likely to view the regulations. The ways in which the rewrite might benefit those identified is also spelt out to some extent (para 29). Future RIA's could explore more explicitly how those groups identified are affected and how significant the benefits might be. For instance would any gains to tax practitioners be passed on to employers via lower fees?
- Since all rewrites potentially share the same small benefits and costs it may be more efficient to cover all tax law rewrites under one overarching RIA.
- This was a relatively minor change in terms of compliance costs and in future it would be worth considering whether the compliance cost review should be subsumed within a wider review of the policy.
- It is worth considering if it is worthwhile to carry out a compliance cost review where the changes are minor.
- The involvement of tax practitioner secondees during the development phase was very beneficial, and it would be worth considering similar initiatives in future.