

MANDATORY ELECTRONIC FILING, INCENTIVES AND MANDATORY ELECTRONIC PAYMENT.

SUMMARY OF RESPONSES TO THE CONSULTATIONS.

Consultation on the draft regulations for mandatory electronic filing for large and medium sized employers, incentives for small employers.

1. We received 9 responses to this consultation. Two from national representative bodies, one from a local professional body and six from individuals.
2. Three of the responses made general comments about the policy and expressed concerns about the future plans to require small employers to send their returns electronically. Those requirements are not covered by these regulations. This document summarises the comments relating to the draft regulations.
3. Two of the responses recommended that the "specified date" in regulation 46ZD (the date on which the employer's size is measured) should be brought forward to the previous autumn each year and that the regulations should provide for a time limit for the issue of notice telling the employer that he must e-file.

The final version of the regulations provides for the specified date to be no later than 30th November and for the notices to be issued by 31st December.

4. One response suggested that the definition of specified date should be the same in the e-filing, e-payment and incentive regulations. That respondent also said that they found the form of words in the draft e-payment regulations clearest.

The definitions of the specified date have been aligned in the final versions of the regulations using the e-payment wording as the starting point.

5. Two respondents asked whether the exception for partnership and sole trader employers that have religious objection to the use of electronic communication could be extended to cover companies controlled by individuals with such objections.

The regulations now provide for companies, whose directors and secretary are all members of a religious society or order whose beliefs are incompatible with the use of electronic communication, to be excluded from the requirement to e-file.

6. The two respondents also asked whether the exception could be extended to clients of agents that have a religious objection to the use of electronic communication.

The Government has not provided for this because the obligation to make a return and to send it electronically rests with the employer, not his agent, and to provide such an exception would give opportunities for avoidance of the requirement to e-file.

7. One respondent suggested that a definition of employee should be inserted into both sets of regulations. That respondent also asked whether employees that receive tax credits but do not pay tax would be included in the count of employees used to determine the employer's size.

The e-filing regulations (and e-payment regulations) are PAYE amendment regulations and the normal definition of employee in regulation 2 SI 1993/744 will apply. The final version of the regulations defines large employer and large or medium sized employer and makes it clear that the employees that will be counted are current employees for whom a deductions working sheet is required. These will include tax credit recipients. The incentive regulations include an equivalent definition.

8. One respondent asked how incentives found not to be due would be recovered.

The regulations provide for incorrect incentives to be recovered in the same way as over-repayments. This will involve the issue of an assessment under section 30A TMA 1970.

9. One respondent was concerned that employers who at the specified date appeared to have fewer than 250 or 50 employees might subsequently become liable to e-filing penalties following a status ruling that reclassified sub contractors as employees.

The regulations provide that penalties will only apply where an e-filing notice has been issued and that such notices must be issued by 31 December before the start of the year in question. A subsequent status ruling will therefore not affect the employer's obligation to e-file.

10. One respondent expressed disappointment that the incentives will not be paid to agents or payroll bureaux.

This is a matter that we have discussed extensively with employer representative bodies. To make payments direct to intermediaries would not have guaranteed that the value of the incentive would be passed on to employers. The degree of intermediary involvement can vary widely. And there would be difficulties where more than one intermediary was acting. The Government has therefore decided that all incentives should be paid to the employer.

11. One respondent expressed strong support for electronic filing and suggested that the requirement to e-file should apply to all employers from 2004/5.

The Government has no plans to change the dates from which requirement to e-file will apply to the various sizes of employers.

12. The comments also included a number of helpful drafting points that have been addressed in the final version of the regulations.

Consultation on the draft regulations for mandatory electronic payment for large employers.

13. We received 5 responses to this consultation. Three from national representative bodies and two from individuals. The main points are summarised below.
14. One respondent said that, while they do not favour compulsion, most large employers will already be paying salaries by electronic means and so the requirement to make payments to the Inland Revenue electronically is not particularly onerous.
15. Three of the responses suggested that the "specified date" in regulation 42A (the date on which the employer's size is measured) should be brought forward to the previous autumn each year and that the regulations should provide a time limit for the Inland Revenue to issue notices telling large employers that they must pay electronically for the forthcoming year.

The final version of the regulations provides for the specified date to be no later than 30th November and for the notices to be issued by 31st December.

16. One respondent asked about the draft amendment to regulation 2D SI 1993/744 that required that payments made electronically use an approved means of electronic communication. That respondent expressed concerns about the Revenue effectively being able to veto certain electronic methods of payment.

The draft amendment was included to ensure that the evidential provisions relating to electronic communication would apply to all electronic payments. The final version of the regulations takes a slightly different approach. The regulation 2D evidential provisions are now applied to all electronic payments.

The Inland Revenue accept a wide range of payment methods, but not every method of payment is suitable for all duties and some payment methods involve significant commission charges. For example, we do not currently accept payment by direct debit or credit card from employers.

17. Two responses expressed concern about the surcharge rates and said that, while they had no objection to the principle of escalating rates, the amounts of surcharge could be large. And they said that they considered that they would be disproportionate to the Exchequer loss.

The Government realises that the surcharge will not be popular but has decided not to change the rates. The surcharge is not intended as recompense to the Exchequer for late payment – it is not interest - it is intended to penalise and deter non-compliance with the requirements set by the regulations. The surcharge rates are based, in part, on the VAT default surcharge rates, but are more lenient in that they provide for two

warnings before the large employer starts to incur surcharge (large VAT traders only get one warning) and the maximum rate is equivalent to 10% of the employer's average monthly payment (the maximum VAT default surcharge rate is 15%).

18. One respondent also expressed concern about the surcharge being based on the tax liability for the whole year and suggested it might act as a disincentive to grow the business (and salary base) after a default has happened.

The surcharge is effectively based on the employer's average monthly payment. We have taken this approach because basing it on the actual payment in default might lead large employers to reduce that payment artificially, to limit the surcharge. This would be difficult to detect because we do not receive any analysis of the monthly payments due. This approach will sometimes work to the employer's advantage – where the default payment is larger than the usual monthly remittance - and sometime to their disadvantage, but overall we think that it will produce a fair result.

19. One respondent said that they felt that the length of the surcharge period is excessive and they referred to the VAT default surcharge period which continues for twelve months after the last default payment.

Previous defaults within the surcharge period are taken into account in determining the rates at which surcharge is charged. We have not changed the provision relating to the surcharge period in these regulations. The PAYE surcharge period will continue until the end of the tax year in which there have been no defaults. This means that a large employer who has defaulted will have to pay on time for up to 23 months before he gets a "clean sheet". We took this approach because the PAYE system, unlike the VAT system, is tied to tax years. The surcharge will be calculated after the end of the tax year and based on the amounts shown in the employer's annual return. Although this aspect of the PAYE surcharge may be seen as more stringent than the VAT system we think it produces a clearer result and is reasonable when the lower surcharge rates and new extended due date for electronic payments are taken into account.

20. One respondent raised a number of points about procedures for appeals.

The final version of the regulations applies (with modifications where necessary) the Taxes Management Act provisions relating to appeals against assessments. The procedures relating to those appeals will therefore apply to the appeals made under these regulations.