

**EXPLANATORY MEMORANDUM TO**  
**THE VALUE ADDED TAX (AMENDMENT) (No. 4) REGULATIONS 2009**  
**2009 No. 2978**

1. This explanatory memorandum has been prepared by HM Revenue & Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The instrument requires VAT registered businesses to submit VAT returns online and pay VAT electronically, for accounting periods which start on or after 1 April 2010. It applies to:

- businesses currently registered for VAT who have an annual VAT exclusive turnover of £100,000 and above; and
- businesses, irrespective of turnover, with an effective date of registration on or after 1 April 2010.

2.2 The instrument provides an exemption for businesses run by individuals who have a religious conscience objection to the use of computers and the internet. This follows from an undertaking given by Ministers in 2002 in response to representations from members of the Exclusive Brethren.

2.3 The instrument provides an exemption for all businesses that are subject to an insolvency procedure.

**3. Matters of special interest to the Select Committee on Statutory Instruments**

None.

**4. Legislative Context**

4.1 These Regulations have been made by the Commissioners for Revenue and Customs in exercise of their powers under sections 25(1) and 58B and paragraphs 2(1) and (11) of Schedule 11 to, the Value Added Tax Act 1994 (VATA); sections 132 and 133 of the Finance Act 1999; section 135 of the Finance Act 2002; section 204 of the Finance Act 2003 and section 95(1) of the Finance Act 2007.

4.2 Section 25(1) VATA provides that a taxable person shall account for and pay VAT by reference to such periods, at such time and in such manner as may be determined by and under regulations. Section 58B VATA provides that regulations made under section 95(1) of the Finance Act 2007 (payment by cheque) may provide for a payment which is made by cheque to be treated as made when the cheque clears as defined in the regulations made under section 95(1) of that Act.

4.3 Paragraphs 2(1) and 2(11) of Schedule 11 VATA allow the Commissioners to make regulations relating to the keeping of accounts and the form and manner in which returns must be made and for those regulations to make different provision for different circumstances.

4.4 Sections 132 and 133 of the Finance Act 1999 allow the Commissioners to make regulations for facilitating the use of electronic communications for (1) the delivery of information the delivery of which is authorised or required by or under any legislation relating to a taxation matter and (2) the making of payments under any such legislation.

4.5 Section 135 of the Finance Act 2002 allows the Commissioners to make regulations requiring electronic communications to be used by specified persons to deliver specified information relating to a taxation matter. Such regulations may provide for penalties in the case of contraventions.

4.6 Section 204 of the Finance Act 2003 allows the Commissioners to make regulations requiring a person to use electronic means in making specified payments under legislation relating to a tax (or duty) for which the Commissioners are responsible. Such regulations may provide for exceptions and may also provide for penalties in the case of contraventions.

4.7 Section 95(1) of the Finance Act 2007 allows the Commissioners to make regulations providing for a payment to HMRC made by cheque to be treated as made when the cheque clears, as defined in the regulations. Such regulations may make general or specific provision, may make different provision for different purposes and may include incidental, consequential or transitional provisions.

## **5. Territorial Extent and Application**

This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 In July 2005, the Government asked Lord Carter to undertake a Review of HMRC Online Services. The purpose of the review was to look at ways of increasing take up of online services for self assessment (SA), VAT, Corporation Tax (CT) and pay as you earn (PAYE). Lord Carter's report was published in March 2006 and set an aspirational goal for HMRC: to aim for universal electronic delivery of tax returns from businesses and IT literate individuals by 2012.

7.2 Lord Carter recommended that HMRC encourage all customers, and in particular business customers, to file income tax SA returns, CT returns, VAT returns and PAYE end of year and in-year forms online. He concluded that

natural growth in the number of online filers could not be relied upon to achieve universal electronic delivery and recommended legislation requiring online filing. He also recommended that businesses be required to pay CT and VAT electronically.

7.3 HMRC is implementing Lord Carter's recommendations in phases from 2007-08 to 2011-12.

7.4 The policy objective is to maximise customer take-up of the online services offered by HMRC in order to:

- provide a better and more cost effective service for customers;
- encourage wider use of new technology that can provide further benefits for customers; and
- efficiently capture clean, easily processed data to help drive down costs for HMRC and its customers.

## **8. Consultation outcome**

8.1 The consultation on draft legislation to implement these proposals was published on 9 April 2009, and concluded on 3 July 2009. The aim of the consultation was to ensure that the legislation, as drafted, would successfully implement the compulsory requirement for VAT returns by affected businesses. The consultation was run to provide businesses, representative bodies and other interested parties with an opportunity to comment on the proposed changes.

8.2 The majority of the respondents provided general comments on the introduction of compulsory online filing for VAT businesses. Some representative bodies also provided specific comments on particular aspects of the draft legislation. HMRC have carefully considered these responses and have made a number of minor changes to the draft legislation.

8.3 A summary of the consultation responses can be found on the [HMRC website](#).

## **9. Guidance**

9.1 HMRC will raise awareness about the new requirements through advertisements in the national press, trade and professional journals/websites and broadcasting articles. HMRC staff will also offer support and advice at face to face events such as HMRC open days and roadshows as well as at selected commercial events.

9.2 Businesses will also be notified via the quarterly 'VAT Notes' and a mailshot flyer which will explain the changes and where to find further guidance and help. An individual letter will be issued to affected businesses approximately three months before the requirement to submit online.

9.3 Guidance on the HMRC website and public notices will be amended, where appropriate.

## **10. Impact**

10.1 The impact on business, charities or voluntary bodies is included in the Impact Assessment which was published in April 2009 and can be found [on the HMRC website](#). This covers a number of changes recommended by Lord Carter. The legislation will impact on 0.7 million VAT registered businesses with turnover of £100,000 and over and on 0.25 million newly registered businesses per year, regardless of turnover. No decision has been made on extending the requirements to the remaining 0.85 million VAT registered businesses whose turnover is below £100,000. The Government will review the continuing need for this exception in 2011/12. This is in line with Lord Carter's recommendation that HMRC should aim for universal electronic delivery of the main business tax returns by 2012.

10.2 The impact on other Government Departments will be the same as that outlined in para 10.1 above.

10.3 The Impact Assessment which covers the effect of the changes made by this instrument amongst others can be found at <http://www.hmrc.gov.uk/ria/carter-ia-final1.pdf>

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 These plans will not, currently, affect existing businesses with a turnover below £100,000. The regulations will require newly registered businesses to file online, irrespective of size, but research shows that they are more likely to be users of IT than established businesses. The requirement to file online from registration will also mean that the business avoids possible transition costs later on.

11.3 The basis for the final decision on what action to take to assist small business has been based upon consultation with stakeholders and on the findings from our latest research.

11.4 HMRC has Customer Champions responsible for representing the needs of both Small & Medium Enterprises (SMEs) and micro businesses. They work with external stakeholders and with colleagues within the department whose work involves these customers.

11.5 HMRC's main external stakeholders in this area are:

- Low Income Taxations Reform Group (LITRG),
- Federation of Small Businesses,
- Institute of Payroll Professionals,
- Tax Aid,
- UK Online Services,
- British Chambers of Commerce,

- Forum of Private Business,
- National Federation of Enterprise Agencies.

## **12. Monitoring & review**

12.1 The changes set out in this instrument aim to achieve universal online filing and electronic payment of VAT returns by businesses with a turnover of £100,000 and over and for those with an effective date of registration on or after 1 April 2010 (with the exception of those businesses exempted on religious grounds and businesses that are subject to an insolvency procedure).

12.2 The numbers of businesses filing online will be monitored on a weekly basis. Help and support will be targeted at those customers the Department expects to encounter the most difficulties. The effectiveness of these measures will be subject to internal review and the amount and nature of support provided will be revised if those reviews indicate businesses are not getting the help and support they need at the time they need it.

## **13. Contact**

Paul Kinsey at HM Revenue and Customs Tel: 0151 703 8558 or email: [paul.kinsey@hmrc.gsi.gov.uk](mailto:paul.kinsey@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.