



# PAYE Pooling

## **Discussion document**

Publication date: 24 October 2011

Closing date for comments: 15 December 2011

<b>Subject of this consultation:</b>	This discussion document is about a possible change to the Pay As You Earn (PAYE) system to give closely connected employers the option of being treated as a single entity for PAYE purposes (PAYE Pooling).
<b>Scope of this consultation:</b>	HMRC would like to gauge the level of interest amongst employers for PAYE Pooling and explore the extent to which it could benefit employers in terms of reduced administration time or costs. This document also outlines how PAYE Pooling might operate and invites views on those proposals.
<b>Who should read this:</b>	This document is aimed at private and public sector employers, pension providers, payroll professionals and others who operate PAYE.
<b>Duration:</b>	This discussion process runs from 24 October 2011 until 15 December 2011.
<b>Enquiries and how to respond:</b>	<p>Responses and enquiries should be sent by email to <a href="mailto:toni.mpario@hmrc.gsi.gov.uk">toni.mpario@hmrc.gsi.gov.uk</a> or by post to Toni Mpario, HM Revenue &amp; Customs, Room 1E 07, 100 Parliament Street, London SW1A 2BQ.</p> <p>Responses should be received by 15 December 2011.</p> <p>HMRC will discuss the issues raised in this document in its regular consultation forums with employers, their representatives and other interested parties</p>
<b>After the consultation:</b>	Responses to this discussion process will inform decisions as to whether PAYE Pooling should be taken forward. A summary of responses will be published before, or alongside, the announcement of these decisions.
<b>Previous engagement:</b>	This is the first stage in consultation. However, HMRC has previously held a series of informal discussions with employers and representative groups that have enabled us to form an initial view as to how PAYE Pooling could work.

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

# 1. The Discussion Process

- 1.1 This document is intended to start a discussion about PAYE Pooling and gather views from as wide a range of private and public sector employers, pension providers and payroll professionals as possible.

*To help HMRC assess the potential level of interest in this idea, we welcome your views on how many and what types of employers you think might be interested in entering into a Pooling agreement. Please note that we are not currently asking employers to register their interest in entering into a Pooling arrangement at this stage.*

- 1.2 This process is being conducted in line with the principles outlined in the document "[Tax Consultation Framework \(PDF 46K\)](#)" which sets out five stages for 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 document is being issued during stage 1 of the process and is seeking views on whether the opportunity to operate PAYE Pooling would be welcomed by employers.

If it is decided to proceed with the PAYE Pooling idea, we will consult further on any specific proposals for policy reform.

## How to respond

- 1.3 A summary of the views sought in this document is included at Chapter 8. Responses should be received by 15 December 2011 and sent by e-mail to [toni.mpario@hmrc.gsi.gov.uk](mailto:toni.mpario@hmrc.gsi.gov.uk) or by post to: Toni Mpario, HM Revenue & Customs, Room 1E 07, 100 Parliament Street, London SW1A 2BQ
- 1.4 When responding please say if you are a business, individual or representative body. If you are responding as an employer, please also let us know how many employees you have and the structure of your organisation. If you are responding as a representative body, please provide information on the number and nature of the people you represent.
- 1.5 Responses to this document should provide details of any potential costs, benefits or other impacts. HMRC will consult on its understanding of the impacts at each stage of development of this policy.

- 1.6 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 the HMRC Internet site at <http://www.hmrc.gov.uk/consultations>. HMRC will acknowledge all responses but it will not be possible to give substantive replies to individual representations.

## Confidentiality

- 1.7 Information provided in response to this consultation, including personal information, might 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
- 1.8 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).
- 1.9 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.

## 2. Executive Summary

- 2.1 The Government is committed to improving the simplicity and competitiveness of the UK's tax system. The PAYE system is a fundamental part of that system and the Government wishes to explore how we could improve its administration.
- 2.2 In considering changes to PAYE, the Government's objectives are to reduce costs for both employers and HMRC by making the system easier to administer, to improve service levels for individual customers and to ensure accurate tax deductions.
- 2.3 At the 2009 Pre Budget Report, the previous Government announced that HMRC would consult on legislation to reduce administrative burdens on businesses by enabling connected employers to pool their PAYE references, returns and payment obligations.
- 2.4 Since then, the current Government announced its intention to improve the operation of PAYE for employers, individual customers and HMRC with the introduction of Real Time Information (RTI). This will require employers to submit information about the tax and other deductions they make at the time payment is made to employees. As this is a significant development in the operation of PAYE, work on PAYE Pooling was put on hold while HMRC developed the framework for RTI.
- 2.5 As we believe readers of this document are likely to be familiar with current PAYE processes, this document refers to all PAYE processes as they exist at present. If, as a result of this discussion, the decision is to take PAYE Pooling forward it will be developed to fit with the RTI framework. Many of the in year and end of year processes discussed in this document will need to be amended in line with RTI. Under RTI, employers will no longer submit in-year movements forms P45 and P46 or the End of Year forms P35 and P14. P11Ds will still be required once RTI has been brought in.

*We welcome your views on how you think PAYE Pooling will interact with RTI and what potential benefits or problems you think may arise.*

### What's next?

- 2.6 HMRC intends for this document to start a discussion about the concept of PAYE Pooling and to gather information and views from employers, pension providers and payroll professionals to gauge the level of interest in this idea.
- 2.7 HMRC would also like to gather information and views on our proposals for how PAYE Pooling might work in order to identify any issues that we need to take into account and possible solutions to address these issues.
- 2.8 Responses received to this discussion document will inform decisions about what happens next and when. If the responses are positive, this may lead to a second stage of consultation.

## 3. Employers' PAYE Obligations

- 3.1 Broadly speaking, PAYE requires employers<sup>1</sup> to calculate and deduct Income Tax and National Insurance contributions (NICs) from the payments they make to their employees<sup>2</sup>. The tax and NICs due must be paid to HMRC monthly, quarterly or annually depending upon the amount and nature of the payments.
- 3.2 Employers are also required to complete certain forms to tell HMRC about their employees and their pay details. For example, employers must submit an annual end of year return to HMRC by 19th May following the end of the tax year. The annual return consists of a form P35 which summarises the end of year payroll totals for all employees, and a form P14 for each employee for whom a payroll record was maintained during the year. The P14 confirms the total amount of payments made to the employee during the year, the total net tax deducted in relation to those payments and the total NICs due in respect of the employment.
- 3.3 The obligation to operate PAYE falls upon employers as defined in sections 4 and 5 of the Income Tax (Earnings and Pensions) Act (ITEPA) 2003. Section 684 of this Act provides for regulations (the Income Tax (Pay As You Earn) Regulations (SI 2682/2003) to be made covering the assessment, charge, collection and recovery of income tax in respect of all PAYE income, which includes cash wages, salaries or pensions paid by an employer or pension provider.
- 3.4 The obligation to pay both primary and secondary Class 1 NICs is provided for by paragraph 3(1) of Schedule 1 to the Social Security Contributions and Benefits Act 1992 (SSCBA). Paragraph 3(3) of this Schedule allows those required to pay NICs to HMRC, to deduct primary NICs from employees' earnings.
- 3.5 Paragraph 6(1) of Schedule 1 to the SSCBA provides the power to make regulations to provide for Class 1, Class 1A, Class 1B, or Class 2 contributions to be paid, accounted for, and recovered in a similar manner to income tax.
- 3.6 Regulation 67 and Schedule 4 to the Social Security (Contributions) Regulations 2001 (SI 2001 No 1004) make provision for Class 1 NICs to be paid, accounted for and recovered in a like manner to income tax paid through the PAYE system. Reference in this consultation document to the operation of PAYE should be read as including the deduction and payment of Class 1 NICs unless otherwise specified. The person obliged to pay Class 1 NICs is called the secondary contributor and this is usually the employer. Therefore, reference to employers in this document should also be read as meaning the liable secondary contributor.

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<sup>1</sup> For the purposes of this document 'employers' include pension providers.

<sup>2</sup> For the purposes of this document 'employees' include individuals in receipt of a pension, directors and other office holders.

## 4. PAYE References

- 4.1 When an employer registers for PAYE, HMRC allocates them a unique employer reference under which the employer must submit all returns and information. A separate unique accounts office reference is also created and linked to the employer reference for use when making PAYE payments to HMRC. The term PAYE reference is used in this document to mean both the employer and accounts office references.
- 4.2 The standard position is that a single employer has one PAYE reference (e.g. one employer reference and one accounts office reference), though they can make an election to operate multiple PAYE schemes<sup>3</sup>. However, at present, a single PAYE reference cannot cover more than one employer.

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<sup>3</sup> An employer may make an election under regulation 98 of the PAYE regulations to set up additional PAYE references for particular groups of employees, such as directors or expatriate employees. Where HMRC accepts an election, with the exception of NICs and Statutory Payments, we will treat the separate PAYE references as being separate employers although part of the same single entity. If the entity decides to revoke a regulation 98 election, HMRC will merge the separate PAYE references back into a single PAYE reference. Although similar, this is a separate process to what we are proposing with PAYE Pooling.



## 5. What is PAYE Pooling?

- 5.1 Many organisations, such as corporate groups of companies, professional partnerships, charities and public bodies, are made up of a number of separate entities. All entities within the organisation that are employers will have their own PAYE reference and are required to make payments and returns to HMRC to meet their PAYE obligations.
- 5.2 HMRC recognises that the operation and maintenance of a number of PAYE references within an organisation can be an unwelcome administrative burden. An administrative easement could be achieved by allowing employers that are connected in this way to be treated as a single entity for PAYE purposes. This has been termed as PAYE Pooling and the following example illustrates what we mean:

ABC Ltd, ABC (Leeds) Ltd and ABC (Manchester) Ltd are three separate companies within the ABC Group. Each company employs a number of staff and, as separate employers, they each make payments and returns to HMRC under their respective PAYE references.

With PAYE Pooling, a single PAYE reference could be set up for the ABC Group allowing the three employers to make combined payments and joint returns to HMRC.

- 5.3 As suggested in this example, PAYE Pooling has the potential to reduce the administrative burden on connected employers by allowing them to submit combined returns and payments to HMRC under a single PAYE reference. Some of the areas where HMRC thinks a pool of employers may achieve an administrative easement are set out below (this list is not exhaustive).

*We welcome your views on how combining returns and payments in this way will work, what administrative savings are likely to be achieved and what problems may arise.*

### Payments

- 5.4 As described in Chapter 3, employers calculate the Income Tax and NICs due from the payments they make to their employees and pay this to HMRC. Rather than each employer making separate payments to HMRC, a PAYE pool will be able to make one combined payment monthly, quarterly or annually depending upon the amount and nature of the payments.

### Forms P45 and P46

- 5.5 When someone changes jobs, their old employer should give them a form P45. This shows the leaver's total pay and tax to the date they left (unless the employee was on a week 1/month 1 tax code in which case this box will be left blank). When they start a new employment, the new employer must complete Part 3 of the P45 and send this to HMRC. If the employee doesn't have a P45, both the employer and employee must complete a P46 and return this to HMRC instead.

As a pool will be treated as a single entity for PAYE purposes, if an employee moves from one employer to another within the pool, we will treat this as the same employment<sup>4</sup> and these forms will not be required. Similarly, under RTI starter and leaver information would not need to be included in the RTI submissions for that employee.

## Expenses and benefits

- 5.6 By 6th July following the end of the tax year, employers must submit a form P11D<sup>5</sup> for each employee for whom they have provided any benefits in kind or expenses (unless these are statutorily subject to PAYE). The P11D shows the cost of the benefits in kind and expenses to the employer and any amount made good by the employee.
- 5.7 A separate return, form P11D(b), showing the employer's total Class 1A NICs liability arising from the benefits in kind provided should be completed and returned by 6th July. The payment of Class 1A NICs should be received by HMRC by the 19th July, if paying by cheque or 22nd July if paying electronically.

Although P11Ds will be required for each employee as they are now, the pool will achieve some administrative easement by only needing to submit one P11D(b) and one payment of Class 1A NICs.

- 5.8 Some employers may have agreed a dispensation or PAYE Settlement Agreement (PSA) with HMRC to reduce the paperwork associated with expenses and benefits. A dispensation is a notice from HMRC that removes the requirement to report expenses and benefits at the end of the year. A PSA is a flexible scheme employers can use to settle any PAYE tax and NICs due to HMRC on three types of expense and benefit: minor items, irregular items, and items it's impractical to operate PAYE on for P11D purposes.

*Due to the high-level nature of this discussion document, we have not yet fully considered how dispensations and PSAs will operate within a PAYE pool. We are keen to hear any views you have on how these may be affected by PAYE Pooling.*

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<sup>4</sup> HMRC's treatment of employees moving between entities within a pool for PAYE purposes does not change their treatment under employment law, which will continue to apply as normal.

<sup>5</sup> For employees whose total earnings (including benefits in kind and expenses) are less than £8,500 a year, form P9D is used in place of form P11D.

## 6. How PAYE Pooling would work

- 6.1 If PAYE Pooling were introduced it would be an optional scheme. It is envisaged that each organisation will assess the merits of a PAYE Pooling arrangement in light of their particular circumstances and organisational needs and make an application to HMRC for Pooling where this is appropriate.

The following paragraphs outline an example of how a pool would be set up and how it will work once established. We invite views on all aspects of this process.

- 6.2 If an organisation decides they would like to enter into a Pooling arrangement, they will nominate one of the employers as a representative. The representative employer will make an application to HMRC, providing details of the employers to be included in the pool, their existing PAYE references and the number of employees held by each.
- 6.3 If HMRC accepts the application, we will set up a PAYE reference for the pool in the name of the representative employer and move the tax records of all employees into the new pool reference. Although we will treat the pool as a single employer for PAYE purposes, the employees themselves will not change employer within the organisation and there should be no effect on their employment contracts or terms and conditions as a result of Pooling.
- 6.4 The representative employer will be responsible for submitting the combined returns and payments under the new PAYE reference. HMRC will suspend the PAYE references for each of the separate employers from the time the pool goes live. All employer liabilities and obligations up to the date of the start of the pool will remain with the individual employers.
- 6.5 If an employer leaves the pool, they will go back to having their own PAYE reference and HMRC will transfer the appropriate employee tax records to this reference. Assuming there is more than one entity left in the pool it can continue as normal. If an entire pool is dissolved as a result of this, or for any other reason, each employer will be reallocated its own PAYE reference and the employee records will be transferred to the appropriate employer as necessary.
- 6.6 As PAYE returns are made annually we envisage that Pooling arrangements will be made and in place for the start of a tax year to reduce the need for unnecessary part year returns. Similarly, we may expect the organisation to exclude any employers who will not remain connected to the others for the whole of the tax year. If the organisation acquires another employer during the year, it may have to wait until the start of the following tax year to include it in the pool.

## Who are connected employers and who would be allowed to pool?

- 6.7 HMRC does not currently have a specific definition of what we mean by “connected employers” in this context but we expect to apply different criteria for private businesses than we would for public bodies. For private business employers we anticipate that we would look for some commonality in business and ownership, whilst for public employers we would look at those grouped under a particular Local or Health Authority. However, we are clear that PAYE Pooling will not be available to payroll agents or other third parties for the purposes of pooling a number of disparate businesses<sup>6</sup>.

*HMRC welcomes opinions on what the specific definition of “connected employers” should be with particular regard to the differences between public and private sector employers. We also wish to identify any problems a specific definition may create and how these can be addressed.*

- 6.8 Before HMRC can make a decision to approve an application to pool, we will need to consider a number of factors. For example, we will look at the compliance and payment histories of the potential pool members and may decide that employers with a history of operating PAYE incorrectly will not be allowed to enter a pool.

*Where HMRC does not approve a Pooling application, we will offer employers an appeals process if they do not agree with our decision. We would like to know how you feel the process should work and what you would consider appropriate conditions to apply before an approval would be granted.*

- 6.9 It will be for the organisation to decide how they want to organise their particular Pooling arrangement(s). They may choose to bring all employers into a single pool, set up a number of separate pools or to leave some employers outside the Pooling arrangement altogether.

- 6.10 At the moment, HMRC is primarily looking at corporate groups of companies, large professional partnerships and public bodies such as local or health authorities, though we will consider other employer relationships as we develop PAYE Pooling.

*Support for the idea of PAYE Pooling has already been received from some larger organisations. However, we would like to gauge the level of interest or appetite amongst all employers and pension providers and their reasons for or against PAYE Pooling.*

## Powers to Enforce and Recover

- 6.11 It is essential that HMRC have the power to enforce the submission of returns and information and protect the exchequer against the loss of unpaid tax and NICs should something go wrong. One option to achieve this would be for all employers within a pool to be jointly and severally liable for any returns and amounts due. The concept of joint and several liability will already be familiar to partnership employers and businesses that are part of a VAT group registration but may be new to other types of employers.

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<sup>6</sup> The PAYE and Social Security regulations recognise the use of third parties for sending information to or receiving information from HMRC. However, the obligation to operate PAYE remains with the employer at all times. HMRC will pursue the employer and not their payroll agent for any outstanding payment or return.

*We acknowledge that joint and several arrangements are not the only option here. For public body employers in particular, this may not be the most appropriate mechanism. We invite comments and views on this and welcome any suggestions for alternative methods HMRC could adopt in order to protect payments and the return of information in these circumstances.*

## **Scope of this Document**

6.12 This document is intended to give an overview of HMRC's proposals for PAYE Pooling and to gather views on these from employers, pension providers and payroll professionals. As this is the first stage of consultation not all areas on which PAYE Pooling may impact have been included within the scope of this initial document. If it is decided to proceed with PAYE Pooling, we will consult further on these. Some of the areas we may need to consider in the future are:

- Statutory Payments
- Student Loans
- The Construction Industry Scheme (CIS)

6.13 As noted in the executive summary, this document does not explain the detail of how PAYE Pooling would operate after the introduction of RTI. If we decide as a result of this discussion process to take PAYE Pooling forward, it will be developed to fit with the RTI framework.

*We welcome suggestions for any areas not covered by this discussion document that will need to be considered if PAYE Pooling is taken forward.*

## 7. Advantages and Disadvantages

- 7.1 Listed below are some general examples of possible advantages and disadvantages to PAYE Pooling that HMRC has identified.

*We would like to gather views on these possible advantages and disadvantages and identify how much they will affect employers and pension providers if they were to pool. We also welcome suggestions for other advantages and disadvantages, including your views on the impacts to student loan collection and anything else we have not covered to help us build a more accurate picture of areas we will need to consider.*

### The advantages of PAYE Pooling

- 7.2 We expect that PAYE Pooling will enable some organisations to save administration time and costs by reducing the number of separate returns and payments they need to make.
- 7.3 Once a pool has been set up, in year leaver and starter information will not be required for movements of staff between employers in the pool, providing more flexibility within the business or public body and giving rise to further administration savings.
- 7.4 Usually, when an employee holds more than one employment their earnings from each employment are dealt with separately for NI purposes. Where an employee holds more than one employment with the same employer or with different employers who carry on business in association with each other their earnings are required to be aggregated for the purposes of calculating NICs. We expect that, where aggregation is required, PAYE Pooling will make this a simpler task for employers as the separate sets of earnings will be dealt with under the same PAYE reference.

*HMRC welcomes any figures that employers, pension providers and payroll professionals can provide of any savings of time or cost they may make as a result of Pooling.*

### The disadvantages of PAYE Pooling

- 7.5 The PAYE payments for the pool are likely to be larger than the payments previously made by the individual employers. If this makes the average monthly payment exceed £1,500, the pool will no longer have the option to make quarterly payments under regulation 70 of the Income tax (Pay as You Earn) Regulations 2003. Any amendment to regulation 70 would be subject to Ministerial approval.

## 8. Summary of Consultation Questions

Below is a summary of the specific questions asked in this document:

- 1.1 *To help HMRC assess the potential level of interest in this idea, we welcome your views on how many and what types of employers you think might be interested in entering into a Pooling agreement. Please note that we are not currently asking employers to register their interest in entering into a Pooling arrangement at this stage.*
- 2.5 *We welcome your views on how you think PAYE Pooling will interact with RTI and what potential benefits or problems you think may arise.*
- 5.3 *We welcome your views on how combining returns and payments in this way will work, what administrative savings are likely to be achieved and what problems may arise.*
- 5.9 *Due to the high-level nature of this discussion document, we have not yet fully considered how dispensations and PSAs will operate within a PAYE pool. We are keen to hear any views you have on how these may be affected by PAYE Pooling.*
- 6.7 *HMRC welcomes opinions on what the specific definition of “connected employers” should be with particular regard to the differences between public and private sector employers. We also wish to identify any problems a specific definition may create and how we could address these.*
- 6.8 *Where HMRC does not approve a Pooling application, we will offer employers an appeals process if they do not agree with our decision. We would like to know how you feel the process should work and what you would consider appropriate conditions to apply before an approval would be granted.*
- 6.10 *Support for the idea of PAYE Pooling has already been received from some larger organisations. However, we would like to gauge the level of interest or appetite amongst all employers and pension providers and their reasons for or against PAYE Pooling.*
- 6.11 *We acknowledge that a joint and several arrangement may not be the only option for HMRC to ensure the submission of returns and information and protect the exchequer against the loss of unpaid tax and NICs. For public body employers in particular, this may not be the most appropriate mechanism. We invite comments and views on this and welcome any suggestions for alternative methods HMRC could adopt in order to protect payments and the return of information in these circumstances.*
- 6.12 *We welcome suggestions for any areas not covered by this discussion document that will need to be considered if PAYE Pooling is taken forward.*
- 7.1 *We would like to gather views on these possible advantages and disadvantages and identify how much they will affect employers and pension providers if they were to pool. We also welcome suggestions for other advantages and disadvantages, including your views on the impacts to student*

*loan collection and anything else we have not covered to help us build a more accurate picture of areas we will need to consider.*

*7.4 HMRC welcomes any figures that employers, pension providers and payroll professionals can provide of any savings of time or cost they may make as a result of Pooling.*

When responding please say if you are a business, individual or representative body. If you are responding as an employer, please also let us know how many employees you have and the structure of your organisation. If you are responding as a representative body, please provide information on the number and nature of the people you represent.