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1. Overview

Conventional business filing systems only ever seem to grow and grow. Legal requirements and good practice demand that we retain thousands of reams of paper detailing transactions, research and correspondence for many years before they can finally be consigned to the shredder.

As a result, valuable office space is allocated to the storage of all this filing. Worse still, when so many pieces of paper are filed by hand, errors are frequent, systems are rambling and staff can spend hours searching for that elusive document.

Technology has, however, come to the rescue of those companies finding themselves drowning in a sea of paper. Document scanning and electronic storage is a growing history as more and more businesses decide to take the leap, storing their paperwork on their PC's instead of the space office corners.

When implemented with care, electronic filing can bring many benefits. Using an intranet, LAN or WAN systems allows staff to share files, whilst a database system would enable rapid searches that would take seconds rather than hours. Much of the paperwork could be destroyed once scanned, and the filing space then used for more profitable purposes.

One of the reasons why businesses can sometimes be reluctant to move towards document scanning is not so much the initial investment costs associated with streamlining, but the issue of legal validity or admissibility of scanned documents. For example, if a VAT discrepancy were to arise, could you be sure that Customs & Excise would accept scanned documentation as evidence? What would happen if a company became embroiled in a court case? Do electronic documents hold the same evidence weight as paper?

This white paper is intended to address some of these issues for businesses.

2. The basic legalities of scanned documents – do they stand up in court?

Does a scanned document stand up in court?

In comparison to paper documents, the issues for electronic documents actually seem to rest on how much integrity they have in terms of 'pedigree' and authenticity rather than their admissibility. Courts and governing bodies now accept that electronic filing is normal procedure for many companies, and they fully accept electronic documents as evidence or supporting material so long as companies can prove that they've taken the appropriate measures to ensure their integrity.

The Basis in Law

The Civil Evidence Act 1995 is perhaps the most relevant point of law to address in relation to electronic documents. Its legacy is to take the onus off the question of physical admissibility, instead examining the actual weight carried by the electronic evidence submitted. The evidential value is then determined by the procedures followed by the company presenting the documents. To put it simply, if a company submits a document that has clearly been unaltered since its creation or which brings with it a clear audit trail that categorises any changes made to it along the way, then that holds for more evidential value than a document that could possibly have been amended in the interim. Simple procedures ensure document integrity for a company looking to move towards an electronic filing system.

Sections 8 and 9 of the Civil Evidence Act 1995 illustrate the legal guidelines for electronic documents as evidence:

- 8 (1) *Where a statement contained in a document is admissible as evidence in civil proceedings, it may be proved;*
- (a) *by the production of that document, or*
- (b) *whether or not that document is still in existence, by the production of a copy of that document or of the material part of it, authenticated in such a manner as the court may approve.*
- (2) *It is immaterial for this purpose how many removes there are between a copy and an original.*
- 9 (1) *A document that is shown to form a part of the records of a business or a public authority may be received in evidence in civil proceedings without a further proof*
- (2) *A document should be taken to form part of the records of a business or public authority if there is produced to a court a certificate to that effect signed either by an officer of the business or authority to which the records belong.*

Essentially, this law may be interpreted to show that an original document is not the only admissible evidence in civil courts. Electronic copies of documents are acceptable so long as their integrity can be proved. Criminal courts involve a more complex set of guidelines, and business with concerns about compliance in this area should check with a specialist lawyer.

3. The British Standards in brief – aspirational targets for businesses

BSI DISC PD008 is the current British Standard document relating to 'Legal Admissibility and evidential Weight of Information Stored Electronically'. It sets a benchmark for procedures that businesses should follow in order to achieve best practice, and therefore, legal admissibility of their electronic documents.

For a company to claim full compliance with the British Standard (hereafter known as the 'Code'), they would have to implement rigorous document management systems. Through working with a specialist document scanning company with in-depth understanding of the 'Code', business managers can identify the best and most compliant system for their needs.

Compliance with the Code wherever possible shows a court or official bodies such as Customs & Excise that an organisation follows best practice in their document management. It also minimizes the risk of a document presented to a civil court being rejected.

The procedures outlined in the Code, whilst thorough, really do hinge around common sense. They also provide a clear framework for companies to use to improve their operational systems or to start mapping their transition to eFiling.

Principles

The Code recommends that companies base their electronic filing systems and procedures around a set of core principles. These principles are 'device independent' meaning that they remain constant through whichever technology system is employed.

- ② Recognise and understand all types of information – implement an information management policy
- ② Understand the legal issues and execute 'duty of care' responsibilities
- ② Identify and specify business processes and procedures
- ② Identify enabling technologies to support businesses and procedures
- ② Monitor and audit business processes and procedures

The key points here are policy and audit. Through the creation of a comprehensive policy document, the company identifies the ideal system for their needs, the operational processes that staff need to follow, and the benchmarks of filing quality required. The audit side answers the legal demands and ensures that procedures are running smoothly throughout the business. Regular audits will identify potential problems before they become reality.

The policy should cover an enormous range of points, from exactly how files are stored to indexing accuracy, digital software, information destruction, backup security, staff access hierarchy and the process to be followed for audit.

The audit process is essential to make sure that the business follows the procedures needed to make all information legally admissible. Whilst everyone is clear on audit trails for financial accounting procedures, the same basic principles should, and could be applied to document management.

The principles of the Code are not impossible to implement. Thorough planning from the beginning should ensure that a company follows best practice. Companies such as Cull Micro Imaging work to the standards of the code every day, advising clients on best practice and appropriate systems.

4. Scanned documents and HM Customs & Excise

What about the VAT man?

At present, the law makes no distinction between electronic or paper records. As a result, Customs & Excise simply refer to 'records' in their guidelines – whether a business keeps their records on paper or electronically makes little difference.

They do, however, insist that you inform them of the format you use for your records.

Section 5.4 of VAT Notice 700/21 reads as follows:

If you keep all or part of your records and accounts on a computer, you must make sure that you can meet your legal obligations to:

- ② Account for VAT properly
- ② Provide information to us whenever we visit you; and
- ② Keep records in the required detail for the required length of time

In practical terms, a business should therefore advise their local VAT office that they wish to store scanned documents copies of all their records in 'format X' (either TIF or PDF format), and that those records will be held within 'document management system Y'.

Customs & Excise do not recommend any particular software packages or file formats and at present an acceptable standard has not been precisely defined, but 'may be taken to mean that all details on the reproduced documents are clear and legible', which enables fairly broad interpretation.

By also following the Code of the British Standard BSI DISC PD0008 in addition to the requirements of Customs & Excise, a company can take the best precautions available to ensure that their records are acceptable for a VAT inspection.

Timescales for Record Keeping

The general requirement for record keeping is a period dating back at least 6 years. For many companies, keeping paper records for so long is fraught with difficulties. By agreement with the Commissioners, this time limit requirement may have a degree of flexibility. It could be noted, though, that if a company uses electronic filing, then the 6 year timescale is of little consequence.

One important consideration for Customs & Excise is their requirement that any original paper invoices must be retained for a period of no less than one VAT period. This would ensure that the current VAT return can be verified using original documentation. Depending on the nature of the company's accounting pattern, this period is either 1 month, 3 months or 1 year in length.

After this time and submission of the return in question, the company can then consign those accounting records to electronic filing in confidence.

5. Scanned documents and the Inland Revenue

And the Tax Man?

Not a world away from the requirements of Customs and Excise, the Inland Revenue has adopted a fairly flexible view of records stored electronically, based on the same grounds that the law does not at present differentiate between paper and electronic documents.

Set out in Tax Bulletin 37, the Revenue provides the following guidelines:

Records may be preserved on optical imaging systems, and the originals discarded, provided that what is retained in digital form represents a complete and unaltered image of the underlying paper document. We are now able to go further: Both in the case of companies and unincorporated businesses we can accept other methods which preserve the information in the record in a different form. This is so long as those methods capture all the information needed to demonstrate that a complete and correct tax return has been made and are capable of yielding up that information in a legible form.

They go on to confirm that some material, such as a company's standard terms and conditions of sale, is not required to be retained for tax purposes. However, exactly what material should be retained and what can be discarded should be checked thoroughly with a tax adviser as regulations differ across industries.

In this Tax Bulletin, the Inland Revenue also makes the important acknowledgement that companies complying with the British Standard BSI DISC PD0008 will automatically satisfy the tax requirements for keeping electronic records.

At present, under the terms of the Companies Act, for most companies the timescales that the Revenue requires material to be retained is set at 6 years from the end of an accounting period. In cases of investigation or late return submission, then this period will extend accordingly. Once again, electronic records management is by far the easiest method of storage for convenience and space-saving benefits.

6. Conclusion

As is impossible to ignore, most businesses are at least assessing the benefits of electronic filing for their operations. Rather than being fairly un-tried business process, it is now so commonplace that bodies such as the Inland Revenue and Customs & Excise are addressing the standards they require in their publications (albeit slowly!).

The British Standard BSI DISC PD008 is the most comprehensive information available to businesses about best practice to follow to ensure legal admissibility of information. As shown above, both the Revenue and Customs use the Code as the pinnacle of their requirements. In complying with the Code, a business can be sure as possible that they are satisfying official record-keeping needs.

To implement an electronic document management system is easier than it may appear at first. By working in conjunction with a specialist scanning company such as Cull Micro Imaging, businesses benefit from great knowledge and experience as they start the process of removing the billions of sheets of paper that currently fill offices around the world.

7. About Cull Micro Imaging

Cull Micro Imaging – is a third generation family run business offering innovative paperless office solutions.

Our objective is to provide a paperless office solution to our clients converting cumbersome paper into instantly retrievable files. Searching for lost documents will become a thing of the past when you subscribe to a paperless office solution from Cull Micro Imaging.

We are accredited with the ISO9002 Quality Systems for all aspects of our business and are regularly audited to BSI Specification and by a number of our clients. Using the latest hardware technology from Cannon and Kodak and supported software from Scanfile, IMR Alchemy and INVU assures our clients receive the best solutions the industry has.

Friendly, knowledgeable staff, provide a full service from initial consultation through to the final delivery and on-going support to ensure a workable solution and client satisfaction.

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8. Further Information and Source Acknowledgement

BSI Publication – BS DISC PD0008:1999 Legal Admissibility and Evidential Weight of Information Stored Electronically

Inland Revenue Publication – Tax Bulletin 37

Public Record Office Publication – Functional Requirements for Electronic Management Systems

HM Customs & Excise Publication – VAT Notice 700/21 Keeping Records and Accounts

The Civil Evidence Act 1995

LEGAL DISCLAIMER

Cull Micro Imaging would always advise consultation with a legal expert before destroying any paper documents. Whilst this information is created in good faith, and is understood to be correct at the time of writing, Cull Micro Imaging accept no legal responsibility for information accuracy, loss or legal action suffered by businesses relying on the advice or information contained.