Making Tax Digital for Business: Regulations

OMB

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The CIOT, LITRG and ATT have commented on the proposed Making Tax Digital (MTD) for Business secondary and tertiary legislation for Income Tax

Both CIOT and LITRG expressed concerns about the unprecedented amount of legislation that is being delegated to secondary legislation. They consider it is inappropriate for legislation that is going to bring in the most fundamental changes to the tax system in decades, since it is delegating not only matters of detail but also matters of principle. We note that when other significant changes to the tax system have taken place (such as the introduction of Self-Assessment (SA) in the 1990s), substantive provisions were set out in primary legislation and subject to the appropriate Parliamentary scrutiny. In some places, it appears that material delegated to secondary legislation can then be further delegated to directions and notices. This is giving HMRC extremely wide powers to make provisions without any scrutiny at all.

LITRG raised several concerns about MTD as it affects low income taxpayers in its consultation response. It called for a specific exemption for those reporting self employed income under Universal Credit (UC) until such time as the rules for claiming UC and for complying with MTD for Business are aligned, or software is available to analyse the same data in such a way as to produce figures for both tax and UC. It believes it is unacceptable for HMRC and the DWP to have different rules for the calculation of business income, together with different reporting cycles, accounting methods, IT systems and different terminology in guidance.

The Income Tax (Digital Requirements) Regulations (https://tinyurl.com/yb69pos8) require businesses to use functional MTD compatible software to keep and preserve digital records, make quarterly updates and an end of period statement or

partnership return. They define ‘digital records’ and set out the deadlines for making updates to HMRC, as well as how corrections and omissions will be dealt with. The regulations also detail how retailers and partnerships will comply with MTD. Finally, the exemption for the digitally excluded is also continued in these regulations, as are other exemptions such as those based on income thresholds and the size of business.

The CIOT has made a number of comments about the regulations. Key points are:

1. We suggest that there is time for a period of consultation on whether it is appropriate to read across existing record keeping provisions from TMA 1970 s12B into MTD;
2. It is unclear how the digital start date in Reg 4 works for both existing and new businesses. We provide a number of examples to illustrate our point;
3. The interaction between the current obligation to notify chargeability and quarterly reporting is not clear from Reg 4;
4. It is unclear how the cash basis election interacts with quarterly reporting (Reg 6);
5. It is not apparent that there is any mechanism to change the quarterly period schedule if a business so desires (Reg 7);
6. The Regulations do not specify whether the ‘update information’ means that cumulative figures should be provided to HMRC each quarter or just the data for that particular quarter (Reg 8);
7. Further detail is needed about the legal position where the authorised agent submits the end of period statement on behalf of the taxpayer (similar to the position under SA) (Reg 12);
8. We make a number of points about how the income threshold works in Reg 25, and how the large partnership exemption works in Reg 27.

LITRG made a number of comments including:

1. LITRG urged HMRC to devise a simple process to claim digital exclusion under Reg 24 and to produce good guidance to assist claimants;
2. LITRG would also like to see the proposed 10 day early filing window in Reg 22 extended for a longer period. This would then deal with situations such as where migrant workers might have to return to their home country for long periods unexpectedly to deal with a family emergency.

The ATT made a number of comments including:

- There is a lack of clarity and consistency in the use of terms keep, preserve and record to describe the digital recording of primary accounting records through the various new clauses inserted into TMA1970 for MTD for income tax and the new regulations;
- We expressed concerns over how data held digitally can be archived in a cost effective manner for the required time limits for businesses that have ceased trading;
- Reg 5 needs further clarification as it currently implies that businesses can only exit MTD reporting requirements when the business ceases, when it should also be possible to fall out of the MTD reporting requirements if the business becomes eligible for one of the exclusions;
- Reg 8 allows legislation to be introduced via notices, which is almost completely unknown in direct tax. Our concern is that the significance of these notices will not be appreciated and that as notices are subject to less scrutiny, these could lack clarity and precision.
- Reg 24 requires all partners in a partnership to be digitally excluded for the partnership itself to be digitally excluded. This is regardless of the role each partner has in the business.
- We also noted issues with the Income threshold in Reg 25, and provided a number of worked examples where the current drafting gives some (presumably) unintended consequences.

The Income tax (Digital Requirements) Notice explains what information businesses will need to include when providing their update information to HMRC each quarter. It also explains what additional information businesses will need to provide to finalise their taxable business profits (or losses) as part of their end of period statement or partnership return. It also explains the varied digital record keeping requirement for those businesses that have made a retail sales election under the regulations.

The CIOT points out that large parts of the boxed text have the force of law and is concerned that some of this detail should be in the Regulations rather than in a Notice. It makes a number of suggestions for improvements to what is proposed in Table 3, which currently replicates the categories on the SA103 word for word. There does not seem to be any option for a business to supply a balance sheet. Given, for example, the loan interest complexities within the property cash basis it seems odd

that HMRC are not encouraging taxpayers to keep balance sheets.

The CIOT's response can be found on the CIOT website.

LITRG's response can be found on the LITRG website.

The ATT's response can be found on the ATT website.