Making Tax Digital for VAT: taking notice of HMRC’s new guidance

Indirect Tax

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HMRC published the final version of its Notice 700/22 Making Tax Digital for VAT (‘the Notice’) on 13 July. The draft version of this notice went through a period of stakeholder review prior to publication and both the CIOT and the ATT, as well as various other stakeholders, provided feedback to HMRC with suggested amendments.

Alongside the Notice, HMRC also published a list of Making Tax Digital (MTD) for VAT software suppliers that they have been working with and a stakeholder communications pack which contains a variety of information for both income tax and VAT, including some frequently asked questions.

In this article we summarise some of the key points which HMRC have confirmed in the Notice.

Who is within the scope of Making Tax Digital for VAT?

As set out in paragraph 2.1 of the Notice, from 1 April 2019, businesses with a taxable turnover above the VAT registration threshold (currently £85,000) will be required to keep digital records and submit VAT returns digitally via HMRC’s Application Programming Interface (API) platform. This obligation remains even if their taxable turnover subsequently falls below the threshold.

That paragraph states that only businesses that have never exceeded the VAT registration threshold will be exempt from MTD for VAT. This could be understood to mean that if you have ever exceeded the VAT threshold (including prior to 1 April 2019) you will be impacted by the new rules, but this is not the case. HMRC has confirmed that MTD will only apply if your turnover has exceeded the VAT registration threshold at any time after 1 April 2019. We are anticipating that HMRC

will update the notice to make this clearer.

Businesses registered for VAT under the ‘intending trader’ rules (that is businesses registered in advance of their anticipated first taxable supply in order to recover input VAT) will only be subject to the MTD rules when their taxable supplies breach the VAT registration threshold (and from the beginning of their next VAT return period), irrespective of the value of input VAT claimed in the interim period.

Will HMRC contact businesses to confirm if MTD applies to them?

Prior to the launch of MTD, HMRC will be writing to all businesses whom they consider will be obliged to comply with the MTD for VAT rules. However, for VAT registered businesses with multiple rate income streams (for example standard rated domestic supplies and outside the scope income for international consultancy services), Box 6 on the VAT return does not distinguish between taxable and non-taxable income, so any such businesses that have a total turnover of more than £85,000 per annum may receive this correspondence. Where the taxable element of the turnover is less than the VAT registration threshold, there is no obligation to comply with MTD, so businesses meeting this criteria should review their position.

Soft landing – what does this apply to?

Paragraph 3.2.1.1 of the Notice sets out a relaxation confirming that businesses will have a one year period from 1 April 2019 to 31 March 2020, when they are not obliged to have digital links between all parts of their VAT accounting software. This relaxation period was raised by stakeholders as part of the consultation process and its inclusion in part of the Notice which has the force of law is welcomed. It should however be noted that this soft landing does not apply where data is transferred to another product solely for the purpose of submitting the VAT return data to HMRC – that transfer must be digital even during the soft landing period. This may be relevant for those using a spreadsheet together with bridging software.

Penalties

The Notice is silent on the penalty position for MTD, which will include failure to keep digital records, failure to have adequate digital links (outside of the soft landing period) as well as any late submission arising from specifically MTD issues. The

overall penalty position is still under development and expected to be confirmed later this year, but it should be noted that on 31 January 2017 HMRC stated in paragraph 3.5 of its summary of responses to the 'Making Tax Digital: Tax administration' consultation that: 'In order to support customers during the transition to the new MTD obligations, customers will be given a period of at least 12 months before they will be charged late submission penalties under MTD' (note that this relates to submission rather than late payment), so we are expecting a second 'soft landing' relaxation in this area too.

Rules in the Notice with the force of law

There are 11 rules in the Notice with the force of law and it is recommended that businesses review these to see if they are impacted.

One rule that may have a wider scope than assumed upon first reading is in paragraph 3.5. This rule states that retailers only have to record their daily gross takings ('DGT') digitally, rather than digitally recording the separate supplies making up that DGT. During the consultation period, it was noted that there may be businesses that do not consider themselves to be retailers, yet will be (perhaps unknowingly) using a retail scheme for some income streams: for example a bed and breakfast's income from their bar and restaurant. The DGT treatment should be available to these businesses for such revenues so businesses and advisers may want to consider if this could apply.

Further guidance

We anticipate that additional supplementary guidance for MTD will be published for certain niche areas and businesses such as the tour operators margin scheme. In addition, we expect to see updates to HMRC's VAT manuals published in due course.

Both the CIOT's and the ATT's websites are regularly updated with MTD matters.

The CIOT and the ATT are both represented on the JVCC subgroup for MTD for VAT so if you have any points about the guidance or other MTD matters that you would like raised at this level, please do contact us on technical@ciot.org.uk or atttechnical@att.org.uk.