Making Tax Digital: an update

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01 December 2018

HMRC has been running a private pilot for Making Tax Digital (MTD) for VAT since April 2018 with privately invited clients of software developers that were going through testing. Once the private pilot interface was tested thoroughly and further functionality delivered, HMRC were able to open the pilot publicly, although they have taken decisions to limit entry initially as well as delay MTD for VAT mandation for certain complex businesses. HMRC have also started writing directly to businesses to tell them about MTD.

The VAT pilot is live

The pilot for MTD for VAT was opened on 16 October to sole proprietors and limited companies on standard VAT return periods and up to date with VAT payments, except for those who:

- are a trust or charity
- are part of a VAT group or VAT Division
- currently trade with, or have traded with the EU
- are based overseas
- are a partnership
- submit annual returns
- make VAT payments on account
- use the VAT Flat Rate Scheme
- are a business that is newly registered for VAT and you have not previously used your VAT online account to submit your VAT Return

Other than for businesses subject to deferred mandation, the VAT pilot is expected to open over the remaining months of 2018 and mandation for MTD is still effective for VAT return periods commencing from 1 April 2019 or later.

Deferral to 1 October 2019 for more complex businesses

HMRC announced that they would defer the mandation date to 1 October 2019 (see GOV.UK) for VAT for certain businesses with more complex VAT positions. These businesses account for approximately 3.5% of the mandated VAT registered business population. Deferral applies to:

- trusts
- not for profit organisations not set up as a company,
- VAT groups or VAT divisions
- public sector entities required to provide additional information on their VAT return (Government departments, NHS Trusts)
- local authorities
- public corporations
- businesses based overseas
- payments on account businesses
- annual accounting scheme users

The MTD pilot should be available for these taxpayers from spring 2019. Please note that the initial 12 month ‘soft landing’ period for digital links that applies to VAT return periods commencing from 1 April 2019, will not be further extended to taxpayers subject to deferred mandation. The soft landing period ends for all taxpayers for periods commencing from 1 April 2020 or later.

Mailshot to taxpayers

HMRC wrote to an initial group of 20,000 taxpayers in early November to inform them about Making Tax Digital and how to find out more. At the time of writing, HMRC were also going to write to a further 180,000 taxpayers in mid- November, after they had considered feedback from the first tranche of the mailshot, and then to the remaining 300,000 businesses entitled to join the first phase of the pilot by late November/early December.

Reform of penalties

It was announced in the Budget small print (see paragraph 2.54 of the Overview of Tax Legislation and Rates published on 29 October 2018) that reforms to the penalty regimes for both late submission of tax returns and late payment of taxes are to be

delayed. This is to allow HMRC ‘more time to consider the communications needed for successful implementation’.

HMRC had already confirmed that the VAT default surcharge regime would remain in place for 2019/20, the first year of MTD for VAT, and we had expected the new penalty regimes for late payments of tax and late submissions of tax returns to commence from April 2020. Draft legislation for the changes appeared in the draft Finance Bill clauses published in summer 2018 but was dropped from the Finance Bill which was published on 7 November.

The Budget announcement means that the new regimes will now not be in place until April 2021 at the earliest, two years after MTD becomes mandatory for businesses compulsorily registered for VAT.

Both regimes are intended to replace the current late payment and late filing regimes for Corporation Tax, Income Tax Self-Assessment and VAT.

The new late submission regime is a points-based system which will apply to returns with a regular filing frequency (including monthly, quarterly and annual returns under MTD). Broadly it means that a taxpayer will automatically receive a point every time they fail to make a return on time. Once a threshold has been reached (which will depend on how often a taxpayer is required to file the particular return) a penalty will be charged for every subsequent failure, but their points total will not increase. Points will either expire over time or after a period of good compliance, depending on whether the penalty threshold has been reached or not.
The new late payment regime is intended to harmonise penalties across taxes. It will consist of two penalty charges; the first based on payments and agreements to pay in the first 30 days after the payment due date and the second based on how long the debt remains outstanding after the initial 30 days.

This delay in introducing the new regimes is disappointing since the penalty point model being proposed for late submissions will work better with the MTD reporting system than the current penalty regime. However, as with any reform, it is more important to do it right than to do it quickly, so we trust that HMRC will make the best use of the extra time to work on the details of the new regimes and publicity around their introduction. The delay also provides the opportunity to bring the new penalty regimes in at the same time for all taxes given that MTD for Income Tax is not coming in before April 2020 at the earliest. This would make sense.

The government has said that, despite the delay, it remains committed to the reform and intends to legislate in a future Finance Bill. No further details have been provided about when the reforms will eventually be introduced, although the government has said that notice will be provided before the measures are implemented.

We continue our engagement with HMRC around MTD, and keep an eye on developments via our websites, branch events, and our weekly technical newsletters.