Making Tax Digital for VAT (MTD): More news on applying for exemption, penalties and updated guidance

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As compliance with MTD for VAT is now mandatory for many businesses (since 1 April 2019), if you have clients who are struggling to get to grips with the new regime it is worth considering whether they may have grounds for claiming exemption before enrolling them into the MTD for VAT programme.

Exemption from MTD

Jayne Simpson's article in last month's *Tax Adviser* summarised the grounds in respect of which exemption can be applied for. It is likely that most claims for exemption will be based on the criterion that it is not 'reasonably practicable' to comply with the requirements of MTD due to age, disability, remoteness of location or for any other reason. This is clearly a subjective rather than an objective test which makes the chances of success when applying for exemption less easy to predict.

HMRC's recent guidance in section 3 of VAT Notice 700/ 22 sets out their view of whether exemption may or may not be given in various circumstances that might arguably meet this criterion. These include on the grounds of age alone (HMRC say unlikely to be exempt) or unfamiliarity with software (again, HMRC say unlikely to be exempt). However, we expect that it will be a combination of several different factors which might lead to an application for exemption being appropriate, and so age and/or unfamiliarity with software might well play a part in someone's specific situation which gives them grounds for claiming exemption.

If ultimately a claim for exemption is unsuccessful, every effort must then be made to comply with MTD as soon as possible going forward, otherwise there will be a risk of being exposed to penalties in due course. HMRC say they will be able to offer some support to taxpayers who are not exempt, but who are nevertheless finding it difficult to comply with MTD for VAT, via their Needs Enhanced Support (NES) service. Therefore if you have clients who prefer to manage their VAT affairs themselves rather than use your services (maybe for reasons of cost) you could advise them to contact HMRC and request assistance from NES. At this stage it is not clear exactly what assistance NES will be able to provide – if the problems a taxpayer is having revolve around choosing or using software, the NES service will not be able to help. However if it is more to do with general digital skills then NES may be able to offer assistance for a short while at least.

The exemption criteria for MTD for VAT stem from the decision in *LH Bishop Electric Co Ltd v HMRC* [2013] UKFTT 522 (TC), in which LITRG helped support the taxpayers in taking their case to tribunal. As the rules surrounding exemption from MTD for VAT are likely to form the blueprint for the exemption rules which will apply to MTD for income tax in due course, it is important that the process works well and is administered fairly by HMRC. We would be very interested in hearing about your experiences of claiming exemption, particularly for vulnerable taxpayers, as this will help inform our feedback to HMRC on this area in due course.

Penalties

If a taxpayer is unable to secure exemption and is mandated to join MTD, they may be concerned about the risk of penalties if things go wrong. This could be because the digital records are not being kept properly or there are problems experienced when trying to submit the VAT return digitally causing a late filing and/or late payment.

- **‘Light touch’ – good effort, but not quite right**
  HMRC anticipate that taxpayers may not get everything right initially with new MTD requirements and they have indicated that front line staff should take a ‘light touch’ approach on penalties for shortcomings in digital record keeping, or filing method, where taxpayers are making best efforts to be compliant. However this would not apply in the case where taxpayers have deliberately failed to engage with MTD.

- **Default surcharge – when things are late**
  It is important to note that the default surcharge regime is still applicable for the late filing of VAT returns and/or payment of VAT under MTD, and both must be received by HMRC by the due date as usual, although a financial penalty only arises if the VAT is paid late. If you encounter problems with MTD when trying to file the VAT return digitally, you could consider taking screen shots of the problem or documenting the issues to evidence the difficulty experienced. It is important to contact HMRC by the due date to notify them if the return will be filed late, although if possible the payment should still be paid on time. If you pay via direct debit and this is linked to the VAT return submission, contact HMRC by the due date to notify them of these difficulties. Taxpayer evidence and HMRC call references could assist with a reasonable excuse argument should a default surcharge be subsequently received.
  Taxpayers should not sign up for MTD too early (unless they want to join the pilot) as this could cause difficulties with digital submission if an earlier VAT return is accidentally brought into the regime due to sign up timing. The CIOT and ATT have published the MTD sign up window date ranges on their websites.

- **'Soft landing' – digital links**
  In notice 700/ 22 Making Tax Digital, HMRC sets out that a 'soft landing ' applies for a period of 12 months starting from the day of mandation into MTD (this will depend on your VAT stagger or whether you are in the deferred minority group of taxpayers). The soft landing only relates to a relaxation of the requirement to have digital links between each piece of accounting software used in the keeping of VAT records and preparation of the VAT return. During the soft landing period, you can use cut/copy and paste to transfer data between software.

Additional relaxations in HMRC guidance

At the time of writing (three weeks before going to print), we anticipated that an updated version of Public Notice 700/ 22 will be published in April, setting out further relaxations that have been discussed at stakeholder meetings between professional bodies and HMRC. These include:

Supplier statements – Provided the supplier statement meets the requirements in the public notice, these may be entered into the digital records rather than each

individual invoice listed on the statement. You should ensure that there are systems controls in place that would prevent the duplication of reporting the statements and invoices.

Petty cash – a summary total of petty cash purchases could be reported in the digital records rather than each purchase. The summary value would be subject to a maximum threshold per entry.

Charity volunteers – volunteer expenses can be reported in the same way as employee expenses; and, where one-off events are run by volunteers the summary totals produced by the volunteers for the supplies made and received can be reported in the digital records instead of each transaction.

The CIOT, ATT and LITRG are interested in hearing about taxpayers' experiences of MTD, particularly in respect of the sign up process and applying for exemptions. Please send feedback to your usual contact, technical@ciot.org.uk or atttechnical@att.org.uk.