Basis period reform: correction of provisional figures

Management of taxes **OMB**

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The ATT, CIOT and LITRG have engaged with HMRC on potential administrative easements around the use of provisional figures following basis period reform.

From April 2024, unincorporated businesses will be taxed on their profits arising in a tax year, regardless of their accounting period end. Businesses that already draw up their accounts to 5 April (or 31 March) will be unaffected by this change. However, businesses with an accounting period that does not coincide with the tax year will have to apportion their profit or loss from two accounting periods to each tax year. One practical complication arising from this is that businesses with an accounting date later in the tax year may not have drawn up their second set of accounts by the filing deadline for a particular tax year. Business falling into this situation will have to include provisional figures in their return, and subsequently correct these once the final set of accounts are available.

Currently, businesses that use provisional figures have to correct these by way of an amendment to their return as soon as possible once the actual figures are available. In April, HMRC released a technical paper looking at potential easements to reduce the administrative burdens associated with this process once basis period reform takes effect.

The technical paper outlined three potential easements for consideration:

- Option 1: allowing taxpayers to submit amendments up to 12 months after the filing date;
- Option 2: extending the filing deadline for certain groups of taxpayers; and
- Option 3: allowing taxpayers to ‘true up’ provisional figures in the following year’s tax return.

An alternative option, combined with option 3, is the ‘safe harbour’ approach, which means imposing a de minimis and ignoring small differences. However, HMRC do not appear likely to accept this.

The ATT held a call with HMRC to discuss these options in May. We discussed how it was important to determine exactly how much information will need to be submitted in respect of provisional figures, as this will dictate the level of the administrative burden associated with correcting them. Whilst we agreed that option 1 appears to be the simplest solution, we expressed concerns that, even with this easement, there could be an increase in the need for overpayment relief claims and disclosures if accounts are amended after this extended deadline has expired.

We asked HMRC to consider the practical impacts of these issues further. Whilst we felt that option 2 potentially represented a significant simplification, this would not be the case if payment deadlines were not also extended, as some level of estimation would still be required. On option 3, we agreed there were issues around changes in tax rates and allowances between tax years. It was also not clear how averaging for farmers and the creative industries would work with such an approach.

The CIOT have also met with HMRC. We felt that as option 1 (amending a provisional figure at the same time as filing the return for the following tax year) would only require a change in guidance, it should be implemented even if it might not alleviate the problems of calculating provisional figures and then having to amend them. But we were concerned about potential penalties and the reasonableness test where the actual apportioned profits prove to be much higher than the estimated profits. We were also concerned about interest charges that would arise where a delayed amendment to the return (that is the amendment is done 12 months later rather than as soon as final figures are known) results in extra tax being due.

On option 2, while we agreed that it might represent a simplification for some taxpayers, the extension to the deadline required would vary for different groups of taxpayers, which could lead to confusion. It would also need a significant change in legislation to effect and would require other changes to be made, such as to payments dates. While option 3 has the benefit of not requiring an amendment to a previous return, there would be challenges around framing the legislation, anti-avoidance, etc.

We also queried HMRC's approach to penalties and interest in cases where large differences between provisional and actual profit arose, especially where tax rates and allowances have changed from one year to the next. We felt that if this option was implemented, then it should include an election for either the taxpayer or HMRC to opt for an actual basis (that is, requiring the previous return to be amended) to prevent manipulation of profits, etc. The position on calculating pension contributions, the high income child benefit charge, tapering of allowances, allocation of double tax relief (both in UK and overseas), etc. would also need reviewing.

LITRG responded to the technical paper by commenting on each of the options from the perspective of an unrepresented low-profit making business. We expressed the importance of considering the options alongside interactions with other areas of the tax and benefits systems. For example, options 2 and 3 in particular could affect student loan repayments, student finance applications and universal credit calculations. We have asked HMRC for clarification on the numbers of unrepresented taxpayers who have an accounting year end from September onwards and so could be affected by these changes. We have also asked HMRC to give further consideration to designing a simplified version of the options that could be used by small businesses; for example, those below a certain turnover/profit threshold.

Lastly, we understand that HMRC will make a decision about which approach or approaches to take by the autumn.

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