Making Tax Digital – a look at the VAT aspects

Indirect Tax **Management of taxes**

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The JVCC considers the VAT aspects of this important topic, including how it will affect VAT reporting and the proposed implementation timeline. We ask members to take part in the consultation.

A sub-group of HMRC's Joint VAT Consultative Committee (JVCC) has been set up to discuss the VAT aspects of the Making Tax Digital (MTD) programme.

Most VAT-registered traders already have to file returns electronically, except for those excluded by virtue of reg 25A(6) of the VAT Regulations 1995 (SI 1995/2518). This raises the question of how HMRC's further digital aspirations affect those already so mandated.

VAT reporting

The key to this is understanding that HMRC's plans are not only to require filing of *returns* electronically, but also the keeping of records this way. The detail of these requirements is subject to consultation, expected in early July.

The original exceptions from mandatory electronic filing of VAT returns were for reasons of religious belief or insolvency. Extension of HMRC's ability not to require electronic filing was written into the VAT Regulations by SI 2014/1497 after HMRC lost cases in the First-tier Tribunal – the CIOT's Low Incomes Tax Reform Group helped to support several appellants in their appeal (*LH Bishop Electrical Co Ltd and Others v HMRC 2013* [TC02910]). The upshot was that those who satisfy HMRC that they cannot reasonably practicably make a return using an electronic system 'for reasons of disability, age, remoteness of location or any other reason' may continue to file on paper. At the same time, the regulations were changed so that filing by

telephone could be considered as using an ‘electronic return system’.

The new digital proposals may include some exemptions or easements for those currently protected, but we are concerned that there may well need to be other exclusions from the requirements. For instance, it is still unclear whether keeping data on a spreadsheet will meet HMRC’s requirements for keeping information in a prescribed digital format or whether traders who are now doing so will have to migrate to some other form of software.

In a VAT context, HMRC is – subject in future to the outcome of the EU referendum – bound by EU law. For instance the ‘principle of effectiveness’, which means that the digital proposals could be subject to challenge if they make it ‘virtually impossible’ or ‘excessively difficult’ to comply with VAT obligations. Moreover, if the data does not serve any purpose (which may be the case with submitting summary data only), it may be contrary to the Principal VAT Directive (2006/116/EC).

Article 261 only allows member states to:

> ‘require the taxable person to submit a return showing all the particulars specified in Articles 250 and 251 in respect of all transactions carried out in the preceding year. That return shall provide all the information necessary for any adjustments.’

Further, VAT administration is subject to the EU principle of proportionality, so it may also be argued that the digital requirements to which HMRC is aspiring are disproportionate for some businesses.

Implementation timetable

HMRC’s implementation timetable for mandatory quarterly reporting under Making Tax Digital for Business (MTDfB) is determined by reference to particular taxes, so from:

1. April 2018 – quarterly reporting for income tax purposes (that is all unincorporated businesses, including partnerships, whether they are VAT-registered or not);
2. April 2019 – quarterly reporting for VAT purposes (that is all VAT-registered businesses whether the business is unincorporated or not);

3. April 2020 – quarterly reporting for corporation tax purposes (that is all companies, both those who are already quarterly reporting for VAT purposes, and those who are not VAT-registered).

The final group to enter the MTDfB regime from April 2020 will be companies that are not VAT-registered.

The intention is that VAT reporting may be synchronised with the new quarterly reporting requirements for income tax and corporation tax if the business is VAT-registered. There will clearly be transitional issues caused by businesses moving into the new regime for each tax at different times. We expect the consultation to examine how to deal with these transitional issues.

Making Tax Digital Case Studies

A few months ago HMRC published four illustrative case studies on GOV.UK (http://tinyurl.com/jl5gzug). The CIOT and ATT's digitalisation and agent strategy working group thought it would be useful to expand on HMRC's case studies to give examples of the range of issues that might arise in practice. On that basis, we re-worked the Revenue's case studies, and added two of our own examples to describe other scenarios from members' practical knowledge and experience, and sent them to HMRC.

We were not concerned to paint an over-optimistic or pessimistic view of what may be typical. The key point to our mind was that the re-workings were realistic scenarios with which the new system will need to deal, particularly with regard to compulsory digital record-keeping and quarterly reporting for businesses and landlords.

We also noted that HMRC's timetable for fully delivering MTD by 2020 is ambitious by any standard, and the delay in issuing the consultation documents caused by the EU referendum has not helped. In our view, the programme has more chance of working successfully if it can be given longer to come into effect.

HMRC consultation documents

We are keen to gather members' comments on the proposals, particularly on the anticipated consultation documents, which we hope will have been published by the

time this edition of Tax Adviser reaches you.

On particular low-income or equality aspects as in the Bishop case, these can be sent to litrg@ciot.org.uk, and more generally to technical@ciot.org.uk and atttechnical@att.org.uk.

Making Tax Digital Webinar

We are holding a Making Tax Digital webinar for CIOT and ATT members on Wednesday 20 July from 10am. More details will be provided nearer the time, but do try to hold the date.