Making Tax Digital – the CIOT, ATT and LITRG consultation responses

General Features | OMB | Personal tax

01 January 2017

The CIOT, ATT and LITRG each responded to the six consultation documents issued by HMRC. All three bodies' submissions had similar overall messages about MTD, while also focusing on specific areas relevant to that body's particular interest. We have set out below a sample of the key messages from some of the responses, but would invite you to read all responses on our websites.

Bringing business tax into the digital age – LITRG messages

While the LITRG is generally supportive of the digital strategy being pursued by HMRC we are concerned that the MTD Business programme is over-reliant on software that HMRC have no control over. We believe that the assumption that the free software made available to the public will deliver the full range of purported benefits from MTD is wrong; it must not be the case that those who are reliant on free software have a much worse experience when it comes to complying with their MTD obligations when compared to their counterparts who are using paid-for versions of commercial software. In our view HMRC should develop free software that is 'fit for purpose' and should not rely on the commercial market to do this.

HMRC must also provide a comprehensive communications programme to make taxpayers aware of MTD as well as find a way to reassure taxpayers that both HMRC's systems and the software they are obliged to use are safe and secure.

The proposed level of turnover of £10,000 or less to qualify for complete exemption from MTD is far too low. We recommend that businesses with a turnover of up to an amount equivalent to the current VAT registration limit, as determined by the figures

on the previous year’s tax return, be exempt from complying with MTD.

In addition to the general exemption from MTD we propose a number of specific exemptions for various groups, including those with irregular income, those with good records but not in the prescribed form, those renting out property to help pay for residential care, some carers, and universal credit claimants.

Transforming the tax system through the better use of information – LITRG messages

The LITRG welcomes HMRC’s proposals to use both information they already hold, and existing or additional third party information, so that taxpayers do not have to provide this themselves. This is a sensible step towards removing administrative burdens which, if implemented carefully, should save both time and effort. However, people must also have the right to challenge the validity of pre-populated information and HMRC should respond to any challenge in a helpful and supportive way. It will be totally unacceptable to suggest that individuals will have to challenge the third party as to the validity of the information provided.

It continues to be a major concern that some of the information currently used by HMRC, for example to populate forms P800, is incorrect. Resolving these issues is crucial before the digital tax accounts go live.

Awareness of digital tax accounts is still very low. Even though many people may have already accessed or will access their digital tax account on at least one occasion there is no guarantee they will check it regularly, or even at all, even if they are sent email or text alerts to remind them to do so. HMRC should deliver a comprehensive and sustained education programme to raise awareness and to encourage and support both the initial and ongoing use of these accounts. Any education programme must not be solely digital; it should be available across a range of channels so that those not familiar with digital tools have the opportunity to be exposed to it. An education programme delivered solely through digital channels may not only discourage those unfamiliar with digital information but may also totally exclude those not able to access services in this way.

Simplifying tax for unincorporated businesses – CIOT messages

The CIOT supports measures aimed at simplifying the tax system. However, small business taxation should be simplified before MTD is introduced, and we encourage HMRC to revisit the MTD timetable to allow simplification to take place first. Indeed, the substantial changes to the tax administration system (record keeping and quarterly updates) being introduced by MTD will be happening at the same time as these proposals to simplify computations, if they are adopted. This means that taxpayers, advisers and HMRC will face considerable change simultaneously.

We believe that the government should consider proposals for radical changes to the tax system for small businesses. For example, a single basis of taxation for (say) businesses below the VAT registration threshold, who could adopt a simple, combined income-minus-business expenditure approach to taxation – without separating trading income and property rental.

We agree that the proposals on the capital vs revenue divide within the cash basis should simplify matters for businesses. However, we are concerned that the remainder of the proposals will impact negatively on unrepresented taxpayers, who may make decisions around accounting bases and periods without being aware that they will have a significant impact on their tax position. Such impacts include the loss of their personal allowance, and accelerating a substantial tax liability.

Our member survey was inconclusive on whether the threshold for the cash basis should be increased and (if so) by how much. If an increased threshold leads to more complex legislation (such as anti-avoidance rules) we would recommend retaining a lower threshold. We questioned the functionality of software and apps being developed for MTD, and how they will support the different bases of accounts preparation, or a shift between them, both for VAT and direct tax.

We recommend that basis periods are left unchanged until MTD has bedded in, and further research can be undertaken on the number of businesses likely to be affected, and (for simplicity and consistency) to consider extending the proposals to all unincorporated businesses (not just sole traders).

We are not persuaded that the four ‘simplified reporting’ measures offer any real level of simplification, but in fact just introduce a third basis of accounting. We do not support these measures, which in certain circumstances actually accelerate the tax payable.

Simplified cash basis for unincorporated property businesses – CIOT messages

We agree that an optional cash basis should be extended to landlords. Many landlords are probably preparing accounts on a cash basis anyway, so permitting them to use the cash basis in legislation will regularise this, and will help landlords adapt to the additional burdens of MTD.

We believe that consideration should be given to aligning the cash basis rules for property with the cash basis rules for trading income. If simplification is really being sought, one set of rules is far simpler than two. That said, the £500 limit for interest deductibility is likely to be a barrier to property businesses using the cash basis.

In relation to a turnover threshold, our member survey suggested that no threshold would be preferable, although we recognise that such an approach might lead to increased complexity within the cash basis (such as the treatment of lease premiums, deposits etc) and could create scope for issues such as accelerated tax payments or possibly avoidance/manipulation, particularly between connected parties.

The £10,000 threshold is far too low for MTD, as a landlord with only one rental property may have to comply with the MTD obligations. It would also be helpful if taxpayers had the option to align quarterly reporting periods under MTD for different sources of reportable income (e.g. a sole trade and a let property).

The timing of the cash basis election needs to be carefully considered. We assume that this will be done on the property pages of the SATR when it is first introduced in April 2017, but once quarterly updates and End of Year declarations are introduced, at what point will the taxpayer have to commit to using the property cash basis? Again, software and apps will need to support the different bases of accounts preparation.

Tax administration – ATT messages

Traders with multiple sources of income, or with an entitlement to tax relief on non-business outgoings (pension contributions, EIS investments, etc) will appear to have a continuing requirement for some form of aggregate declaration by the taxpayer (a tax return, however it might be described) in order to signify the provision of all necessary information. In such circumstances, our view is that the compliance legislation and enquiry powers should apply to that aggregate declaration and not (as currently proposed by HMRC) to the End of Year declaration which would only have provided part of the picture for such taxpayers.

The existing record keeping legislation is primarily contained within TMA 1970 s 12B and will need to be substantially modified to reflect the MTD proposals. In particular, s 12B(5) provides for a monetary penalty for failure to comply with the record keeping obligation, but does not include any provision for suspension of such a penalty for a record keeping failure, and so does nothing to address the cause of the non-compliance or support taxpayers who do their best to comply.

We do not agree with a 12 month deferral for penalties and we think that the familiarisation period should be a minimum of two years. In regard to penalty points, we consider that at the completion of the appropriate 24 or 12 month period, the penalty point should be deleted from the taxpayer’s record regardless of whether there were other penalty points on the clock. We raised the possibility of reducing penalty points after (say) three successive submissions on time, which would appear consistent with the principle of rewarding compliance. We do not think that the amount of the fixed penalty should reflect the size of the business, as it would introduce complexity.

We are fundamentally opposed to the concept of points only becoming appealable when they have caused a penalty to be charged. We have attempted to identify a middle ground whereby statute would provide for reasoned objections to be lodged against penalty points (possibly through the provision of an online form with pre-populated reasons for the objection and space to provide supporting detail). In the event of the penalty points accumulating to the threshold level for a penalty, those objections would then be considered before a penalty was issued.

In relation to penalty interest, we do not see a 14 day period as appropriate. Consistent with the current late-payment provisions, we think that the lower rate of

interest should apply for a 30 day period. In principle, we support the alignment of interest rates across taxes.

Voluntary pay as you go – ATT messages

The idea to encourage taxpayers to budget better for future tax liabilities is very sensible and we support this, but the current Budget Payment Plan scheme is woefully under publicised and should be promoted more.

These proposals only apply to taxpayers who are providing digital quarterly reports. This disadvantages those not providing digital updates, including the digitally excluded. There is no reason to assume that these groups might not also want to budget and plan ahead.

The proposals as they stand come across as confusing in terms of the allocation of voluntary payments and we believe taxpayers will find this hard to follow. Indeed, HMRC need to be very wary of imposing too much change too soon on taxpayers. It might therefore be better to allow taxpayers to become familiar with quarterly reporting before introducing PAYG.

As noted above, all our responses are available in full on our websites:

The Chartered Institute of Taxation website

The Association of Taxation Technicians website

The Low Incomes Tax Reform Group website