MTD: The next steps are revealed

1 March 2017

On 31 January HMRC published their responses to the six Making Tax Digital (MTD) consultation documents, as well as draft legislation and explanatory notes for some of the measures, a revised impact assessment, and other supporting documents – over 15 separate documents running to around 250 pages. So, even on the busiest day of the tax year, it was hard not to notice them.
Let’s cut to the chase – has the consultation process worked? Has HMRC listened? Well, yes and no.

Key elements

On the whole, the timetable remains unchanged, so April 2018 for income tax, April 2019 for VAT and April 2020 for corporation tax. The main relaxation on the timetable is for large partnerships (>£10m turnover), which will come into MTD for income tax in April 2020, that is at the same time as incorporated businesses for corporation tax.

The requirement for all businesses and landlords, unless specifically exempted, to keep their records in a digital format remains. The lower exemption and deferral thresholds still appear to be undecided, with the government taking more time to consider both the absolute exemption threshold (initially proposed at £10,000) and the higher threshold up to which businesses would have an additional year before they are mandated (which many respondents suggested should be the VAT registration threshold).

Crucially, HMRC recognised that a nine month deadline for the end of year declaration would ruin Christmas and New Year for everyone, and have changed the deadline to the earlier of ten months after the last day of the accounting period or 31 January (the existing self-assessment deadline). So the familiar 31 January deadline is still likely to remain with us, at least for the foreseeable future.

HMRC has also relented on the use of spreadsheets, and businesses will be able to continue to use them for record keeping, but they must meet the necessary requirements of MTD, which is likely to involve combining the spreadsheet with a form of software in order to be able to submit updates. Further, businesses eligible for three line accounts will now be able to submit a quarterly update with only three lines of data (income, expenses and profit).

Charities (but not their trading subsidiaries) will be exempted from MTD, as will businesses within an insolvency process, Lloyd’s Underwriters, Exempt Unauthorised Unit Trusts (EUUTs) and Property Income Distributions to individual shareholders in Real Estate Investment Trusts (REITs) and Property Authorised Investment Funds (PAIFs).

Free software will be available to businesses with the most straightforward affairs, although this appears to be limited to unincorporated businesses, under the VAT threshold, with no employees. And whilst on the subject of costs, HMRC’s estimate of transition costs of £280 (on average) seems incredibly low, and on HMRC’s own figures, business costs will not ‘break even’ until 2020/21.

Legislation will be included in Finance Bill 2017 to provide for digital reporting and digital record-keeping for businesses subject to income tax. However, many of the specifics will be provided for in regulations.

Simplification measures

The government has chosen to proceed with increasing the entry threshold for the cash basis of accounting from its current level of £83,000 (the current VAT registration threshold) to £150,000 (with the exit threshold being raised to double that, i.e. £300,000), and to simplify the rules on capital and revenue expenditure within the cash basis. These changes will apply from the 2017/18 tax year onwards. No other changes to the cash basis have been announced so the current restrictions on loss relief and finance costs remain. As a result of stakeholder comments, further consideration is being given to the reform of the basis period rules and measures to simplify period end reporting requirements.

A simplified cash basis will also be introduced for unincorporated property businesses, and again this will be subject to a receipts threshold of £150,000 per annum. The government will make the cash basis the default for property businesses with receipts below this threshold, but there will be the ability to opt out and use an accruals basis of accounting instead.

Penalties

A mixed response was received to HMRC's proposals for a 'penalty points' system, and HMRC are to further consult in spring 2017. However, HMRC has confirmed that customers will be given at least 12 months before they are charged any late submission penalties under MTD, and a right of appeal will be provided against any penalty points as they are incurred.

Most respondents to the consultation considered penalty interest to be the most appropriate proposal for a late payment sanction, and HMRC will consult further on specific proposals for late payment penalty interest and the alignment of interest rules in 2017.

Voluntary payments

The government is pressing ahead with the proposals on voluntary payments, even though respondents felt that take up would be limited. This might be even more the case as HMRC confirmed that they intend to allocate payments to those which fall due first, and not as the taxpayer might wish them to be allocated. Members with recent experience of Real Time Information might shudder at the thought of HMRC systems allocating payments.

However, flexibility over voluntary payments is recognised, including the ability to seek a refund of a voluntary payment. HMRC will process repayments, even shortly before a liability becomes due, unless the taxpayer failed to pay on time in the previous 12 months. Prompts will be built in to ensure that taxpayers are aware of pending liabilities.

Third party information

The government's ambition to end the tax return is reliant on receipt of reliable and timely information from third parties such as employers, banks and building societies, and pension providers.

HMRC appear to have stuck to their original proposal that errors in third party information should be queried with the third party in the first instance, rather than with HMRC. Similarly, HMRC seem to have rejected the idea that taxpayers can override incorrect third party data, in order to input the correct information. Rather, where an item is disputed, HMRC will exclude that amount from the tax calculation. If the dispute is not resolved by the end of the tax year, HMRC will make an estimated assessment using the information it believes to be correct, albeit in the knowledge that the amount might subsequently have to change.

Next steps

Notwithstanding the lengthy consultations and responses, we still have a long way to go. A small amount of draft legislation was released on 31 January, but there is still a significant quantity to follow in the Finance Bill and in regulations.

The CIOT and ATT continue to hold events in relation to MTD, both at local branches, conferences and webinars. Look out for these throughout 2017 as things start to become clearer.

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