

**The Income Tax (Digital Requirements) Regulations  
Response from the Low Incomes Tax Reform Group (LITRG)**

**1 Executive Summary**

- 1.1 While we are pleased to have the opportunity to comment on the draft regulations relating to the introduction of the Government's Making Tax Digital (MTD) initiative, we remain firmly of the opinion that the fundamental principles of the MTD programme which the regulations cover should be the subject of primary and not secondary legislation, and so be properly scrutinised in Parliament.
- 1.2 We note that the two paragraphs 3 and 4 of regulation 4 are incompatible as currently drafted as paragraph 3 currently refers to tax year YYYY-1 and paragraph 4 refers to tax year YYYY. We recommend that regulation 4 paragraph 3(c) is amended to refer to the period of account ending on a date which is 'on or after 5 April YYYY' so that it is consistent with regulation 4 paragraph 4 and our understanding of the original intention of the regulation.
- 1.3 The question of how a business establishes its Digital Start Date when it changes from being exempt from digital requirements to not being exempt, irrespective of whether it is a business in existence when MTD for Business is introduced or whether it starts trading after the introduction of the new regime, needs to be considered as a matter of urgency.
- 1.4 The correction and omission rules given in regulations 19-21 should be reconsidered. We recommend that the period where amendments can be made should be similar to the current self assessment rules whereby the taxpayer can amend their returns up to 12 months after the statutory filing deadline and HMRC can make amendments up to 9 months after the submission of the return, provided the taxpayer agrees to them.

- 1.5 In our view it is vital that the application process for digital exclusion referred to in regulation 24 is as straightforward as possible, and can be accessed from non-digital channels. Good guidance must be available.
- 1.6 We recommend that a specific exemption should be included in the regulations to exclude those claiming universal credit (UC) from the MTD process until such time as the rules for claiming UC and for complying with MTD for Business are aligned. It is unacceptable for HMRC and DWP to have different rules for the calculation of business income for low-income people, together with different reporting cycles, accounting methods, IT systems and using different terminology in their respective guidance. We also recommend further specific exemptions be included for shared lives carers, and those who let their homes to pay for residential care.<sup>1</sup>

## **2 About Us**

- 2.1 The LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HM Revenue & Customs (HMRC) and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

## **3 General comments**

- 3.1 We note these regulations cover the key areas of the MTD for Business programme, namely
- the use of functional compatible software

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<sup>1</sup> These recommendations were originally made in our response to the main consultation document on the MTD for Business programme, 'Bringing Business Tax into the Digital Age' in November 2016. See chapter 7, 'Exemptions', page 20: <https://www.litrg.org.uk/latest-news/submissions/161108-making-tax-digital>

- the digital requirements
- the start date for complying with the digital requirements
- how to make corrections to digital submissions
- exemptions

3.2 As these are the fundamental principles on which the MTD for Business regime is based, it is extremely disappointing that the rules relating to these principles are contained in mere regulations which will be subject to minimal parliamentary scrutiny. Our position has always been that these areas are of such significance that they should be the subject of primary not secondary legislation and this was noted in our briefing on the MTD Finance Bill clauses.<sup>1</sup>

3.3 Notwithstanding this we make some specific comments on the regulations themselves below. It is noted that there appear to be many anomalies within the regulations as they currently stand which gives the impression they were produced in time-pressured circumstances without the attention to detail that we would have expected. This is disappointing given the importance of the content of these regulations.

#### **4 Regulation 4 – Digital Start Date**

4.1 This draft clause distinguishes between a start date applicable to non-property businesses and one applicable 'in any other case'. Bearing in mind the population that will be required to comply with MTD for Business, this would seem to be drawing a distinction between a start date for a trading business (geared around the business' current accounting practice) and for a property business, presumably meaning those with rental income who are either mandated into MTD due to level of turnover or who choose to be within MTD for Business voluntarily. It can be difficult for an unrepresented business to understand such a distinction and therefore it is important that detailed guidance is available to assist in this area, including guidance as to what actually constitutes a business in this context.

4.2 Regulation 4, paragraphs 3-5, establish the Digital Start Date for existing businesses. These paragraphs state that where a relevant entity (as defined) is carrying on a business immediately before 6 April YYYY, the Digital Start Date is the date after the account end date and paragraph 3(c) refers to the account end date as the period of account which ends on or after 5 April YYYY-1. As this is written, this regulation gives most businesses a Digital Start Date before the point at which MTD for Business is due to begin.

4.3 For example, supposing the MTD for Business regime begins on 6 April 2020, then for a business which prepares accounts to say, 30 April each year, paragraph 3(c) gives the

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<sup>1</sup> See paragraphs 3.1-3.3 of Briefing from the LITRG in relation to clauses 60-62 and schedule 14 of Finance Bill 2017-2019, dated 19 October 2017:

<https://www.litrg.org.uk/sites/default/files/files/171019-LITRG-FB17-MTD%20Digital-record-keeping-FINAL-2.pdf>

business a Digital Start Date of 1 May 2019 since the period of account which ends on or after 5 April 2019 (that is, 2020-1) is the year ended 30 April 2019. Similarly, a business with a 31 March year end would have a Digital Start Date of 1 April 2020, and a business with a 31 December year end would have a Digital Start Date of 1 January 2020. Surely this is not what is being aimed for here? We recommend that paragraph 3(c) is amended to refer to the period of account ending on a date which is 'on or after 5 April YYYY'.

4.4 Regulation 4 paragraph 4 is designed to deal with establishing the Digital Start Date where there are two periods of account falling into the one tax year beginning 6 April YYYY. This might apply on a change of accounting date, for example where a business changes its year end from 30 June to 31 March. Taking the year YYYY to be 2020 again, this means the business would prepare accounts for 12 months to 30 June 2020 and then for a 9 month period to 31 March 2021. Paragraph 4 states that paragraph 3(c) must be applied to the first account end date, ie 30 June 2020 in this example. We agree this is a sensible approach in these instances, however we note that the two paragraphs 3 and 4 of regulation 4 are incompatible as currently drafted as paragraph 3 currently refers to tax year YYYY-1 and paragraph 4 refers to tax year YYYY. The amendment suggested above (see para 4.3) would make Regulation 4 paragraph 3 consistent with Regulation 4 paragraph 4.

4.5 Paragraphs 7-9 of regulation 4 state the rules for determining the Digital Start Date for a new non-property business which starts trading after the introduction of these regulations. In summary, the regulations state that the Digital Start Date is the day after the first accounting period ends provided it ends after 5 April following commencement. Otherwise the Digital Start Date is 6 April after commencement. So, looking at a business which starts trading at say 1 January 2021 as an example, there could be the following scenarios:

- If first accounting period is 12 months to 31 Dec 2021 then Digital Start Date is 1 January 2022
- If first accounting period is 3+ months to 5 April 2021 then Digital start Date is 6 April 2021
- If first accounting period is 3 months to 31 March 2021 then Digital Start Date is 6 April 2021
- If first accounting period is 15 months to 31 March 2022 then Digital Start Date is 1 April 2022

4.6 This seems quite complicated, and could be seen to encourage longer accounting periods to defer the obligation to comply with MTD for Business. Another more straightforward option could be for new businesses to join MTD from commencement of trading. However, consideration needs to be given to how these rules interact with regulation 25 which exempts businesses from the digital requirements until the second tax year after the one in which qualifying income (defined in regulation 25 paragraph 5, but which is broadly gross income from all sources) exceeds a specified amount, which is widely expected to be the VAT registration threshold.

- 4.7 It seems to us that the effect of the interaction of these two regulations is that the rules set out in paragraphs 7-9 of regulation 4 can only be applied if the business elects not to be exempt from digital requirements under regulation 28.
- 4.8 This then begs the question of how a business establishes its Digital Start Date when it changes from being exempt from digital requirements to not being exempt, irrespective of whether it is a business in existence when MTD for Business is introduced or whether it starts after the introduction of MTD for Business. For example, if a business starts trading on 1 April 2021 but its qualifying income does not exceed the VAT threshold until the basis period for the 2022/23 tax year (the year ended 31 March 2023), it is not obliged to comply with digital requirements until the 2024/25 tax year, but regulation 4 does not specify when the Digital Start Date is in these circumstances. We conclude that regulation 4 needs to be re-drafted to clarify what rules are relevant in these circumstances either by applying the existing clauses in some way or by applying a different set of rules.

## **5 Regulation 7 Quarterly updates**

- 5.1 We note that regulation 7 paragraph 4 states the deadline for submission of a quarterly update is one month from the end of the quarter. As we would like to see a standard time limit for making quarterly returns under the MTD regime, whether for income tax or for VAT, and VAT registered businesses are already very familiar with the current time limit of one month and seven days after the quarter end to file VAT returns, we believe it would be sensible to align the time limit for MTD updates with this.<sup>1</sup>

## **6 Regulation 8 Update notice**

- 6.1 We are pleased to note from the Income Tax Notice that the update notice specifying the update information to be provided in the quarterly update will only require the total amounts within specified categories of transactions and not an item-by-item breakdown for businesses with turnover below the VAT threshold.
- 6.2 However, complete flexibility relating to irregular filing of updates will not be achieved if the maximum period between updates is three months. We recommend that there should be an option for a seasonal business to apply for a dispensation to file updates at more suitable

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<sup>1</sup> This was also a recommendation in our response to the main consultation document on the MTD for Business programme, 'Bringing Business Tax into the Digital Age' in November 2016. See paragraph 7.5 on page 17: <https://www.litrg.org.uk/latest-news/submissions/161108-making-tax-digital>

intervals to fit with the trade and that HMRC should be obliged to agree to any proposals unless there is evidence which shows it is an unreasonable claim.<sup>1</sup>

## **7 Regulations 10 and 11 Provision of update information**

- 7.1 We are pleased to see this regulation gives some flexibility for businesses to submit stagger updates covering periods of less than three months. However the option of only one stagger update per relevant period limits the flexibility that could otherwise be achieved. It is not clear why there should be a limit of only one stagger update per relevant period.
- 7.2 We note that regulation 11, paragraph 2(a) allows update information to be filed up to 10 days before the end of the quarterly period. We would suggest this should be a longer period than 10 days, as a 10-day period may not be enough to cover all circumstances which may arise where early filing is appropriate, for example extended absence for medical reasons, holiday, sabbatical, etc. Therefore we suggest the regulations should be amended to state 'or such other period as may be allowed by HMRC'.
- 7.3 This would then also cover the situation where someone may wish to arrange in advance for extended time to comply with their quarterly obligations. This might be for example if they need time to replace a computer that has succumbed to a virus, or if someone is temporarily abroad and out of range of broadband – for example a migrant to the UK who is self employed, but who has temporarily returned to their home country for a family emergency – who may usually be able to comply, but not be able to at the time their report is due. In these circumstances it would be very helpful to be able to apply in advance for a deferment or short term extension – perhaps until they return to the UK in that situation.<sup>2</sup>

## **8 Regulations 19-21 Corrections and omissions**

- 8.1 We note this regulation allows for any inadvertent errors or omissions in digital records to be corrected in the next submission which will be either a quarterly update or end of period submission. However the regulations as currently drafted could mean that a correction should be made in a quarterly update which is in the following relevant period to the one in

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<sup>1</sup> This was also a recommendation in our response to the main consultation document on MTD for Business programme, 'Bringing Business Tax into the Digital Age' in November 2016. See paragraph 7.4, on page 17: <https://www.litrg.org.uk/latest-news/submissions/161108-making-tax-digital>

<sup>2</sup> This recommendation was originally made in our response to the main consultation document on the MTD for Business programme, 'Bringing Business Tax into the Digital Age' in November 2016. See chapter 7, 'Exemptions', page 20: <https://www.litrg.org.uk/latest-news/submissions/161108-making-tax-digital>

which the error was made. For example, if a business with a 31 March year end made an error in record keeping in the quarter ended 31 December 2020, but did not discover this until July 2021, this regulation would surely mean that it would need to make the correction in the quarterly update for the three months to 30 September 2021 (due to be filed by 31 October 2021) if the end of period statement for the year ended 31 March 2021, due to be filed by 31 January 2022, had not been submitted. However this would mean the correction has been made to the wrong accounting period. We question whether this is the intended outcome as this does not seem sensible.

- 8.2 Regulations 20 and 21 allow for either the taxpayer or HMRC to amend the end of year submission. However the time period for taxpayer amendment given in regulation 20, paragraph 3 and HMRC amendment given in regulation 21 paragraph 4 is rather confusing as it seems to be saying that amendment can be made until the point at which the end of period statement is submitted. We would prefer to see an amendment period for both the taxpayer and HMRC similar to that currently available under self assessment, that is 12 months from the statutory filing deadline for the taxpayer (subject to adjustment for late issued returns) and nine months from the date of submission for HMRC.
- 8.3 HMRC may amend an end of period submission for any obvious errors or mistakes in a similar manner to the current rules, and the taxpayer has the right to reject any such correction, in which case the submission remains unaltered. This seems a sensible transfer of rules that work from self assessment to the MTD for Business regime.

## **9 Regulation 23 Nominations by HMRC**

- 9.1 This draft regulation allows HMRC to select a partner of a partnership to act as the nominated partner for the partnership where either they have been asked by the partners to do so, the partners have failed to nominate a partner themselves, or the nominated partner has failed to comply with the partnerships obligations.
- 9.2 We believe the regulation should be amended to also allow for the partnership to appeal against HMRC's choice of nominated partner and to replace the nominated partner appointed by HMRC with their own choice of nominated partner.

## **10 Regulation 24 Digital exclusion exemption**

- 10.1 Regulation 24 sets out the procedure for claiming exemption if a taxpayer is digitally excluded as defined by the *Bishop* exemption rules (paragraph 14(2)-(4) of schedule A1). The individual/partnership claiming to be digitally excluded must give notice to HMRC in writing, specifying why they are digitally excluded and the date from which this has been the case. On receipt of a notice, the Commissioners must give notice in writing within 28 days to confirm they are either satisfied or not satisfied that the claimant is digitally excluded. If a taxpayer ceases to be digitally excluded they must notify HMRC within three months of

ceasing. If the Commissioners cease to be satisfied that a person is digitally excluded they must give notice in writing, specifying the date when they cease to be digitally excluded.

- 10.2 It is very important that this process is as simple as possible, is publicised, and that very good guidance is available to assist with it. However the guidance must not impose greater obligations to support a request for digital exemption than is required under these regulations otherwise the process will become too onerous. It must be possible for a claim to be made through non-digital channels.

## **11 Regulation 25 other exemptions**

- 11.1 The Finance Bill Sub-committee of the House of Lords Economic Affairs Committee recommended in their report into MTD published in March 2017 that further consideration be given to excluding certain types of businesses from the MTD regime.
- 11.2 We recommend that specific exemption should be given in the regulations to those claiming UC until such time as the rules for claiming UC and for complying with MTD for Business are aligned. It is unacceptable for HMRC and the Department for Work and Pensions (DWP) to have different rules for the calculation of business income for low-income people, together with different reporting cycles, accounting methods, IT systems and using different terminology in their respective guidance. Alignment of HMRC and DWP systems must be achieved before there is any question of UC claimants being brought into MTD; that is, we recommend that UC claimants are specifically exempt from MTD until at least the cash bases for tax and UC are fully aligned and that claimants are subject only to a single reporting requirement for both.
- 11.3 We also recommend further specific exemptions be included for shared lives carers, and those who let their homes to pay for residential care.

LITRG  
10 November 2017