

HMRC Digital Strategy – legislative changes to enable Paperless Self Assessment

Response by the Low Incomes Tax Reform Group

1 Executive Summary

- 1.1 We welcome the opportunity to consult on these proposals. We are in favour of Government departments offering choices to citizens in the way they receive their correspondence and welcome the proposal for a fuller digital interaction. That said we are very disappointed with the brevity of the consultation period which is far too short and the speed with which the draft regulations come into force after the end of that period, and feel it is not in accordance with the principles of good consultation.
- 1.2 We seek an assurance from HMRC that the paper channel will remain open to taxpayers in self-assessment (SA) and that a 'default position' of online will **not** be applied later down the line; the paper channel should not be closed to people nor should online become mandatory and such a course would be hugely worrying.
- 1.3 We recognise in the consultation that provision is made for those who have an agent assigned but would welcome further assurance that the same will apply to those who use a family member or friend to help with their affairs. The recent deemed consent offering by HMRC allows for informal representatives to speak on behalf of those they represent and request duplicate paper copy correspondence – how is it intended that will work with digital mail? Clarification would be welcome.
- 1.4 We are encouraged that HMRC are proposing a staged approach to the proposals so that effects can be monitored and changes can be made as the service progresses. All changes must be safeguarded with a quality service for taxpayers and a form of

appeal must exist should anything go wrong. In particular, we seek a revision of the criteria for the defence of 'reasonable excuse' bearing in mind the risks we have identified with the digital offering.

- 1.5 We are concerned that changes made as a result of this consultation and the legislation will place a greater responsibility on the taxpayer to comply should he opt into digital delivery of SA notices and find that he misses an alert or cannot access his secure mailbox. With this in mind we have outlined some risks and potential problems at paras 3 and 4 that we feel HMRC should consider and address before launching the service.
- 1.6 These risks and problems may even deter taxpayers or their agents from opting in to receive notices digitally and therefore become a burden for both the department and the public as the provision of a service that is not used is a waste of public money. It is hoped that HMRC plan to publish statistics showing the sign-up and usage of the digital mail offering.
- 1.7 We are interested to hear if there are plans (within HMRC or DWP) to extend the digitisation of correspondence to other taxes and benefits and would welcome further consultation should this occur

2 About Us

- 2.1 The Low Incomes Tax Reform Group (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 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 Risks

Secure mailbox

- 3.1 We are pleased that HMRC is to "host" the new secure mailbox system as that should minimize the possibility of items being posted to the incorrect account. Nevertheless

we do think that it can be very easy to “press a button” and for an item to be sent to the wrong mailbox. For this reason we think it is essential that there are levels of authorization before items are sent in this way; more so because the system is only going to work optimally if once an item enters the mailbox an automatic alert is sent to the taxpayer.

- 3.2 Before the system is established, there also needs to be clear guidelines about “cleansing” the system. For example, how long might a mailbox be dormant before it is removed? Or what if a particular mailbox is corrupted or hacked? Clear guidelines for both HMRC staff and the taxpaying public need to be made clear before implementation.

Equal treatment of paper filers

- 3.3 Each channel option should be of the same standard and appropriate resource and funding applied to paper forms as well as digital ones; those who choose not to or cannot engage digitally should not be given a ‘raw deal’ regarding updates, timelines and staying current.

Risks associated with the digital option

- 3.4 We note that the opting in process is immediate and yet the opting out takes up to 48 hours; this seems unfair and could pose a risk for those who may be in the midst of receiving a notice and need to act quickly because of loss of mobile phone or internet connection. How does HMRC propose to handle notices due for delivery when there are access problems?
- 3.5 In turn how will HMRC react if a taxpayer states that they didn’t receive the alert or couldn’t access the notice in their account – what is the contingency so that taxpayers are protected from unnecessary penalisation or worse still litigation? Will the current appeals process look more favourably on the taxpayer in these digital circumstances and are HMRC prepared for an influx of such appeals?
- 3.6 There is a risk that people will be unable to access either the alert or the digital correspondence in their mailbox if they have experienced the loss of a contract or device, loss of user ID or forgotten password. The seriousness of some of the notices HMRC are proposing to digitalise gives us cause for concern should the taxpayer miss out on receiving them.
- 3.7 Similarly we would like to understand the new Identity Assurance service that HMRC will be implementing for taxpayers to see how this may impact access to secure mailboxes and the complexities it may bring.
- 3.8 Mobile phones will pose a particular threat for alerts in that they are easily and often lost or stolen and that in turn would affect a taxpayer’s ability to communicate should they have opted into the digital transaction service. How does HMRC propose to cope with this issue?
- 3.9 In the opting in process we have made a presumption that the taxpayer gives HMRC *either* an email address *or* mobile phone number and not necessarily both (but this is not entirely clear from the document). This is personal data and we would welcome

assurance that such data will not be shared wider and certainly not without the taxpayer's consent.

- 3.10 Similarly we would expect much finer details in a further consultation paper should HMRC decide to use social media accounts as part of the new electronic service. We are particularly concerned about the implications for data protection and taxpayer rights of the use of their personal data in a 'public' space.

4 Potential problems

- 4.1 The proposed service relies on the taxpayer acting upon an alert (either SMS or e-mail) to access the secure mailbox and open and read the delivered output. This is very different from a letter through the post in that it is a two stage process and others cannot intercept or get involved. We can envisage this falling down for those who struggle to organise their affairs in an orderly fashion, have only the basic digital skills, fall ill and go into hospital or a care home, go to prison or have mental health difficulties. There needs to be a contingency in place for all these eventualities to enable someone to step in.
- 4.2 The current SA regime for trustees works by issuing reminders and such to the first named trustee. No other notices are generally received by the trustees. Trustees may often not be business people and so may not otherwise interact with the SA system. It might be helpful if notices were provided electronically to *all* trustees, if they so desired. The position is similar for partnerships, where a notice is issued to the nominated partner only although since the partners are likely to interact with SA personally, the chance of an important notice being overlooked is probably less than such a notice issued to one trustee.
- 4.3 Should a taxpayer who has opted to interact digitally decide they would like to revert to paper communications or find that they are no longer able to engage digitally then there should be a simple, quick and effective process to accommodate this. Also it should be ensured that the option is available via letter or telephone for those who are no longer digitally included through cost, disability or choice. There should be no great burden or cumbersome process imposed on the individual for a switch.
- 4.4 We know that there are many people (and especially those on low incomes) whose access to digital can be erratic as the costs can limit them and they move and close contracts both to mobile phones and broadband providers. This often means that they have multiple e-mail addresses or mobile phone numbers or may even be without either over a period of time. How does HMRC intend to keep up to date records of this taxpayer data and ensure that their records are always current and notifications are delivered? More importantly how does HMRC propose to ensure notices are opened and read?
- 4.5 We have concerns around the use of both SMS and email alert messages to inform a taxpayer of an electronic notification or statement posted to a mailbox as there may be periods when the taxpayer has gaps in digital engagement. This may be through the loss of mobile phone, a disconnection of a broadband service or through the inability to pay because of debt; in turn there will also therefore be a gap in their tax affairs which may result in a penalty or determination.

- 4.6 We also have concerns about how robust the system might be at peak times; for example, many taxpayers accessing on 30/31 January.
- 4.7 There is already a problem with spam and phishing emails adopting the guise of an official HMRC communication. This will be compounded as taxpayers start to rely on alerts to access notices and may inadvertently open a rogue mail or delete the correct HMRC one.

5 Questions

Question 1: *HMRC intends to make available electronically the Self Assessment products listed at paragraph 9 to those who have opted in to Self Assessment Online. Views are sought on the suitability of those products being made available online.*

On reviewing the documents that HMRC are proposing to include in this transactional service we agree that reminders to pay tax or file a return would work well but we are less convinced about such things as notices of enquiry and failure to comply, especially with the risks already noted in mind. This could be problematic, especially for the unrepresented taxpayer. There is a government drive to reduce the number of litigations by departments and this surely will be in jeopardy for HMRC if there is a rise in litigation as a result of important notices being issued digitally but not seen by the taxpayer.

It is not clear from the consultation whether there is the opportunity to pick and choose which notices and forms the taxpayer wants to receive electronically or whether it's an 'all or nothing' approach?

Including the 'exit' message as an electronic reminder could be a risk as those who are no longer in SA may in turn have disengaged digitally. This we feel should remain as a paper form.

Many of the products proposed electronically are time critical and yet some taxpayers will only access email or text prompts periodically – do HMRC propose adding a timescale to the alert (maybe in the title bar) so that taxpayers do not miss important deadlines?

Where a statement, penalty or notice/reminder to pay is issued digitally and posted to the secure mailbox how will the taxpayer be able to obtain a payslip in order to make a payment by post should he wish to do so? Not all taxpayers will have access to a printer; indeed some will be using a mobile phone or tablet without a connection.

At the moment it appears this digital communication is, in the main, one way. This system might be much more attractive for taxpayers, enabling them to make significant cost savings, if they could also send mail to HMRC in this manner.

All of the risks and problems we have noted earlier could have a negative effect on the smooth running of the delivery of mail digitally. Safeguards should be in place to ensure the taxpayer is not adversely affected by any system issues, periods of downtime which prevents access to the secure mailbox or delivery issues and their rights impeded due to circumstances beyond their control.

Our recommendation would be for HMRC to identify a number of risks or problems which, if they occurred, would automatically be accepted as a reasonable excuse. There would be a means for the taxpayer to notify HMRC of the occurrence of any of these risks, and that would prompt HMRC to refrain from sending a penalty notice – or, if a penalty notice had already been sent, HMRC could accept a reasonable excuse defence without the time-wasting and costly process of requiring the taxpayer to go through a formal appeal.

Question 2: *Many customers registered to use the Self Assessment Online service do not personally access the system, but allow their appointed agent to file on their behalf (see paragraph 22). HMRC welcomes suggestions on how customer consent can be best achieved in circumstances such as these.*

Representation by a paid agent is outside LITRG's brief, but we would like to understand how HMRC expect the digital delivery to work for those who choose to get a friend or family member to help with their affairs? How would registration work, who would receive the alert and how can a representative access the secure mailbox?

It should be borne in mind that taxpayers sometimes change agents, some more than once, indeed some may have forgotten that they even have one assigned; HMRC must therefore consider how this would affect any opt-in via an 'old' agent around access to the 'lost' clients' current notices and statements. This poses a risk to confidentiality if there are any delays in recording the termination of that relationship in the HMRC systems.

Question 3: *Comments are sought on whether the draft legislation set out in Annex A works as intended and facilitates HMRC's electronic interaction with its customers. In particular HMRC welcomes views on the definition of 'secure mailbox', the deemed delivery provisions and conditions and the provision and withdrawal of consent.*

The legislation should protect the taxpayer as well as the department. The proposed service relies heavily on electronic delivery of the notice itself to the appropriate secure mailbox and also the alert to inform delivery either by SMS or email. The ability to access all these systems is key to its success and the risks and issues we have noted all pose a threat to the taxpayer's ability to comply. Conditions must therefore be considered on a case by case basis where the system has failed.

The concept of 'security' has not been adequately reflected in the definition of 'secure mailbox'. We would suggest the following insertions (highlighted in yellow):

- “(b) can be accessed **only**
- (i) by an individual permitted to use electronic communications by an authorisation given by means of a direction by the Board(s)[in accordance with regulation 3(3)] **or**
 - (ii) **by a recognised agent acting on behalf of such an individual.**

It would then be desirable to add a definition of 'recognised agent'.

There appear to be some inconsistencies in what is included. For example notice under S12ABA TMA 1970 (partnerships – amendment of return by taxpayer) is included while the equivalent right for individuals and trustees at S9ZA TMA 1970 is excluded. Similarly notices

under S9B TMA 1970 (individuals and trustees able to amend return during enquiry) are included while those for partnerships (S12AD TMA 1970) are excluded. Further notices under S12AA TMA 1970 are included while the withdrawal of those same notices in accordance with S12AAA TMA 1970 have been excluded.

Question 4: HMRC welcomes comments on the assessment of the impacts of these proposals in the Tax Impact and Information Assessment on page 12 including but not limited to the equalities impacts, impacts on individuals and burden reductions.

We understand that the government drive to a digital by default approach is in the main a cost saving exercise and of course it has been widely publicised¹ what the cost savings to government departments will be. However it should be borne in mind that there are many taxpayers who are digitally excluded² and always will be despite the work going on to bring the nation up to speed. We would therefore not endorse a default position of digital delivery and we seek an assurance that this offering will only ever be a matter of choice.

With this in mind we would be interested to know if HMRC has an agreed forecast on the number of taxpayers expected to sign-up to the service and how many may subsequently struggle to stay on board because of the risks and problems we have already highlighted. As stated an unused or under-used service can become a burden for all concerned.

LITRG

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¹ <https://www.gov.uk/government/publications/digital-efficiency-report/digital-efficiency-report#where-the-savings-will-be-found>

² http://www.litrg.org.uk/Resources/LITRG/Documents/2012/05/digital_exclusion_-_litrg_report.pdf