



MAKING TAX DIGITAL FOR INCOME TAX SELF ASSESSMENT REGULATIONS

Issued 13 January 2021

ICAEW welcomes the opportunity to comment on the Making Tax Digital for Income Tax Self Assessment regulations, a revised version of which was published by HMRC on 15 December 2020, a copy of which is available from this [link](#).

This representation makes detailed comments on the draft Making Tax Digital for Income Tax Self Assessment (MTD ITSA) regulations. We note that many of the detailed requirements were included in a draft Income Tax Notice published for consultation in 2017 which has not yet been revised. We presume it is intended to supplement these regulations by revising and publishing that notice. Some of our comments necessarily relate to issues which might be covered by that document.

Many of our comments were included in [ICAEW representation 126/17](#) which responded to a previous draft of the regulations published for consultation in 2017.

The Tax Faculty welcomes the ongoing discussions on the regulations, particularly on regulation 10 which determines update periods, and which presents very significant practical problems.

We do have significant concerns about the policy requirement for quarterly updates and about the need for simplification of tax rules in advance of MTD for ITSA. We will address those under separate cover; this representation covers only our comments on the detail of the regulations.

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DETAILED COMMENTS

1. **Paragraph 2.** The definition of property business refers to s263(3) of ITTOIA 2005. This section includes both UK and overseas property within the definition, but it is not clear from the regulations that the obligations will (we understand) be separate for UK and overseas property businesses. We presume this will be covered in the Notice.

We understand that the obligation for furnished holiday lets (FHL) will not be separate but nevertheless this income will need to be reported separately from non-FHL income when updates and end of period statements (EOPS) are submitted. It is not clear whether HMRC will require income and the corresponding claim to be reported where rent a room relief completely covers the income (the SA return has a tick box only). It would be helpful if these points could be made clearer in the regulations.

2. **Paragraphs 2 and 3.** It is not clear whether the definition of 'functional compatible software' in paragraph 2 and paragraph 3 mean that there must be digital links where a set of products is used.
3. **Paragraph 4.** The regulations helpfully allow a period after the business starts before it needs to comply with the requirements. This reduces the need for software to handle opening year rules and overlap relief but does not eliminate them where a taxpayer within MTD starts a new source. This may need further consideration.
4. **Paragraph 5.** Paragraph 5(1) says that digital records must be kept 'until the date that the business ceases'. Is it intended that that the obligation to maintain digital records continues even if the requirement to provide quarterly updates ceases?

The MTD for VAT regulations allow the digital records to be maintained outside functional compatible software where a business ceases to be VAT registered (to avoid the need to maintain a software subscription). A similar provision for MTD for ITSA records would be helpful.

5. **Paragraph 6.** We suggest that, as per the equivalent MTD for VAT regulations, HMRC be given the power to vary the requirement to record each individual transaction where it would be impossible impractical, unduly onerous to do so. This would allow for important easements for eg, employee expenses, petty cash etc.

We foresee practical difficulties where transactions are being recorded just once to cover both VAT and income tax where the relevant date/tax point may be different, or where one may be on a cash basis and the other on an accruals basis. For example, it is sometimes necessary to use the date on which goods are made available for VAT.

6. **Paragraph 7.** We have concerns about the policy requirement for quarterly updates which we will address under separate cover. We suggest that thought be given to cases where a taxpayer fails to submit several quarterly updates and whether it would be possible to submit one update or EOPS to bring matters up to date (while accepting any penalty implications).

We suggest that the quarterly deadline be one month and seven days, as allowed for MTD for VAT.

7. **Paragraph 8.** 8(d) suggests that an update might include details for more than one information period but would need to identify the different information periods. This is not practical; updates should contain information relating to only one information period.

8(e) – identifying the properties – we are not clear why this is required in quarterly updates rather than only in the end of period statement. It might be more appropriately dealt with in the tertiary legislation. If this is intended to identify property acquisitions and disposals, perhaps this could be dealt with separately within the update although an acquisition would

not necessarily be let immediately.

We suggest that it be made clear that taxpayers have the option of providing some or all of the end of period statement specified information in their quarterly update, but that this is not mandatory.

The designatory information in the latest version of the notice includes national insurance number and this is also included in the software specifications. Some of those required to comply with MTD in respect of income from property will not have a national insurance number and this needs to be accommodated.

8. **Paragraph 10.** This has been discussed at meetings with HMRC. As noted above, update periods must contain information relating to only one information period and the regulations need to reflect this. Anything else is not practical. Flexibility is welcome but the essential is that update periods can be matched to basis periods.
9. **Paragraph 15.** The specified information requirement for partnerships includes everything that is currently required to be included on the self assessment partnership return, including capital gains and other income. The requirement for individuals is limited to information relating to self-employment and property income. This suggests that HMRC will not be providing an alternative way for partnerships to report other income and capital gains; if this is correct it will mean that partnerships may be very restricted in their software choices unless HMRC makes the relevant functionality mandatory.
10. **Paragraph 20.** We would welcome assurance that paragraph 20(3) does not interfere with the right of a taxpayer to amend a return under s 9ZA TMA 1970 or the time limit for so doing.
11. **Paragraphs 22 and 23.** These sections seem to be helpful in giving more flexibility where a nominated partner is not cooperating in complying with the requirements. The requirement to notify a nomination or revocation of a nominated partner in the quarterly update may pose a problem of the software does not have this functionality. Will this functionality be mandatory and if not, will there be an alternative way to notify?
12. **Paragraph 24.** It is not clear why the notice under paragraph 1(b) must be given in writing. HMRC has been accepting applications for exemption from MTD for VAT by phone and we presume would be expecting to do so for MTD for ITSA. We suggest that HMRC starts dealing with applications for digital exclusion exemptions well in advance of the April 2023 start date.
13. **Paragraphs 25 and 26.** This has been discussed at meetings with HMRC. We understand that this provision is expected to change before being laid and we would agree with a change which would avoid an annual assessment of whether a taxpayer needs to comply with MTD but, instead, means that once in the system they would need to continue to comply unless they apply to HMRC to be excluded on the basis that their gross income is expected to remain below the £10,000 threshold for the foreseeable future.

There may be a need for further exemptions eg, some of the cases on HMRC's specials and online filing exemption lists, those whose tax affairs are handled by PD1. We also suggest that the position of bankruptcy and individual voluntary arrangement cases may need further consideration (and possible exemption), if only because the current self assessment return process is not straightforward and new unique taxpayer references are issued (though not always in IVA cases). The exemption for estates is welcome but may also need to extend to the deceased for periods for which updates have not been submitted.

14. **Paragraph 27.** It is not clear what form the notice of election (or its withdrawal) must take. We suggest that this be as light touch as possible and that completing the online sign-up process be treated as sufficient.

Other

15. Many software packages don't allow for mid-month period end dates. We suggest that the current easement that allows accounting periods to 31 March to be treated as being to 5 April for self-employment be formalised and extended to property income.