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Reporting rules for digital platforms – HMRC consultation[1]

Response by the Chartered Institute of Taxation

1 Executive Summary

1.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the UK for advisers dealing with all aspects of taxation. We are a charity and our primary purpose is to promote education in taxation with a key aim of achieving a more efficient and less complex tax system for all. We draw on the experience of our 19,000 members, and extensive volunteer network, in providing our response.

1.2 Overall the proposals look reasonable and in line with the Organisation for Economic Co-operation and Development (OECD) Model Reporting Rules for Digital Platforms which require digital platforms to report details of the income of sellers on their platforms to the tax authority where the platform is resident, incorporated or managed, and also to the sellers. It is particularly welcome that reports must be made to sellers as well as the tax authority since this will help drive compliance.

1.3 The definition of 'personal services' is very broad. This may lead to difficulties in determining who is caught by these rules. Not only have there been recent cases concerning the employment status of 'gig' economy worker but also we need to understand how the rules interact with other areas of the tax system (apart from PAYE) that involve withholding taxes at source. HMRC need to provide more clarification in their guidance about who is included and who is excluded.

1.4 We support HMRC's suggestion to introduce a new 'verification' service which sellers could use to generate a bespoke code or reference number that could be used as a TIN. Ideally the verification service should be operational in time for commencement of the rules in January 2023 so HMRC should ensure that sufficient resources are allocated as soon as a decision is made (to introduce the new service) in order to make this possible.

1.5 Changing the UK's tax year to 31 December would address the timing issues caused by reporting platforms having to report information by 31 January for the calendar year just ended to HMRC and to each reportable seller. As the consultation document acknowledges, the reporting deadline in the model rules does not fit

[1] https://www.gov.uk/government/consultations/reporting-rules-for-digital-platforms/reporting-rules-for-digital-platforms-consultation

well with the 31 January deadline for filing a UK self-assessment tax return. In general however we think annual statements will not be as helpful as more timely information, particularly with the introduction of Making Tax Digital for Income Tax Self Assessment in April 2024 which will require UK traders to keep records up to date and submit information to HMRC quarterly.

1.6 The data should be presented to the sellers by the platform operators in an easily understandable and usable format. We suggest that it might be appropriate for HMRC to specify the title, format and content of the report that is presented to sellers. HMRC could consider working more closely with online platforms from an educative / guidance point of view, as people might be more receptive to messages about their potential UK tax obligations from the online platforms rather than HMRC. However, UK tax rules around the tax consequences of assets held or income arising overseas are complex. We do not think it is reasonable to expect platform operators to provide relevant information to their sellers on this. There is a strong case for improving the GOV.UK guidance in this area.

1.7 We agree that penalties need to be sufficiently high to encourage platforms to comply but are unclear how this is going to work in practice. We would also want to see more detail to enable us usefully to comment and to compare the proposals against the CIOT's 10 'powers and safeguards' principles (see Appendix).

2 About us

2.1 The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

2.2 The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

2.3 The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries.

2.4 Our members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

3 Introduction

3.1 The UK government is implementing the OECD model rules. Following consultation, these rules have already been agreed internationally to ensure consistent requirements for platforms across different jurisdictions, but they have optional elements and do not always describe in detail how jurisdictions should implement them in practice. This consultation sets out the details of the rules and invites views on the optional elements and the UK's proposed implementation of the rules. The consultation also welcomes comments on the impacts arising from implementation, on how the information to be reported could be used to help taxpayers get their tax right, as well as any practical issues. The reporting rules will come into force from January 2023 at the earliest.

3.2 A power has been introduced in Finance Act 2021 s129 to enable regulations to be made which will require certain UK digital platforms to report information to HMRC about the income of sellers of services on their platform. HMRC will then exchange the information with the other participating tax authorities for the jurisdictions where the sellers are tax resident. Under the OECD rules, digital platforms in participating jurisdictions will be required to provide a copy of the information to the taxpayer to help them comply with their tax obligations.

3.3 The CIOT's stated objectives for the tax system, relevant to this consultation, include:

- A legislative process that translates policy intentions into statute accurately and effectively, without unintended consequences.
- Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
- Greater certainty, so businesses and individuals can plan ahead with confidence.
- A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
- Responsive and competent tax administration, with a minimum of bureaucracy.

3.4 In this submission, we are only providing a response to questions where we have relevant knowledge and experience.

4 Question 1 - Do you agree with the government's proposals on excluding certain platform operators? Please indicate whether you think platforms would make use of the exclusions in practice and what factors might influence these decisions.

4.1 Yes, we agree with these proposals, particularly those in paragraphs 2.9 and 2.10 that concern whether the platform falls within one of the exemptions and enabling them to indicate this during the initial registration process.

5 Question 2 - Are the definitions on the scope of the model rules sufficiently clear? Are there scenarios not anticipated by the rules where guidance is needed?

5.1 The definition of 'personal services' (see paragraph 2.13) is very broad. This may lead to difficulties in determining who is caught by these rules. Not only have there been recent cases concerning the employment status of 'gig' economy worker but also we need to understand how the rules interact with other areas of the tax system, apart from PAYE, that involve withholding taxes at source. It is worth noting things like the Employment Intermediaries Reporting Rules (which apply to employment agencies where workers are supplied) and the Construction Industry Scheme (CIS) reporting rules (which apply to non-employed subcontractors), as equivalents for reporting payments to workers who are not employees. HMRC need to provide more clarification in their guidance about who is included and who is excluded. There is also an argument for having one set of reporting rules for payments to persons, rather than specific rules for each sector (especially where there is the potential for overlap of those rules resulting in double reporting).

5.2 The exclusion for sellers that are 'employees' of the platform operator should only apply if the selling is done as part of their employment with the platform for which they are paid via PAYE. There may be an employee who works in the platform's HR team, for example, who is also a 'seller' ie is providing services to third parties via the platform (such as providing a taxi service) in their 'spare' time, when they are not doing their paid employment work for their employer. In that example, the platform should be required to report the person's taxi service income (subject to the other exclusions set out in the consultation document).

5.3 With regard to the definition of 'platforms' in para 2.2, it is not clear if a business which simply sells goods and services directly to customers through its own website is in scope or not. Please can this be clarified?

5.4 Similarly, please can HMRC clarify whether intra-group transactions are covered by or excluded from these rules?

6 Question 3 - Is any additional guidance needed in light of the government's plans to adopt the extension of scope in its implementation of the model rules?

6.1 We do not think additional guidance is needed beyond setting out what the exemption is and stressing the 'and' in the test (ie less than 30 sales of goods AND for which they were paid not more than 2,000 euros).

7 Question 4 - Do you have any comments on how you would like the interactions of the model rules and DAC 7 to operate in practice?

7.1 No comments beyond saying that, in our view, it is vital that differences between how different jurisdictions implement the model rules are kept to a minimum as far as is possible.

8 Question 5 - Do you have any comments on the practical application of the rules on collecting the required information about sellers and rental property?

8.1 No comments.

9 Question 6 - Which number, or combination of numbers, would be appropriate to use as a Tax Identification Number? Please give reasons to support your view.

9.1 The consultation discusses what type of reference number should be used as the Tax Identification Number (TIN). Several options are proposed, including the Unique Taxpayer Reference (UTR), National Insurance Number (NINO), Company Registration Number (CRN), VAT Registration Number (VRN) and a bespoke registration number / code. We note that in paragraph 3.11 it says that the Government is currently minded to propose that platform operators can report a TIN from a range of options for UK sellers. However, later in paragraphs 3.12 and 3.14 it says that both NINOs and UTRs are sensitive pieces of information which would need to be held securely and not disclosed inappropriately. Given this is cross border disclosure and the entities involved are not highly regulated (like the financial institutions to which the Common Reporting Standard (CRS) applies), there is a risk of such data being hacked or leaked etc. It is not difficult to imagine this reporting obligation giving rise to digital platforms being used for scams and identity theft if individuals need to include such a sensitive piece of information as their NINO. Individuals wanting to use these platforms

are likely to be extremely reluctant (rightly) to provide a digital platform with such a sensitive piece of information as a NINO, potentially stifling the growth of digital platforms and placing the UK at a disadvantage in this respect. There are also other drawbacks with existing reference numbers which the consultation sets out, meaning that just using one of them will not be sufficient in all cases.

9.2 In view of the above, we would therefore support HMRC's suggestion in paragraph 3.16 (and later explored in paragraph 3.26) to introduce a new 'verification' service which sellers could use to generate a bespoke code or reference number that could be used as a TIN. This would have the disadvantage of introducing a further identification number, as HMRC notes, but on the other hand there could be future reporting requirements or measures for which such a less-sensitive TIN would be useful if this new code was set up in such a way as to suit it to a possible broader application in the future.

9.3 Ideally the verification service should be operational in time for commencement of the rules in January 2023 so HMRC should ensure that sufficient resources are allocated as soon as a decision is made (to introduce the new service) in order to make this possible. Resources should be allocated at the very least before legislation is drafted.

9.4 In the past there have been examples of inadequate consideration as to how a policy is implemented digitally which have created administrative and cost burdens for taxpayers and businesses. If it appears that a new verification service will not easily be integrated within existing systems and be consistent with the law this should be a 'red flag' to prompt a rethink of the proposal.

10 Question 7 - Do you have any comments on the practical application of the rules for collecting and verifying the data?

10.1 It is difficult to understand exactly what HMRC expect a platform operator to do as regards verification. The rules make sense when you have large platforms with large suppliers, but there must be a limit as to how much actual verification a platform operator can do.

10.2 Whilst platforms are likely to be using new and flexible software, the time and cost required to build new processes and data storage capability should not be under-estimated.

10.3 Paras 3.21 and 3.22 seem to be saying that the platform operator can assume that the seller's country of residence is the same as their home address (for individuals) or registered office address (for entities). We do not see how using the main residence address as a tax residence identifier ensures that the correct taxing authority gets to know of the income. In the case of US and Eritrean citizens, for example, their nationality creates a tax residence regardless of where they live.

10.4 Dual tax residents do not seem to have been considered either – they will likely give one home address which will not identify someone who has eg just moved to France but not yet lost their UK tax residence status.

10.5 Also, if we consider an example of a UK resident and domiciled individual who also owns homes in Spain and Italy. They decide to rent out their homes in Spain and Italy via an online rental platform when their family is not using them, setting up the rental whilst in those countries. The rental platform will know the address of each property. The person can demonstrate the property address using local utility bills and other paperwork (they may have bank accounts in Spain and Italy too). They may also file returns in Spain and Italy on their rental income/profits (depending on local tax rules) and so get a TIN from those countries. In this situation the platform will not notify the UK about this income; however it should be reported on their UK tax return.

11 Question 8 - Would stakeholders (both sellers and platforms) find a Government Verification Service useful if one was available? Please give reasons for your view.

11.1 HMRC need to ensure the system outlined in paragraph 3.26 works for people who want to be sellers, so it needs to be easy to use, quick and efficient. Some sellers may not be registered for self-assessment already but a government verification service (GVS) could enable them to register for it at the same time, and perhaps also for Making Tax Digital. HMRC also need to factor in the small seller opt out referred to at Q3 above – those people should not be required to use the system. Overall having one system (ie the 'tax check' system which is being currently designed to be used for taxi drivers etc) makes sense rather than setting up yet another system. If it enables platform operators to check out existing sellers when these rules are introduced (rather than the operator having to ask each seller for other documents to prove address, tax reference etc) then it may be easier. The unique code generated by the process described in paragraph 3.26 would also circumvent concerns that sellers would not want to provide platforms with their NINO or UTR (see para 9.1 above) which would be beneficial.

12 Question 9 - Do you have any comments on the practical application of the rules in relation to the timing, active seller option and third party due diligence requirements?

12.1 At paragraph 3.35, the contractual arrangements also need to provide for the data being secure (and GDPR compliant) and the consequences if it is not secure, particularly if the third party is going to have the person's tax reference number. If a platform intends to use a third party to carry out the due diligence then this must be made clear to the potential seller so they can decide whether to proceed etc, given the requirement for informed consent in GDPR.

13 Question 10 - What are your views on the government only offering the option to submit reports directly in an XML file format and removing the manual reporting option? Would you use an API to share info with HMRC if it was available? Please explain your answer.

13.1 There is no specific question about voluntary reporting (para 4.8), but surely any disclosure by a platform operator which goes beyond the legal requirement would be a breach of data protection law.

13.2 At paragraph 4.10, which refers to how consideration must be reported, we note that there is no mention of cryptocurrency.

14 Question 11 - How could platform operators provide information to sellers about their income at an earlier point to make it more useful?

14.1 Reporting platforms have to report information by 31 January for the calendar year just ended to the tax authority and to each reportable seller. The consultation notes at paragraphs 4.17 that the reporting deadline in the model rules does not fit well with the 31 January deadline for filing a UK self-assessment tax return. On pages 22 and 23 HMRC make some suggestions as to how this problem could be mitigated (eg by asking platforms to provide more frequent reports), which sound helpful, but they do not deal with the underlying problem (ie the UK having a 5 April tax year end).

14.2 We cannot see that it is practical for platforms to provide extra or different information to sellers who happen to need to report their income in the UK compared to other countries. However, we would be interested to

know if they might be able to offer any flexible solutions to the problem that has been identified. In general we think annual statements are not as helpful as more timely information.

14.3 The recent proposals for basis period reform will make the situation worse if, as proposed, the current year basis is changed to a tax year basis AND the UK retains a 5 April tax year end. This is because the information for the period from 1 January to 5 April will be needed by all taxpayers in order to complete their self-assessment tax returns (not just those with an accounting period ended between 1 January and 5 April), but it will not be available until the 31 January which coincides with the self-assessment filing deadline.

14.4 The consultation document ignores Making Tax Digital for Income Tax Self Assessment (MTD for ITSA) which requires UK traders to keep records up to date at least quarterly, and annual sharing (or even quarterly sharing) would be of limited benefit.

14.5 Changing the UK's tax year to 31 December would address some of these issues. In the CIOT's response[2] to HMRC's recent Call for Evidence on the Tax Administration Framework, we recommended that HMRC consult on changing the UK's tax year (following up on the recent work of the Office of Tax Simplification[3] (OTS)). We said that retaining a 5 April tax year end makes little sense in today's global world where many countries use 31 December as their tax year end (including the USA, France, Germany and Ireland). The OTS considered both 31 March and 31 December as alternatives. In our view, changing the UK's tax year to 31 March would not deal with the issues caused by using a different year end to much of the rest of the world, including those set out in the current consultation document, but changing the tax year to 31 December would deal with them.

15 Question 12 - How can HMRC and platform operators work together to provide appropriate information to sellers to help them understand and comply with their tax obligations? What guidance would sellers find useful?

15.1 The data should be presented to the sellers by the platform operators in an easily understandable and usable format. We suggest that it might be appropriate for HMRC to specify the title, format and content of the report that is presented to sellers. It needs to be user-friendly enough for the seller to be able easily to identify from it the information they need to comply with their tax obligations.

15.2 HMRC could consider working more closely with online platforms from an educative / guidance point of view, as people might be more receptive to messages about their potential UK tax obligations from the online platforms rather than HMRC. One area where guidance for sellers is likely to be needed is that the data being reported is not about 'income' in the sense used in the Tax Acts as the platform operator will only be able to report turnover. It is unlikely to have information about costs and therefore cannot provide any information about the actual taxable profit. This must be provided by the sellers themselves via their self-assessment tax returns.

15.3 However, UK tax rules around the tax consequences of assets held or income arising overseas are complex (as noted in paragraph 4.22). We do not think it is reasonable to expect platform operators to provide relevant information to their sellers on this. They could provide references to the appropriate guidance on GOV.UK but the problem with that is that the information on there is heavily simplified to make it generally

[2] https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/d1104860-4402-4156-83b9-5b2af972e057/210715%20Tax%20Administration%20Framework%20-%20CIOT%20response%20FINAL.pdf

[3] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1016718/Tax_year_end_date_report_web_copy_.pdf

understandable per the gov.uk rules, so there is probably a strong case for improving the GOV.UK guidance in this area.

15.4 The comments earlier in the consultation document make it clear that the seller will need to be provided with a tax reference number. This should be enough to prompt most people to consider tax. HMRC will be able to match the data and follow up omissions and mistakes accordingly. As the reporting platforms will be providing HMRC data from overseas we are not sure that HMRC can require them to do any more.

15.5 This level of information sharing is only practical where there is both a UK seller and a UK platform. In the real world many platforms will be operated outside the UK.

16 Question 13 - Do you have any comments on the practical application of the rules relating to the reporting requirements?

16.1 No comments.

17 Question 14 - Does the proposed penalty approach meet the government's objectives of being reasonable, proportionate and effective in ensuring compliance with the model rules?

17.1 The information provided is quite high level and we would want to see more detail to enable us to usefully comment and to compare the proposals against the CIOT's 10 'powers and safeguards' principles (see Appendix).

17.2 We agree that penalties need to be sufficiently high to encourage platforms to comply but are unclear how this is going to work in practice. HMRC will receive data from UK platforms to pass on to overseas jurisdictions, but what enforcement provisions or other processes will be needed for HMRC to know if the information is correct and complete? HMRC will receive data from overseas jurisdictions where platforms are based that host UK sellers, and it will be able to check the data and compare it to what is reported on UK tax returns – but we cannot see how HMRC will have any control over whether the overseas jurisdiction penalises the platform for mistakes and the level of those penalties.

17.3 We agree with HMRC's view in paragraph 5.6 that a fixed penalty is unlikely to be appropriate, in view of the factors listed by HMRC in paragraph 5.6.

17.4 We agree, in particular, with HMRC's recognition in para 5.6 (sixth bullet point) that the size of the business should be taken into account so that the impact of the penalty is proportionate. This is a point that seems particularly acute for these rules. The exclusion from the definition of 'Excluded Platform Operator' is very narrow in the OECD Model, given that a EUR 1 million threshold is a relatively low quantum. Therefore, many small start-ups may find themselves within the scope of this regime. Whilst a typical small business-owner or start-up entrepreneur should be expected to have a general awareness that their business will present them with obligations to comply with in respect of income tax / corporation tax and VAT, for example, such that non-compliance penalties for those taxes may be appropriate even for small businesses / traders, the fact that a reporting requirement of this nature should exist – and exist at such a relatively low level of transaction quantum – will be less intuitive or obvious. As a result, non-compliance by a smaller platform (which may have less access to advisers than a larger platform) is more likely to be due to an honest mistake or lack of awareness. Accordingly, a measure could be included which applies a 'lighter-touch' approach for smaller digital platforms so as to ensure fairness and not be seen as unnecessarily burdening start-ups with rules

which are enforced strictly, eg perhaps include a measure allowing digital platforms with transactions below EUR 10m to suspend or more easily suspend penalties arising on condition that they take steps to improve their processes to enable future reporting to be of better quality.

18 Question 15 - What additional one-off or regular costs do you expect to incur to comply with the requirements of the model rules? Please provide any information, such as costs, staff time or number of sellers/platforms affected which would help HMRC to quantify the impacts of this measure more precisely.

18.1 No comments.

19 Acknowledgement of submission

19.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

The Chartered Institute of Taxation

21 October 2021

Appendix

HMRC POWERS & SAFEGUARDS

The CIOT's 10 principles against which HMRC's use of its powers and safeguards

and any proposed powers and safeguards can be compared

1. Consistent – powers and safeguards should be applied consistently across HMRC, taxes and taxpayers.

2. Fair -–powers should help build trust in the tax system and achieve a fair balance between the powers of the tax authority and the rights of taxpayers, whilst being effective in identifying and dealing with non-compliance.

3. Proportionate – powers should be proportionate to the mischief they are introduced to tackle, used in a fair and even-handed way and are not abused.

4. Evidence based – decisions about when and how to use a power or operate a safeguard must be based on the available facts and evidence.

5. Be targeted appropriately and used for the purpose they were introduced for - the policy rationale for the power or safeguard should be clearly articulated at the outset and later deviations only considered exceptionally and after consultation.

6. Certain – there should be certainty about when and how a power or safeguards will and can be used; it should be set out in statute, with easily accessible and understandable guidance to supplement it.

7. Simple - so the rules can be more easily understood by taxpayers, agents and HMRC officers.

8. Transparent and communicated effectively – so taxpayers, agents and HMRC officers can understand and are aware of what taxpayers need to do to comply with their obligations or to challenge HMRC decisions.

9. Regularly reviewed – powers and safeguards should be reviewed regularly to ensure they are up to date and being used appropriately.

10. Access to justice – powers and safeguards should be subject to appropriate oversight, including the right for taxpayers to challenge HMRC decisions via statutory review, tribunal appeal etc.