

Income Tax (Digital Requirements)(Amendment) Regulations 2024

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 nearly 20,000 members, and extensive volunteer network, in providing our response. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party political organisation.
- 1.2 We are pleased that the outcomes from the Small Business Review are being incorporated into the Making Tax Digital for Income Tax Self-Assessment (MTD ITSA) regulations. The changes represent a positive step towards ensuring that MTD ITSA is not overly burdensome.
- 1.3 There are still several areas of concern and uncertainty which have not been addressed in these changes such as: how tax and accounting adjustments should be made in the absence of End of Period Statements (EOPS), what exactly a 'digital record' actually is, the lack of details regarding digital links (including amongst joint-property owners), how owners of Furnished Holiday Lets are supposed to record their income, the operation of the exemption from MTD ITSA in some cases, and how one applies for exemption. Ideally these should be clear from the Regulations or Notices, but otherwise detailed guidance is needed to clarify the position.
- 1.4 We welcome there being no reduction in the income threshold below £30,000, and note that the position remains under review. This threshold should not be lowered until it is clear that MTD ITSA is meeting its objectives and that it is clear that it will not be disproportionately complex or burdensome to taxpayers and their agents. We endorse the point made by our Low Incomes Tax Reform Group (LITRG) that as levels of annual turnover, rather than profits determine mandate for MTD, many smaller sole traders could be brought into the scope of MTD ITSA who may not even be liable for income tax, so keeping them away from the uncertainties and additional costs of moving to MTD is welcome.

2 About us

- 2.1 The CIOT is an UK 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.
- 2.2 The CIOT’s work covers all aspects of taxation, including direct and indirect taxes and duties. Through 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’ and ‘CTA(Fellow)’, to represent the leading tax qualification throughout the UK.

3 Introduction

- 3.1 On 22 November 2023, the outcome of the HMRC Small Business Review was released in which cumulative quarterly reporting was introduced, along with: the removal of the need to file EOPS, reporting ‘easements’ for owners of joint property, exemption from MTD ITSA for foster carers and those with no national insurance number (NINo). It was also confirmed that the £30,000 mandation threshold from April 2027 will not be lowered for now, but kept under review. These draft 2024 Regulations now make amendments to the 2021 Regulations to implement these changes.
- 3.2 Our stated objectives for the tax system 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.

4 Our response

- 4.1 The changes resulting from the Small Business Review are welcome ones, in particular making the quarterly returns cumulative and removing the need to submit EOPS – these are changes which we, along with other professional bodies, have been advocating for some time.

Exemptions

- 4.2 We welcome the exemption for those who do not have a NINo (because of the difficulties they face in accessing HMRC's digital services). Paragraph 20 (1A)(b) within Part 7 states that the exemption applies to those who do not 'have' a NINo. Further guidance will be needed about what is meant by 'having' a NINo, and whether the intention is to simply exempt those who are unable to obtain one. Within this guidance should also include direction for those assigned a temporary NINo and to what extent or otherwise they are exempt from MTD ITSA.
- 4.3 With respect to the mandation threshold and the 'income exemption' provisions within Part 8 paragraph 21, it is possible that someone may exceed the £50,000 threshold in 2024/25, but by 2026/27 their income may be significantly below that level (say, £25,000). However, by then the exemption no longer applies and the taxpayer will have to complete quarterly updates for the next 3 years per paragraph 22. If this is the intention, the operation of these rules should be made abundantly clear to taxpayers, with clear guidance and examples. This should also illustrate what happens if a new source of income arises for taxpayers already within MTD ITSA, and at what stage that new income must be included in quarterly updates.

Digital records and quarterly reporting

- 4.4 The draft Regulations and Notice both fail to adequately specify what a digitally record actually is. While significant detail was provided for MTD for VAT, in VAT Notice 700/22, save for similar text regarding retail sales the current drafts are almost silent on these requirements. Until this is clarified, together with any necessary easements (see below), we do not see how software can be fully developed, nor business costs estimated with any certainty.
- 4.5 Some of the uncertainties around digital records include:
- When does a digital record actually start? There might be someone else (eg an online platform or letting agent) assisting a trader or landlord with their record keeping;
 - Will the digital records start when the other person enters figures into their system, or when they are passed to the trader/landlord to incorporate into their own records? For example, a letting agent may well be collating the rental figures and expenses for the landlord. Will that agent's system be part of the digital records and require a digital link in order to meet the definition of functional compatible software? Or will the digital records requirements only be deemed to start once the principal has received them?
 - Will taxpayers be required to prove that the digital link requirements have been met when the start has been identified?
 - Barristers and their clerks are another common example – the clerks receive the brief fees and will enter them on chambers' IT systems, is that the start of the digital link?
- 4.6 Easements may well be needed, as they were with MTD for VAT, as set out within Notice 700/22. For example, paragraph 3.3.2.1 (supplies by third parties), concedes that businesses can record agent supplies' summary as one invoice. Likewise, totals from a supplier statement (3.3.3.1), rather than their individual transactions, need only be included in digital records; petty cash transactions can also be recorded as a single purchase in the digital records (3.3.3.2). Similar allowances should be made for MTD ITSA, with supporting guidance, to help reduce uncertainty, administrative workloads and the risk of errors being made.
- 4.7 Those traders who operate with year ends other than 31 March/6 April are going to find it very burdensome to complete quarterly updates aligned with the tax year; trying to reconcile quarterly update figures to the apportioned accounting figures (to the extent necessary) will be nearly impossible. Guidance will be needed, along with examples, to help those non-aligned businesses accurately submit quarterly updates and make final adjustments using apportioned accounts over multiple years.

- 4.8 The Regulations remove the requirement to provide an EOPS. Paragraph 8 of Part 2 of Schedule A1 of TMA 1970 (introduced by Finance (No.2) Act 2017) envisages the EOPS including information about calculating profits, losses or income. With removal of the EOPS, the final declaration will presumably contain provisions for making adjustments, allowances and claims? Or could they be made anytime within the year within quarterly updates? It would certainly make sense for them to be made as part of the final declaration; having to include them in the final quarterly update could add further pressure to that quarter's deadline and lead to errors. The regulations should include provision for the final declaration, but also provide directions for how adjustments, allowances and claims should be made.
- 4.9 Similarly, removal of reference to the EOPS in Regulation 17(3) makes it unclear as to how any errors made within the fourth quarterly update would be corrected. As drafted, the regulations seem to require such an amendment to be made in the quarter 1 update of the following tax year, which we do not consider to be appropriate as the cumulative nature of the quarterly returns should only operate within each tax year. The regulations should therefore be amended to clarify the position; ideally that any corrections are made alongside the final declaration.
- 4.10 The submission deadlines within Part 3 paragraph 7(5) for the quarterly updates give until the 5th of the month following the end of the period relevant. The original intention for MTD was that one submission could be made, with the VAT return information satisfying the business's VAT obligations, and the ITSA information satisfying those obligations. Aligning the submission deadline with the 7th, to coincide with the VAT submission deadline, would help meet this objective and mitigate the impact on businesses.

Property income

- 4.11 The reporting of joint property rental income and expenses has been a source of uncertainty for some time, and we acknowledge the efforts which HMRC are making to resolve the issue. The 'easements' in the draft Notice will be welcomed by some, but there needs to be further detail about how they will work in practice. For example, the extent to which digital links are required in order to supply information between joint property owners, and the mechanism for providing details of their share of property expenses in their tax return.
- 4.12 Another long-standing concern revolves around furnished holiday lets (FHLs). As the records for these must be maintained separately from 'ordinary' lets, a landlord will need to know whether their property qualifies as an FHL for a particular quarter; however, with the 105-day occupation criterion in particular, the owner may not know whether that is met until after the first quarter at the earliest. The draft Regulations and Notice are silent as to how landlords should record the data for that first quarter or in the time before that occupation criterion is met. Further clarification is needed as to the precise record-keeping and reporting requirements.

5 Acknowledgement of submission

- 5.1 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

11 January 2024