ICAEW
REPRESENTATION 103/21

REPORTING RULES FOR DIGITAL PLATFORMS - CONSULTATION

Issued 21 October 2021

ICAEW welcomes the opportunity to comment on the Reporting rules for digital platforms - consultation published by HMRC on 30 July 2021, a copy of which is available from this link.

This response of 21 October 2021 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 157,800 chartered accountant members in over 147 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

ICAEW
Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
T +44 (0)20 7920 8100 F +44 (0)20 7920 0547 icaew.com

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (RC000246)
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

KEY POINTS

1. This consultation process further highlights the benefit of introducing a new single tax identification number for all taxpayers, as mentioned in HMRC's tax administration framework consultation. While such a system is unlikely to be in place for the start of the proposed reporting rules for digital platforms, work should begin now to ensure that it can be introduced as soon as possible, especially as some of the individual sellers operating through UK based platforms will not already have a UK tax identification number.
2. We note the limitations highlighted in the consultation document that information being shared will help sellers to prepare their tax filings. As information does not need to be shared with them by platform operators until the deadline for preparing their relevant tax returns (31 January), this will be too late to check this against their tax returns for income from1 January to the end of the tax year. We reiterate the point we have made in other consultation responses that having a 5 April year end in the UK exacerbates these issues and this would partly be mitigated by moving to a 31 December tax year end. Making this change to the tax year would also mean that HMRC is better able to compare the data reported to it to taxpayers' filings and identify cases for investigation.
3. In view of the potential impact on relatively small platform operators, we recommend that the exclusion for platforms generating less than 1m euros of sales per year is increased to 5m euros. This should take out of scope the vast majority of platforms that breach the 1m euro limit through dealing with a large number of smaller value individual transactions.
4. We also recommend that there is an exemption introduced for reporting on sellers whose total sales on the platform concerned for the year do not exceed the combined thresholds of 100 transactions and 10,000 euros.
5. While the proposed regime will help to make data more readily available to sellers and tax authorities alike, we are concerned that the timing of that data may not be entirely compatible with helping either party to manage their respective responsibilities under the tax systems in which they operate.
6. For example, sales income is often received at a different time to when the goods are delivered or the relevant service is performed. Similarly, returns and refunds can be commonplace, especially in the retail sector. This means that there may be mismatches across different quarters or even different tax years which could cause tax authorities to raise unnecessary enquiries when the information they receive does not match up with that reported in sellers' tax returns. Any users of this information will need to accept its inherent limitations. Mistakes may also arise where an individual seller is resident in one territory but a platform operator shares information about the seller with a different territory because this is the location of the seller's primary address.
7. Some assistance could be given to UK resident sellers by stipulating certain categorisation of the information provided by them to platform operators. For example, splitting out rental income into the different territories in which the relevant properties are located and also between furnished holiday letting and other UK properties would help them to categorise their income correctly in their UK tax returns and determine in which other territories they need to make tax filings. The exact nature of information to be provided both to sellers and to tax authorities must be determined as soon as possible so that platform operators have enough time to put in place the procedures and processes that they will need to comply with the new regime.
8. Having said that, we are concerned overall that a burden is being placed on platform operators that they are unlikely to be qualified to deal with. For example, asking operators to determine the residence status of sellers or providing sellers with guidance on their tax obligations will inevitably lead to mistakes and misleading information being given. HMRC must take primary responsibility for management of the UK taxation system and not rely on unqualified third parties to do this for them.

ANSWERS TO SPECIFIC QUESTIONS

Chapter 2 (Scope)

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.

9. We support the government's proposal to adopt all three of the proposed optional categories of Excluded Platform Operator.
10. We also agree that allowing some flexibility, so that platform operators falling within the 1-million-euro exclusion category can choose to opt in to the model rules, will be useful, particularly in the example given where the platform expects its business to grow rapidly.
11. Some sellers may find it useful to have an 'HMRC ready' checklist of the income their activity has generated through the platform in a year. This could provide a cross reference for the business owner checking the income they have reported for the year. For a platform which offers information 'fit for submitting to the revenue authorities', there is clearly a marketing opportunity by the platform having already submitted the necessary information to HMRC.
12. As this market matures, smaller platforms may be bought by larger entities. Having a customer information base already verified with the tax authorities and established along the lines suggested could make the sale process and information transfer more straightforward. Indeed, it could also enhance the sales value of the target platform.
13. Regarding the consideration limit itself, we note that 'Total payments (consideration) in the previous year are less than 1 million euros' is not itself indicative of high profits. The amount of information and need to standardise and report what is likely to be a vast quantity of data will impose a considerable burden on what could be a relatively small platform. Platforms operating on a low profit margin will have to process a very large number of small transactions just to cover operating costs and this will result in a disproportionate burden falling on them in relation to seller validation, data collection and processing by the platform operator, large data transfers to the local tax jurisdiction, and for HMRC, large numbers of sellers' data to process and cross check. An excess of data can be a hindrance for the authorities, as well as a help. We, therefore, recommend that the limit is increased to 5 million euros, at least initially, if this is compatible with the government's desire to stay as closely aligned to the OECD model rules as possible.
14. We note that the EUR 1 million limit itself is specified in the OECD paper 'Model rules for reporting by platform operators with respect to sellers in the sharing and gig economy'. We suggest an equivalent limit in £ sterling might be preferable to avoid platform operators facilitating sales primarily in sterling from having to determine whether a euro based threshold has been met. Consideration should also be given to ensuring reporting is required where payment is made in cryptocurrency.
15. Although the three optional categories of Excluded Platform Operators (EPO) are explained very clearly and succinctly in para 2.6, there are some concerns over how the definitions would be applied:
16. Total payments. It has become common for customers to buy a service, good or a delivery (of food for example), or to rent a property, but then cancel it before the transaction is fulfilled. A deposit or even the full sum may be paid at the time of the booking, with a full or part refund following cancellation. Many platforms also process transactions on sale or return, so a customer might buy three garments to try on at home and then return two. We are, therefore, keen to ensure that the definition of sales in a particular year relates to actual net sales made after any returns or refunds have been added back.
17. We do agree with minimising the administrative burden of operating the tax system wherever possible and the exemptions might create their own considerable administrative challenge which may be disproportionate to the benefit.

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?

18. The wording used for the definitions on the scope of the rules is clear.
19. Paras 2.16 and 2.17 deal with different types of consideration and also the occasions where payment may not be sufficiently clear.
20. However, the practical application of the wording may be more problematic. The entrepreneurial and rapidly developing nature of platforms means that will be scenarios in which it is not clear whether a platform has intermediated between the seller and buyer, or simply provided a referral or connection.
21. For example, a product designer may tender for work being marketed through a platform. Having successfully provided the designs covered in the brief, the client wants the same designer to provide a similar set of designs for a further product in the range. Clearly there will be signed contracts to cover follow on work, but these may or may not have to be reported by the platform.
22. Alternatively, there may be scenarios in which a platform provides an introduction between a buyer and seller, and also provides ongoing services such as project tracking, document repositories
23. We therefore believe that it would be helpful to include provision that:
    - transactions are out of scope where a contract is concluded between a buyer and seller:
        - That does not include the platform as a party or third party
        - Is not signed on terms and conditions provided by the platform
        - Does not require payment to be made between buyer and seller through the platform
    - where the transaction does not result in a named seller or sellers contracting with the buyer, this is out of scope for the proposed rules. For example, this would be relevant in the case of transport companies who may rely on the gig economy to engage delivery drivers, but where those delivery drivers do not have any contractual obligations to the seller.
24. There will also need to be clarity about when a sale must be reported. Holiday lets are traditionally booked months in advance on a no fee/ reduced fee cancellation arrangement. Will the letting platform be reporting sales in December of one year only to report cancellations in the January of the following year? This will lead to considerable administrative confusion for the taxpayers, platforms and tax jurisdictions involved.
25. The list of excluded sellers seems reasonable. However, the exclusion for sellers who are ‘employees’ of the platform operator should only apply if the selling is done as part of their employment for the platform. If an employee is ‘selling’ through the platform in their ‘spare time’ then this should be reportable as they will be paid separately to their salary.
26. We foresee problems for platform operators as they are required to determine the residence status of active sellers in their jurisdiction. In addition, it is possible for a seller to be resident in more than one jurisdiction in the same year. This is made more difficult for natural person sellers whose residence is needed for the tax year and where there is also the problem of the UK having a tax year (6 April to 5 April) which does not align with most other countries’ tax years (most frequently years to 31 December). Clearly, it would be difficult for a platform operator to determine the exact time during a tax year when a seller’s residence status changed and so it would most likely disclose all the territories it believed the seller could have been resident in during that year.

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?

27. We have no further comments in relation to extending scope to also include the sale of goods and transport rental.
28. Excluding casual sellers from the extension seems reasonable. When deciding how the parameters for this are to be defined, we suggest addressing the following:
29. Our understanding is that the '30 sales worth not more the Euros 2,000' test applies in respect of the individual platform and not across all platforms. How is a year to be defined, calendar year or tax year? Are goods or services returned/rejected to be included?
30. We note the UK definition of trading is not dependent on these criteria. The report by a platform may create an unnecessary compliance alert for a casual platform seller.
31. We understand that the government wishes to stay as close to the OECD model rules as possible, but we consider that this limit may still catch some casual sellers who are not carrying on a trade with a view to a profit. Rather than introducing a test which would require the platform operator to assess the seller's motives, we recommend that the threshold is increased to, say, 100 transactions and a value of 10,000 euros. This could be used as the new system settles down, possibly being reduced after a couple of years.

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?

32. While the EU and OECD rules have now been finalised, the UK is the first country to publicly consult on domestic implementation of the rules. We support the approach adopted by HM Treasury which seeks to 'bridge the gap' between the EU rules and the OECD Framework – notably by taking advantage of the optionality presented in the OECD framework and including the sale of goods and various data elements that are required by DAC7.
33. Although it is unlikely that the UK will deviate significantly from the OECD model rules, for previous exchange of information regimes, the HMRC's exchange of information team have consulted widely with industry and published substantial guidance. This level of engagement is welcome and it is likely to be useful if the team are able to engage in discussions about the adoption of the rules, clarifications of uncertain items during implementation, discussions on XML schemas and methods of exchange, and in discussions on tax authority reviews of compliance. We note that many countries globally have looked to UK Guidance on Automatic Exchange of Information when framing their own rules.
34. At the same time, previous implementations of automatic exchange of information regimes have had fractured implementations, with different jurisdictions adopting different rules. This is particularly the case in the implementation of the Common Reporting Standard (DAC2) and Mandatory Disclosure (DAC6). These differences can add to the cost and complexity of implementation for multinational clients – and to the extent that HMRC can work to minimise any differences by engaging with the EU and OECD, and publishing its own guidance as early as possible, that will result in a lower cost to industry and a more consistent global picture of seller activity.

Chapter 3 (Due diligence)

Question 5

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

35. For sellers using multiple agents and platforms, it will be critical to ensure data is supplied in homogenous formats. Where separate units at the same postal address are let, it must be possible to identify them separately.

36. It must also be simple to show cancelled or amended bookings, including where these are in different reporting periods.
37. Jointly owned property revenues must be properly attributable to the beneficial owners in the correct proportions. Frequently one taxpayer will handle the letting and associated paperwork, while the taxable income is shared.
38. Not all property owners will be natural persons and systems must be able to accommodate Limited Liability Partnerships, companies and trusts.
39. Information being gathered will be shared by HMRC with other jurisdictions where the UK owner may not be recognised as having the same legal form.

Question 6

Which number, or combination of numbers, would be appropriate to use as a Tax Identification Number (TIN)? Please give reasons to support your view.

40. As the consultation has recognised, not all taxpayers have a Unique Taxpayer Reference (UTR) or a National Insurance Number (NINO). Many will not be VAT registered and only companies will have a Company Registration Number (CRN).
41. These different identifiers have different numbers of fields and combinations of letters and numbers. As each transaction may need to be identifiable with a mixture of owners, this needs careful thought. Exchange of information for direct taxes is much more complex than for VAT and it may be necessary to use a new identifier for any taxpayer selling through a website. While not ideal, given the complexity, this may be the only solution.
42. We note from HMRC's tax administration framework that it is considering introducing a new tax identification number for individuals. We believe that implementation of the OECD's model rules gives some impetus to this proposal. We note HMRC's concern that such a system may not be available in time for when the rules are expected to come into force in January 2023. In that case, the regime could begin using existing TINs and could be transitioned over to using a single tax identifier once this becomes available.

Question 7

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

43. We are concerned that the verification of taxpayer residence has been greatly oversimplified in this consultation. Residence status is for the taxpayer to state, with the support of an adviser in more complex cases, and for HMRC to challenge where it disagrees.
44. Taxpayers can be resident in more than one country at the same time.
45. The UK determines residence for tax years running 6 April to 5 April. Most other countries use either 31 March, or most commonly 31 December. There will be a mismatch of data for this purpose.
46. Although we have raised this with Government previously, and noting the recent report on this matter from the Office of Tax Simplification, we must once again note the difficulties caused by the UK's historically based tax year end in the modern digital age.
47. Platforms are not tax specialists and are not required to adhere to any code of conduct such as the Professional Conduct in Relation to Tax. Verification and challenge of residence status by a platform is not appropriate.
48. Platform operators could use an individual or entity's primary address as a proxy for their place of residence and this would be a reasonable simplification. However, this may mean that a seller's sales information is shared with the wrong jurisdiction (for example, if an individual has a primary address in X but has retained residence status in territory Y). This would just need to be accepted as an imperfection inherent in the proposed regime.
49. The requirement to verify seller information contained in the proposals also needs to reflect the practicalities of the digital economy. For example, a seller may provide a copy of a passport or drivers' license as a proof of identity – but in many cases that document is

unlikely to be reviewed by a human. As a result, if there is any information present on those documents that contradicts information that a seller provides, it may not be captured electronically.

50. The requirements to verify information provided by sellers should be restricted to a requirement to verify only the information which is provided in a digital and structured format as part of the platform's existing onboarding process – the Common Reporting Standard described this as 'electronically searchable information' and a similar description would be useful here.

Question 8

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

51. A verification service confirming that a UK taxpayer is registered with HMRC would be useful.

52. This type of verification service is likely to be based on historic data. A UK resident taxpayer may not consider notifying HMRC that they have moved until they submit their tax return, which could be up to 10 months after the end of the tax year. Meanwhile, the platform may seek to verify their data many months earlier.

53. The analogy between the verification that a taxi driver is registered for self assessment with HMRC seems to oversimplify the position. A taxi driver is by definition a single natural individual. A jointly owned property being let through an agency which markets the property through a platform may not be as straightforward.

54. While we welcome any facility to make it easier for platform operators to collect and report information about sellers under the proposed regime, we are concerned that any extension of the Government Verification Service does not merely shift the burden of administration onto individual sellers nor require them to enter into a verification process that is unnecessary. For example, we can see the benefit of a tax check before a taxi driver renews their licence. It seems less appropriate for an online trader to be prevented from trading unless a tax check is carried out. We note that this is not the intention, see para 3.27, but a platform may decide to reduce its own risk by requiring a GVS code before allowing a new seller to join. There will then be an onus on the GVS to issue codes on a timely basis.

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?

55. We welcome the flexibility that the model rules provide around the extension of the deadline for due diligence procedures in the platform operator's first period and also the ability of third parties to carry out those procedures. We also welcome the ability to exclude recently added and non-active sellers from yearly due diligence procedures.

56. Our main concern here relates to timing. Where multiple platforms are involved, it may not be simple to share information quickly enough.

57. Comparing due diligence procedures across different jurisdictions is not necessarily a simple task. Will support be provided by the UK authorities which other jurisdictions would find acceptable?

Chapter 4 (Reporting)

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.

58. We have no specific comment here although it seems unlikely that an online business would seek to use a manual reporting option.

Question 11

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

59. Many sellers will be individuals within the scope of the Making Tax Digital for Income Tax Self Assessment rules (MTD ITSA) which begins in April 2024. First quarterly reports will be required by 5 August 2024 and must include a report on total sales made in the period April to June 2024. It would be helpful to UK MTD ITSA taxpayers to have a record of their reportable income on a quarterly basis in time to inform these quarterly reports.
60. Monthly reports might also be seen as a useful additional service by some taxpayers, but this would perhaps be an added value service offered by those platforms with the necessary functionality. If reporting is all carried out using the XML schema this should hopefully make it simple for platforms to produce reports, if their software systems sync up successfully with those of HMRC.
61. UK taxpayers will also need to sign off an end of period statement for each source of business or property income. This will be required by 31 January following the end of the tax year for which that income source total is being confirmed, so by the same date that the Income Tax Self Assessment return is made.
62. Para 4.17 illustrates the difficulty this poses for platforms submitting by reference to a calendar year one month after that year with reference to the tax year 2025/26. We do not have a solution to this, but it does illustrate the importance of accuracy by both the platform and the seller. There should be a presumption that the information reported by the seller is correct as the default.
63. Furthermore, the mismatch of the UK tax year with the requirement for reporting by platforms to be just one month after the end of a calendar year, will create considerable problems when matching information for tax return reporting. We believe this is one of the many reasons why changing the UK tax year end to 31 December would be useful in helping taxpayers comply with their tax reporting obligations.
64. UK income tax classifies property income into separate businesses, UK and overseas, furnished holiday lettings and other lettings. Platforms may need to provide an analysis of the sales being reported for income taxpayers so that the information is more useful.
65. This will be less problematic for corporate sellers. Companies with a non-calendar quarter year end may find monthly statements more helpful.

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?

66. GOV.UK should be the primary source of guidance for UK based sellers. We are concerned that HMRC is proposing to place a considerable burden on platform operators in an area (tax law) that they are unlikely to have any significant expertise in. We note that HMRC would not wish operators to provide tax advice as such but if information is provided by operators, sellers will want to rely on that information. If that information proves to be incorrect and a significant loss arises, in terms for example of additional tax liabilities, as a result of a seller relying on it, the seller may wish to take legal proceedings against the platform operator. We assume that the operators will not have suitable professional indemnity insurance to cover this.
67. While many platforms will have tax specialists to hand who are able to keep the guidance given on their websites updated and correct, this will not be the case for all. Each platform will report to the jurisdiction where they are based and report to its sellers.
68. Rules for UK resident taxpayers will be different to those who are resident elsewhere. Would a platform based outside the UK be expected to give guidance on UK tax in English? This would need to be heavily caveated. Similarly, would a UK based platform be expected

to be provided with information about the tax rules in each of the jurisdictions worldwide in which its sellers are resident?

69. It would also be helpful if HMRC could provide a clear statement, on GOV.UK, that it requires this information to be collected and reported by platforms, and how the information will be used. Platforms are likely to receive challenge from sellers that they are not entitled to the information being collected and reported – and therefore a clear statement from HMRC is essential.

Question 13

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

70. The simple example at paragraph 4.24 illustrates how difficult it could be in practice for platform operators to apply these rules where multiple parties operate the same platform. Our only other observation is that it will be essential for the report sent by the platform to the taxpayer/seller to be easy to understand and user friendly.

Chapter 5 (Administration and enforcement)

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?

71. In line with our ten tenets for a better tax system, we believe that any penalty or enforcement regime should be simple and understandable. This would allow platform operators to be clear on the consequences of failing to comply with the regime and, therefore, make those deterrents more effective.

72. Our initial impression of the proposed approach is that it is relatively complex. We welcome the reduction of penalties where there are mitigating factors and the introduction of an appeals process to deal with cases where there is a reasonable excuse for failure to comply.

73. However, having penalties for failure to keep records in addition to the penalties for failure to report seems unnecessarily complex and burdensome.

74. We also suggest that HMRC takes a 'light touch approach' to penalties in the first year of operation of the new regime, as it has done with other new areas such as when iXBRL was introduced for corporation tax purposes and the introduction of MTD for VAT.

75. We are also concerned about how effective it will be. HMRC will receive reports from UK based platforms to pass onto other jurisdictions. HMRC will not be able to judge how accurate etc those reports are. On the other hand, HMRC will receive data from overseas jurisdictions but will be unable to enforce penalties on the platforms from whom the data emanated if it is incorrect.

Chapter 6 (Assessment of impacts)

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.

76. No comments.

APPENDIX 1

ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. Statutory: tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. Certain: in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. Simple: the tax rules should aim to be simple, understandable and clear in their objectives.
4. Easy to collect and to calculate: a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. Properly targeted: when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. Constant: Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. Subject to proper consultation: other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. Regularly reviewed: the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. Fair and reasonable: the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. Competitive: tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see https://goo.gl/x6UjJ5).