ICAEW
REPRESENTATION 62/22

NOTICES MADE UNDER REGULATIONS 3, 8, 12 AND 16 OF THE INCOME TAX (DIGITAL REQUIREMENTS) REGULATIONS 2021 (SI 2021) NO. 1076

Issued 28 July 2022

ICAEW welcomes the opportunity to comment on the Notices made under regulations 3, 8, 12 and 16 of the Income Tax (Digital Requirements) Regulations 2021 (SI 2021) No. 1076 by HMRC on 1 July 2022, a copy of which is available from this link.

This response of 28 July 2022 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the ICAEW Tax 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.

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1. The draft Notices made under regulations 3, 8, 12 and 16 of the Income Tax (Digital Requirements) Regulations 2021 (SI 2021) No. 1076) – the draft MTD ITSA notices – are very limited in scope and do not differ significantly from the drafts published in 2017. The notices need to be supplemented by guidance which we understand will not be available for some time.

2. There are many significant policy, design and implementation issues that have yet to be resolved. These include:
   - The need for multiple agent functionality to allow different agents to complete the quarterly and year end activities, or to submit information for different income sources (eg, for property income and for trading income).
   - The design for businesses that have accounting dates that do not fall between 31 March and 5 April has not yet been developed.
   - The design for jointly owned property including how income from different property portfolios is aggregated prior to submission to HMRC needs further development and software that can deal with complex, but common, cases.
   - The need for clarity over when adjustments and corrections must be included in a resubmitted quarterly update and when they can be included in a subsequent update or as annual adjustments. This is indicative of confusion arising because some elements of the detailed design are not based on an underlying legal framework but were developed somewhat independently. For example, had the design been based on the quarterly update submissions being cumulative, year to date figures (as we had expected), this would have avoided the additional burden of resubmitting earlier updates and been more consistent with the policy objective of the quarterly updates being light touch with no penalties for inaccuracy.

   - The capacity of HMRC, software developers, taxpayers and agents to deliver MTD ITSA to the current timeline. This is a concern because of (a) the very limited scope of the pilot, (b) the lack of clarity over many of the requirements (c) the capacity of software developers and HMRC's customer services group to provide the support required and (d) the current lack of awareness and resistance to the additional cost involved.

3. The solution to some of these issues may lie in changes to policy and legislation as well as design. ICAEW's Tax Faculty appreciates the extensive engagement with HMRC's MTD team but is concerned about the number of fundamental issues that remain unresolved. The fact that fundamental issues are surfacing at such a late stage in the process gives little or no time for discussion on whether there are better, simpler or more effective solutions.

4. ICAEW's specific comments on the draft MTD ITSA notices are as follows:
   - We welcome the reduced requirements that will apply to businesses under the VAT threshold which will continue to be able to adopt 'three line accounts'. This reduced requirement will now, we understand, apply from digital records through to quarterly updates and EOPS end of period statements. It is a welcome simplification for smaller businesses – it would be useful to monitor its impact on errors and mistakes.
   - The notices state "*A relevant person with an annual turnover below the VAT registration threshold, as amended from time to time, may choose to provide the total of all income and the total of all expenses instead of the totals of the amounts falling within each category of transaction listed in this Update Notice*". It is not clear that this provision covers digital record keeping requirements as well as the requirements for updates, as per the policy intent.
   - We had expected that taxpayers who qualify for the 'three line account' relaxation for property income would be required to separately identity residential property finance costs so that HMRC could check that the specific tax treatment that applies to these

costs had been correctly applied. This does not appear to be reflected in the draft notices.

- The self assessment relaxation that allows joint property owners who receive notice of net income or loss to enter that figure on their tax return does not appear to be included in the draft notices. We are not clear whether that is an intended omission.
- We expected the regulations to provide further clarity over what is meant by a ‘transaction’ and the level of detail required to be maintained in functional compatible software. Regulation 6 of the Income Tax (Digital Requirements) Regulations 2021 states that “digital records” for a business means records of each of the transactions made in the course of the business. It is not clear whether entering totals (from, for example, supplier or letting agent statements) that summarise a number of transactions is permitted.
- The list of additional information required in the EOPS does not include
    - Loss brought forward used against this year’s profits, other than in relation to UK property). It may need to be listed in the other categories (Businesses with Trade Profits, Overseas Property (not EEA FHL), UK FHL, EEA FHL)?
    - Adjustments made to adjust from quarterly update figures to tax year figures for businesses that have an accounting date that is not 31 March to 5 April.
    - Entries for spreading transitional profits arising from basis period reform.
    - CIS sub-contractor deductions or other tax deducted from trading income.
    - Voluntary class 2 national insurance contributions

We are unclear whether these pieces of information are required to be in the EOPS or HMRC is collecting them at another stage of the process.