



# DRAFT LEGISLATION INCOME TAX (DIGITAL REQUIREMENTS) (AMENDMENT) REGULATIONS 2024 AND ASSOCIATED NOTICES

Issued 12 January 2024

ICAEW welcomes the opportunity to comment on the Draft legislation: Income Tax (Digital Requirements) (Amendment) Regulations 2024 and associated notices published by HM Revenue & Customs on 7 December 2023, a copy of which is available from this [link](#).

For questions on this response please contact ICAEW's Tax Faculty at [taxfac@icaew.com](mailto:taxfac@icaew.com) quoting REP 8/24.

ICAEW remains extremely concerned about the making tax digital income tax self assessment (MTD ITSA) policy and programme. These concerns include:

- The administration burden and complexity that arises from the requirement for quarterly updates.
- Unresolved design and implementation issues and whether a meaningful pilot will be possible in 2025/26 in advance of the April 2026 start date.
- HMRC's capacity to provide the customer support that will be needed.
- Whether a sufficient range of suitable software products (including some that meet the government commitment to free products) will be available.
- How the late submission penalty regime will apply in practice.

These concerns have been discussed at length with HMRC. This representation is limited to some detailed comments on the draft regulations and notices rather than repeating in full the major concerns listed above.

This response of 12 January 2024 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. ICAEW Tax Faculty's Ten Tenets for a Better Tax System, by which we benchmark the tax system and changes to it, are summarised in Appendix 1.

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## SPECIFIC COMMENTS

1. ICAEW notes that it will be necessary to amend the primary legislation for MTD ITSA. In particular the references to end of period statements need to be removed from primary legislation. ICAEW suggests that the primary legislation also be amended to remove the requirements as they apply to partnerships. As the legislation currently stands, partnerships are excluded from MTD ITSA requirements only by the absence of secondary legislation. Given that there is currently no target date for MTD ITSA to be extended to partnerships it would be appropriate for the redundant legislation to be removed and become a matter for a future Finance Bill and parliament.
2. The legislation, regulations and notices will need to be supplemented by guidance that has yet to be developed. As that guidance is developed, and during the pilot and implementation, it is likely that further amendments to the regulations and notices will be needed.
3. The regulations and notices do not provide sufficient clarity on the requirement for digital records (Regulation 3). The meaning of “the details of the items comprised in that information” in regulation 3(b) is unclear. For example, can record keeping start from a document that is itself a summary of several transactions (eg, a supplier statement or a statement from a letting agent). Having discussed this with HMRC, we are content for this matter to be covered in guidance to allow pragmatic decisions to be made during design and implementation. The regulations and notices may need to be revisited if the digital record keeping requirements become a matter of dispute between taxpayers and HMRC.
4. The regulations and notices do not provide sufficient clarity on the requirement for digital links to be maintained once information is entered into functional compatible software (Regulation 5). Some taxpayers will use software that does not form part of the functional compatible software. Further guidance is needed on what is considered to be manual and what is considered to be digital for these purposes.
5. HMRC has suggested that it is considering changing the submission deadline for MTD ITSA quarterly updates from the fifth of the month to the seventh of the month. This would allow some taxpayers to submit the MTD ITSA quarterly updates and VAT returns at the same time, as well as allowing two more days for MTD ITSA quarterly updates. ICAEW would support such a change and suggests that it be reflected in the regulations. (Regulation 7(5)). (Support for this change does not alter the fact that ICAEW would prefer removing the quarterly update obligation altogether or allowing more time for it to be submitted).
6. We suggest that the regulations give HMRC the specific power to withdraw a quarterly update notice. This will be needed where a notice is issued in error, for example where a source of income has ceased. This should include the power for a submission already made to be voided.
7. Consideration needs to be given to how the regulations apply (and the design works) where a taxpayer misses multiple quarterly obligations. Now that the quarterly updates include cumulative figures for the tax year to date, there would seem to be little to be achieved by requiring taxpayers to go back to complete missed obligations before they can finalise the liability for a tax year. We understand that submission penalties would be charged and be subject to appeal on the grounds of reasonable excuse. A quick and easy way to bring taxpayers’ affairs up to date will be needed.
8. Regulation 17 states that where an error or omission is corrected, correct and complete information must be provided to HMRC when the next quarterly update is submitted. Corrections will need to be made to the information for the relevant tax year. The regulations

do not seem to provide for this, instead suggesting that the correction be made with the next quarterly update which may be for the subsequent tax year. Some errors and omissions will not be identified until the liability for the year is being finalised.

9. The regulations require those without a national insurance number to apply for an exemption. HMRC should be aware of whether taxpayers have a national insurance number (it should be linked to their unique taxpayer reference) and be able to apply this exemption without an application.
10. Regulation 21(a) needs to be rewritten to accommodate late issued notices to file a self assessment tax return.
11. We suggest that further consideration be given to how regulation 21 applies the income exemption. The effect of that regulation is to require taxpayers to comply with MTD ITSA regulations for three complete tax years even if they exceed the income threshold in only one tax year because of a one-off spike in income. We suggest allowing taxpayers to claim an exemption if their income in the tax year just prior to their start date is below the threshold. Reducing the period that a taxpayer needs to be below the income threshold before they can exit MTD ITSA from three years to two would also be helpful.
12. The regulations do not deal with the situation where a taxpayer is declared bankrupt or dies (including the obligations of personal representatives). It may be necessary to make regulations to support practical solutions in these situations; further consideration is required.
13. The relaxations for joint property owners included in the notice do not go far enough to make the system workable. Many joint property owners will not receive sufficient information to allow them to comply. The current self assessment relaxation that allows joint property owners who only receive details of net income or loss to enter that figure on their tax return has been removed and should be reinstated.
14. 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”. This section of the notices refers only to quarterly updates (regulation 8) and not digital record keeping (regulation 6). Therefore, it is not clear that this relaxation covers digital record keeping requirements as well as the requirements for updates, as per the policy intent as we understand it. It is also not clear whether this provision applies to income from property, self-employment or both.
15. HMRC should consider requiring taxpayers who qualify for the ‘three-line account’ relaxation for property income to separately identify residential property finance costs so that it can check the specific tax treatment that applies to these costs has been correctly applied. We had understood that to be the intention, but this does not appear to be reflected in the draft notices.
16. The section of the notice dealing with retail sales comes under the heading “Update notice – made further to regulation 8” but actually relates to regulation 6 (digital records).

## 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>).