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# DRAFT LEGISLATION: INCOME TAX (DIGITAL REQUIREMENTS) (AMENDMENT) REGULATIONS 2024

## Response by Association of Taxation Technicians

### 1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to provide comments on the *Draft legislation: Income Tax (Digital Requirements)(Amendment) Regulations 2024*<sup>1</sup> ('the Draft Legislation') issued on 7 December 2023.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 We were pleased to have the opportunity to discuss aspects of the Draft Legislation with representatives of HMRC in a virtual meeting on 19 December 2023, as part of our ongoing Making Tax Digital (MTD) engagement with HMRC and other stakeholders. This submission builds on, and develops, the points made at that meeting.
- 1.4 The Draft Legislation consists of Draft Amendment Regulations<sup>2</sup> and Draft Notices<sup>3</sup>. For ease, we refer to these sub-components of the Draft Legislation as *Regulations* and *Notices* respectively, or the singular form where appropriate.
- 1.5 In section 2 of this response, we offer some key observations on the Draft Legislation as a whole. We address observations and drafting issues specific to the Regulations in section 3, and those specific to the Notices in section 4.

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1. <https://www.gov.uk/government/consultations/draft-legislation-income-tax-digital-requirementsamendment-regulations-2024>
2. [https://assets.publishing.service.gov.uk/media/6572062b58fa300013b140e8/Draft\\_MTD\\_Amending\\_Regs\\_2024.odt](https://assets.publishing.service.gov.uk/media/6572062b58fa300013b140e8/Draft_MTD_Amending_Regs_2024.odt)
3. <https://www.gov.uk/government/consultations/draft-legislation-income-tax-digital-requirementsamendment-regulations-2024/draft-notices-made-under-regulations-3-6-and-8-of-the-income-tax-digital-requirements-regulations-2021-si-20211076>

## 2 Key observations

### *Digital record keeping*

- 2.1 A key component of the MTD for Income Tax Self-Assessment (MTD for ITSA) requirement is digital record keeping. However, we do not believe that the Regulations and Notices provide sufficient clarity as to the expected contents of digital records.
- 2.2 In particular, the proposed wording of Regulation 6 is vague regarding the nature of digital records which must be kept. We welcome the omission of references to “transactions” (which appeared in the 2021 Regulations<sup>4</sup>) as this term has limited relevance to income tax matters. However, the new wording in the Regulations creates either flexibility or ambiguity in what records taxpayers should keep. Whilst flexibility may have been the intention, ambiguity should be avoided.
- 2.3 The Notices clarify the level of detail needed for quarterly updates (subject to the points in section 4 below). However, we believe the level of detail which must be kept in digital records is still not clear. In particular, what is meant by an ‘item’ in this context? A notice under Regulation 6 should be drafted to clarify the amount of detail required in digital records.
- 2.4 For example, if the landlord of a solely-owned property receives a 10 line invoice relating to the same quarterly period and consisting of eight repairs and two replacements of domestic items, should the landlord note these in his/her digital records as:
- 1) eight separate entries under repairs and two separate entries under replacement of domestic items, or
  - 2) as one subtotal under repairs and a separate subtotal under replacement of domestic items?
- 2.5 If the level of detail required in digital records cannot be explained sufficiently clearly in a notice, guidance should be made available with example figures worked through from the point of invoice to what needs to be retained in digital records and what needs to be provided to HMRC in quarterly updates.

### *Digital links*

- 2.6 The Draft Legislation does not address HMRC’s expectations regarding digital links under MTD for ITSA. This is likely to be every bit as important as it is for MTD for VAT, if not more so. For instance a letting agent might create a digital record of property income and expenses, which is then emailed to the taxpayer. Again, a notice under Regulation 6 would be beneficial here, accompanied by guidance containing case studies of common situations where digital links might be relevant. VAT Notice 700/22 section 3.2.1<sup>5</sup> provides a good example of what is required.
- 2.7 In connection with Regulation 7, we have previously suggested that the deadlines for each quarterly update period should be the 7<sup>th</sup> of the relevant month (rather than the 5<sup>th</sup>). This would be consistent with MTD for VAT, and would also ease time pressures on agents.

### *Furnished Holiday Lets*

- 2.8 The Notices (specifically *Update notice – made further to regulation 8*) appear to require quarterly updates showing income and expenses separately for: UK property, foreign property, UK FHLs and EEA FHLs. However, we question how practical it will be to report details of income and expenses relating to Furnished Holiday Lets separately to non-FHLs on a quarterly basis. Taxpayers will not know whether their let property qualifies

4. <https://www.legislation.gov.uk/ukxi/2021/1076/made>

5. <https://www.gov.uk/government/publications/vat-notice-70022-making-tax-digital-for-vat/vat-notice-70022-making-tax-digital-for-vat#digital-record-keeping>

as an FHL for any specific tax year at the time of submitting the first, second and potentially third quarterly updates, so will be unable to correctly classify the income and expenses for most of their quarterly updates.

- 2.9 We suggest a practical solution would be to assume that, for the purposes of the quarterly updates, the property will retain the FHL or non-FHL status it had in the previous year (unless it is known for sure that this will not be the case – for example because a property has been let long-term). The Notices will need to be amended to accommodate this approach (or an alternative).

See also paragraph 4.2 regarding categorisation of income and expenditure for different property businesses.

### 3 Regulations - specific observations and drafting issues

- 3.1 Regulation 7 is amended to place quarterly updates on a cumulative basis. As a result, all quarterly update periods will now have a start date of 6 April, or 1 April where a calendar quarters election is in place.

Regulation 7(9) states that “For the first tax year for which a calendar quarters election has effect, quarterly update period 1 is the period beginning with the first day of the tax year (6<sup>th</sup> April) and ending with the following 30 June.” In the absence of any further wording, this would indicate that all subsequent quarterly update periods that year would have a start date of 1 April. We believe this is incorrect, and that Regulation 7(9) needs to be amended to state that, for the first tax year for which an election has effect, all quarterly update periods start on 6 April, and end on the dates shown in the table in Regulation 7(8).

Similarly, Regulation 7(10) – which deals with the quarterly update periods in the year after a calendar quarters election ceases to have effect - needs to reflect that *all* quarterly update periods that year will start on 1 April (and not just the first).

- 3.2 Following the removal of the End Of Period Statement, where errors or omissions in digital records are identified, Regulation 17(3) requires corrections to be submitted to HMRC via a taxpayer’s next quarterly update. This appears to mean that an error in the fourth quarter of one year would need to be corrected via the first quarterly update the following year, which cannot be correct.

We believe this Regulation should be amended to require the correction to be made via the sooner of: the next quarterly update for that tax year, or the final year summary for that tax year.

- 3.3 Regulation 21 provides exemption from MTD based on a taxpayer’s level of qualifying income. If a taxpayer had qualifying income of £55,000 in 2024/25 they will be within the scope of the draft legislation with effect from 2026/27 even if their qualifying income in 2025/26 was below the MTD threshold (say £20,000) and remained at that level. That taxpayer would then be subject to MTD requirements for three years, up to and including 2028/29 (per Regulation 22).

Taxpayers are unlikely to expect this outcome, so clear guidance with examples in the form of case studies will be essential.

Guidance should also deal with new sources of MTD income for taxpayers who are already submitting quarterly updates, clarifying from when they must include that new source of income in their quarterly updates, and explaining the implications of voluntarily including it in quarterly updates before they are legally obliged to do so.

- 3.4 We struggle to understand the intention behind Regulation 21(5B)(b) and would welcome clarification in a notice or in guidance. This subsection does not appear to relate to income in excess of any of the trading allowance, property allowance or rent a room relief (ITTOIA 2005 Part 6A Chapter 1, ITTOIA 2005 Part 6A

Chapter 2, and ITTOIA 2005 Part 7 respectively), all of which require gross income to be declared in a return before the relevant allowance or relief is claimed. Can this subsection be reviewed and clarified?

3.5 Regulation 24 exempts non-resident companies from the draft legislation. We are not clear what the purpose of this Regulation is, given companies should not be within the scope of MTD for Income Tax anyway.

3.6 We believe the following minor drafting issues should be considered and addressed.

- In Regulation 2, the definition of HMRC needs updating to “His Majesty’s Revenue and Customs”.
- The heading of Regulation 5 “Keeping and recording digital records” could be simplified to “Keeping digital records”. “Keeping” and “recording” appear to carry the same requirements in this context, and our proposed change avoids the awkward phraseology “recording ... records”.

#### 4 Notices – specific observations and drafting issues

4.1 In the “*Joint Property Owners – notice made further to Regulations 6 and 8*”, we do not understand the inclusion of “when appropriate” in the first bullet point under both “Digital record-keeping” and “Quarterly update information”. When would it *not* be appropriate for a joint landlord to only include their share of property income and expenses?

Instead, we suggest removing both first bullet points in these sub-sections, and:

- Under “Digital record-keeping”, the current second bullet point should be revised to (emphasis added) “in relation only to *their share of* income and expenses...”
- No revisions would be needed to the remaining bullet points under “Quarterly update information”.

4.2 In the “*Update notice – made further to regulation 8*”, the categories for income and expenses relating to UK property, foreign property, UK FHL and EEA FHL are inconsistent. We suggest the categories should be identical, with the exception of *non-residential property finance costs* which should be removed from both UK FHL and EEA FHL, as it is not relevant to either given that an FHL is, by definition, residential property.

We also question whether details of allowable property finance costs will be available on a quarterly basis – lenders often only provide a breakdown of the interest and capital elements of loan repayments on an annual basis.

4.3 The “Retail sales” notice appears under the heading “*Update notice – made further to regulation 8*” but, we believe, is made further to regulation 6.

4.4 We believe the following minor drafting issues should be considered and addressed in the “*Update notice – made further to regulation 8*”:

- The third bullet point under both trading and property income sections should be amended to (emphasis added) “totals of the amounts falling within property income and *expense categories* set out in the following table”.
- “Business and entertainment costs” should be revised to “business entertainment costs”.
- The income category “other income from property” should start with a capital “O” for consistency. This category currently appears under UK property and foreign property, but see paragraph 4.2 regarding the need to show the same income categories for UK FHLs and EEA FHLs as well.

## 5 Contact details

- 5.1 We would be pleased to join in any discussion relating to this Consultation. Should you wish to discuss any aspect of this response, please contact our Technical team via [atttechnical@att.org.uk](mailto:atttechnical@att.org.uk).

## 6 Note

- 6.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has more than 9,800 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.