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MAKING TAX DIGITAL FOR INCOME TAX AND PENALTY REFORM – DRAFT LEGISLATION

Response by Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians (ATT) is pleased to have the opportunity to comment on the draft legislation regarding Making Tax Digital for Income Tax (MTD) and penalty reform, which was published on 21 July 2025¹.
- 1.2 The primary charitable objective of the ATT is to promote the education and 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.
- 1.3 In section 2 of this response, we consider the draft legislation on MTD and penalty reform ('the draft legislation')². In section 3 we comment on the draft Income Tax (Digital Obligations) Regulations 2026 ('the 2026 Regulations')³.
- 1.4 We would be pleased to discuss any aspect of this submission further. Relevant contact details can be found in Section 4.

2 Comments on draft legislation – MTD and penalty reform

2.1 Clause 1 – Persons on whom digital reporting requirements may be imposed

- 2.2 Clause 1 provides two key definitions:

- i) 'a person is a "relevant person" if the person is carrying on or has carried on a relevant activity.'

¹<https://www.gov.uk/government/publications/making-tax-digital-for-income-tax-and-penalty-reform>

² <https://www.gov.uk/government/publications/making-tax-digital-for-income-tax-and-penalty-reform/draft-legislation-making-tax-digital-and-penalty-reform-accessible-version>

³ <https://assets.publishing.service.gov.uk/media/687a1015a8ee0c6e06f45258/Draft-Income-Tax-Digital-Obligations-Regulations-2026.pdf>

And (our emphasis)

- ii) 'A "relevant activity", in relation to a person, means any activity which may give rise to profits or other income for which the person would be liable to income tax chargeable under Part 2 or Part 3 of ITTOIA 2005 **if the person were UK resident.**'

The text in bold is new compared with existing legislation in Schedule A1 TMA 1970⁴, which applies the digital reporting and record keeping requirements to:

'a person within the charge to income tax who, otherwise than in partnership, carries on (or has carried on)–
(a) a trade, profession or vocation the profits of which are chargeable to income tax under Part 2 of ITTOIA 2005,

(b) a property business the profits of which are chargeable to income tax under Part 3 of ITTOIA 2005, or

(c) any other activity which may give rise to profits or other income chargeable to income tax under Part 2 or 3 of ITTOIA 2005. '

The addition of 'if the person were UK resident' in the draft legislation may have unintended consequences. It appears this would theoretically bring *all* non-resident sole traders and landlords into the scope of MTD even where all their business activities are offshore and so do not give rise to any UK tax liability.

The MTD income thresholds will protect most of this population, since non-resident sole-traders and landlords operating exclusively outside the UK will not need to declare their overseas income on a UK tax return. However, consider a UK resident landlord or sole trader who is within the scope of MTD in respect of a foreign property or sole trade business carried on exclusively overseas, but who then relocates outside the UK. The overseas business continues, but is no longer taxable in the UK once the individual becomes non-UK resident. However, '*if the person were UK resident*' that business would remain in scope of MTD until it ceases or income reduces below the MTD threshold for three consecutive years. It appears the individual would therefore need to comply with the digital reporting requirements despite having no remaining connection to the UK and no UK tax liabilities, which presents an unnecessary and unfair administrative burden.

It is not clear whether this is intended, or an unintended consequence of the wording of Clause 1. If intended, it would be interesting to understand what issue HMRC are trying to address, in order to avoid unnecessary compliance burdens for taxpayers such as those outlined in the previous example.

- 2.3 New paragraph 6 of Schedule A1 TMA 1970 introduces a new definition of 'business'. Previously, this read "... means the activity by virtue of which this Schedule applies to the person (and if more than one, means each of them)..." The new definition omits the part in brackets – should this be reintroduced to cover multiple businesses run by the same individual?

2.4 **Clause 5 – Power to cancel penalty points and late submission penalties etc**

- 2.5 This clause amends Schedule 24 FA2021. One of the main changes is to give HMRC the power to cancel penalty points and financial penalties at their discretion. We support this measure. However, it also gives HMRC the power to re-award cancelled penalty points (new para 6A(5)) or a late filing / payment penalty (new para 16A(4) and para 17A(4)). It is not clear in what scenarios HMRC might need to do this. We feel it is important for taxpayers to have clarity over their tax affairs and the possibility of penalty points or penalties being reinstated after they have been cancelled creates a great deal of uncertainty for affected taxpayers, who might reasonably expect a penalty / penalty point cancellation decision to be final. Whilst it would be our preference for the ability to reinstate a penalty / penalty point to be removed, if the

⁴ <https://www.legislation.gov.uk/ukpga/2017/32/section/60>

legislation is finalised on the basis that a penalty decision *can* be reversed by HMRC, this fact needs to be made clear to taxpayers.

- 2.6 New paragraph 16A(1) provided by Clause 5(4) states that (our emphasis) ‘This paragraph applies where HMRC **have** assessed a penalty...’. HMRC is singular in other references in the draft legislation.

3 Comments on the Draft Income Tax (Digital Obligations) Regulations 2026

3.1 Part 2

- 3.2 The definition of ‘program’ in Regulation 3(2) is less clear than the definition we have had to date in Regulation 3(3) of The Income Tax (Digital Requirements) Regulations 2021⁵ (‘the 2021 Regulations’).

In particular, the use of ‘amendment of or access to that data ... does not require any further recording of data by the user’ coupled with the extended definition of digital records (see comments on Regulation 15(2) at paragraph 3.11 below) makes the position unclear regarding year-end tax and accounting adjustments. These could be seen as ‘amendments’ of data and also further recording of data, either via the same program as was used to record the original data, or via another program. However, such adjustments would only be required after the digital records have first been created.

3.3 Part 3

- 3.4 In Regulation 6(1) should “Where the person ceases to carry on the business” be changed to “Where the relevant person ceases to carry on the business”?

- 3.5 Regulation 6(1)(b) states that a person must give notice to HMRC of the digital termination date no later than the quarterly update deadline for the quarter in which cessation takes place. This seems sensible, but it is not clear how such notice will be given. More guidance is needed on this point.

- 3.6 Regulation 6(2)(a) goes on to say that such notice is not required if the digital termination date is before the digital start date. How will HMRC be aware that the relevant business has ceased in those circumstances? For example, someone required to comply with digital reporting requirements from 6 April 2026 on the basis of their 2024/25 tax return could cease to trade during the 2025/26 tax year. If they are not required to tell HMRC about the cessation, how will HMRC know in advance of their mandation date? The taxpayer would (presumably) be pursued by HMRC and/or receive penalty points for missed quarterly updates before the 2025/26 tax return showing the cessation date is filed and processed.

3.7 Part 4

- 3.8 Regulation 10 states that ‘A quarterly update must contain such information ... relating to a business of a relevant person as the Commissioners may specify by direction’. Is it correct to say ‘by direction’? Regulations 7 and 8 of the 2021 Regulations refer to ‘update information’ as specified in ‘update notices’.

⁵ <https://www.legislation.gov.uk/ukxi/2021/1076/made>

Whilst we expect the ‘Making Tax Digital for Income Tax: update notice’⁶ and the ‘Making Tax Digital for Income Tax: digital record-keeping notice’⁷ will need to be updated to refer to the 2026 Regulations, these notices are presumably the appropriate method of specifying the information required in a quarterly update.

The same point applies to Regulation 15(2)(c) in reference to digital records.

- 3.9 Regulation 11 gives details of the ability for taxpayers to submit a calendar quarters election. It is our understanding that HMRC would expect such an election to be submitted via a taxpayer’s compatible software, however Regulation 11 is silent on this point. If a taxpayer can submit such an election by other means, HMRC needs to make it clear how this would work and how a taxpayer could revoke a calendar quarters election.

3.10 **Part 5**

- 3.11 Regulation 15(2)(a)(ii) expands the definition of ‘digital records’ to include records of financial information to be included ‘in a return for that tax year’. Does this mean that tax and accounting adjustments and non-MTD income (such as dividends) now form part of the digital records? Would information pre-populated in the return by HMRC (eg PAYE data) also form part of the digital records? More guidance is needed on this point, and the practical implications of the new definition.

3.12 **Part 6**

- 3.13 Regulation 16 states that a relevant person ‘may’ use functional compatible software to give notice of an amendment of a return under TMA 1970 s9ZA. Should this be ‘must’? It is not clear that any alternative route exists, especially as the definition of functional compatible software in Regulation 3 now specifically refers to amendments to data.

3.14 **Part 7**

- 3.15 The previous, very clearly defined exemption for those without a National Insurance Number (NINO) as provided at Regulation 22 of The Income Tax (Digital Requirements) (Amendment) Regulations 2024⁸ (‘the 2024 Regulations’) has been removed.

In the 2026 Regulations, this appears to be swept up into a wider exemption under Regulations 20 and 33 for those unable to verify their identity. This makes application of the NINO exemption much less clear. In particular:

- At what time should the test for exemption apply? Under Regulation 22 of the 2024 Regulations, if a taxpayer had no NINO on 31 January then they were exempt for the following tax year. In the 2026 Regulations, no timeframe or date is given, causing ambiguity for taxpayers in terms of their MTD obligations.

Take an individual who would otherwise be in scope of MTD from April 2026, but who has no NINO. In, say, February 2026 should they apply for exemption, despite the fact they may be issued with a NINO by 6 April 2026? Should they wait for HMRC to grant them exemption under Regulation 19(4) without an application being required? Neither party will know until 6 April 2026 whether there is a day in that tax year on which the individual had no NINO, so their position in respect of exemptions and digital obligations is uncertain at

⁶ <https://www.gov.uk/government/publications/update-notice-for-making-tax-digital-for-income-tax/making-tax-digital-for-income-tax-update-notice>

⁷ <https://www.gov.uk/government/publications/digital-record-keeping-notice-for-making-tax-digital-for-income-tax/making-tax-digital-for-income-tax-digital-record-keeping-notice>

⁸ <https://www.legislation.gov.uk/uksi/2024/167/contents/made>

least until 6 April 2026. Delays in an exemption notice being issued, and the absence of any deadline for HMRC to do so (paragraphs 3.18 and 3.20) will extend that period of uncertainty.

- Will the exemptions for individuals without a NINO be automatic or will an application be needed? Regulation 22 of the 2024 Regulations makes the exemption automatic. However, as Regulation 19 of the 2026 Regulations covers both situations where a taxpayer applies for exemption, and those where HMRC grant it without application, the position is now unclear.

- 3.16 Under Regulation 20(2)(a) of the 2021 Regulations, individuals applying for digital exclusion had to ‘specify how the digital exclusion condition is met’. This requirement to state the grounds for exclusion when applying to HMRC appears to have been omitted from the 2026 Regulations. This seems surprising – how will HMRC determine whether an exclusion application is valid if the applicant does not have to state the reason(s) why they believe they are excluded?
- 3.17 Regulation 18(1)(b) implies that a taxpayer is exempt for a whole tax year if they have an exclusion notice in place for any day in that year. This seems sensible, but it would be helpful for HMRC to confirm this.
- 3.18 It is disappointing that the 28 day time limit imposed on HMRC to accept or reject an application for exemption on the grounds of digital exclusion, as contained in Regulation 20(4) of the 2021 Regulations has been removed from the 2026 Regulations. This could give rise to uncertainty for taxpayers. If HMRC is unable to achieve the 28 day time limit, we feel that an alternative timeframe should be stated so that the uncertainty is not prolonged unnecessarily. By having a stated time period, it will be easier to identify where a taxpayer (or their agent) should follow up an outstanding response, something that would not be possible with an open-ended period in which to respond to exemption applications.

Clear guidance will also be needed as to what approach taxpayers should take whilst waiting for an exemption request to be processed – for instance, can/should they ignore their digital obligations completely while their digital exclusion application is being processed?

Regulation 18(2) provides that digital obligations can be retrospectively deemed not to have arisen where an exclusion application is approved after an individual’s digital start date. However, if that application is rejected, presumably penalties for failure to comply with digital obligations could apply? Without a deadline binding HMRC to respond to exclusion applications, the period over which such penalties might be incurred is theoretically unlimited.

- 3.19 The time limit for a taxpayer to notify HMRC that they are no longer excluded is reduced to 30 days by Regulation 19(3)(b) (down from three months under Regulation 20(5) of the 2021 Regulations). This seems to be a very tight deadline, especially given that HMRC’s own deadline has been removed (paragraph 3.18).

It is unclear why such a short deadline is needed if, as set out above, Regulation 18(1)(b) means the taxpayer will remain exempt for the rest of the tax year anyway.

- 3.20 Regulation 19(4) obliges HMRC to issue an exclusion notice to a relevant person where HMRC believes them to be excluded, even if that person has not applied for exemption. To avoid confusion and/or unnecessary exclusion applications, it would be helpful if HMRC were bound by a time limit for issuing such notices – we suggest 28 days from the point when HMRC become aware of the grounds for exclusion.
- 3.21 There appears to be a mistake in Regulation 19(6) – reference to ‘a day under paragraph (3)(b)’ should read ‘a day under paragraph (5)(b)’.

- 3.22 Under Regulation 19(6), if HMRC consider that an individual has ceased to qualify for an exclusion notice previously issued, they are obliged to notify that individual accordingly, stating the date they ceased to be excluded.

A deadline should be imposed for HMRC to notify the individual of the cessation of their exclusion – we suggest 28 days from when HMRC becomes aware that the previous exclusion circumstances no longer apply. In the absence of such a deadline, penalties for failure to comply with digital obligations could theoretically apply for an unlimited time pending HMRC notifying the individual.

Presumably in the event of an exclusion notice being withdrawn, but where HMRC take an unreasonable amount of time to notify the affected individual, HMRC could use discretionary powers under Clause 5 of the draft legislation to retrospectively cancel any penalty points awarded while the individual had reason to believe an exclusion notice was still in place?

- 3.23 In Regulation 20(a)(ii), what is ‘any circumstance beyond the person’s control’ in which a taxpayer may be unable to verify their identity intended to cover? This appears to be very broadly worded – is there a risk of this exclusion being abused or misunderstood?
- 3.24 Regulation 26 makes provision for determining a taxpayer’s income. Whilst it is stated in Regulation 26 (1)(c) that no account is to be taken of an amendment to a tax return, it should be made clear that this would be irrespective of whether the amendment was by the taxpayer, or by HMRC in the event of an enquiry.
- 3.25 The wording of Regulation 30(1) is unclear – we assume ‘the previous filing tax year in relation to the tax year Y’ means the most recent tax year, before year Y, in respect of which a tax return has been filed?
- 3.26 It appears exemptions under Regulation 30 will apply automatically, without any application to HMRC for exemption being needed, but this should be made clear.
- 3.27 Will HMRC notify individuals qualifying under Regulation 30 that they are exempt? If so, it would be useful to impose a time limit within which HMRC must do so, for similar reasons to those in paragraph 3.20.
- 3.28 Regulation 30 provides exemption from digital obligations (*inter alia*) where a relevant person becomes ‘of a description specified in paragraph (2) ‘at any point in ... any tax year after that, up to and including the tax year Y’.

If a relevant person starts to match one of the descriptions in Regulation 30(2) in the tax year preceding Year Y, no tax return will have been filed by the start of year Y which informs HMRC of the new grounds for exemption. It is unclear in some instances (particularly ministers of religion and Lloyds underwriters) how HMRC might become aware of that exemption in advance of the digital start date which would otherwise apply. This could lead to unnecessary penalties for failure to comply with digital obligations. We would like to see the position made clearer in the final legislation to avoid confusion.

- 3.29 Trustees are exempt under Regulation 30(2)(a). We assume this intended to cover trading/property business activities carried on in that capacity (as trustee). However, as drafted, this exemption could be understood as extending to trading activities and property businesses carried on by that trustee in a personal capacity as well. We assume this is not the intention.

- 3.30 Regulation 30(2)(b) introduces new exemptions for donors of lasting or enduring powers of attorney. This exemption appears widely drawn, and could be open to manipulation – for example a taxpayer might give a power of attorney to their spouse specifically in order to avoid MTD obligations.

Areas of uncertainty include:

- Does the power of attorney simply have to be given, or does it need to be active?
- The reference in Regulation 30(2)(b) is to a lasting power of attorney (LPA) under s9(1) of the Mental Health Capacity Act 2005 – this includes two types of LPA, welfare and property/affairs. The current drafting of Regulation 30 indicates simply giving LPA over welfare or health matters (and not financial affairs) would be enough to make an individual exempt.
- The Mental Health Capacity Act 2005 only applies in England and Wales. The applicable legislation in Scotland is the Adults with Incapacity (Scotland) Act 2000 which has different definitions, being a continuing power of attorney and a welfare power of attorney. Separate legislation also applies in Northern Ireland. Regulation 30(2) should make it clear how the exemption applies throughout the UK.

3.31 **Part 8**

- 3.32 Regulation 33 provides scope for further exemptions ‘by reference to any matter, including ... the description of a relevant person’. Guidance on the intended scope of this exemption will be required. We assume it may include, for instance, individuals who currently have to file paper tax returns with HMRC’s Public Department 1 on grounds of specific employment types – e.g. members of the judiciary, Foreign Office employees, and individuals with connections to the Royal Family?

- 3.33 Regulation 34 is a new addition compared to the 2021 and 2024 Regulations, and its purpose is unclear. Does the requirement to ‘satisfy such conditions relation to the verification of identity as the Commissioners may specify by direction’ simply refer to being able to establish identity in order to register for MTD? If the intended purpose of this Regulation is any wider, further explanation and guidance is urgently required.

4 **Contact details**

- 4.1 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 us at atttechnical@att.org.uk.

The Association of Taxation Technicians

5 Note

- 5.1 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 10,000 members and Fellows together with over 7,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.