Think Ahead ACCA

Making tax digital: Voluntary pay as you go

A public consultation issued by HM Revenue and Customs

Comments from ACCA to HMRC
November 2016
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The expertise of our senior members and in-house technical experts allows ACCA to provide informed opinion on a range of financial, regulatory, public sector and business areas, including: taxation (business and personal); small business; pensions; education; and corporate governance and corporate social responsibility. www.accaglobal.com

Further information about ACCA's comments on the matters discussed here can be requested from:

Yen-pei Chen
Manager, Tax and Corporate Reporting
yen-pei.chen@accaglobal.com
+ 44 (0) 207 059 5580

Jason Piper
Senior Manager, Tax and Business Law
jason.piper@accaglobal.com
+44 (0)20 7059 5826

ACCA
+44 (0)20 7059 5000
info@accaglobal.com
www.accaglobal.com
The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

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ACCA welcomes the opportunity to comment on the proposals issued by HMRC. The ACCA Global Forum for Taxation and UK Tax Committee have considered the matters raised and a large number of ACCA Members and businesses have contacted us with their comments. Their views are represented in the following. This response should be read in conjunction with the comments made on the HMRC MTD consultation suite.

GENERAL COMMENTS

While we welcome the Government's objective to simplify tax payments, the smooth delivery of a voluntary pay-as-you-go (PAYG) system that works across different taxes is likely to require complex legislative, administrative and technological challenges to be overcome. At a time when significant legislative changes will be required to implement the core reporting, assessment and administrative processes under Making Tax Digital, we would recommend that HMRC resources should be concentrated, at present, on drafting legislation to incorporate these core aspects of the Making Tax Digital project.

In order for a voluntary PAYG system to work effectively, it is essential to ensure that:

- accurate information is provided to HMRC, and
- the digital integrated tax account, enabling taxpayers to view all their tax liabilities across multiple taxes in one place, is robustly designed.
- Control remains with the taxpayer

We would recommend that HMRC should satisfy itself that the above prerequisites are achieved, before commencing work on PAYG, even in voluntary form. Any PAYG discussions should be delayed until Making Tax Digital for unincorporated businesses, VAT and incorporated businesses are embedded in both taxpayers' and HMRC's processes. In our view, implementing voluntary PAYG at this early stage is likely produce low marginal benefits, as the costs of implementing the complex process may outweigh the cash flow benefits of accelerated tax receipts from voluntary adopters.

Notwithstanding the above concerns that the system has been designed by HMRC without consideration of any evidence based impact assessment of the implications for taxpayers, we have set out our responses to selected consultation questions below. Where our response relates to more than one question, the questions are set out together in sequence above our response. ACCA's principle reaction to this proposal is that investment in tax law simplification and digital solutions for allocation and repayment need to be considered rather than voluntary PAYG.

ACCA
+44 (0)20 7059 5000
info@accaglobal.com
www.accaglobal.com
The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

AREAS FOR SPECIFIC COMMENT:

Question 1: Do you see any challenges with the voluntary payments process described? Do you think there are alternative options that should be considered, and if so, what are these?
Question 2: Do you have any views or suggestions on the display of voluntary payments in the digital tax account?

Under the current statutory payment rules for business customers, overpayments from taxpayers in respect of final tax liabilities for each period result in a repayment from HMRC. We are concerned that the proposed voluntary payments process, acting across different taxes, could make it more difficult for taxpayers to claim repayments. As discussed in paragraphs 2.14 to 2.17 of the consultation document, the allocation of voluntary payments to different tax liabilities on a first-in-first-out basis could result in penalties being chargeable on the taxpayer upon requesting repayment. The extension of HMRC powers to set off customer credits against customer credits, as discussed in paragraph 2.21 of the consultation document, could result in a large reduction in opportunities for taxpayers to claim repayment.

The loss of repayments is likely to have a negative impact on businesses' management and certainty of cashflow and access to working capital. This concern is highlighted in paragraph 2.22 of the consultation document, but given the proposed set-off arrangements, the consultation document does not provide a credible solution to this working capital issue.

The introduction of a voluntary payment system, based on quarterly update information provided before taxpayers' final tax position is known, is likely to increase, not decrease, budget uncertainty for the Treasury. If widely implemented, the uncertainty could have a cash flow impact as taxpayers request repayments throughout the year.

Further, significant complications are likely to result where a taxpayer has multiple streams of business and employment income: for example, where a doctor works part-time as an employee for an NHS hospital trust, and part-time as an independent medical consultant. The determination of applicable tax rates is likely to be difficult

ACCA
+44 (0)20 7059 5000
info@accaglobal.com
www.accaglobal.com
The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

before the end of the tax period, therefore making it impossible to assess interim estimated tax liabilities based on quarterly update information.

As stated in our overall comments, we would recommend that the introduction PAYG is delayed until a number of years after the implementation of the new Making Tax Digital reporting and assessment mechanism. In the interim, the existing administration of tax payments and repayments may be improved, including putting in place processes and resources to reduce the current level of errors in allocating payments to the correct accounting periods.

If a voluntary PAYG system is to be introduced, we would recommend that voluntary tax payments should not be linked to current year estimated tax liabilities based on quarterly updates. For the reasons explained above, the estimates provided by quarterly updates under the current Making Tax Digital proposals are likely to be unreliable. Instead, we would argue that taxpayers should have the choice to determine the amount and frequency of voluntary tax payments that they would make. In particular, we would argue that the amount and frequency of voluntary tax payments should not be based on the estimated quarterly tax liabilities, but instead reflect each business' circumstances and ability to pay.

For those who wish to enter into voluntary tax payment arrangements, the Budget Payment Plan offers suitable scope, and our members have shared details of clients who use it. However, it appears that the low take up rates of this option seem to be not so much due to any flaws in the mechanism, but rather simple paucity of volunteers to manage cashflows in that manner. "Most clients out of principal will not pay HMRC until the tax is due."

Question 3: Should there be a 'period of grace', and if so, what period would be appropriate to allow for separate payment of an amount becoming due?

We do not believe that introducing a period of grace will be helpful. Voluntary tax payments should be matched to the earliest arising tax liability at the time the payment is made. Subsequent reallocations should be avoided as far as possible.

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Question 4: Do you have any general comments to make on the allocation of voluntary payments?
Question 5: Do you foresee any problems with HMRC's intended approach to the allocation of voluntary payments?

As noted above, the allocation of voluntary payments across multiple taxes is likely to result in legitimate opportunities for businesses to claim repayment.

Taxpayers and agents have experienced on-going issues around the misallocation of tax payments: for example, quarterly corporation tax payments have been allocated to the wrong accounting period, sometimes incurring penalties and late payment interest, and reversing the errors, penalties and interest have required additional agent and HMRC staff time. As one single integrated account is to be used for multiple taxes, we are concerned that the existing problems may be exacerbated.

Question 6: What improper or inappropriate use of the repayment facility do you think there may be, and what rules do you think should be applied by HMRC to stop that happening?

Any rules applied by HMRC in respect with repayments should be aligned with, and certainly should not exceed, the rules currently applied by banks.

Question 7: Do you agree with a restriction on repayment shortly before a liability becomes due, and if so, what period or terms of restriction do you think should be put in place?

We do not believe that any restrictions should apply to repayments shortly before a liability becomes due.

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Question 8: Do you have any views or evidence on whether, and how, HMRC should revisit the sums paid as payments on account to match more closely to the sums being reported under MTD?

We would strongly recommend that the sums paid as payments on account should not match more closely the proposed sums being reported under MTD. The current proposals do not impose penalties for inaccurate quarterly updates, and in certain circumstances (for example, where a taxpayer has multiple streams of income) the sums being reported as business profits under MTD will not reflect the taxpayer's final tax liability.

We would argue that payments on account should continue to be based on the previous year's liability and subject always to manual override by the taxpayer. Voluntary payments, as pointed out above, should only reflect each taxpayer's ability to pay.

Question 9: Do you have any views or suggestions on customers' ability to elect for overpayments to be held as voluntary credits?

Taxpayers currently have the ability to elect for overpayments to be held as voluntary credits: at present, refunds are triggered only if the taxpayer elects for the refund to be issued. This should continue to be the case.

Question 10: What are your views on how voluntary payments might work for partnerships? Do you think partners will see the convenience of direct payment towards their total liabilities as outweighing a loss of a limited amount of confidentiality?

An option may be extended to individuals to indicate, through an election, whether they would wish their tax liability to be passed to the partnership. The election will need to account for individuals who are partners in more than one partnerships. There are however a number of potential difficulties arising from the proposals for interim reporting

ACCA
+44 (0)20 7059 5000
info@accaglobal.com
www.accaglobal.com
The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

for partnerships. Any mechanism which links the individual partner tax affairs to the partnership's accounting would need to be very carefully designed and must remain voluntary.

Question 11: Do you think there are any special considerations that should apply to third party voluntary payments?

We agree that, as discussed in paragraph 3.14 of the consultation document, it is important to allow third parties to make a voluntary payment on behalf of someone else.

However, in our view, it is essential that the existing facility, under the CRS system, allowing repayments to be made at the taxpayer's request to different accounts from the accounts from which the tax payment had been made also be retained, albeit subject if necessary to safeguards and checks such as specific notification to the taxpayer of amounts paid and to whom. Payment to tax agents out of available tax refunds can be a useful way for taxpayers to settle professional fees, and has the advantage for the agent of certainty of cash flow. However, in such situations it is of course important that the taxpayer be specifically alerted, in order to avoid the reported issues with some HVARs of excessive deductions being taken

Question 12: What additional processes or measures would make customers feel more confident about making voluntary payments?

In our view, additional measures to encourage customers to make voluntary payments are likely to have limited impact. Taxpayers who see the benefit of PAYG and are able to do so are already making voluntary payments, for example through the BPP. Those who do not have the capability or inclination to do so are unlikely to adopt voluntary PAYG.

The payment of interest on voluntary credits, at a rate that is comparable to or higher than bank savings interest could have a possible incentivising effect.

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Question 13: Do you have any suggestions for the basis on which earlier repayments could be reasonably claimed?

The main barrier to allowing repayments to be claimed before the end of the relevant period of account is the fact that the existing loss relief regimes, including loss carry back and allowances such as R&D credits, are based on an annual basis (or for corporation tax, the company's accounting period). Over the long term, should quarterly digital updates become the sufficiently widespread, there might be an opportunity for tax reliefs to be moved to a quarterly basis for taxpayers within scope. However, this will require a fundamental rewrite of tax legislation and introduce additional complexity. Given the current economic uncertainty and the legislative impact of Britain's exit from the EU, we would suggest that this should not be considered at the current stage.

Question 14: Please tell us if you think there are any other costs or benefits not covered in the summary of impacts, including any detail you may have.

A number of associated costs are set out below. The costs identified relate only to PAYG – so costs relating to the core Making Tax Digital initiative are excluded.

The costs for businesses are likely to be concentrated around the direct and indirect impact of the potential loss of working capital, including reduced revenues as business opportunities are lost, and increased financing costs as short-term finance is needed to fulfil consequent short-term working capital needs. In addition, additional agent fees may arise as additional agent time is needed to reallocate payments to tax liabilities. We note that this impact should be mitigated in a voluntary system.

The costs for HMRC:

- Staff time in drafting substantial amendments to legislation

- Staff time and financial investment in developing digital software with an ability to allocate voluntary payments to appropriate tax liabilities

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- Staff time and financial investment in developing digital customer interface which discloses the allocation of voluntary payments to liabilities, and allows taxpayers to reallocate payments and request repayments

- Additional staff and financial investment in upgrading the repayment mechanism

- Potential lost tax revenues as a result of reduced business profitability (as discussed in the paragraph above)

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