

Making tax digital: Transforming the tax system through the better use of information

A public consultation issued by HM Revenue and Customs

Comments from ACCA to HMRC
November 2016
Ref: TECH-CDR-1433

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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

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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

The proposals for Making Tax Digital (“MTD”) and the associated £1.3bn investment in HMRC systems changes are the most significant tax project of recent years, and probably the single government project with the widest and deepest short to medium term impact on the population in general. There are three principle aspects to the tax system – the legislation that imposes the charge, the forms and mechanisms that enable assessment and communication of the charge, and finally the payment processes that facilitate collection of the charge – and MTD for business will affect all three.

ACCA has engaged with HM Treasury and HMRC from an early stage on the Making Tax Digital proposals, and we have significant concerns that the transition to quarterly reporting, and potentially payment, of taxes will create difficulties for many sectors, transactions and tax rules.

While this consultation is not directly a part of the MTD programme, and the measures contained in it could be implemented entirely independently of MTD, there will be an inevitable interaction between them. Where specific benefits can accrue from such interaction we have attempted to identify them, and likewise to warn of potential risks which may arise.

Reliable and widespread incorporation of third party information into taxpayers’ digital accounts could significantly reduce the time taken to manage the tax compliance process. However, in many cases it will be agents who are best placed to manage and reconcile the client’s tax affairs, and this is usually why they are appointed. HMRC must ensure that any widespread use of third party data is allied to the development of effective agent access to the new digital framework. Taxpayers and their agents must have access to the same information on HMRC’s systems.

HMRC must also remain sympathetic to the wider economic and regulatory pressures imposed on third party providers of information. They will almost all be commercial organisations facing their own pressures and often paying tax in the UK on whatever

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profits they are able to generate. Care must be taken to ensure that obligations put on them in order to ease one aspect of tax administration do not cause wider difficulties.

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AREAS FOR SPECIFIC COMMENT:

(Note – notwithstanding HMRC’s approach (and in order to avoid confusion), “taxpayer” will be used throughout for the HMRC/taxpayer relationship; “customer” will be used to refer to the relationship between the individual and a commercial service provider, eg bank. “client will be used to refer to the relationship between taxpayer and agent. We have not sought to answer questions directed specifically at third party data providers.)

Question 1: Where events during the year result in a change to a customer’s tax projection, what is the appropriate format and regularity of notification that HMRC should send to employers and customers?

Notification should be as soon as any event which may change the taxpayer’s tax projection is known. HRMC could also set reminders to avoid any instances where the first notification did not reach the taxpayer. The notification should be send via whichever of formats the taxpayer elects for example email, sms, post etc and must be copied to both the taxpayer and any agent acting in respect of the relevant head of tax.

Question 2: Have you any suggestions for how we present third party information in your digital tax account in a way that will make it easier for you to understand your tax?

The information should be presented in a way to be easy to follow by any person who does not necessarily understand how the tax system works. All third party information should be clearly disclosed in the digital tax account with explanations as to what is the impact of this (if any) to the taxpayer’s position, and to clarify where appropriate that the changes may be in respect of an annualised charge to tax and therefore subject to further change throughout the year. This is particularly important especially in the case of taxpayers who experience fluctuations in their salaries resulting in frequent changes between tax bands. The information ideally should be separated per third party information provider to enable the user to assess whether this information is accurate by comparing the information given by the third party provider to the taxpayer (if possible) – see also question 6.



Question 3: If you are concerned over privacy impacts of HMRC's plans for improving how we use third party information we already receive, do you have any suggestions for how these concerns could be resolved?

A well-structured internal control system should be in place with strict monitoring procedures to ensure each and every person (employee or contractor) involved is appropriately qualified and vetted.

HMRC will need to ensure its own compliance with GDPR/NIS as appropriate. However, we would observe that despite some high profile historic data losses, HMRC's own record for data security is generally good. We would also note that a recent NAO report¹ indicating that HMRC was responsible for the majority of reports of potential data loss incidents in central government departments is more indicative of an appropriate risk management culture aimed at maintaining taxpayer data security; unrealistically low levels of reports would suggest a failure to engage with what will inevitably be a potential issue in any such large organisation.

Question 4: If a third party information provider is aware of how the ownership of a joint asset is split, do you think the third party provider should inform HMRC?

Subject to necessary legal authorities, yes. The design of the process will also need mechanisms to cope with Form 17 elections.

Question 5: Information providers will want to keep their customers fully informed about the information they provide to HMRC (and have a responsibility to do so under the Data Protection Act 1998). Do you think there should be a standard approach, or should information providers design the best approach to meet the needs of their particular business and customers?

We believe that information providers should design the best approach to meet the needs of their particular business and customers and where not sure follow a standard

¹ <https://www.nao.org.uk/press-release/protecting-information-across-government/>



approach following guidance provided by the HMRC. The development of a common and well recognised flag, similar in concept to the “Keep it safe” logo printed on tax relevant documents in the wake of the introduction of self-assessment, would be useful.

When designing the approach to follow information providers should consider the upcoming changes in data regulation under the EU General Data Protection Regulation (GDPR) which comes into force on 25 May 2018. This will significantly tighten the regime for those who are handling data within the European Union. Regardless of any development around a UK exit from the EU, it seems inevitable that the UK will need to make available legislation of at least equivalent level if businesses are to be able to operate within the EU single market.

Considering the changed legislative requirements it seems that there would be an increased risk involved for data providers and potential additional liabilities. Any standard approach developed should take into consideration the above highlighted regulatory changes, and HMRC should be sympathetic to the other additional regulatory and commercial pressures faced by data providers at this time, ensuring that any HMRC requirements are compatible with wider obligations.

Question 6: Do you have any preferences for how you would like to be kept informed by third party information providers?

There is a clear benefit to 3rd party providers “copying in” the taxpayer on any submission to HMRC, so it can be checked back. This would obviously result in duplication of information flows, although in a digital environment this would be more easily managed than on paper. It is however essential that in any process design care is taken to ensure that third party information is complete, and that only appropriate information is recorded and transmitted. Areas such as trusts, clubs and joint bank accounts can pose particular issues and should be subject to specific safeguards.

The third party information providers should publicly disclose any instances of data breach (and may in any event be obliged to do so under GDPR/NIS obligations). This would impose a much greater responsibility on the third party information providers as



they will be faced with reputational risk to ensure that the necessary investments in safeguards is made to avoid any data breaches in the first place.

HMRC should also consider the question of storage and retrieval of archive information in a digital environment. It is not uncommon for professional advisers to take a date-stamped paper printout of online information (including HMRC guidance) to guard against the removal or alteration of that information in the future. We are aware of instances where bank customers can face significant administrative or financial hurdles to recovering historic information in relation to on-line accounts, in particular once accounts have been moved or closed. Mechanisms must be developed to ensure that such issues do not generate insuperable problems for taxpayers or their agents.

Question 7: Do you think there are any additional safeguards we should consider in relation to the protection and use of third party information by HMRC?

The decision to go digital means that HMRC would require to safeguard a much larger volume of data than has previously been the case, coming from various different sources. This implies the involvement of a larger number of employees and digital interfaces/channels to deal with this information. HMRC should therefore have the right internal controls in place to ensure the protection of this information, for example the necessary security controls, regular visits of these controls to assess their operating effectiveness and improve them where necessary etc. The use of this information should be restricted to the employees with the right authority to use this information in accordance with HMRC guidance. It is of crucial importance to ensure that the right professionals are dealing with this information and this process is carefully monitored.

Question 8: Do you agree with the principles we have set out for how information queries should be resolved? What are your expectations for how this would work in practice?

We agree with the principles set as to how the queries should be resolved. Ongoing review in practice will be essential. Our Members continue to experience difficulties in



contacting HMRC on a regular basis, and would welcome greater resource, and also the development of safe and secure electronic communications for agents.

Question 9: How can we best align HMRC’s third party information requirements with information providers’ circumstances? For example, with other standards information providers need to meet; other regulatory changes; internal business processes and requirements.

HMRC need to bear in mind that the information providers are already subject to a range of requirements under existing EU regulation. As a member of the EC Expert Group on Exchange of Financial Account Information ACCA is acutely aware of the significant financial costs incurred by information providers in developing their existing processes in order to comply with a constantly changing legislative background. In particular, regulators need to remember that simply because information has been collected in the past, it may not be practicable to retrieve and process that information for a particular purpose in the future unless the specific requirement had been contemplated when the original system was designed. It should be borne in mind that the UK may well be a less attractive retail market for multinational banking service providers in the future as a consequence of other regulatory and economic developments. If HMRC impose design constraints which do not exist anywhere else in Europe, providers will have less incentive to enter/remain in the UK market. Additionally, UK taxpayers may face additional costs by providers of this information.

The information providers will of course need to follow the relevant data protection act legislation and directive where applicable (see more information in question 6) and as noted there are a number of upcoming changes in this area. HMRC must remain alert to the consequences of the interaction of their requirements with the wider regulatory environment.



Question 12: What opportunities do current and potential information providers and software providers see for a stronger partnership with HMRC to enhance our customer experience?

The software providers will definitely have opportunities in the development of interfaced software to enable the information to be transferred for example by the third party providers to the HMRC from their existing systems. It could also be an opportunity to give better solutions to information providers to use for enhanced up to date and HMRC compliant software to replace their existing ones.

It is absolutely vital that HMRC do not develop APIs solely in conjunction with software houses. Agent must be consulted on the required features, and the process must be a three way conversation. There is widespread dissatisfaction in the agent community at the delays HMRC have experienced in developing useable agent tools, and significant concern that internal communication issues mean that agents' requirements frequently fail to be accommodated in HMRC product design and rollout. Software houses will want to develop products which are attractive to agents; proper development of the APIs will put them in a position to do this, while failure at that early stage of system specification runs the risk of preventing them from doing so at all.

Question 13: What new sources of third party information would most enhance the customer experience and best contribute to the aim of ending the tax return for all?

It is not clear whether this is aimed at software houses, who do have customers, or taxpayers, who (if they do not choose to buy software) will not be "customers" in any recognisable sense of the word. For a significant proportion of SA taxpayers for whom just one or two sources of third party information (PAYE and bank interest) are relevant, the wider machinery of MTD will be of no interest.



Question 14: How can we best open up discussions and begin to work with new potential information providers who are not currently providing information to HMRC on a regular basis?

A sympathetic approach from HMRC, recognising that “potential information providers” actually have a role as commercial organisations, and have set themselves up accordingly, will be vital. HMRC should ensure that they minimise the additional burdens that they are going to impose on potential information providers.





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