ICAEW
REPRESENTATION 43/22

OFFICE OF TAX SIMPLIFICATION PROPERTY INCOME REVIEW

Issued 25 May 2022

ICAEW welcomes the opportunity to comment on the call for evidence published by Office of Tax Simplification on 17 March 2022 as part of its property income review, a copy of which is available from this link. This representation supplements the feedback provided at a roundtable on 28 April 2022 and responds to question 17 only, on Making Tax Digital income tax self assessment aspects.

For questions on this response please contact our Tax Faculty at taxfac@icaew.com quoting REP 43/22.

This response of 25 May 2022 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.

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ICAEW
Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK
T +44 (0)20 7920 8100 F +44 (0)20 7920 0547 icaew.com

The Institute of Chartered Accountants in England and Wales (ICAEW) incorporated by Royal Charter (RC000246)
Registered office: Chartered Accountants' Hall Moorgate Place London EC2R 6EA UK

This response is concerned solely with setting out concerns about how Making Tax Digital income tax self assessment will interact with the property income rules – as set out in question 17 of the call for evidence which is reproduced below. Further, we have not included more general comments and concerns on MTD policy nor on the cost to businesses of complying with the requirements. These concerns have been raised directly with the HMRC MTD team and discussions are ongoing.

Question 17: Making Tax Digital for Income Tax starts in April 2024 and mandates quarterly electronic updates for most individuals with turnover of over £10,000 for their property (and business) income. Are you aware of these reporting obligations and have you considered how you might comply with them?

ICAEW has serious specific concerns about how Making Tax Digital for income tax self assessment (MTD ITSA) will operate for income from property.

1. **Awareness**
Awareness of MTD ITSA requirements will present a greater challenge for taxpayers with income from property who do not generally regard themselves as being in business. This will be a particular issue for unrepresented landlords, particularly those who are non-resident, who are likely to need individual communications from HMRC if they are to become aware of the requirements.

2. **Mismatch between number of legal obligations and number of separate submissions**
The MTD regulations refer to a maximum of two legal obligations for property income: one for UK property income and one for overseas property income. The number of legal obligations is relevant for late submission penalty points.

However, the MTD ITSA system is being designed so that up to four datasets (a to d below) may need to be submitted for each quarterly update/end of period statement in relation to property income:

a. UK furnished holiday lets (FHL),
b. UK other property income,
c. EEA FHL and
d. overseas other property income.

Our current understanding is that the submission of a dataset for either UK FHL or other UK property income will satisfy the obligation for UK property income and likewise for overseas property income. The impact of this is that a penalty point would not be charged if FHL data is submitted even if the UK other property income was submitted late (or vice versa).

This mismatch is likely to cause confusion and the design may need to be reconsidered to avoid a mismatch between the number of obligations and submissions.

3. **Self assessment simplifications**
Two simplifications are mentioned in the self assessment SA105 notes.

The first relates to jointly held property and says, *'If you receive notice of your share of the income (or loss) after expenses, put the income in boxes 5 or 20, or the loss in boxes 9 or 29. Tell us the name and address of the person who prepares your property records in the 'Any other information' box on page TR 7 of your tax return.'*

Our understanding is that this simplification is used currently, though perhaps not widely. One effect of using it is to reduce the gross income figure that HMRC will use to determine whether or not the £10,000 threshold for needing to comply with MTD ITSA is met.

The second simplification allows a single figure for expenses other than residential property financial costs saying, ‘*If your total property income (including FHL income) before expenses is below £85,000, you can just add up your (FHL expenses and put the total in box 9)/(expenses and put the total (minus any FHL expenses) in box 29).*

Our understanding is that this simplification is little used. Whether it should be retained is part of a wider ongoing policy discussion on ‘three-line accounts’. The regulations currently require all transactions to be categorised; the draft notices from 2017 allow for simplified ‘three-line accounts’ reporting. ICAEW supports the retention of this simplification. We suggest that the requirements for digital record to be categorised be aligned with the detail required in quarterly updates.

4. Interaction with other HMRC processes

It is not yet clear how the requirements of the non-resident landlord scheme will interact with MTD ITSA.

5. Eligibility

A national insurance number is currently a requirement to join the MTD ITSA pilot. ICAEW understands that HMRC hopes to develop a solution to allow those without national insurance numbers to join MTD ITSA by 2024. If not, those without national insurance numbers will need to be exempted. This needs to be resolved at an early stage and before any individual communications to taxpayers that are expected to need to comply with MTD ITSA. The affected taxpayers will be exclusively those with income from property (and not from self-employment) as it is not possible to register a self-employment without a national insurance number.

6. Jointly held property

Each individual is required to comply with MTD ITSA requirements for their income from property. This includes their share of income from any jointly held properties. There is no form of joint reporting by property or portfolio of properties.

This will create very significant practical problems for taxpayers who have different property holdings (perhaps with a mix of FHL and non-FHL, UK and overseas) with different groups of joint owners. They may also have income from a solely owned property. These different income streams will need to be combined in one software product (per obligation) before being submitted to HMRC. We are not aware of software solutions that are designed to maintain records for a jointly held property and allow that income to be split and reported by different taxpayers although software developers are now aware of the issue.

In some cases, the record keeping for different properties may be done by different people and using different software products and the taxpayer may have great difficulty obtaining the information in time to submit the quarterly update and in complying with the requirement to have digital links from the transaction records through to submission. There is no software solution for this scenario other than the use of a suite of software and spreadsheets.

The additional administrative burden will be greatest for those who habitually receive information on jointly held properties only once a year and perhaps use the simplification mentioned in paragraph 3. We suggest that HMRC discusses with representatives of interested parties how this might be overcome.

7. **Definition of ‘transaction’**

The MTD regulations state that “digital records” for a business means a record of each of the transactions made in the course of the business. It is not yet clear what HMRC expects ‘each of the transactions’ to mean in practice. In relation to property this is particularly relevant for letting agent/property manager statements. It is not clear whether it will be sufficient to record summary information from such a statement in the digital records or what level of detail will need to be recorded.

8. Other practical issues

Other practical issues raised by members include:

a. Situations where it is not clear at the start of the year whether or not a property will qualify as a furnished holiday let. We presume that it will be acceptable to make a reasonable assumption, submit on that basis and amend later if the actual outcome is different. However, this may prove to be burdensome as it may require some quarterly updates to be resubmitted.

b. Other situations will also require assumptions to be made which may change at a later stage eg, whether rent a room relief or actual expenses will be claimed and whether overseas property income will be taxed on an arising or remittance basis. (ICAEW welcomes the exemption from MTD for remittance basis taxpayers in respect of their overseas income which addresses this issue in part).

c. It will need to be possible for taxpayers to appoint multiple agents for income tax. This will be necessary to allow one agent (say a bookkeeper) to submit quarterly updates and another to submit the EOPS end of period statement and finalisation. In some cases, it may be necessary to allow different agents to deal with income from property and income from self-employment.