

EXPLANATORY MEMORANDUM TO
THE INCOME TAX (DIGITAL REQUIREMENTS) REGULATIONS 2021
2021 No. 1076

1. Introduction

1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument provides for persons with profits from a trade, profession or vocation, or profits from a property business, which are chargeable to income tax and exceed £10,000 to follow the rules for Making Tax Digital (MTD) for Income Tax from 6 April 2024.

2.2 MTD for Income Tax requires a business or landlord to keep and preserve their tax records electronically and to submit reports to HMRC using approved software. A report of the business's trading or property income, allowable expenditure and claims for allowances or reliefs against such income must be submitted in relation to each tax year (property businesses) or basis period (trading businesses), and interim reports must be submitted quarterly on fixed dates.

2.3 There are exemptions for those unable to use electronic systems for practical or religious reasons, but some exempted businesses and landlords may choose to use approved software and comply with the regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

6.1 Section 60(1) to (3) of the Finance (No. 2) Act 2017 inserts section 12C and Schedule A1 into the Taxes Management Act 1970 (TMA 1970). Schedule A1 provides the statutory framework and power to make these Regulations. Section 61 of, and Schedule 14 to, the Finance (No. 2) Act 2017 also makes consequential amendments to TMA 1970 and to other acts to allow for the new reporting regime. Appointed day regulations in relation to these provisions were made under sections 60(4) and 61(6) of Finance (No. 2) Act 2017 by the Treasury on 23 September 2021 and they come into force on the same date as these Regulations.

- 6.2 These Regulations are made under powers in Schedule A1 to TMA 1970, which is not yet in force. In making these Regulations, HMRC relies on section 13 of the Interpretation Act 1978, which provides that those powers may be exercised at any time after the passing of Schedule A1, so far as may be necessary or expedient for the purpose of giving full effect to Schedule A1 when it comes into force.

7. Policy background

What is being done and why?

- 7.1 The government recognises that businesses want to get their tax right, but many businesses find this hard to do. For example, based on most recent data, the difference (between total taxes owed to the government and taxes paid on time, also called the tax gap) is estimated at £35 billion of which around £10.4 billion is due to error and failure to take reasonable care.
- 7.2 MTD aims to help reduce the tax gap and bring the tax system into line with what income tax Self Assessment businesses and landlords expect from other online service providers: a modern digital experience. MTD was successfully introduced for over one million VAT businesses in April 2019, will be extended to all VAT businesses from 1 April 2022 and is now being extended to income tax Self Assessment businesses and landlords.
- 7.3 The government announced on 21 July 2020 that trading and property businesses within income tax Self Assessment with gross income of more than £10,000 will be required to follow the rules for MTD. Businesses with turnover £10,000 or less will not be required to use the system but can choose to do so.
- 7.4 MTD will require businesses to keep and preserve digital records and use approved software, which by definition is capable of recording information, sending information to and receiving it from HMRC. To complete an income tax Self Assessment return, income tax Self Assessment businesses and landlords will use information stored in their digital (electronic) records. This information will then be sent directly to HMRC.
- 7.5 It is anticipated that this will make it easier for income tax Self Assessment businesses and landlords to get their tax right the first time, reducing the risk of errors and the worry that businesses face when HMRC intervenes to put things right. Businesses and landlords will not need to adjust their reporting dates or be required to provide any more tax information than they do already.
- 7.6 HMRC is not supplying income tax Self Assessment businesses and landlords with software but is working closely with the software developer industry to help them bring a wide range of functional compatible software to the market including free software products.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 There are no plans to consolidate this legislation.

10. Consultation outcome

- 10.1 In August 2016 the government published six consultation documents. The consultation relevant to this legislation was called 'Bringing business tax into the digital age'. HMRC received 618 written responses from individuals (including businesses) (153), accountants (264), representative bodies (40) and others (161). The consultation response was published on 31 January 2017.
- 10.2 Most respondents supported the direction of travel of the MTD proposals but many raised concerns about the timetable, adjusting to digital change, administrative burdens, data security, and agents' accessing digital services to support their clients. The government responded to those concerns by announcing that MTD for Income Tax would not come into effect until 6 April 2023 to give businesses more time to prepare. The government has now decided that the rules should come into effect from 6 April 2024.
- 10.3 In September 2017, a draft of this instrument was published for technical consultation. HMRC received 12 responses from accountancy bodies and firms and other professional organisations, as a result of which some changes to the instrument have been made. Since then, HMRC has consulted informally on these Regulations with a number of representative bodies.

11. Guidance

- 11.1 Additional guidance, including notices, which will provide information that supports the changes legislated for in this instrument, will be published on GOV.UK in due course prior to 6 April 2024.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies is limited. MTD for Income Tax applies to the approximately 4.2 million businesses and landlords with trading or property income of more than £10,000, and the impact on them will vary. Businesses within scope already operating MTD for VAT or using digital tools for business administration may incur relatively little cost in moving to MTD, where other, less digitally capable businesses, may be more affected by one-off transitional costs as they move to MTD processes.
- 12.2 There is no significant impact on the public sector.
- 12.3 A Tax Information and Impact Note covering this instrument will be published on the website at <https://www.gov.uk/government/collections/tax-information-and-impact-notes-tiins>.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on the smallest businesses, the approach taken is to exempt those businesses with an annual turnover of £10,000 or less and ensure that free software products are available.
- 13.3 The basis for the final decision on what action to take to assist small businesses is to balance the benefits MTD will offer businesses against unduly burdening those with very low gross annual income, many of whom do not consider themselves to be carrying on a business. For the majority of small businesses, MTD will improve the

quality of record keeping, reducing the likelihood of mistakes (and attendant risk of unwelcome and costly HMRC compliance interventions) and help businesses to manage their cash flow more effectively. HMRC has engaged extensively with all sectors affected by the changes and will ensure there is software and support in place that meets their needs and is testing the processes extensively.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is that HMRC will monitor the impact of the changes introduced by this instrument periodically using information collected from its internal systems and processes, as well as regular engagement with affected stakeholder groups.
- 14.2 The regulation does not include a statutory review clause because the legislation relates to taxes, duties, levies or other charges and falls within the exemption in section 28(3)(a) of the Small Business, Enterprise and Employment Act 2015.

15. Contact

- 15.1 Jim Rogers at HMRC Telephone: 03000 588833 or email: jim.a.rogers@hmrc.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Nick Atkinson, Deputy Director for Making Tax Digital policy, at HMRC can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Lucy Frazer QC MP, Financial Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.