

# JTC NEWSLINE

Issue 123

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## Making Tax Digital: index & timeline

Confused by HMRC's Making Tax Digital (MTD)? What does Making Tax Digital really mean? How will it affect you? Does MTD mean quarterly reporting? Is my business exempted from Making Tax Digital?

### **January 2019**

- It is currently proposed that VAT registered businesses trading above the VAT threshold are mandated into filing VAT returns by using functional compatible software from April 2019.

- The Making VAT Digital (MVD) pilot continues to roll out. Get your firm into the pilot as soon as you have compliant software.

- Plans for Making Tax Digital for self-assessment are currently on hold.

### **Exemptions from MVD have been announced and may apply where:**

- You are a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications.

- An insolvency procedure has commenced in relation to your business.

- It not possible for you to make a return using a

compatible software return system for reasons of age, disability, remoteness of location, or any other reason.

You can apply for exemption using the VAT helpline on **0300 200 3700** or write to **HM Revenue and Customs VAT Written Enquiries Team Portcullis House 21 India Street Glasgow, G2 4PZ.**

HMRC have advised that wherever possible the taxpayer should make the call rather than their agent. In my opinion very few people will be allowed off the hook but if you want to try, read the HMRC exclusion guidance first.

### **Joining MVD**

MVD is an opt-in system:

- Taxpayers who have joined one of the MVD pilots have already opted in to MVD.

- All other taxpayers, whether mandated or voluntary must opt in to MVD.

- Simply using compatible software to submit returns is not sufficient if you have not actively opted in.

- Either the taxpayer or your agent (via the Agent Scheme) can sign the taxpayer up to MVD.

- Taxpayers should wait 6 days after their final non MVD return has been filed to sign up but this should be no later than 48 hours before their first MVD return is due, or 15 days before if paying by direct debit.

### **Non-compliant software and the use of bridging software with spreadsheets**

HMRC have confirmed that the use of bridging software with spreadsheets is not prevented after the end of the soft-landing period in April/October 2020. As long as the correct digital links are in place a bridging system may be used indefinitely.

### **Penalties**

In November 2018 proposals to introduce a new late interest and late payment points based penalties system for MVD were postponed. They were omitted from Finance Bill 2019. It is now anticipated that the new system will be postponed until 2021. The present penalties system can be harsh so make sure your VAT returns are in on time and that if you cannot pay on time, you contact HMRC **before** the due date for payment to arrange time to pay. ■

## The disguised remuneration loan charge

Has your business ever paid your remuneration via a loan? Has your accountant ever suggested that this is a way of reducing tax?

HMRC have introduced new legislation to stop these schemes and are settling with those who have used them. They have released more facts and figures about those taxpayers who will be affected by the disguised remuneration (DR) loan charge, including a pictorial factsheet which makes interesting reading.

The information now released reveals that:

- Scheme users' income was double that of the average taxpayer's.
- 70% of those who were in DR schemes used them for 2 years or more.
- The average user avoided at least £20,000 a year in tax and national insurance.

HMRC have again reiterated the point that they have never approved tax avoidance schemes, and have always said that they do not work.

There is still time for scheme users to reach a settlement with HMRC with flexible payment options available for those who cannot pay in full upfront. If you think you might have been involved contact

your accountants.

HMRC say that where a settlement has not been reached on a disguised remuneration loan scheme by 5 April 2019, they will still give consideration to reach an agreement under the existing terms.

On 6 April 2019 a loan charge applies to all disguised remuneration loans outstanding on 5 April 2019, unless a settlement agreement has been reached before that date.

The original deadline for registering for settlement was 31 May 2018. However HMRC have continued to allow taxpayers to register.

HMRC now say that they will consider whether or not to extend settlement under the existing terms beyond 5 April.

● Each case will be considered individually, and, when deciding whether to allow the taxpayer to settle post 5 April, HMRC will look at whether the taxpayer has met all of HMRC's deadlines and if they have responded promptly to queries and correspondence.

● If a taxpayer has not been able to settle by 5 April solely due error or delay by HMRC, HMRC will ensure that the taxpayer is not disadvantaged as a result. ■

## Decision to provide security for PAYE

In *UBI Ltd v HMRC [2018] TC06771*, the First-tier Tax Tribunal (FTT) agreed that a company with a poor compliance record was reasonably required to provide HMRC with security for PAYE liabilities. It had failed to keep to a Time To Pay (TTP) arrangement.

- For tax years from 2013/14, the company failed to pay the full amount of PAYE it declared.
- In September 2016, the company agreed a TTP arrangement with HMRC but failed to keep it.
- In December 2016 HMRC warned the company that if it did not pay the PAYE due, it would require security.
- The company did not pay nor agree a further TTP. HMRC required the company to provide more than £110,000 in security for PAYE liabilities.

### Comment

It is quite unusual for HMRC to require security from an existing business but if a company fail to pay their PAYE enough times it is a measure in their arsenal. ■

**If you have a query on any item in JTC newslines contact**

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## Clubhouse similar to village hall fails to obtain zero rating

In *HMRC v Greenisland Football Club (GFC) [2018] UKUT 0440*, the Upper Tribunal (UT) overturned the First-tier Tax Tribunal (FTT) decision to allow a club to zero rate construction of a clubhouse, however, it agreed that no penalties were due.

- GFC are a registered charity and community based sports club who leased land from a council.
- They built a new clubhouse and issued a certificate to the builder confirming that the building was intended for use 'solely for a relevant charitable purpose'.
- On the basis of this certificate, the builder zero rated the construction supplies.
- HMRC decided that the construction works should have been standard rated and GFC's certificate was issued incorrectly. It assessed GFC for a penalty of £53,101,
- GFC appealed to the FTT.

The taxpayers won at the FTT but HMRC appealed to the Upper Tribunal (UT). The UT found that:

- The football club built a new club house whose facilities were extensively used by some local community groups including many unrelated to sport. The

club maintained that it was not running a business as their use was no more than 20% of the facilities, and the club had no booking priority over other users. The UT decided that this was still sufficient to establish an economic activity and it exceeded the "modest incidental use" for the club house to qualify for zero rating as a village hall or similar.

- It also found that use of the facilities for a subscription is not compatible with a charity. Economic activity extends beyond commercial and profit-making bodies.

On these two grounds, the Upper Tribunal upheld HMRC's appeal against the FTT decision. The taxpayer was not entitled to a zero rated building.

In respect of penalties, VAT Notice 708 says that an entity about to engage in a high-cost commitment should seek professional advice. HMRC said that the club should have asked HMRC directly, but that is not what the notice says. The club did obtain professional advice and followed it.

The UT agreed that the club had a reasonable excuse and vacated the penalty. My purpose in including this is to act as a warning that you must be **very** careful when contemplating zero rated work on village halls or clubhouses. ■

## 2019 Spring Statement date

The Chancellor has announced the date of his Spring Statement, 13 March 2019. This is not an additional budget (Budget 2019 is scheduled for the Autumn). We might expect further announcements on key measures such as Making VAT Digital and perhaps hear more on certain outstanding consultations, such as employment status.

This means that, in the event that the UK does leave the EU as currently scheduled on 29 March, the Spring Statement will be held two weeks before Brexit happens. ■

## Just for a laugh

On 6 September 2018, a government department stated that in the last 12 months it had acquired three jockey helmets, a drum kit, half a sofa, torso mannequins, a set of golf clubs, a bathroom toilet with seat, and a copy of Louis Wain's Book of Illustrated Cats from the 1920s.

**Q.** In respect of what tax offence were these items acquired?

**A.** Not paying vehicle excise duty. They were found in seized cars. ■

## **Entrepreneurs' relief: change to new definition of personal company**

Proposed changes to the definition of a personal company for entrepreneurs' relief have been amended as Finance Bill 2019 goes through parliament, to offer an alternative, less stringent test.

At Budget 2018 it was proposed that, for disposals on or after 29 October 2018, for a company to be an individual's personal company for entrepreneurs' relief purposes, the claimant must, throughout the relevant period, have at least:

- a 5% interest in the

distributable profits of the company **and**

- a 5% interest in the assets available for distribution to equity holders in a winding up.

The proposed finance bill amendment provides that either the above two new conditions must be met, or the claimant must instead have:

- an entitlement to at least 5% of the sales proceeds on the disposal of the ordinary share capital of the company.

The government has said that the changes to the personal company definition are intended to ensure that taxpayers disposing of shares have a minimum economic

stake in the company. The proposed amendment is to allow claimants to use their entitlement to the sales proceeds of the company as evidence of this stake where they cannot show an entitlement to the profits and assets of the company. ■

**Next month**.....more on the development of Reverse Charge VAT. Specimen letters to subcontractors, what your new invoices should look like and other excitement..... ■