Clause 1: Digital reporting and record-keeping for business: income tax

Summary

1. This clause and schedule introduce new digital record-keeping and reporting requirements for businesses within the charge to income tax. The new rules have effect from 6 April 2018.

Details of the clause

2. Subsection 1 amends the Taxes Management Act 1970 (TMA 1970).

3. Subsection 2 inserts section 12C of TMA 1970.

4. Subsection 3 inserts Schedule A1 to TMA 1970.

Details of the Schedule: Schedule A1: Digital reporting and record-keeping: Businesses with profits chargeable to income tax

Part 1: Application

Application: persons

5. Paragraph 1 sets out the persons to whom the Schedule will apply, subject to exclusions in paragraph 2. They are, persons within the charge to income tax who are carrying on (or have carried on in a relevant tax year) trades, professions, vocations and property businesses which have profits chargeable to income tax under Parts 2 or 3 of the Income Tax (Trading and Other Income) Act (ITTOIA) 2005. The Schedule will also apply to a person carrying on or who has previously carried on any other activity which may give rise to profits or other income chargeable to income tax under Parts 2 or 3 of ITTOIA.

6. Paragraph 2 excludes specific persons and activities from the new requirements. It also provides for excluded persons to elect into the requirements of the Schedule. Those excluded are trustees of charitable trusts and exempt unauthorised unit trusts, Lloyd's underwriting businesses, persons with income from real estate investment trusts, and persons with property income distributions from open ended investment

companies. The exclusion only applies when the person is acting in that capacity, and the Schedule may apply to the person in respect of other activities.

7. Paragraph 2(4) provides that HMRC may make regulations about elections and withdrawal of elections by excluded persons.

Application: partnerships

8. Paragraph 3(1) describes which partnerships will be in scope for the obligations created by this Schedule, subject to exclusions in paragraph 4. The partnerships in scope are those where one or more of the partners is within the charge to income tax.

9. Paragraph 4(1) sets out that where all the activities of a partnership that may give rise to profits are excluded activities then the partnership is excluded from the requirements of this Schedule. It also provides for excluded partnerships to elect into the requirements of the Schedule.

10. Paragraph 4(2) gives similar exemption as in paragraph 2, where the activity of the partnership is a Lloyd's underwriting business, holding shares in real estate investment trusts, or participating in open ended investment companies.

11. Paragraph 4(3) provides a similar power to paragraph 2(4) allowing HMRC to make regulations about elections and withdrawal of elections by excluded partnerships.

12. Paragraph 5 provides that obligations on partnerships under this Schedule are to be met by a nominated partner, makes provision about the definition of a nominated partner, and details the circumstances in which HMRC may nominate a partner. It also provides a power to make regulations about nominations.

Part 2: Digital reporting and record keeping

Interpretation

13. Paragraph 6 defines the term "business" for the purposes of part 2 of this Schedule.

Periodic updates

14. Paragraph 7 gives HMRC authority to make regulations: requiring persons or partnerships within the Schedule to submit specified information to HMRC electronically; specifying the information to be provided; and specifying the reporting periods for which it must be provided. This paragraph is subject to the restriction that financial information in relation to each business may not be required more often than once every three months.

End of period statement

15. Paragraph 8 gives HMRC authority to make regulations requiring persons within the Schedule to submit specified information to HMRC, in relation to each relevant period.

16. Paragraph 8(2) defines “relevant period”. This is either a period of account in the case of a person with income from a trade, profession or vocation; or the tax year.

17. Paragraph 8(3) states that the information which may be specified in regulation is information relevant to the calculation of profits, losses, or income of the business.

18. Paragraph 8(4) gives HMRC authority to make regulations which will allow persons voluntarily to include other specified information (unrelated to a trade, profession, vocation or property business) in the end of period statement where that is relevant to establishing amounts of income tax chargeable and payable.

19. Paragraph 8(5) defines chargeable and payable amounts of tax for the purposes of paragraph 8(4).

20. Paragraph 8(6) gives HMRC authority to make regulations to require that the end of period statement is provided before the end of a specified period and that it must include a declaration that the information is correct and complete.

21. Paragraph 9 gives HMRC authority to make regulations that require partnerships within the Schedule to submit specified information to HMRC in relation to each tax year.

22. Paragraph 9(2) states the information which HMRC may specify includes information about any person who has been a partner during the tax year or in any period of account ending in the tax year.

23. Paragraph 9(3) and (4) mirrors paragraph 8(5) but additionally states that the information which HMRC may specify includes information relating to the disposal of any partnership property during the tax year.

24. Paragraph 9(5) mirrors paragraph 8(6) above, providing that regulations under this paragraph may require the end of period submission from a partnership to be provided within a specified period and include a declaration that the information is correct and complete.

Record keeping

25. Paragraph 10 gives HMRC authority to make regulations specifying the electronic records a business within the Schedule must maintain. The requirement is to both keep and preserve the relevant records; HMRC may specify what must be kept, the form it should take, and how long it should be kept for.

26. Paragraph 10(2) clarifies that the records that HMRC may require to be kept are those

relevant to periodic updates and the end of period statement.

27. Paragraph 10(3) clarifies that the requirements under this Schedule will not replace existing record-keeping obligations, and are in addition to those requirements.

Electronic communications and records; supplementary powers

28. Paragraph 11 sets out the scope of HMRC's regulation-making powers in relation to electronic communications and records that may be required to meet the requirements of this Schedule, including what constitutes electronic communications and records.

Part 3: Exemptions

29. Paragraph 12 requires HMRC to make regulations to exempt from the requirements of this Schedule those who are digitally excluded and defines who can be exempted on that basis.

30. Paragraph 12(3) clarifies that a partnership can be exempted as digitally excluded only where one of the exemption conditions applies to each of the partners.

31. Paragraph 13 allows HMRC to make regulations to provide for further exemptions.

Part 4: Supplementary provision

32. Paragraph 14 makes further provision about the regulations which may be made under the Schedule, and clarifies that these may make different provision for different persons.

33. Paragraph 14(2) provides that HMRC's regulation-making power allows for matters to be specified in public notice.

34. Paragraph 14(3) clarifies those things which cannot be specified in a public notice and instead must be specified in regulations.

35. Paragraph 14(4) provides that regulations may only impose requirements in respect of relevant periods starting on or after 6 April 2018.

36. Paragraph 14(5) and (6) explain that the regulation-making power is subject to negative procedure for statutory instruments.

Background note

37. This clause and Schedule are part of the process of making business taxes digital announced at Autumn Statement 2015. They require businesses, the self-employed, landlords, and partnerships that have partners who pay income tax on their share of the profits to use digital record keeping tools. They also require regular updates of business profits, every 3 months (or more frequently if the business so chooses), to be sent electronically. Whilst the basis of the tax system for an individual will continue to be linked to the tax year, businesses will be required to finalise the tax profit or loss for each relevant period (broadly, the period ending in the date they draw up accounts) and provide this electronically.

38. Making Tax Digital (MTD) will see the introduction of simple, secure and personalised digital tax accounting for businesses and individuals. It will replace existing complex, costly and time consuming tax processes and lead to the abolition of the annual tax return. This clause and Schedule give effect to the first stage of this, by requiring persons carrying on a trade, profession, vocation, or a property business, and partnerships to keep digital records and provide regular digital updates to HMRC.

39. There are some who genuinely cannot use digital reporting, due to individual circumstances such as disability, religion or geographical location. They are exempted from these obligation and alternative requirements will be provided.

40. The aims of MTD are to bring the tax system in line with what businesses and individuals now expect from other services provided: a modern digital experience. It will help businesses to get their tax right by reducing the likelihood of errors and giving greater certainty.

41. The Schedule provides for regulations to give effect to the Schedule.

42. If you have any questions or comments on this please contact Ben Stern at ben.stern@hmrc.gsi.gov.uk or Jeff Worrell on jeff.worrell@hmrc.gsi.gov.uk.