



UPDATE ON MAKING TAX DIGITAL FROM ANDREW JACKSON, CHAIR OF UK200GROUP TAX PANEL – Issue 6

Measuring Tax Directly

There is an area of MTD which I find rather troubling: the way that it re-writes the relationship between taxpayers and HMRC.

A long time ago, the provision of information to HMRC was simple - if, to modern eyes, a little quirky. You sent in your return, HMRC issued an assessment showing a certain amount of tax, you appealed the assessment on the grounds that it wasn't in accordance with the information supplied, then you looked to see what the assessment actually said... and the stately dance proceeded on its inevitable course.

Many years ago the rules were modernised. Under Self-Assessment you send in your return with your own assessment of the tax due and HMRC believe every word you say - unless they decide not to, in which case they open an enquiry and ask you to send in further information to support your figures.

A few years ago HMRC started checking the amounts in returns against third-party information. Many enquiries I see these days run along the lines of "*Your return says you've received bank interest of £2.60. According to figures we have, you've actually received £23,729.43. Would you care to comment on the difference?*"

This seems to lead to a whole variety of responses from taxpayers: some coughing in embarrassment; some pointing out that although they have signing authority for a charity's bank account it isn't strictly their money; and one enthusiastically thanking HMRC for pointing out an account they thought they'd closed years ago but which still had several thousand pounds in.

Fascinating though the explanations are, it would be much nicer if this sort of thing could be sorted out before the tax return is submitted, rather than a year or two afterwards. I am therefore rather keen on the way that MTD means HMRC will be sharing this information with taxpayers in real time, allowing details to be updated and figures to be checked before they have any tax impact.

My enthusiasm is however tempered by the way that HMRC are looking at this information.

According to the consultation on "*Transforming the tax system through the better use of information*", when third parties tell HMRC of the income you have received the information will immediately feed through to your Digital Tax Account, where it pre-populates your tax return and you can check that the amounts are correct. If the information is wrong, you can correct it very simply by contacting the relevant third party and asking them to tell HMRC the correct number.

And this is where it all falls down. You have no power at all to compel the third party to do anything.

I see two major problems: one of practice and one of law.

In practice, you cannot yourself correct a figure which shows up on HMRC's website. You have to:

- know who to contact at the third party provider;
- understand the issues well enough to convince them that they've done something wrong;
- persuade them to correct the error; and
- do all this between the day you notice the error and the filing deadline.

In many cases this may be relatively easy - you would hope that major banks, for example, would have extremely helpful customer service teams set up to deal with this. But what about a small employer which has ceased to trade, or where the employee left under fraught circumstances?

In practice this may simply not work, and even where it does it seems a terribly laborious way to proceed - apart from anything else, it will almost certainly be the taxpayer who has to do the legwork.

From a legal standpoint, what we have is third-party information taking priority over the taxpayer's figures – a reversal of the current position. This is explicitly set out by HMRC in their response to the information powers consultation, where they say "*Part of Making Tax Digital is a move away from Self-Assessment principles*". Not only are you unable to self-assess your tax, you can't even appeal the assessment on the grounds that it's not in accordance with information supplied: the information quite clearly *has* been supplied, just not by you.

Now I would hope that in practice you would be able to convince HMRC to accept the correct figures, even if the employer you are suing for unfair dismissal refuses to amend your over-stated P11D. But what do you do if they just point at the computer and sit tight? Go to Tribunal?

It's a major shift in the balance of power, and seems to have been barely addressed among all the other discussions of MTD. It also leads to a third, and perhaps more troubling, issue: HMRC are in effect saying that they don't trust taxpayers to provide correct information.

So, what can we do? It's hard to say, other than keeping a close eye on DTAs. Ideally, you'd be able to check the underlying numbers early on, giving you plenty of time to get them corrected before the filing deadline. But is that going to be feasible in practice?

Hopefully we can get HMRC to be a bit more pragmatic here. Using third-party data as a cross-check is one thing; using it as the primary source is quite another.

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For more information on the UK200Group and our Campaign for Clarity on MTD, click [here](#) or visit www.uk200group.co.uk For Further information contact: admin@uk200group.co.uk