Making Tax Digital for Corporation Tax

Response from the Scottish Charity Regulator

Name	Steve Kent
On behalf of	Office of the Scottish Charity Regulator
Address	Quadrant House, 9 Riverside Drive, Dundee DD1 4NY
	We agree to our response and the name of the organisation being made public
Contact	Steve Kent, Policy Manager steve.kent@oscr.org.uk
	We agree to being contacted in future for consultation or research purposes

Background

1. The Scottish Charity Regulator (OSCR) is the independent registrar and regulator of Scotland's 25,000+ charities. It is established as a body corporate by section 1 of the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act). It is a Non-Ministerial Office of the Scottish Administration and reports to the Scottish Parliament.

2. OSCR maintains the Scottish Charity Register (the Register). All charities registered in Scotland are required to keep accounting records and to prepare annual statements of account in compliance with the 2005 Act and the Charities Accounts (Scotland) Regulations 2006 (as amended) (the 2006 Regulations).

3. Accounting records must be sufficient to disclose at any time the financial position of the charity and to enable the charity trustees to prepare a statement of account that complies with the 2006 Regulations. In particular, the records must contain entries showing from day to day all sums of money received and expended by the charity, and the matters in respect of which each receipt or expense takes place.

4. The form of the annual accounts of a charity depends upon its size (in terms of its gross income), its legal form and any provision in its constitution. The majority of charities are eligible to prepare Receipts and Payments accounts. Larger charities, and all charitable companies, are required to prepare fully accrued accounts in accordance with the Charities Statement of Recommended Practice (SORP).

5. A charity must file accounts with OSCR within 9 months of the end of its financial year and must provide any member of the public with a copy in response to a reasonable request. The accounts, including the required narrative report, are intended to assist public understanding of what a charity is set up to do, how it uses its resources and what it has achieved in terms of the public benefit it provides. The accounts are therefore an essential means of promoting public trust and confidence in charities.

Response to consultation

6. OSCR welcomes the opportunity to respond to the HMRC consultation. However, we have confined our response to Question 19 in the consultation document, concerning whether charities should be within the scope of Making Tax Digital (MTD) for Corporation Tax (CT) where they have income within the charge to CT and are

required to complete a Company Tax Return. It is our view that they should not, for the reasons set out below.

7. Of the 25,200 charities entered in the Register (1 March 2021) more than half (51%) have an annual income of less than £25,000 and considerably more than one-third (37%) have an annual income of less than £10,000. The majority of Scottish charities are therefore very small. In many cases their accounting records are kept manually and without the use of digital software. Where Receipts and Payments accounts are prepared they may not receive professional accountancy support as the form and content requirements were designed to be easy for charity trustees to understand and comply with. They may also be reliant purely on volunteers and not have paid staff. We are concerned about the burden of compliance with MTD these charities would face.

8. We note that charitable trusts have been excluded from MTD for Income Tax. If charities are not excluded from MTD for CT then this leads to an inconsistent position where the compliance is dependent on the legal form of the charity.

9. Although charities are within the charge to CT, in the great majority of cases they are exempted by the tax reliefs available to them on condition of the application of their funds for charitable purposes. Most charities never incur a liability for CT while a small number may do so on an occasional basis. In our view, it would be disproportionate to bring charities within the scope of MTD for CT when there is rarely any tax revenue to be generated.

10. The consultation points out that charities registered for VAT are within the scope of MTD for VAT. The VAT rules for charities are, in the main, the same as those for other organisations and it is right that for those VAT registered charities there should be a consistency of treatment between them and other VAT registered businesses. In the majority of cases there will be a VAT revenue generated from the registered charity. We note the view that those charities have not experienced more difficulty in managing MTD for VAT than comparable businesses. However, the very fact that those charities have reached the threshold of taxable turnover that requires VAT registration means that they are larger entities more likely to use digital software or to engage professional accountancy services. In our view this is not a reliable indicator that smaller charities would not experience difficulty in managing MTD for CT.

11. We recognise that there may be a case for bringing the trading subsidiaries of charities within the scope of MTD for CT, although it is unclear to us how much tax revenue would be generated from doing so. Most subsidiaries are not registered charities and many have been established precisely because they carry on activities that are not directly in furtherance of charitable purposes. However, subsidiaries are typically created to generate income streams for charities through non-primary purpose trading and their profits, if any, are covenanted to the parent charity, avoiding a liability for CT.

12. OSCR fully recognises the benefits of charities improving their digital capacity and in recent years we have promoted a number of initiatives aimed at helping charities to make the digital transformation, especially in response to the challenges arising from the Covid-19 pandemic. Nearly all charities now engage with us virtually, including filing accounts and returns online. But we are not persuaded that exclusion of charities from MTD for CT will place them at a disadvantage if software developers do not develop products that meet their needs. This appears to us a circular

argument because charities will have no need of such products if they are outwith the scope of MTD for CT.

13. In conclusion, we do not consider it appropriate to bring the charitable sector as a whole within the scope of MTD for CT because it will not be relevant to the great majority of charities and it risks placing a disproportionate burden of compliance upon small organisations from which there is little prospect of raising tax revenue. The MTD scheme is intended to make it easier for individuals and businesses to get their tax right and to keep on top of their tax affairs. But in the case of the overwhelming majority of charities there would be no tax liability to get right.

Contact

OSCR has welcomed the opportunity to contribute to this consultation and we will follow with interest the findings and conclusions drawn from it. Should you wish to discuss any aspect of our response please contact:

Steve Kent, Policy Manager
steve.kent@oscr.org.uk