Making Tax Digital interest harmonisation and sanctions for late payment: CIOT, ATT and LITRG responses to consultation

General Features **Management of taxes**

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The CIOT, ATT and LITRG have responded to the HMRC consultation on Making Tax Digital: interest harmonisation and sanctions for late payment.

The government is in the process of reforming tax administration penalties as part of wider work to simplify and harmonise tax administration processes across taxes. HMRC have indicated that their aim is to design penalty regimes that are fair; effective in supporting good compliance; and simple to understand and operate. The consultation followed two previous ones on this topic, both published in 2017 – on tax administration and sanctions for late submission.

The consultation sought views on two aspects:

- Late payment interest and repayment interest – the consultation included proposals to align interest paid to and by HMRC for VAT with the rules for income tax self-assessment and corporation tax;
- Late payment penalties – the consultation also included proposals for a new penalty model in respect of late payments of tax, with the aim of creating a harmonised regime across the taxes. The proposed penalty involves a hybrid model, whereby one element is charged at a percentage of the tax due, and another element is charged by way of an interest-type calculation.

In its response the CIOT said it agrees with HMRC’s broad principles for a good penalty regime and with HMRC’s proposal that there should be a common set of rules for late payment interest and repayment interest to apply across income tax

self-assessment, corporation tax and VAT. In the CIOT's view, this will make the system simpler and clearer, and help taxpayers better comply with their obligations.

The CIOT is however concerned that the proposals to remove repayment supplement for late payment by HMRC of VAT refunds will be detrimental to businesses. It is also surprised that, at the same time, HMRC are proposing a similar model to penalise late payment by taxpayers. Either a regime with a penalty at the end of a defined period meets the above principles for a good penalty regime, or it does not. It must work both ways.

In the CIOT's view, the proposed new 'hybrid' late payment penalty model does not provide a long enough period for the taxpayer to take the appropriate action to avoid a penalty. Instead of 15 days we have suggested that the period should be extended to 30 days. The 'hybrid' model is also complex. HMRC will need to explain how it works clearly to taxpayers in order that they understand what they need to do to minimise their exposure to penalties and the consequences of not meeting their payment obligations.

It will clearly be important that the late payment model ultimately chosen works consistently and fairly with the 'penalty points' model which is being proposed for late filing of tax returns.

The consultation paper does not specify from what date the proposed changes to the rules on interest and late payment penalties would take effect. Equally, for VAT purposes, it is not clear whether the existing default surcharge would continue to apply to late filing of VAT returns. While it is not essential that the proposals are brought in at the same time as Making Tax Digital (MTD) for Business, and in fact there is unlikely to be enough time for that to happen especially with mandatory MTD for VAT starting from April 2019, it would make sense to streamline the introduction of the changes as far as is possible rather than bringing them in in a piecemeal fashion. Previous experience has shown that changes to the penalty system brought in over several years can cause confusion for taxpayers and advisers alike.

The CIOT's full response can be found on the CIOT website.

The LITRG response welcomed the fact that the proposed model for late payment sanctions will maintain reasonable excuse provisions, and that late payment penalties under the proposed new model will not include the base rate, as these

were two issues LITRG raised in response to the previous consultations on this topic.

LITRG also emphasised the importance of clear communications to ensure that taxpayers understand the new sanctions for late payments – both in terms of guidance on GOV.UK and information provided to affected taxpayers. Moreover, LITRG pointed out that HMRC must provide support to taxpayers to help them get things right or rectify the situation once they have missed a deadline, in particular, vulnerable taxpayers who find themselves in debt.

In order for the proposed model to work fairly, LITRG asserted that HMRC must ensure that the time to pay (TTP) service deals with taxpayer requests fairly, even-handedly and with understanding.

The LITRG response raised concerns that the proposals for late payment penalties do not strike the right balance between fairness for those that pay on time and providing a reasonable time to arrange payment. In particular, LITRG agreed with the CIOT that 15 days from the due date is not a long enough period in which to allow taxpayers to either pay or arrange a time to pay arrangement without penalty. Moreover, the proposal for a hybrid system of late payment penalties, which include an element charged at a percentage of the tax due and an interest type element, in combination with the 15-day limit for no penalty and 30-day limit for a reduced penalty, will add to complexity and make the sanctions imposed on taxpayers less transparent.

LITRG also noted the importance of making it as easy as possible for taxes to be paid, so that late payment charges can be avoided, and the necessity of having alternatives to paying online.

The LITRG submission is available on the LITRG website.

The ATT response noted a key distinction between the proposals for late payment sanctions and those relating to late submission (where the government is adopting a totting-up points system). The latter and the VAT default surcharge regime (which is abolished under the proposals) both feature an early warning system to taxpayers of any non-compliance. By contrast, the proposed late payment regime does not. ATT identified this as a potential source of misunderstanding and confusion which will need to be addressed in HMRC’s communications.

ATT also noted that the proposed introduction of late payment sanctions for corporation tax meant that companies would need to receive clear and specifically targeted advance guidance so that they appreciated the significantly more severe implications of late payment under the proposals and could plan accordingly.

Much of the focus in ATT's response was on the proposal for a new tax-geared sanction of 2.5% of the overdue tax where it was not paid or made the subject of a TTP arrangement until more than 15 days after the due date but before the 31 day point (when a 5% tax-geared sanction would arise and a penalty rate of interest – possibly 8% on top of normal late payment interest – would start to accrue until payment or a TTP arrangement). Noting the complexity of the 2.5% sanction and the potential for it to be disproportionate, ATT concluded that a much simpler way of encouraging positive taxpayer behaviour would be for a penalty rate of interest to accrue immediately from the due date but with the important provision that it would be cancelled if payment or a TTP arrangement was made within the first 15 days from the due date.

At a meeting with HMRC, ATT had been advised that although the consultation referred to a TTP arrangement being made within the 15 or 30 day period, HMRC's intention would be to recognise the key date as that of the initial approach to HMRC with a view to a TTP arrangement. ATT's response included deliberate reference to HMRC's indication on this point.

The ATT submission is available on the ATT website.