# The Penalties for Failure to Pay Tax (Assessments) Regulations 2024

**Management of taxes**



21 August 2024

CIOT and LITRG have jointly commented on draft regulations relating to the reformed penalty system for late payment of tax in FA 2021 Sch 26 and the assessment of the second late payment penalty. In our view, the regulations do not achieve their intended purpose.

Currently, the legislation allows HMRC to assess the second late payment penalty once, when the amount of outstanding tax is paid in full, within a two-year assessment time limit. The draft regulations purport to allow HMRC to assess and charge the second late payment penalty towards the end of the two-year time limit where the outstanding tax has *not* been paid in full. This is to make sure that taxpayers will not be able to intentionally avoid a second late payment penalty by not paying their tax before the end of the two-year time limit.

In our submission, we note that although an assessment can be made at the two-year point, the penalty itself cannot be calculated because HMRC need to know the

date that the tax has been paid (which is yet to occur) to be able to work out and charge the amount of the penalty. We suggest that some aspects of Sch 26 will need to be revised so as to allow HMRC to estimate the penalty period or explicitly to assess the penalty based on part of the penalty period.

We also note that there is no provision in the draft regulations for HMRC to be able to assess an additional amount of the second late payment penalty – that is for the period from the date of an assessment under the draft regulations until the date the tax is actually paid in full. Again, we suggest that Sch 26 could be amended to allow HMRC to issue a supplementary assessment for the additional penalty when the tax is eventually paid.

Finally, one of the conditions for HMRC being able to assess a second late payment penalty is that there is no time to pay (TTP) agreement in effect. Where there is a TTP agreement in effect, but a taxpayer subsequently breaks the TTP after the two-year assessment time limit, Sch 26 states that the penalty is payable as if the TTP never had effect – but by that point it would be too late for HMRC to assess it. This appears to mean that a taxpayer could avoid the second late payment penalty by agreeing a TTP and then breaking it after the two-year assessment time limit has passed. We doubt that this is what is intended. We suggest that an amendment is required to clarify the position.

The full joint CIOT and LITRG submission can be found here: www.tax.org.uk/ref1329 and here:

www.litrg.org.uk/10936.

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