



**Making Tax Digital:
Interest harmonisation and
sanctions for late payment**

2 March 2018

About ICAS

1. The following submission has been prepared by the ICAS Tax Board. The ICAS Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 committee members. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.
2. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members in the many complex issues and decisions involved in tax and financial system design, and to point out operational practicalities.

General comments

3. ICAS welcomes the opportunity to respond to the HMRC consultation 'Making Tax Digital: interest harmonisation and sanctions for late payment', issued by HMRC on 1 December 2017.
4. Harmonisation of interest rates and rules, together with a standardised approach to late payment penalties across all taxes, offers the possibility of meaningful simplification. Yet it may be appropriate for taxes with different cycles to have different interest and penalty regimes.
5. There are three main tax return cycles: transactional, or 'one-off' returns, such as Inheritance tax, SDLT / LBTT and Non-resident Capital Gains Tax (NRCGT) returns; annual returns, such as those for corporation tax (CTSA) and income tax self assessment (ITSA); and 'continuous' or on-going returns, such as those for VAT, PAYE and CIS.
6. It is doubtful if a single regime can adequately cover all these types of returns and the current proposals begin to blur the boundaries. For example, where does a one-off return like NRCGT slot in? There is a difference in character between ITSA returns, where, even under Making Tax Digital (MTD) the assessment period is likely to be annual, so interim returns are 'provisional', as contrasted with monthly / quarterly returns like VAT and PAYE, where every return is designed to be final.
7. Payment and reporting deadlines need to be realistic and reasonable. For example, with NRCGT the payment deadline can be within 30 days of the transaction. This is a very challenging deadline and the addition of penalties seems retrogressive. Compliance would be better assisted by alternative means, such as wider publicity and linking with land registry transactions.
8. The consultation mentions feedback from the previous consultation 'Making Tax Digital: sanctions for late submission and late payment' which was published on 20 March 2017 and the feedback 'Making Tax Digital – sanctions for late submission and late payment. Summary of responses' published in December 2017.
9. The Summary of responses raises a number of additional questions, which could usefully have been included here, such as proposed amendment that penalties for deliberately withholding information would potentially apply after any missed deadline, rather than after 12 months (para 21 page 20, Making Tax Digital –sanctions for late submission and late payment Summary of responses December 2017).
10. The retention of a tax-geared penalty for deliberate failure to make a submission (see para 3.38 Making Tax Digital: Tax administration Consultation Document, published 15 August 2016) adds an additional layer of complexity and might usefully have been considered within this consultation so that interaction and boundaries are clear.

11. Similarly the concept of a 24 month maximum life penalty for points could usefully have been reviewed here (paras 18-12, page 19 /20, Making Tax Digital –sanctions for late submission and late payment Summary of responses December 2017).
12. In particular it is noted that HMRC's own research (point 13 on page 9, Making Tax Digital –sanctions for late submission and late payment Summary of responses December 2017) concluded that a suspension model has a stronger motivational effect than a simple penalty point one.
13. Overall, the proposed rules are becoming unnecessarily complex. The interaction of behaviour-based penalties for late notification and with the proposed penalty points system for late filing creates a new cliff-edge around the meaning of 'deliberate' behaviour. This boundary is already one which is of concern to agents and taxpayers, with the tribunal taking a different view from HMRC in a number of cases.

Specific questions

14. Question 1 – 5

Question 1 Do you agree that in-year QIPs payments should continue to attract differential interest rates?

Question 2 – Do you agree the way interest is charged for CT satisfactorily mirrors the rules contained in FA09?

Question 3 – If you do not agree please explain why.

Question 4 – Do the proposals for interest for VAT on late payment of a return reasonably reflect the FA09 rules?

Question 5 – Are the proposals for VAT regarding interest on assessments and amendments sensible?

The proposals outlined in questions 1-5 seem reasonable.

15. Question 6 – Do the proposals for interest on a delayed payment of a repayment VAT return reflect the right balance between recompense for customers and the protection of public monies?

The higher rate for delayed payment of a repayment VAT return should be retained; or a mirror-image commercial rate adopted, so that the rate paid by HMRC when it delays repayment mirrors the rate paid by the VAT registered business who pay late.

The position with VAT is unlike that of tax on profits, for, for example. The impact of VAT on registered businesses should be 'neutral' – when collecting / recovering tax they are simply administering VAT on behalf of the government. Commercial considerations should therefore apply to delays on either side.

16. Question 7 – Do the proposals for late payment penalties strike the right balance between fairness for those that pay on time and provide a reasonable time for those that need it to arrange payment?

The proposals seem complex and potentially confusing. Introducing 15 day and 30 day limits, plus a percentage penalty and two rates of interest is complex.

Agreeing time to pay (TTP) can take time. Basing the reduced penalty on agreeing TTP, rather than on applying for TTP is potentially unfair. Allowing 30 days, with discretion to extend in exceptional cases, would be more workable.

The rules would be simplified by having a single date, of 30 days from due date, in which to pay. After this the full late payment penalty could apply, unless TTP had been agreed (or was being negotiated and an extension had been agreed).

17. Question 8 – Do you think these general rules provide the correct balance between protecting those that pay on time and encouraging and supporting those that do not?

The rules here are becoming unnecessarily complex.

Para 5.1 outlines proposals for:

'a hybrid model where late payment penalties include:

- *An element charged at a percentage of the tax due; and*
- *An element charged in an 'interest' type calculation'.*

The consultation proposes at 5.24:

'If the tax remained unpaid after day 30 of the due date the first penalty charge would become immediately payable. An additional penalty would then be charged after 30 days from the proper due date until full payment is made, and would be calculated in a similar way to interest.

5.25 This second penalty would be charged in addition to any late payment interest. Based upon feedback from previous consultations the government has decided that there would be no second addition of the base rate used in the formula to calculate the second penalty charge.

5.26 The second charge would be calculated and become payable after the debt had been paid in full.

It would seem much clearer and fairer to have:

- One due date, with penalty interest running from the due date (not from 15 /30 days after the due date);
- One interest rate for non-payment running from this single date;
- Clearer guidance and more clarity around reasonable excuse;
- Suspension of penalties when TTP has been requested within the initial 30 days.

Leaving the additional penalty interest calculation until the debt has been paid does not encourage payment. It also means that the taxpayer is unaware of exactly how much they owe. The amount owing, plus penalty interest, should be notified to taxpayers monthly.

18. Question 9 – Do the proposed rules provide the correct balance between protecting those that pay on time and encouraging and supporting those that do not?

See comments at 15 above. Retaining the current rules for payments on account and amended returns seems reasonable. Late payment penalties should be due only on balancing payments.

19. Question 10 – We believe that late payment penalties should apply from the payment due date. What difficulties, if any, could you see with this?

This approach seems reasonable.

20. Question 11 – Are there any other specific circumstances that should be accounted for?

No comments.