

Making Tax Digital: interest harmonisation and sanctions for late payment
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

- 1.1 We welcome 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.
- 1.2 Clear communications will be essential 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, HM Revenue & Customs (HMRC) must provide support to taxpayers to help them get things right or rectify the situation once they have missed a deadline. In particular, we recommend that HMRC do more for vulnerable taxpayers who find themselves in debt.
- 1.3 We agree that the proposals are likely to encourage taxpayers to contact HMRC to try to make time to pay arrangements where they are unable to pay on time. In order for the proposed model to work fairly, it is essential that HMRC ensure that the time to pay service deals with taxpayer requests fairly, even-handedly and with understanding.
- 1.4 We are not convinced that the proposals for late payment penalties strike the right balance between fairness for those that pay on time and providing a reasonable time to arrange payment. In particular, we do not think that 15 days from the due date is 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.

- 1.5 In cases where a second late payment penalty becomes due (after 30 days) we would urge HMRC to consider intervention to try to establish whether there might be mitigating circumstances that could constitute a reasonable excuse in due course.
- 1.6 Where the taxpayer asks for time to pay before the due date, but HMRC have not yet agreed the terms before the period of grace expires, the penalty (or reduced penalty) should not be triggered, provided the taxpayer does not delay unreasonably in providing any information requested. It would be unconscionable to charge a penalty if the taxpayer had made a timely request, but HMRC had not concluded the terms of the time to pay arrangement before the period of grace was up.
- 1.7 It is important to make it as easy as possible for taxes to be paid so that late payment charges can be avoided. We believe that there should always be alternatives to paying online. This will affect not only those taxpayers who will face a transitional period during which they may not be comfortable with paying online, but other taxpayers too who may be unable ever to move to online payments.

2 About Us

- 2.1 The Low Incomes Tax Reform Group is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Introduction

3.1 *General comments about interest and late payment penalties*

- 3.1.1 We welcome the opportunity to respond to the government consultation on proposals for the harmonisation of interest rates and rules and the proposed introduction of a standardised approach to late payment penalties across taxes. LITRG responded to both previous government consultations on this topic: Making Tax Digital – Tax Administration

(published August 2016)¹ and Making Tax Digital – sanctions for late submission and late payment (published March 2017).² We also responded to the consultation Interest – working towards a harmonised regime.³ In addition, we found it helpful to meet with HMRC to discuss the consultation period.

- 3.1.2 Clear communications will be essential to ensure that taxpayers understand the new sanctions for late payments. This will be especially important where there are changes or differences by comparison to what taxpayers are currently used to. In addition to ensuring that there is clear guidance on GOV.UK, information should be provided to affected taxpayers alongside notices to pay / comply, and also on an ongoing basis once the taxpayer has missed a deadline, and is therefore within the late payment penalty regime. It may also be necessary to consider the tone of communications, to ensure that HMRC are viewed as approachable, in particular by those who are vulnerable.
- 3.1.3 In addition to guidance, HMRC must provide support to taxpayers to help them get things right or rectify the situation once they have missed a deadline – this would include not only notification of the missed payment deadline, but information and assistance to get back on track, and to avoid reaching the next step within the sanction regime.
- 3.1.4 Safeguards must be maintained within the new regime. Existing safeguards should be kept, and we welcome the fact that the proposed new model will take account of reasonable excuse. We welcome HMRC's acknowledgement of the importance of reasonable excuse, and the intention to leave its definition vague, in order to allow for each case to be treated on its merits. As noted in our response to the 2017 consultation on sanctions for late submission and late payment, we think that the principles underlying reasonable excuse should themselves be reviewed.⁴
- 3.1.5 We recommend that HMRC do more for vulnerable taxpayers who find themselves in debt. Adding to their burden with ever-increasing penalties does little to aid recovery of tax. Efforts should focus on contacting taxpayers before penalties and interest mount up and seeking to agree time to pay arrangements.
- 3.1.6 Under Making Tax Digital, a new penalty point model is being proposed for the late submission of tax returns. As late submission of tax returns is not uncommon where there is

¹ The LITRG response is available at <https://www.litrg.org.uk/sites/default/files/files/161107-LITRG-response-MTD-tax-administration-FINAL.pdf>.

² The LITRG response is available at <https://www.litrg.org.uk/sites/default/files/files/170609-LITRG-response-MTD-Penalties-LITRG-FINAL.pdf>.

³ The LITRG response is available at <https://www.litrg.org.uk/sites/default/files/files/090209-LITRG-response-Interest-harmonised-regime-FINAL.pdf>.

⁴ Cf. para. 3.4.2 ff., <https://www.litrg.org.uk/sites/default/files/files/170609-LITRG-response-MTD-Penalties-LITRG-FINAL.pdf>.

late payment of tax liabilities, it is important that the new sanctions for late payment operate in a manner consistent with those for late submission, and that the two systems can be easily understood in conjunction with one another.

3.2 ***Initial assessment of impacts***

- 3.2.1 At paragraph 6.3 of the initial assessment of impacts, it indicates that the proposals on late payment penalties will influence those that cannot pay to make time to pay arrangements. We agree that the proposals are likely to encourage taxpayers to contact HMRC to try to make time to pay arrangements where they are unable to pay on time. However, it is our experience that some taxpayers can find it difficult to agree time to pay arrangements with HMRC.⁵ In order for the proposed model to work fairly, it is essential that HMRC ensure that the time to pay service deals with taxpayer requests fairly, even-handedly and with understanding. With a view to ensuring this, we recommend that HMRC officers responsible for negotiating time to pay arrangements are trained in a uniform set of guidelines and are allowed to exercise discretion only within strict parameters. Moreover, only HMRC officers who have been so trained should be authorised to grant or refuse time to pay arrangements.
- 3.2.2 It is also essential that there are a number of different channels available to taxpayers by which to apply for time to pay. We understand that taxpayers will be able to apply for a time to pay arrangement through their Personal Tax Account; however, not all taxpayers will be able to use an online service; equally, not all taxpayers can use a telephone. So, there must be a paper route that operates efficiently.
- 3.2.3 We are concerned that vulnerable taxpayers may not always be aware of the ability to argue that they have a reasonable excuse. It is therefore essential that HMRC officers are trained consistently and have appropriate guidance in front of them, to assist them in recognising when they are dealing with a vulnerable taxpayer, who may not be fully aware of their rights. This will help to ensure that they advise the taxpayers appropriately and direct them to the Needs Enhanced Support service where relevant.

4 **Interest rates and Corporation Tax**

4.1 ***Q. 1: Do you agree that in-year QIPs payments should continue to attract differential interest rates?***

- 4.1.1 As we noted in our 2009 consultation response we are unconvinced by the reasons given for maintaining a difference between the interest treatment of Corporation Tax QIPs and

⁵ We receive queries from the general public via the 'contact us' facility on our website (<https://www.litrg.org.uk/contact-us>). With regards to time to pay arrangements, the evidence afforded by these queries indicates that there is little consistency in the principles applied to different cases. Many of the queries we receive in relation to time to pay concern tax credits debt or are from taxpayers who are already in financial difficulties.

Income Tax.⁶ As with QIPs, the final liability for Income Tax for a tax year is unknown when the first payment on account falls due on 31 January during the tax year to which it relates.

- 4.1.2 Moreover, while Corporation Tax QIPs involve larger amounts of tax in an absolute sense, the amounts involved for individual taxpayers may be much more significant in relation to their income, particularly for those on low incomes.
- 4.1.3 We question whether this asymmetry between corporate and non-corporate entities meets the principle of fairness (cf. para. 2.1 of the consultation document).
- 4.2 ***Q. 2 and Q. 3: Do you agree the way interest is charged for CT satisfactorily mirrors the rules contained in FA09? If you do not agree please explain why.***
- 4.2.1 Yes. We have no further comments in respect of these two questions.

5 Interest and VAT

- 5.1 ***Q. 4, 5 and 6: Do the proposals for interest for VAT on late payment of a return reasonably reflect the FA09 rules? Are the proposals for VAT regarding interest on assessment and amendments sensible? 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?***
- 5.1.1 Alignment is generally a welcome simplification. If there is a good reason for any difference in approach between taxes, it might be undesirable to force them into alignment simply for the sake of it.
- 5.1.2 The proposals for interest for VAT on late payment of a return appear to reflect the FA09 rules reasonably. The proposals for VAT regarding interest on assessment and amendments appear to be sensible, including the proposal in paragraph 4.9 to retain legislative discretion to not charge interest where it is judged that the interest would not constitute restitution to the government. We would welcome clarification as to how this will be achieved. We think the proposals for interest on a delayed payment of a repayment VAT return strike a reasonable balance between recompense for customers and the protection of public monies.
- 5.1.3 We welcome the removal of the default surcharge and repayment supplement as part of this process of alignment.

⁶ Cf. para. 3.6.1 ff., <https://www.litrg.org.uk/sites/default/files/files/090209-LITRG-response-Interest-harmonised-regime-FINAL.pdf>.

6 Late payment penalties and the interaction with late payment interest

6.1 ***Q. 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?***

6.1.1 We are not convinced that the proposals for late payment penalties strike the right balance between fairness for those that pay on time and providing a reasonable time to arrange payment.

6.1.2 On the one hand, we welcome 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. We raised both of these issues in our response to the 2017 consultation.⁷ While we are pleased to note that the proposed model incorporates penalty interest (this is preferable to a fixed penalty approach, as it allows the severity of the sanction to vary according to both the amount of tax outstanding and the length of the delay in payment), we think that a hybrid model is likely to prove confusing to taxpayers.

6.1.3 We do not think that 15 days from the due date is a long enough period, however, in which to allow taxpayers to either pay or arrange a time to pay arrangement without penalty. 15 days do not provide sufficient leeway for HMRC to issue a penalty notification, for it to be received and considered by the taxpayer, and for the taxpayer to take action. The threat of a penalty should act as an incentive to pay; however, allowing insufficient time for a taxpayer to rectify their position serves to diminish the incentivising effect, as 15 days may be perceived as an impossible timescale to meet. This is particularly the case if the taxpayer receives the notification by post, as this can be delivered several days after the date of issue (and indeed, the date on the letter is not always the date of posting), leaving far fewer than 15 days in which the taxpayer can arrange payment. A period of 15 days also does not allow for a taxpayer being away on holiday or working away from home on contract, for example. It is easy to conceive of situations where the 15-day period could expire before a taxpayer has actually had sight of the notification.

6.1.4 Providing a further period (up to 30 days in total from the due date) to allow taxpayers to pay or arrange a time to pay arrangement with a reduced penalty helps to soften the position (referred to in para. 6.1.2 above) to some extent, but it also makes the regime more complex.

6.1.5 The proposal is also 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. This will add to complexity and make the sanctions imposed on taxpayers less transparent. This is especially the case when late payment interest is factored in and also possible late filing penalty points

⁷ Cf. para. 15.1 ff., <https://www.litrg.org.uk/sites/default/files/files/170609-LITRG-response-MTD-Penalties-LITRG-FINAL.pdf>.

under current proposals, as it is often the case that returns will be outstanding when payments are outstanding.

- 6.1.6 As an alternative, we suggest the following approach – HMRC simply allow 30 days for payment or for the agreement of a time to pay arrangement without penalty; if the 30 day time limit is not met, HMRC charge the full penalty. The penalty could still consist of the two proposed elements, and there would also be late payment interest. Although this would not provide the gradation of the system proposed in the consultation document, it would have the advantage of greater simplicity. As part of this approach, HMRC would send a warning letter / notification at the beginning of the 30-day period, which would make it clear to the taxpayer that (a) they are in default, and (b) if they pay in full or make a time to pay arrangement with HMRC by xxxx date they will not be charged a penalty.

6.2 ***Q. 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?***

- 6.2.1 In cases where a second late payment penalty becomes due (that is, the ‘interest’ style element) (after 30 days) we would urge HMRC to consider intervention to try to establish whether there might be mitigating circumstances that could constitute a reasonable excuse in due course. If the taxpayer cannot pay the principal sum due for valid reasons, there is little point in adding late payment penalties which may cause severe stress and anxiety. In this instance, we would urge that HMRC aim to agree a time to pay arrangement if possible and to suspend any further penalty provided that the taxpayer sticks to that payment schedule. In some cases, such as bereavement for example, it may even be necessary to suspend collection altogether until such time as the reasonable excuse has passed. In relation to bereavement, the survivor can often face difficulties due to pension providers failing to transfer pensions efficiently; problems may also be faced when there are delays in obtaining probate. Moreover, the grief and stress of bereavement can result in a person falling behind with their administrative and financial issues.
- 6.2.2 In para. 5.21 ff. of the consultation document, there is an illustration of the first 30 days for the new model. Although referred to in a note, there is no illustration of the late payment interest that would also be payable in such a late payment situation. When providing guidance for taxpayers in relation to the new model for late payment interest and penalties, it will be essential to include both interest and penalties in examples, to ensure transparency and clarity for taxpayers.
- 6.2.3 As explained in para. 5.26 of the consultation document, the second charge (if tax unpaid after 30 days from the due date) will only be calculated and become payable once the tax debt has been paid in full. Again, it is essential that guidance and notifications to taxpayers make this clear, so that the second charge does not come as a nasty shock. For example, notifications of the outstanding tax should indicate clearly that the amount of tax payable does not include the late payment penalty, which will be calculated later. The notification should also explain how the late payment penalty will be worked out. It should be possible to include a calculation of the penalty interest charge accrued to date on any communications relating to outstanding liabilities so this is clear.

6.3 ***Q. 9: Do the proposed rules provide the correct balance between protecting those that pay on time and encouraging and supporting those that do not?***

- 6.3.1 The proposed rules for specific circumstances appear to provide a reasonable balance between protecting those that pay on time and encouraging and supporting those that do not.
- 6.3.2 In relation to the proposals in para. 5.27 ff. of the consultation document, about penalties attaching to non-payment of tax charged by determinations, it is important that HMRC apply special relief where appropriate.

6.4 ***Q. 10: We believe that late payment penalties should apply from the payment due date. What difficulties, if any, could you see with this?***

- 6.4.1 We agree that it makes sense for late payment penalties to apply from the payment due date, with the proviso that if payment is then made (or a time to pay arrangement agreed) within the specified period (15 days in the consultation document), no penalty actually becomes payable.
- 6.4.2 The consultation document does not make it entirely clear from which date the interest-style penalty will be calculated – the payment due date or 30 days after the payment due date. We think that it would be appropriate for the interest-style penalty calculation to commence at the 30-day point.
- 6.4.3 It will be important to word communications and guidance concerning late payment penalties carefully, such that the approach is clear to taxpayers.

6.5 ***Q. 11: Are there any other specific circumstances that should be accounted for?***

- 6.5.1 We understand that it is current practice in relation to time to pay arrangements, that where a proposal has been made, but not agreed, prior to the due date for payment, the arrangement is treated as having been active at the due date, provided it is subsequently agreed or substantially agreed. We understand that it is the intention that this practice should continue. We welcome this.⁸ It would be unconscionable to charge a penalty if the taxpayer had made a timely request (and did not delay unreasonably in providing any information requested), but HMRC had not concluded the terms of the time to pay arrangement before the period of grace was up.
- 6.5.2 We understand that the majority of requests for time to pay arrangements are made by telephone, and are dealt with quite quickly. It is essential that, for those who prefer to deal with HMRC by post, or who are unable to telephone, the system for dealing with postal requests for time to pay arrangements is efficient.

⁸ Cf. para. 18.2, <https://www.litrg.org.uk/sites/default/files/files/161107-LITRG-response-MTD-tax-administration-FINAL.pdf>.

- 6.5.3 It is important to make it as easy as possible for taxes to be paid so that late payment charges can be avoided. We believe that there should always be alternatives to paying online. In some cases, there will be a transitional period during which many taxpayers may not be comfortable with paying online, but others may be unable ever to move to online payments. Simply being able to go online and use social media apps, or send and respond to emails, etc. does not necessarily mean that someone has the skills to do online banking. Such taxpayers should either be allowed a longer time to pay and/or permitted to pay by an alternative method. Some have valid concerns about the security aspects of committing details of their bank account and other personal financial matters to the internet, and are uncertain about how to make payment securely. Their concerns should be respected.

LITRG
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