

# Making Tax Digital – sanctions for late submission and late payment

**Summary of responses**  
December 2017

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# Introduction

1. The government is engaged in reform of tax administration penalties. This is part of wider work to simplify and harmonise tax administration processes across taxes, taking into account the introduction of Making Tax Digital for Business (MTDfB). The reform programme aims to design regimes that are fair; effective in supporting good compliance; and simple to understand and operate.
2. Previous consultation has identified that a good penalty regime should take a consistent and standardised approach. Simplifying and harmonising late submission penalties, late payment penalties and interest will make the tax administration system clearer and simpler for our customers, ensuring that it is as easy as possible for them to comply with their obligations across taxes. It will also be easier for HMRC to operate penalties consistently.
3. Alongside this summary of responses to consultation on late submission penalties, the government has published a [further consultation on simplified interest and late payment penalties](#). The government intends to introduce the changes to late payment and late submission penalties as a coherent package. This will allow the two to be designed to work well together and will reduce the number of consecutive annual changes being made to penalties.
4. The new late submission penalty regime has been developed to underpin regular submission obligations: for example, annual Income Tax Self Assessment (ITSA) return obligations as well as the proposed new MTDfB reporting obligations. An effective late submission penalty regime needs to support behavioural change for those who genuinely wish to meet their submission obligations but may not currently have the right incentives to do so. At the same time, the model must appropriately penalise those who repeatedly fail to meet their obligations, despite having received support and time to change their behaviour. The new penalty model also aims to avoid mechanistically charging large numbers of penalties for those who are trying hard to comply with new MTDfB submission obligations.

**Following significant support on consultation, the government intends to take forward the points based late submission penalties for further consultation on draft legislation.**

5. In the 2016 consultation document [Making Tax Digital: Tax administration](#) published 15 August 2016, the government made proposals for sanctions for late submission and late payment. This consultation built on earlier work to establish common principles for HM Revenue & Customs (HMRC) penalties, which gained wide support through consultation on [HMRC Penalties: a Discussion Document](#).
6. The [summary of responses](#) to that consultation, issued on 31 January 2017, said that:
  - The government was committed to getting the late submission model right and recognised that more work needs to be done;

- The government would continue to explore penalty interest for late payment, taking into account concerns raised, particularly about the rate levels and the interaction with late payment interest; and
  - There would be a further consultation.
7. The resulting consultation [Making Tax Digital – sanctions for late submission and late payment](#) was issued on 20 March 2017, providing an update on penalty interest and sought views on three possible models for late submission penalties to tackle non-deliberate failures:
- Model A – Points-based penalty (updated from the 2016 consultation model)
  - Model B – Regular review of compliance
  - Model C – Suspension of penalties
8. In total 59 written responses were received to the March 2017 consultation (listed in Annex A).

### Who should read this document?

9. All individuals and business customers, agents and representative bodies with an interest in tax administration and late submission penalties should read this document.

### Structure of this document

10. This document sets out the questions posed in the consultation document, summarises what respondents told us and provides a government response. It is structured as follows:
- [Chapter 2: Late submission penalties](#) provides responses from stakeholders on what model they thought was the best and why; the relative importance of the principles of fairness, simplicity and effectiveness and how they apply to each of the models.
  - [Chapter 3: Model A - Points-based penalty](#) provides responses to the revised points-based model.
  - [Chapter 4: Model B - Regular review of compliance](#) provides responses to the regular review of compliance model.

- [Chapter 5: Model C - Suspension of penalties](#) provides responses to the penalty suspension model.
- [Chapter 6: Details of the points-based penalty model](#) describes some aspects of how it is anticipated the new system will work.
- [Chapter 7: Penalty interest](#) sets out further views on penalty interest received during the consultation period.
- [Annex A](#): lists the stakeholders who provided written responses to the consultation.

## Overview of responses

11. The government is very grateful to all of those who took time to respond to this consultation.
12. In their response to [Late submission penalties \(Chapter 2\)](#) the large majority of those who responded favoured [Model A - the revised points based model](#).
13. Respondents overwhelmingly identified simplicity or fairness as the most important factors in the design of a late submission penalties model. Many respondents qualified this by saying that if a model cannot be effective (or fair) if it is not simple because it will not be easily understood and therefore cannot promote behavioural change. Respondents also explicitly recognised the tension between the three principles of simplicity, fairness and effectiveness: increasing one may decrease another.

*“If people don't understand it, how can they be motivated by it?”*

14. Respondents provided useful comments on each of the proposed models ([Chapters 3-5](#)) which are discussed in detail in the corresponding sections below. These included helpful suggestions on how each of the models could be improved.
15. Overall the large majority of respondents favoured [Model A](#) because it was the simplest (and most familiar) option out of the three models and it was perceived that the immediate, transparent consequences of a point are most likely to effectively change behaviour.

*“Points gives people time to improve. It is simplest and clearest to understand. Everyone connects with points.”*

16. A minority preferred either [Model C – suspension of penalties](#) or a mix of [Model A and Model C](#). None were in favour of [Model B - regular review](#).

*“The taxpayers’ behaviour and attitude are the salient factors to recognise when assessing compliance. This means not penalising those who make one-off or accidental errors. The ‘suspension’ model appears the best at achieving this”*

*“Regular Review is too nebulous - nothing happens on the first failure. It would also need a complicated explanation of how the review period worked.”*

17. The large majority of those who responded agreed fully or to some extent that the proposed periods of good compliance to reset a points total were set at the right level. There was a common, related suggestion that points should have a maximum shelf-life. The government is sympathetic to concerns that open-ended points could lead to some perverse outcomes. A maximum lifetime for points will be included in the forthcoming draft legislation.
18. Whilst some respondents suggested that points or penalties should be suspended for a period, the government will not be taking this forward. This is because it starts to introduce too much complexity to the points model for it to be easily explained. The government will, however, ensure that the points are appealable and can be set aside in appropriate circumstances. Guidance will be published to support the consistency of decision-making for these processes.
19. **The government intends to proceed with Model A - points-based penalties, incorporating the feedback received through this consultation. Draft legislation will be published in Summer 2018. Chapter 6 sets out further details of how it is anticipated this model will work in practice** Following consultation on draft legislation, the intention is to legislate for the new model at the earliest appropriate opportunity. The government then intends to apply the new model in phases to different taxes. It is anticipated that the model will first be implemented for VAT, commencing in 2020. This allows VAT customers a period of 12 months to become familiar with their new obligations after they become subject to MTDfB. An appropriate notice period will also be provided before the new regime is implemented for VAT and other taxes.
20. Respondents made further comments in response to [Chapter 7 - Penalty Interest](#). Those who commented were mainly concerned about the rate of interest which would apply and many felt that 14 days after the due date was too short a time period from which to charge penalty interest. A large number of those who commented would like to see a further consultation on penalty interest.

21. The government has now published a new consultation on penalty interest which can be found at <http://www.gov.uk/government/consultations/making-tax-digital-interest-harmonisation-and-sanctions-for-late-payment>. This includes the interaction between penalty interest and standard interest, the point at which penalty interest is applied and the rate structure. The government intends to introduce legislation for both late payment and late submission sanctions as a coherent package of penalties reform.
  
22. Chapter 7 of the March 2017 consultation set out the government's initial assessment of the impacts of the proposals. No comments were received. A Tax Information and Impact Note for proposed changes will be published in due course.

## Chapter 2: Late submission penalties

1. This chapter sets out the consultation questions asked in Chapter 2 of [Making Tax Digital - Sanctions for late submission and payment](#). It includes a summary of the responses received and the government response.
2. Chapter 2 of the March 2017 consultation outlined three possible models for a new penalty for non-deliberate failures to meet regular submission obligations:
  - Points-based model, applying per tax (rather than across all taxes as in 2016 consultation), where a point is incurred each time a customer fails to provide a submission on time. A penalty is charged after the points received reach a certain threshold, with the points being reset to zero after a period of good compliance with submission obligations;
  - Regular review of compliance model, where HMRC would carry out an automated review of a customer's compliance with submission obligations over a set, retrospective period. No penalty would be charged for the first failure(s) in a set period, but a penalty calculated on the basis of the number of failures would be charged for further defaults in the period; or
  - A suspension of penalties model, where a penalty would be suspended and not charged on the first failure on condition that the outstanding submission is supplied within a set time. Suspension could operate more than once but not repeatedly.
3. The consultation proposed that any penalty model should reflect the five principles for a good penalties system, that is being:
  - Proportionate;
  - Fair;
  - Consistent and standardised in approach;
  - Designed from the customer perspective; and
  - A credible threat.

It was also emphasised that penalties would only apply where a customer has failed to meet an obligation and does not have a reasonable excuse for doing so. Full appeal rights would apply to all failures and the recording of failures that do not immediately give rise to a penalty (for example, incurring a point).

### Responses to consultation questions

Question 2.1: Which of the three penalty models proposed (A – Points-based, B- Regular review of compliance, or C – Suspension of penalties) do you consider to be the best and why?

4. The large majority of respondents preferred Model A – points based. The remainder preferred either Model C – suspension of penalties or a mix of Model A and Model C.
5. Agents formed the largest group of respondents, accounting for nearly half the responses. They demonstrated a strong preference for Model A.

Associations/trade bodies were the next largest group: they were more evenly split between Model A, Model C and a mix of Model A & C. The majority of the remaining respondents – broadly businesses, the self-employed and others - preferred Model A.

6. Those preferring Model A tended to think that it was the simplest and therefore the easiest for customers to understand. Where Model C was preferred this tended to be because it allowed a customer to rectify a one-off mistake without incurring any penalties or points, despite Model A also allowing customers to make one-off mistakes without a financial penalty.

*“Points involve less retrospective computation and analysis which could make the other options too complex. With the other options, the time is too long between the crime and the punishment to make them effective.”*

*“Points is very easy to understand and administer. It is the best option for fairness, simplicity and effectiveness (not to mention transparency). It is similar to driving licence penalties which people accept and understand.”*

*“Suspension is very clear, the customer is warned and this model also encourages timely compliance.”*

*“Suspension is the simplest designed sanctions framework to encourage improved compliance after late submissions. The model would discourage the development of late submission habits.”*

Question 2.2: What are your views on the relative importance of the competing demands of fairness, simplicity and effectiveness?

7. The largest group of respondents to this question felt that simplicity was most important, with the second largest group considering fairness most critical. Associations/trade bodies tended to think that simplicity was most important whereas agents felt that all three should be evenly balanced. Only two respondents considered effectiveness was most important whilst the remainder chose a varied combination of two of the three principles.

***“A system of penalties will not be effective unless it is both simple and fair, and is unlikely to be fair unless it is simple enough to be understood both by taxpayers and by those responsible for administering it.”***

8. However, there was a clear qualitative consensus: if a model is not simple enough to be easily comprehended or communicated, then it cannot be fair or effective. The government agrees that, in the case of late submission penalties for non-deliberate behaviour, simplicity and ease of communication is going to be particularly important to influencing behaviour.

Question 2.3: To what extent does each of the three penalty models strike an appropriate balance between fairness, simplicity and effectiveness?

9. Around half of the respondents to this question felt that Model A struck the appropriate balance, particularly achieving both simplicity and fairness. Others felt that Model C achieved an appropriate balance, with some doubting that a points system would be fair as it might be too complicated for easy comprehension. Model B was considered to be the least effective in achieving a balance due to its lack of clarity and the delay in communicating the value of the penalty accrued during the review period. A minority felt that a combination of Model A and C would strike the right balance, particularly introducing suspension of points to Model A.

***“[The] points model is simple, clear and fair. It includes many of the advantages of suspension without including the subjective element which has caused problems with the present suspension regime. The points approach means that there would be warnings and time to make improvements before a penalty is actually imposed.”***

### **Government response**

10. As set out in the responses to the 2016 consultation the government is committed to getting the penalties model right. The government notes the respondents' views on the relative importance of the principles of fairness, simplicity and effectiveness as they apply to the three proposed models.
11. The system needs to be both easy to understand and fair to different taxpayers whilst actively promoting the right behaviours and actions. It must both promote compliance in the run-up to deadlines and also change behaviour customer behaviour in the long term. The government recognises that there will often be tension between these objectives.

*“We think the points based model is theoretically a good idea but that it could in practice be complicated for taxpayers to understand, and keep track of. There are also difficulties in devising an appropriate mechanism for resetting points to zero, so as positively to encourage compliance without being seen as rewarding noncompliance.”*

12. It was helpful that most respondents clearly linked the penalty principles to their choice of preferred model. This made it clear that Model A and C (or a combination of elements of each), best balanced simplicity and fairness, and were therefore also thought to be effective. Respondents’ choice of Model A or C often depended on their subjective analysis of which they perceived to be simpler to understand and operate. The government has discounted a combination of the two models because, whilst that may increase perceived fairness, it also creates a very complex system which will reduce the ease with which customers can understand and comply with the new system.
13. On balance, the government considers that the points-based Model A, which attracted most support in this consultation, achieves the best compromise between fairness and simplicity, whilst also being effective in supporting good compliance and changing behaviour. Our analysis of the likely behavioural impacts of each model also forecasts that a points based system will have a moderately positive effect on customer behaviour. This compares to a stronger relative effect for suspension (Model C) and weaker relative effect for regular review (Model B).
14. The government can confirm that there will be full appeal rights against points at the time they are incurred, as well as against any resultant financial penalties. The government also intends to give HMRC statutory power to disapply points and penalties where, for example, it is already aware of reasonable excuse or where operational issues may make it difficult for customers to comply with their submission obligations.
15. The government has incorporated some of the additional changes to Model A suggested by respondents, including a maximum lifetime for points, a way of incentivising customers to submit information when the deadline has already passed, and advance notification of reasonable excuse before a deadline has passed. These and further details are outlined in [Chapter 6: Details of the points-based penalty model](#). However, the government is also mindful that adding too many additional elements to the model is likely to reduce the clarity with which the system can be communicated to customers. A lack of clarity is likely to lead to customers interpreting the model in different ways and will therefore reduce its fairness and effectiveness.
16. The government intends to publish draft legislation for the points based model for further consultation in Summer 2018.

17. The government's intention is to legislate for the new model at the earliest appropriate opportunity, alongside new sanctions for late payment (including late payment interest). The package of reformed sanctions will then be available for commencement for different taxes (including new MTDfB reporting obligations) following an appropriate notice period for customers.

## Chapter 3: Model A – Points-based penalty

1. Chapter 3 of the March 2017 consultation outlined a revised points based model from the model consulted on in 2016. The basic hallmarks of this model are outlined at the beginning of Chapter 2.
2. The period of good compliance required to reset points was proposed to increase or reduce by reference to the frequency of filing obligations. A good compliance period of two submissions was proposed as being required for annual filing obligations; four submissions where there are quarterly filing obligations and six submissions where there are monthly filing obligations.

**Question 3.1: Do you agree with these proposals for the duration of the required good compliance periods?**

3. Of those who answered this question, a large majority either agreed in full or to some extent with the proposed periods. Some respondents asked about how this would be applied across taxes, and some suggested that points should have a maximum shelf life, expiring after a certain period of time.

**Question 3.2 Could any changes be made to the points-based penalty model to make it fairer, simpler or more effective?**

4. Various changes were suggested including:
  - Varying the number of points or the amount of the penalty by reference to the gravity of the offence or size of tax liability;
  - Clear and regular communications from HMRC showing the current points/penalty situation and how to avoid receiving further in future;
  - Offering on-line training – the completion of which should reset the points to zero;
  - Increasing points for each missed deadline and reducing for each deadline met;
  - The ability to pay a proportion of a financial penalty to buy back a point;
  - A penalty cap on the number of penalties that can be accrued after the threshold is breached;
  - All partners should not be penalised for failure to submit a partnership return;

### Government response

5. In line with responses, the government intends to proceed with Model A. The points model will seek to address most of the comments (see [Chapter 6](#) for further details):

- It provides for a good compliance period enabling the reset of points to zero, the period of which being based on the frequency of filing obligations;
- The government recognises that clear guidance and communications will be key to its successful implementation;
- The model will be designed to provide for a degree of flexibility, for example, enabling points to be dis-applied under certain circumstances;
- The government has also made changes to incentivise submission of information after the deadline has passed as well as specifying that points should have a maximum lifetime; and
- To dovetail with these changes, the penalty for deliberate withholding of information will be amended to be applicable, where appropriate, at any time after a deadline has passed.

## Chapter 4: Model B - Regular Review of compliance model

1. Chapter 4 of the March 2017 consultation set out the regular review model which is described briefly in Chapter 2 of this document above.
2. Under this model, HMRC would notify the customer each time they were late to ensure that any penalty chargeable at the time of the review did not come as a surprise and to prompt the customer to tell us immediately if they had a reasonable excuse for missing an obligation.
3. The March 2017 consultation proposed that HMRC would carry out the review of compliance once a year. In the case of annual submissions the review would be carried out within two months of the deadline for providing the submission. For customers within Making Tax Digital for Business the consultation proposed three options on the timing of the review:
  - Linking to a calendar year of submission obligations;
  - By reference to the submissions associated with a particular tax year (which may fall after that year has ended); or
  - Review compliance with the obligation to provide regular updates (in year) and the obligation to provide an end of period statement and final declaration (after year) separately.
4. The government has been clear that it does not want to penalise one-off oversights so the consultation proposed that for quarterly or monthly obligations there should not be a penalty for the first failure during the review period. It also proposed a short period of grace for annual obligation customers, for example 30 days, where there would be no penalty accrued.

### Question 4.1: What are your views on the timing of the review?

5. It was clear from answers to this question that none of the respondents favoured Model B with the consensus being that it was too complex and consequences of failure were too far in the future to be fair or effective. Many comments highlighted that the lack of real time review and notification would not incentivise improved compliance and lead to more customers missing returns.

***“The review is not operating in ‘real time’, but is instead looking backwards at the taxpayer’s compliance history. This is too late to change the taxpayer’s behaviour during that period and less likely to encourage compliance and prevent non-compliance”***

Question 4.2: Which of the three options mentioned (of Model B) in the consultation for customers within Making tax digital for business do you think is the most appropriate?

6. Around a third of the respondents who answered this question did not support any of the options. A further third preferred treating quarterly and annual Making Tax Digital for Business obligations separately. The remaining respondents were evenly split between the other two options (review of a calendar year vs. tax year obligations).

Question 4.3: Do you agree that the proposed approach to one off oversights would be a proportionate response to occasional lateness that lasted just a short time?

7. Most of those who answered this question supported the proposed approach of a 30 day period of grace allowing one-off oversights for those with annual obligations, but some thought that clear guidelines would be needed to prevent any future compliance issues. A large minority of the respondents felt that this option could cause customers to use the 30 day period of grace as a deadline extension.

Question 4.4: Could any changes be made to the regular review of compliance model to make it fairer, simpler or more effective?

8. Various suggestions were made, including further consultation and capping the penalty that could be accrued per compliance review period.

### **Government Response**

9. Model B was the least favoured by respondents, being considered the least fair, the most complex and lacking transparency. The government will not therefore be proceeding with this model. However, the government welcomes the time taken by respondents to comment on the regular review proposal.

## Chapter 5: Model C – Suspension of Penalties

1. Chapter 5 of the March 2017 consultation proposed a model for suspension of penalties which gives the customer the opportunity to avoid having to pay a penalty by providing a late submission within 30 days. It provides for two possible failures without incurring a penalty but only if the outstanding submission is provided within a specified time.
2. To avoid customers repeatedly providing late submissions, the number of occasions on which a penalty would be suspended would need to be limited. A period of sustained good compliance would be used in a similar way to the points model to reinstate the ability to suspend a penalty for initial failures.

Question 5.1: Do you agree that improved compliance should be recognised? Is there a better way to recognise it?

3. The vast majority of respondents to the question agreed that improved compliance should be recognised in some way. However, many of those respondents who supported the points model indicated that the points model recognised improved compliance just as well as, if not better than, suspension. Some were concerned about how much complexity suspension could add to the process, especially for those with multiple obligations. A number of respondents indicated that there was potential for confusion with different types of suspension provisions applied to the deliberate withholding of information behavioural penalties. Others asked for more detail and suggested further consultation.

*“We like the suspension model for that very reason: that improved compliance is recognised. The automatic setting of conditions should positively encourage and recognise compliance and prevent and penalise non-compliance”*

*“Keeping track of periods of good compliance and lack thereof will provide another administrative burden for taxpayers”*

*“We do think that improved compliance should be recognised; indeed we would go further and argue that good compliance in the past should be recognised. This is why we prefer Model A [points]”*

*“The taxpayers’ behaviour and attitude are the salient factors to recognise when assessing compliance. This means not penalising those who make one-off or accidental errors. The ‘suspension’ model appears the best at achieving this.”*

Question 5.2: Could any changes be made to the suspension model to make it fairer, simpler or more effective?

4. Suggestions to improve Model C included:

- Customers being able to warn HMRC in advance that they may be late;
- Three opportunities to suspend penalties;
- No more than one or two suspensions in a three year period; and
- Resetting the ability to suspend penalties after every reporting cycle;

### Government response

5. The government recognises that Model A and Model C present some similar characteristics, ensuring that one, two, three or four unintentional late submissions are not unfairly penalised by the immediate charging of a penalty. The government therefore agrees that both would to some extent acknowledge and encourage compliant behaviour.
6. As set out in Chapter 2 paragraph 13, the government considers that Model A achieves the better balance between fairness and simplicity whilst being effective in supporting good compliance. The points-based model will also provide a greater opportunity for customers to change their behaviour before getting to the stage where a penalty is charged. It is also perceived as more transparent and easier to understand. The government welcomes the time taken by respondents to comment on the suspension proposal.

## Chapter 6: Details of the points-based penalty model

1. This chapter describes some of the main features of how it is anticipated the points-based model will work in practice. Some of these details have been confirmed previously, either in the original consultation for this response document or the earlier chapters of this summary of responses. Other features have come about as a result of consultation feedback or from further thinking on the practical operation of the model.
2. The government is not seeking comments on these details now. There will be an opportunity to comment on the working of the legislation when the government consults on it in Summer 2018. That consultation will be accompanied by a technical note explaining the holistic operation of the regime.

### Previously confirmed details

#### *Summary of model*

3. A customer receives a point every time they fail to provide a submission on time. At a certain threshold (depending on the frequency of their submission obligations) a penalty is charged. Once the threshold is reached a penalty is charged for every subsequent failure to provide a submission on time. The points are reset to zero after a period of good compliance (that is, meeting submission obligations on time), again depending on the frequency of the obligation. This model is designed to ensure that isolated failures do not attract a penalty and improved reporting behaviour is rewarded.

#### *Penalty thresholds*

4. The following penalty thresholds have previously been mooted, and the government intends to proceed with them:

<b>Submission frequency</b>	<b>Penalty threshold<sup>1</sup></b>
Annual	2 points
Quarterly	4 points
Monthly	5 points

#### *Points total per tax*

5. Previous consultations indicated divided views on whether a points total should apply per tax or should cover all obligations regardless of how many taxes a customer is liable for. A separate points total per tax is preferable because it a) is simpler (avoiding complex calculations to devise penalty thresholds for customers with different numbers of obligations) and b) reflects business structure (where different departments may be responsible for different taxes).

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<sup>1</sup> The number of points at which a financial penalty will be charged.

### **Periods of good compliance**

6. As confirmed in Chapter 3, the government is minded to use the following periods of good compliance used for the purposes of resetting a customer's points for a tax to zero:

<b>Submission frequency</b>	<b>Good compliance period</b>
Annual	2 submissions
Quarterly	4 submissions
Monthly	6 submissions

### **Flexibility**

7. The government intends to provide HMRC with a power to ensure that points and penalties do not *have to* be accrued, including if a customer provides a reasonable excuse in advance of missing a deadline.

### **Appeals**

8. Both points and penalties will be fully appealable. HMRC recognises that customers may wish clear points from their total even if a financial penalty has not yet been charged.

### **Additional details**

#### ***Making Tax Digital for Business (MTDfB) Income Tax Self Assessment (ITSA) obligations***

9. Customers with more than one business will, under MTDfB ITSA, be required to provide an individual regular update for each business. These updates per business are framed in the legislation as separate obligations. The government has considered, in a similar way to customers with multiple tax obligations, whether a customer should have one points total for all these sets of obligations, or whether each set of obligations should have a separate points total.
10. A strong message from consultation responses was that simplicity and clarity of communication should be prioritised in order for the system to be fair and effective. A single points total covering all sets of MTDfB obligations would necessitate tailored penalty and reset thresholds for every customer with more than one set of obligations. The government feels that this approach would severely undermine the principle of simplicity and lead to confusion and misunderstanding for both customers and HMRC.
11. The government accepts that the disadvantage to this approach is that there is potential for a customer with multiple businesses to attract more penalties than those with only a single business. However, this would only ever be as a result of them repeatedly failing to meet their obligations at least four or more times for each of their individual businesses.

12. If the approach of one points total (regardless of the number of businesses) were to be taken, a customer with a single business would receive the same penalty as a customer with multiple businesses for failing to meet far fewer obligations. The government thinks this is more unfair. The government therefore intends to implement a separate points total for each business.

### *Implementation for different taxes*

13. The first tax for which the new model will be implemented is likely to be MTDfB VAT obligations in 2020, following a soft-landing period of 12 months.
14. The government has previously indicated that the new regime should apply to as many taxes with regular submission obligations as possible. This will provide a simplified single system for customers to understand.
15. The government can now confirm that, where a tax has regular submission obligation that fits the model, it will be included within the scope of the new regime. The regime will then be commenced by secondary legislation for different taxes at an appropriate point in the future, and after an appropriate notice period has been provided to customers.

### *Moving between different reporting frequencies*

16. In many taxes (including VAT), it is possible for customers to elect to change reporting frequency if they meet certain conditions. The government wants to accommodate this flexibility without penalising those who need to change frequency or incentivising changes unrelated to business needs. There will be a mechanism to adjust the points totals and reset good compliance periods in a way which provides neither advantage or disadvantage to these customers.

### *Partnerships*

17. In common with other indirect tax liabilities, the government thinks that the liability for late submission points and penalties for the ITSA partnership return (whether required under MTDfB or the current ITSA scheme) should lie with the partnership. The government does not think that each individual partner should accrue points and penalties. The government therefore intends to apply a single points total and late submission penalty for which the partners will be jointly and severally liable. This creates parity with other businesses.

### *Incentivising submission of information after the deadline has passed*

18. In order to provide some motivation to submit returns after the deadline and once a point has accrued, it will not be possible for the points total to be reset unless all relevant submissions for the tax for the previous 24 months have been provided. This approach balances the need to provide an incentive for submission after the deadline with recognition that changing behaviour for forthcoming submissions is the primary aim of the model. This approach is likely to be particularly effective at influencing the behaviour of those who have

reached the penalty threshold (and have therefore failed to submit multiple returns).

### ***Maximum lifetime for points***

19. The government does not want those who are generally compliant with submission obligations but who are occasionally late to be overly penalised. Without a maximum lifetime for points it is plausible for a customer with quarterly submissions to accrue a financial penalty by failing to provide 25% of their submissions over the course of 3 years. For that reason the government intends to initially set the maximum lifetime of points at 24 months.
20. Whilst points will generally expire after 24 month, the government does not want points to expire for those who have reached the threshold. This will prevent gaming of the system and will not affect those who are only occasionally late.

### ***Changes to Deliberate Withholding penalty***

21. With the demise of the current escalating late submission penalty, the penalty for deliberately withholding information about their tax liability will be amended to be applicable (where appropriate) at any time after a deadline has passed, rather than 12 months or more after the deadline.

### ***Next steps***

22. Further technical details will be included in the draft legislation for consultation, which will be accompanied by a technical note. The value of the financial penalty will be announced in due course.

## Chapter 7: Penalty Interest

1. The government said in the [Summary of Responses](#) to the 2016 consultation that it regards penalty interest as the primary option for a late payment sanction for late payment for Corporation Tax, Income Tax and VAT<sup>2</sup>.
2. Chapter 6 of the March 2017 consultation provided an update and invited further comments on a possible model and its interaction with late payment interest.
3. Although no specific questions were asked about penalty interest in the March 2017 consultation, there were a total of 68 widely differing comments provided by 32 respondents. These were primarily centred on the rate for the calculation and the date from which to apply penalty interest.
4. Comments were broadly in line with the previous consultation, questioning the suggested timescale for charging and the rate of penalty interest.

### Government Response

5. The government welcomes the further views expressed on penalty interest in response to this consultation and is committed to ensuring that penalty interest is designed in the best way to replace the current late payment penalties.
6. The government has now published a consultation on its proposals for the harmonisation of interest rates and rules, and the proposed introduction of a standardised approach to sanctions for late payment across taxes. This document also considers the further views that were raised in response to the penalty interest proposals above. This is called '*Making Tax Digital: interest harmonisation and sanctions for late payment*' and can be found at <http://www.gov.uk/government/consultations/making-tax-digital-interest-harmonisation-and-sanctions-for-late-payment>. The closing date for responses is 2 March 2018.

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<sup>2</sup> This should not be confused with late payment interest, which is commercial restitution for HMRC for not having use of monies owed.

## ANNEX A: LIST OF STAKEHOLDERS WHO PROVIDED WRITTEN RESPONSES

1. Association for Financial Markets in Europe
2. Association of Accounting Technicians
3. Association of Chartered Certified Accountants
4. Association of Convenience Stores
5. Association of Taxation Technicians
6. BDO UK LLP
7. British Art Market Federation
8. Chartered Accountants Ireland
9. Chartered Institute of Taxation
10. Certified Public Accountants Association
11. Clive McGovern Ltd
12. Crowfoot & Co Accountants Ltd
13. CSB Accounts
14. Deloitte LLP
15. Eaves and Co
16. Forum for Private Business
17. Grant Thornton UK LLP
18. Harold Smith Chartered Accountants
19. KEW Accountants & Tax Specialists Limited
20. Kingston Smith LLP
21. KPMG LLP
22. Legal and General Group plc
23. Lieberman and Co Accountants and Registered Auditors
24. Low Income Tax Reform Group
25. Lymm Tax services
26. M&S Accountancy and Taxation Ltd
27. National Farmers Union
28. Office of Tax Simplification
29. PricewaterhouseCoopers LLP
30. PKF Francis Clark
31. RB Taxation Services
32. Rhino Software
33. Ross Martin
34. RSM UK Tax and Account Ltd
35. Sandisons Ltd
36. Scottish Grocers Federation
37. Standard Life plc
38. Stern Associates
39. The Institute of Chartered Accountants in England and Wales
40. The Institute of Chartered Accountants in Scotland
41. The Institute of Financial Accountants
42. The Investment Association
43. UHY Hacker Young

16 individuals also provided written responses