HM Revenue
& Customs

Making Tax Digital: Interest harmonisation and sanctions for late payment

Summary of Responses
6 July 2018

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1. Introduction

1. The government is reforming tax administration penalties. This is part of wider work to harmonise tax administration processes across taxes, taking into account other changes such as the introduction of Making Tax Digital for Business (MTDfB).

2. The reform aims to encourage compliance through a penalty regime that is fairer and simpler for customers and retains the confidence of the majority of taxpayers, who pay on time.

3. Previous consultations had already identified that simplifying and harmonising late submission penalties, late payment penalties and interest would make tax administration clearer and simpler for taxpayers, ensuring that it was as easy as possible for them to comply with their obligations across taxes.

4. The government announced, on 1 December 2017, its intention to introduce both a points based late submission penalty model and a late payment penalty model alongside it, which would together form a coherent package. This consultation was launched at the same time.

5. In a previous consultation document Making Tax Digital: Tax administration, published 15 August 2016, the government made numerous proposals relating to sanctions for late submission and late payment. This built on the earlier work establishing common principles for HMRC penalties, which gained wide support through consultation on HMRC Penalties: a Discussion Document published 2 February 2015.

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 needed to be done; and
    - the government would continue to explore penalty interest for late payment, taking into account concerns raised, particularly about rates and the interaction with late payment interest.

7. The government then consulted further on late submission and late payment penalties through the publication of '[Making Tax Digital – sanctions for late submission and late payment]'. The summary of responses to that consultation, issued on 1 December 2017:

- noted support for the points based penalty model; and
- recognised the need to design the model in conjunction with late payment penalties to ensure a coherent and consistent package.

8. At the same time the government launched this consultation, which set out proposals for the new late payment model alongside the closer harmonisation of interest rules and operation.

9. In total 21 written responses were received to this consultation from a number of different areas including representative bodies and accountants. The consultation team also met with a number of organisations.

Structure of this document

10. This document sets out the questions posed in the consultation, summarises what respondents told us, and provides a government response. It is structured as follows:

- Chapter 2: Interest rates and Corporation Tax summarises responses to questions asked about interest harmonisation and Quarterly Instalment Payments (QIPS) and CT generally.
- Chapter 3: Interest and VAT summarises responses on interest harmonisation and application to VAT in the context of both VAT late payments and repayments.
- Chapter 4: Late payment penalties and the interaction with late payment interest summarises responses to late payment penalty proposals and their interaction with late payment interest.
- Chapter 5: Next Steps provides information on further actions.
- Annex A: lists the stakeholders who provided written responses to the consultation

Overview of responses

11. The government is grateful to all of those who took time to respond to this consultation. This has helped to inform the government's response.

12. The interest harmonisation proposals received broad support across all taxes, and the government intends to proceed broadly as proposed in the consultation. Some specific concerns were raised with regards to VAT repayment interest not being paid where there are missing returns or for periods of reasonable enquiry. The government has considered these concerns and decided that where a repayment return is received and there are other outstanding returns HMRC will pay interest from the date any outstanding returns are submitted, subject to reasonable enquiry. **There is further detail on this in Chapter 2.**

13. The majority of respondents were broadly in favour of the late payment penalty proposals. Some expressed some concern about complexity, and regarding specific issues such as the initial penalty being applied 15 days after the payment due date. There were also queries about the interaction with Time to Pay arrangements (TTP) and the length of time taken to finalise these agreements with HMRC.

14. The government has considered both areas of concern in detail. It has decided that in order to be fair to the vast majority who pay on time, penalties should be calculated on debts remaining due after 15 days from the payment due date although on a mitigated basis where payment is made or a TTP arranged up until 30 days after the due date. Where a successful TTP agreement is made, the government will take the date of contact with HMRC as the effective date for the purpose of late payment penalties. **More detail on these decisions is in Chapter 4.**

2. Responses: Interest rates and Corporation Tax

1. This chapter sets out the consultation questions asked in Chapter 3 of the consultation on interest harmonisation and sanctions for late payment. It includes a summary of the responses received and the government response.

2. After setting out the interest principles and Finance Act 2009 interest legislation – which currently applies for ITSA but not for CT or VAT - in the preceding chapter, Chapter 3 explained the current position for interest rates and Corporation Tax.

3. Particular circumstances apply to Corporation Tax Quarterly Instalment Payments (QIPS). The CT QIPS regime is a mechanism whereby large CT payers, (generally those with annual profits of more than £1.5million) estimate their current year's liability and make in year payments based on this estimate. The government considered that the current differential interest rates, paid up to the normal accounting year payment date, for QIPS should be maintained.

4. Other than QIPS, interest on CT is charged by HMRC from the date payment is due to the date it is actually received. Interest is paid to customers from the date the payment that is being repaid was received, or if that payment was received early, the day the payment became due and payable, until the date the repayment is made. These rules broadly mirror those implemented for ITSA (Finance Act 2009 Sch53 and 54).

Responses to the consultation questions

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

5. There was strong support from the vast majority of respondents to keep the differential interest rates that apply to QIPS. A couple of respondents noted that differential interest rates that apply to QIPS were explored at length, which culminated with the current underpinning legislation. They pointed out that the reasons for the differential rates had not changed since then. A small number of respondents felt that the differential rates should be extended beyond the large company population and/or to other taxes.

6. A few respondents raised concerns that larger companies would continue to be treated differently due to their need to make advance payments under QIPs, questioning rationale and inconsistency.

> ***'…given the estimated nature of the payments, we agree that in-year QIPS should continue to attract differential interest rates'***

> ***'..[the majority do accept that] there are often changes that occur between the figures that represent the first quarterly instalment and the final figures and that the interest rate is deliberately set lower to reflect that lack of certainty'***

> ***'..strongly support this proposal. The lower rate of interest for CT QIP… and indeed the difference between that rate and the "normal" rate… were extensively discussed in the period leading up to Budget Day 2000. We think that the same considerations have continued to apply ever since'***

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.

7. All respondents to this question except one agreed that the way interest is charged for CT broadly mirrors the FA09 rules. The respondent who disagreed pointed to the asymmetry and alignment need for the differing tax treatment of interest paid and received for income tax and corporation tax purposes.

Government Response

8. The government considers that the reasons for having differential rates for QIPs remain. Only in CT do customers have to estimate their current year's tax liability before the year is finalised and make payments based on those estimations. Once the payment date for the year, 9 months and 1 day after the end of the accounting period,

has elapsed the usual rates apply. As a result, the Government will be retaining the current interest rate differential for QIPS.

9. **The government continues to consider that the way interest is charged on overpaid and underpaid CT satisfactorily mirrors the income tax FA09 rules and as a result does not plan to legislate further.**

3. Responses: Interest and VAT

1. This chapter sets out the consultation questions asked in Chapter 4 of Making Tax Digital: interest harmonisation and sanctions for late payment. It includes a summary of the responses received and the government response.

2. Chapter 4 sets out the main areas where the rules for charging interest and associated late payment penalties in VAT are not aligned with the general rules for CT and ITSA:

   - **VAT – interest on late payment of returns.** The Government proposed that late payment interest should follow the FA09 rules. Interest would be charged on any amount remaining outstanding from the date the payment for the VAT return was due until it was paid. Where a return was submitted and paid after the proper due date the government proposed that late payment interest would be charged for the period between the proper payment due date of the return and when the payment for it was received.

   - **VAT- interest on assessment and amendments.** Here the government proposed to also adopt the existing rules contained in FA09. In general, interest would be charged to customers as if the return had been correctly made on the due date until the payment of the amendment was received. Where amendments to assessments or returns resulted in amounts due to customers, interest would be paid either:

     - from the date of the payment of the amount that was being repaid, or
     - where not a repayment of an amount previously paid, from the later of the date than an amendment was received, or the date it should have been received.

3. It proposed to retain the current legislative discretion not to charge interest on assessments and amendments in circumstances where it was judged that interest would not constitute restitution in VAT as a whole.

4. The government also set out proposals concerning the charging of interest where a prime assessment, an assessment raised where a return has not been received by the due date, is issued and where it is subsequently replaced by the submission of a return.

- **VAT – interest on delayed payment by HMRC of a repayment return.** The government proposed to replace repayment supplement with repayment interest but also extending the application of repayment interest beyond the circumstances where Repayment Supplement is currently paid, including:

    - dis-applying the current 30 day rule
    - dis-applying late return restrictions
    - dis-applying not paying interest where returns are reduced above certain limits but paying interest only on such reduced amounts
    - retaining the current outstanding return restriction which means that repayment interest would not be paid if there are outstanding VAT returns.
    - retaining the restriction not to pay interest during any periods of HMRC's reasonable enquiries.

Responses to the consultation questions

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

A large majority of respondents considered that the proposals for interest on late payment of a return reasonably reflected FA09 rules. The proposals which would result in the end of default surcharge and repayment supplement were broadly welcomed.

> ***'… we note that the replacement of the default Surcharge with interest payable from the due date until date of payment would be likely to be welcomed by taxpayers'***

> ***'we welcome the removal of the default surcharge and repayment supplement as part of this process for alignment'***

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

5. Views on this were generally supportive but some respondents sought further clarification. This included seeking clear guidance on what would constitute a period of reasonable enquiry; scenarios concerning when

interest would be paid where the repayment is of an amount not previously paid; and a counter proposal for interest to be paid from no later than the due date of the associated return in that circumstance.

6. Clarity was also requested about paragraph 4.5 and 4.6 of the consultation. Paragraph 4.5 of the consultation dealt with interest charged to customers for amendments and assessments and said it would be calculated from the date the return and payment was due. Whereas paragraph 4.6 of the consultation dealt with interest payable to customers where amendments and assessments resulted in an amount due to customers. The explanations offered reflected the general approach that already exists in FA09 for ITSA.

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?

7. Just over a quarter of respondents did not favour the proposals for interest on a delayed payment of a repayment return while a similar number were in support.

'We agree that the principle of imposing interest instead of the repayment supplement, is an appropriate response to a delay by HMRC in making a repayment'

'However it would be helpful if HMRC would indicate how it would seek in the future to encourage its staff to deal with claims in a timely manner absent the threat of repayment supplement'

'While the accrual of interest may, in principle, reflect a delay in HMRC making a repayment claim, it would not appear to adequately recompense the 'use of money' and cash-flow disadvantage that taxpayers may suffer'

8. The balance of respondents either sought further guidance – for example on 'reasonable enquiry' or provided qualified support. While most welcomed the proposed relaxation of existing rules that apply to repayment supplement, some felt that they were not extensive enough, so while many agreed with the proposal to remove the 30 day rule, some concerns were aired on the proposal to not pay interest where there are returns still outstanding. A couple wanted repayment interest set at

higher rates and one raised the inconsistency with direct taxes where there is no restriction on repayment interest where HMRC is waiting for a response to an enquiry.

Government Response

9. The government has considered the concerns raised about paying interest where a repayment return is received and there are VAT returns missing for other prescribed accounting periods. The government proposes to pay interest, subject to reasonable enquiry provisions, from the later of:

- **the date of the claim,**
- **the date the claim should have been made**
- **the date all outstanding returns were received.**

10. This should ensure that customers will receive interest as soon as HMRC can be sure that it understands the overall debt position.

11. The government is committed to making payments to customers as soon as possible whilst ensuring it takes reasonable steps to ensure that such payments are made where there is a valid claim. In addition to receiving interest a customer may make a claim for any costs directly incurred as a result of an unreasonable delay in HMRC making a repayment. In addition, if the payment is delayed due to a mistake by HMRC, a customer may also make a claim for additional costs incurred as a direct result of that mistake.

12. The proposals for applying interest on amendments and assessments for a return are consistent with the current application of amendments, assessments, and discovery assessments to ITSA within FA09. That is, the interest start date is the date the initial self-assessment or return and payment were due.

13. The concept of 'reasonable enquiry' has existed within VAT for some time and will continue to retain its current meaning. An enquiry needs to be reasonable in terms of both the length of time it continues and the matters being considered.

14. The government will be aligning the way interest is charged for VAT with the rules in place for FA09. Interest will not be paid for periods of reasonable enquiry. However, the government proposes to pay interest on claims for amounts due to be repaid in a return, once any missing returns have been received.

4. Responses: Late Payment Penalties and the interaction with late payment interest

1. This chapter sets out the consultation questions asked in Chapter 4 of Making Tax Digital: interest harmonisation and sanctions for late payment. It includes a summary of the responses received and the government response.

2. Chapter 5 sets out the late payment penalty proposals which support late payment interest in encouraging full payment of what is due as soon as possible. These proposals build on earlier consultations and propose a new two-charge model.

3. **The first charge**. Where tax is not paid by the payment due date, and there is no reasonable excuse a penalty payment based on a percentage of the tax unpaid at the due date would become payable after 30 days. There are some exclusions:

    - no penalty would be charged if payment of the unpaid amount was made or a time to pay arrangement (TTP) was agreed within 15 days of the due date; and
    - the penalty would be halved if that payment or TTP was made from day 16 to day 30

Responses to the consultation question

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 arrangement payment?

4. Most respondents were broadly supportive of the two charge system, but some had secondary concerns about the details – for example with the proposed 15 days from the due date, time taken to arrange TTPs, accounting for CT estimates. A few concerns were raised about complexity as well as the potential impact on customers who are vulnerable and unrepresented, with guidance and clear communications

being key to successful implementation. Only three respondents firmly rejected the proposals as a whole.

> ***'we are broadly supportive of the proposed new model for penalties in relation to the first 30 days after the due date. We agree that some form of sanction beyond basic interest is required to ensure fairness to those taxpayers who do pay on time after an initial period'***

> ***'We agree that where a customer does not have a reasonable excuse but is unable to pay the full amount by the due date customers should proactively engage with HMRC to arrange to pay over time but as quickly as they can'***

> ***'15 days is too short a period in which to agree to pay with HMRC'***

> ***'…accepts that HMRC is in a difficult position, that the current VAT regime effectively results in penalties being levied from day one and therefore a movement to payment 30 days later would represent a sizeable change and could drive a negative change in taxpayer behaviour'***

> ***'as now, TTP in place at the due date and reasonable excuse would mean that no penalty would be charged. So to that extent late payment penalties may be regarded as more flexible than default surcharge and more likely to encourage taxpayers to pay sooner by offering the taxpayer the opportunity, after the default event has occurred, to act quickly and remedy the situation and avoid or mitigate the penalty element'***

5. **The second charge.** An additional penalty would then be charged after 30 days from the proper due date until full payment is made. This charge would be calculated in a similar way to interest.

6. Late payment penalties would be charged in addition to late payment interest but there would be no second addition of the base rate used in the formula to calculate the second penalty charge.

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?

7. A small number of respondents felt the rules did not provide balance citing complexity; harshness; historical issues with making TTPs. The majority though were broadly supportive with some offering a degree of qualification via suggestions on the penalty rates and process, including the interaction with TTPAs (for example that penalties should not accrue once a TTP was in place).

> ***'paying any liability on time should be the norm… in the majority of cases IT, CT and VAT liabilities are predictable and the due dates are known in advance'***

> ***'we do have concerns about the terminology… We can see taxpayers being confused by what appears to be two interest charges'***

> ***'given that HMRC is already charging a 2.5% LPUI and a 5% penalty after 30 days we consider that the LPP interest…. Should be set at no more than 7.5% p/a'***

8. The chapter then discussed specific circumstances applying to:

- late returns where a return is not provided and a determination/prime assessment is raised. Penalties would be charged with respect to late payment according to general rules but these would then be cancelled where a return displaces the determination/prime assessment. Interest and penalties would then be calculated from the due date of the return.
- amendments and assessments, where penalties would be charged from the date the amendment is made, or the payment for the amendment is required – if later.
- accelerated payment notices – late payment penalties would be charged if the APN is not paid by the due date.
- payments on account – late payment penalties would only apply to balancing payments, or for CT from the normal due date.

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

9. While once again the majority of respondents were broadly supportive, some provided additional comments including, appeal rights; interaction with CT filing date; and fairness in circumstances where there is no opportunity to make a TTP as the mitigation period would have already passed (for example where a return has displaced a determination or prime assessment), applying special relief was the suggested remedy for this latter situation.

> ***'… the interaction of the proposed LPP with the new model for late filing penalties will need to be considered to ensure that together the penalties applying are consistent, proportionate, and fair…" A person who puts in a return to displace an assessment won't have the same opportunities to TTP and mitigate the penalties.'***

> ***'In general we believe that the proposed rules strike the correct balance'***

> ***'Although not stated in the document, we understand that the interest-type element of the penalty would cease to accrue if and when a payment arrangement (or payment) is made. We support this change as it would mean that there would be a continuing incentive for taxpayers to contact HMRC to make a payment arrangement, even after the initial 15/30 days have elapsed.'***

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

10. The majority of respondents were in broad agreement that late payment penalties should apply from the payment due date, although a few wanted penalties to start at 30 days after the due date. A couple of respondents pointed to the need for taxpayers to be clear about their obligations and clear communications being key.

> ***'In principle we support the concept that penalties should apply from the payment due date…however…a penalty system is only fair if taxpayers know when their obligations to make payments actually arise'***

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

11. Points raised in response to this question are reflected in other parts of the consultation responses.

Government Response

12. **The government intends to introduce the late payment penalties based upon the two charge model consulted on and broadly supported by the majority of respondents. The government considers that the two charge system is fairer to the vast majority who comply with payment dates and prompts better compliance behaviours for the small minority who don't in a proportionate manner:**

- **promoting payment closer to the due date;**
- **encouraging earlier contact with HMRC for those who can't pay, in order to arrange TTPs; and**
- **directly linking the penalty to the amount of time a debt is outstanding.**

13. **The government recognises there are concerns about the complexity of a two charge model. However it considers that the two charge model can be simply distilled down - if a payment or TTP is made or treated as made within 15 days of the due date no penalty will be charged; between 16 and 30 days half a penalty will be charged; after 30 days a full penalty will be charged plus a further penalty which will then accrue daily until payment is made or a TTP treated as made.**

14. **The reasonable excuse provisions and the right to appeal penalties and the amounts of them will remain as important safeguards for customers.**

15. **As suggested by some respondents, where a time to pay arrangement has been made, the government will take the date that a customer (or their properly authorised agent or representative) contacted HMRC with the proposals, as the effective date for late payment penalty purposes.**

16. **The government has considered concerns that 15 days beyond the due date is too short a period, but believes that the reasonable excuse provisions, as well as the confirmation above on when TTPs are effective from, will provide the correct balance between being**

fair to those who pay on time while providing reasonable scope for those who do not pay on time to avoid a late payment penalty without creating an, effectively, significantly delayed second payment date.

17. **The government has considered concerns about LPP applying to CT prior to the return being received and will introduce a reasonable excuse for CT customers to avoid a penalty where, between payment and filing date, they can demonstrate that the payment made at the payment date was based upon a reasonable estimate of the tax due for the year and any balance is paid as soon as possible once the true liability is known.**

18. **In introducing these changes, the government acknowledges that communications with customers will be an important element to achieve the desired result of ensuring that payment is made on time where possible or, where it is not, for customers to make arrangements to pay as quickly and easily as possible.**

5. Next steps

Draft legislation

1. The government has today published draft legislation for the proposed changes to Interest for VAT, Late Payment Penalties and Late Submission Penalties. The draft legislation has been published with this summary of responses.

Final decisions

2. Final decisions on all of these measures will be made after consultation on the draft legislation. The decisions will include dates for implementation and for the rates that will apply.

3. The government expects to include legislation for these measures at the next opportunity and will make any final decisions on the rates that will apply across both late submission and late payment penalties ahead of that point. These penalties will not apply to any tax or accounting periods starting before 1 April 2020.

Annexe A: List of stakeholders consulted

1	Association for Financial Markets in Europe
2	Association of Accounting Technicians
3	Association of Tax Technicians
4	BDO UK LLP
5	Certified Public Accountants Association
6	Chartered Accountants Ireland
7	Chartered Institute of Taxation
8	Deloitte LLP
9	Federation of Small Business
10	Institute of Financial Accountants
11	Institute of Certified Practicing Accountants.
12	Institute of Chartered Accountants in England and Wales
13	Institute of Chartered Accountants of Scotland
14	Kingston Smith LLP
15	KPMG
16	London Society of Chartered Accountants
17	Low Income Tax Reform Group
18	National Farmers' Union
19	PricewaterhouseCoopers LLP
20	RSM UK Tax and Accounting Ltd

And one response from an individual.