Clause 31 and Schedule 13: Penalties for failure to pay tax

Summary

1. This clause and Schedule introduce a new two tiered penalty model for individuals and businesses that fail to pay their tax liability on time. It set outs how the penalty will work, reasonable excuse provisions and the appeal process.

Details of the clause

2. This clause introduces a new schedule comprising of three parts

    a. Part 1 introduces the new two tiered penalty for failure to pay tax liabilities by certain dates;

    b. Part 2 sets out under what circumstances a penalty would apply; and

    c. Part 3 covers the supplementary provisions including reasonable excuses and the appeals process.

Schedule 13: Part 1: Introduction

3. Paragraph 1 introduces the provisions for the new late payment penalty model. It also includes three tables showing the different taxes, the tax liabilities and date by which penalties will be applied from within the new model. The three tables set out the principal amount, amounts payable in default of return being made and amounts shown to be due in other assessments, determinations etc.

4. Paragraph 2 provides for the conditions that apply for the circumstances that are referred to in some items of the schedule. The circumstances relate to where a person fails to make a return and that return, if delivered would have shown an amount was due and payable thus allowing the scope for different treatment of assessments raised in lieu of returns and those that are not.

5. Paragraph 3 refers to corporates and amounts falling due within returns. It sets out that the late payment penalty applies from filing date, which is after the payment date, rather than the payment date where the correct amount was unpaid at the proper date but that the insufficient amount paid was a reasonable estimate of the tax due.

6. Paragraph 4 allows for regulations to be made in relation to late payment penalties and the application to PAYE allowing the effective date for penalties to be after the payment date.

Schedule 13: Part 2: Liability to a Penalty

7. Paragraph 5 states that no penalty is payable by the person if the liability is paid in full before the end of the 15 day after the original due date of the tax. No penalty also applies if proposals are made to HMRC within that time period that lead to a time to pay agreement (TTP) within a reasonable period.

8. Paragraph 6 sets out that if the tax liability has not been paid by day 15 or the time to pay condition is not met then a penalty would apply.

   a. Subparagraphs 6(1-2) provides for a penalty of the Amount A if the debt is paid in full or the 15 day TTP condition is met between days 15 and 30.

   b. Subparagraph 6(3) provides for the situation if the debt is not paid in full before the end the 30 day period. If the 30 day TTP condition is met then again Amount A is charged. If the 30 day TTP condition is not met the amount due is the total of amount A and B.

   c. Subparagraph 6(4) says that amount A is 0.5x% of the amount unpaid at the end of the 15 day period.

   d. Subparagraph 6(5) says that amount B is 0.5x% of the amount unpaid at the end of the 30 day period.

9. Paragraph 7 states that TTP agreements are met if the person contacts HM Revenue and Customs (HMRC) on or before 15 days or 30 days after the original tax liability due date and makes proposals for paying the tax owed and as a result of this an agreement is reached between HMRC and the person.

10. Paragraph 8 states that if the TTP agreement is breached the person will be liable to a penalty on the basis that the time to pay arrangement never was there. If the agreement is breached HMRC may give the person a notice that a penalty is payable under this paragraph.

11. Paragraph 9 outlines that if there is still tax outstanding at the end of day 30 then a second penalty of y% per annum will be applied to the remaining tax liability until it is paid in full or, until the date proposals are received for a TTP which results in an agreement with HMRC.

12. Paragraph 10 sets out that if the TTP is breached the person will be liable to a penalty on the basis that the TTP arrangement was never there.

13. Paragraph 11 gives definitions of certain terms using within this clause including, 15 day period, 30 day period and TTP agreement.

14. Paragraph 12 sets out the future changes that can be made through secondary legislation. These changes include the 15 or 30 days from which the penalties apply from and the percentage values of the penalties.

Schedule 13: Part 3: Supplementary Provision

15. Paragraph 13 sets out the same reasonable excuse provisions that are found in Finance Act 2009 (FA 09).

16. Paragraph 14 states that a person is not liable to penalties covered in this legislation if they have already been convicted of an offence in respect of that failure. This is the same double jeopardy paragraph as found in FA 09.

17. Paragraph 15 explains penalties under this section will not be taken into account under the provisions of section 97A of TMA 1970, paragraph 12(2) of schedule 24 to FA 2007 and paragraph 15(1) of schedule 41 to FA 2008. These pieces of legislation deal with the case where two or more tax geared penalties may apply.

18. Paragraph 16 sets out that HMRC may assess the penalty and must tell the individual the amount and how it has been calculated.

    a. Subparagraph 2 allows that HMRC may make regulations to assess the penalty under paragraph 9 in intervals.

    b. Subparagraph 3 says that HMRC must notify the person of a penalty and describes what detail must be in the notice.

    c. Subparagraph 4 says that the penalty must be paid within 30 days of the date the notice is issued.

    d. Subparagraph 5 provides for how the assessment of the penalty may be treated, and is to be treated as if it were an assessment of tax and may be enforced as such and combined with an assessment of tax.

19. Paragraph 17 says that a further assessment of a late payment penalty amount may be made where an earlier assessment is found to have been too little.

20. Paragraph 18 states that HMRC has one year after the debt is paid in full to make an assessment of any penalty amount.

21. Paragraph 19 - 21 sets out the appeal provisions for this clause. The person may appeal against the penalty being applied and the value of the penalty.

22. Paragraph 22 states that changes made through statutory instrument in relation to part 2 must go through the positive procedure and be approved by the House of Commons. It also states that changes made to assessment under paragraph 16 can go through the negative procedure.

Background note

23. Customers are required to pay tax owed by specific payment dates. If a customer fails to pay their tax on time then they are liable to a penalty in most tax regimes. Currently the value of the penalty applied to customers is varied which can lead to disparity depending upon which tax is owed.

24. The government wishes to encourage customers to pay their tax on time or make contact to

discuss solutions to resolve the situation. The new late payment penalty regime has been introduced to ensure that those who pay their tax on time are not disadvantaged by those who do not and to incentivise payment on time where possible. It ensures that customers who have a reasonable excuse for not paying on time or who contact HMRC with the aim of resolving the issue are not negatively affected.

25. The new regime is likely to initially apply to regular VAT, CT and ITSA obligations. Other excise, environmental, insurance and transport taxes are included within the scope of legislation since the government intends to introduce the new regime more widely after VAT and ITSA.

26. The regime has been the subject of consultation on three occasions, initially as part of 'Making Tax Digital: Tax Administration' responses document published on 31 January 2017, then as part of the consultation 'Making Tax Digital: sanctions for late submission and late payment' responses document published on 1 December 2017 and then finally as 'Making Tax Digital: interest harmonization and sanctions for late payment' consultation published on 1 December 2017 and responses document published alongside the draft legislation.

27. If you have any questions about this change, or comments on the legislation, please contact Duncan Calloway on 03000 571813 (email: mtdta@hmrc.gsi.gov.uk).