



THE INSTITUTE
OF CHARTERED
ACCOUNTANTS
IN ENGLAND AND WALES

12 October 2007

Our ref: ICAEW Rep 95/07

Your ref:

Late Filing Penalty Consultation
Companies House
Crown Way
Cardiff CF14 3UZ

By email to lfpreform@companieshouse.gov.uk

Dear Sir

PENALTIES FOR THE LATE DELIVERY OF COMPANY ACCOUNTS (SECTION 453)

The Institute of Chartered Accountants in England and Wales (the 'Institute') welcomes the opportunity to comment on the consultation draft *Penalties for the Late Delivery of Company Accounts (Section 453)* published by *Companies House* in July 2007.

The Institute operates under a Royal Charter, working in the public interest. Its regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the Financial Reporting Council. As a world leading professional accountancy body, the Institute provides leadership and practical support to over 128,000 members in more than 140 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. The Institute is a founding member of the Global Accounting Alliance with over 700,000 members worldwide.

GENERAL COMMENTS

Timely filing of company accounts is vital to enable third parties such as suppliers and customers to assess the financial strength of a company they are trading with or otherwise contemplating doing business with. Disclosure is the *quid pro quo* for

company's limited liability, and late filing robs such third parties of access to up to date information that could be important to their decisions regarding their dealings with the company.

We are concerned that the current penalties regime provides insufficient deterrent to late filing, and we therefore support the Government's intention to make the late filing penalties regime more effective by increasing the penalties, and by targeting higher penalties on those companies who file very late or repeatedly late.

However, we fear the proposals may not go far enough to achieve the aim of incentivising companies to file on time, and we therefore believe the Government should carry out further research as to whether even larger increases should be introduced.

We also believe that (especially if the amount of penalties is to be increased) a more consistent approach to the waiver of penalties, and better communications with directors regarding filing penalties, will assist with the objective of persuading companies to file their accounts on time.

We recommend that more investment is made in Companies House systems, particularly to improve the system for electronic filings.

ANSWERS TO SPECIFIC QUESTIONS

1. Would the proposed new regime meet our objective of persuading companies to file their accounts on time?

We agree that there should be increases in the penalties, and that there should be a faster rate of increase in penalties for companies who are more than one month late delivering their accounts, and additional penalties for any company that files late in successive years. However, we question whether the current proposals go far enough to provide sufficient incentive to file on time.

We recommend that Companies House gives further consideration to what it is trying to achieve and carries out more research into the level of penalties that would achieve its objectives. For instance, the penalties set out below may be more effective:

- for private companies, a rate of penalties of £200 for each month (or part thereof) that the accounts are late (with no cap); and
- for public companies, a rate of penalties of [£750] for each month (or part thereof) that the accounts are late (with no cap).

We acknowledge that the above alternative would result in increased administration for Companies House.

Proposed "repeat offender" supplement

We support the proposal that the penalty should be doubled if the company also filed its accounts late the previous year. However, instead of this same doubled figure applying in a subsequent (third) year of late filing, we would go further, and suggest that it should be tripled in a third successive late filing, and quadrupled with a fourth, and so on (with no cap).

We agree that a company that files on time should be given a clean slate, and that the repeat offender supplement should also apply when a set of accounts are delivered late with the previous year's accounts still outstanding.

However, we do not agree that the repeat offender supplement should be applied if a penalty levied was levied in the previous year but the Registrar decided not to collect it because of exceptional circumstances (for example because of a fire, or the illness of the only director). We think such companies should be given a clean slate.

Waiver of penalties

We note from Companies House website that extensions can be granted or penalties waived 'in exceptional circumstances'. We believe there are many circumstances in which it would be appropriate for extensions/waivers to be granted, for example, where records are destroyed by fire or stolen (eg on computer hardware). We are aware of anecdotal evidence that suggests there can be a large degree of discrepancy as to whether extensions/waivers are granted, and we believe a more consistent and transparent approach regarding mitigating circumstances may help improve timely filing.

Timing of Notices and Communication

We believe that imposing the penalties earlier, and better communications with directors regarding the penalties for not filing on time, including more information regarding the accelerated rates of penalties, will assist with this objective. At present, penalty notices are only sent when a company actually files its accounts. A possible suggestion for improving timely filing would be for penalty notices to be sent out as soon as a company is in default, with a monthly notice sent reminding the company of the increasing penalties.

Such notices should also make it clear that directors are committing an offence, and subject to be fined personally in the criminal courts, if the accounts are filed late and that, in addition, the Registrar may take steps to strike the company off the public record.

Defective Delivery of Accounts

We note that late filing penalties will apply in respect of accounts that have been filed with the Registrar but have subsequently been discovered (eg through public complaint for instance) not to have met the requirements for proper delivery. In making our comments above regarding the amount of penalties, we have taken into account the fact that the normal penalty bands will apply as from fourteen days from the date of the notice sent to the company if the requirements for proper delivery have not been complied with within that fourteen day period. However, we note that there can be postal delays and that it can often take time for postal correspondence to reach the correct recipient within larger organisations. Also, (for single director companies) the fourteen day period could occur whilst the director is on holiday. We would therefore recommend a move toward electronic defective delivery notifications, as this could reduce potential delays in receipt, and that the extensions/waivers regime takes account of reasonable mitigating circumstances.

Limited Liability Partnerships

We agree that the revised Late Filing Penalties regime should also be applied to LLPs, and we believe this should be implemented at the same time as for companies.

2. Would the proposed new regime be a fair and proportionate response to the issue of late filing?

See our comments above – we fear the increases may not go far enough.

3. Should the date on which the new penalties come into force be 1 February 2009, or should it be either earlier or later?

We support the proposal that the new penalties should apply for accounts filed late on or after 1 February 2009.

Please contact me should you wish to discuss any of the points raised in this response.

Yours faithfully



Liz Cole
Manager, Business Law
T +44 (0)20 7920 8746
F +44 (0)20 7638 6009
E liz.cole@icaew.com