



## LATE SUBMISSION PENALTIES (CL30, Schedules 11 and 12 F3B17-19)

Issued 31 August 2018

ICAEW welcomes the opportunity to respond to the *consultation on draft Finance (No.3) Bill 2017-19 legislation: Clause 30, Schedules 11 and 12 late Submission Penalties* published by HMRC on 6 July 2018.

This response of 30 August 2018 has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

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## THE MEASURE

1. The clause and the associated schedules introduce a new points-based penalty regime for late submission of tax returns with a regular filing frequency. The measure is expected to initially apply to VAT and income tax self assessment obligations before being extended to other taxes.
2. Some minor amendments are being made to the penalty regime for taxpayers who, by failing to make a return, deliberately withhold information so that the two penalties work together.
3. The start date for the measure is delegated to secondary legislation but the intention is that implementation will be staged and will commence with penalties for VAT filing obligations from 1 April 2020.

## OUR CONCERNS

4. ICAEW responded to previous consultations on late submission penalties. Many of the points made in these responses <https://www.icaew.com/-/media/corporate/archive/files/technical/icaew-representations/2016-part-2/icaew-rep-175-16-mtd-tax-administration.ashx> and <https://www.icaew.com/-/media/corporate/files/technical/icaew-representations/2017/icaew-rep-68-17-making-tax-digital-sanctions-for-late-submission-and-late-payment.ashx> are still pertinent and have not been fully addressed by the current drafts.
5. ICAEW is concerned about the uncertainty over the penalty regime that will apply in the first year of mandatory MTD for VAT filing in 2019/20. Paragraph 20, Schedule 11 gives HMRC the power to make regulations to provide a period of grace (familiarisation period) during which points and penalties for a late return would not be incurred when a new or amended return obligation is introduced. It appears that there is no such period of grace for the current default surcharge regime for VAT which will apply in 2019/20, the first year of the new MTD for VAT obligations. The practical application of the old and new penalty rules needs careful managing, with clear communication to businesses. Many VAT registered businesses do not use a professional adviser for what has previously been seen as a simple administrative task. In particular the withdrawal of the seven day period of grace for submitting a return should be explained.
6. ICAEW welcomes the decision to introduce the new penalty measure separately for each tax regime and that the introduction of a single penalty regime covering all of a taxpayer's filing obligations has been put aside for future consideration.
7. ICAEW is concerned that taxpayers that have more than one business and file separate returns for each business will have separate points totals and penalties for each business. This will add considerable complexity for some taxpayers that have relatively straightforward tax affairs; for example, a taxpayer with a single self-employment and income from property would, we understand, be treated as having two or more businesses with separate filing obligations.
8. ICAEW supports the five principles that should underpin penalty regimes that were set out in paragraph 3.2 of the August 2016 consultation document **MTD: Tax Administration** and the statement that the approach to penalties should be simple, fair and proportionate. In order to be effective a penalty regime needs to be easily understood by those affected. We are concerned that this measure is far from being simple; the proposed penalty regime is extremely complex and will not be easily

understood by taxpayers. As the proposals have developed, additional layers of complexity have been added. These include the time limits for HMRC to notify a taxpayer that they have incurred a point, a time limit for HMRC to assess the penalty, complicated rules to deal with the situation where the frequency of reporting changes and the need to have separate points totals for each submission obligation (as mentioned above, for income tax there may be more than one submission obligation).

9. Without knowing the level at which the penalty will be set we are unable to assess whether the measure is proportionate. We consider that penalties will not be seen as proportionate if they are not capped at the amount of tax payable, but we look forward to further consultation specifically on the level and basis for calculating penalties.

## **OUR RECOMMENDATIONS**

10. We recommend that a period of grace be applied to the submission of VAT returns in 2019/20, the first year of the new MTD for VAT obligations and that penalties and default surcharge be applied on a risk-assessed basis only.
11. We recommend that the measure be amended so that each individual taxpayer would have to keep track of only one points total for income tax self assessment (including their quarterly and annual obligations) however many 'businesses' or sources of income they may have.
12. We recommend that HMRC gives consideration to how it will educate taxpayers about the new penalty regime to ensure that it is well understood. The information currently available on gov.uk about late submission and payment penalties for income tax self assessment is inadequate; we recommend that much fuller information about the new rules be made available on gov.uk.
13. We recommend that HMRC designs its regular communications to ensure that taxpayers are reminded of upcoming filing obligations and are warned when they are about to incur a financial penalty for late submission or late payment. Warnings need to be effective and messages on digital tax accounts may not achieve the desired effect especially where a taxpayer has built up outstanding filing obligations over a considerable period.
14. The interaction between late notification, late submission and late payment penalties is important. Taxpayers see them as being part of one system and we recommend that changes are introduced as a package and the interactions are made clear.

## **SUGGESTED AMENDMENTS**

15. We do not have any specific amendments to suggest.