



# **Finance (No.2) Bill 2019-21**

## **Clause 113 & Schedule 25: Penalties for failure to pay tax**

### **BRIEFING FOR MPS ON THE FINANCE BILL BY ICAEW TAX FACULTY**

#### **WHO WE ARE**

Please see Appendix 1.

#### **EXECUTIVE SUMMARY**

1. ICAEW considers that the proposed late payment penalty regime is overly complex and as a result will not be understood by taxpayers and therefore will not act as an effective deterrent. We recommend that the measure be simplified.

#### **THE MEASURE**

2. The measure introduces a new penalty regime for late payment of income tax and VAT. It replaces the existing late payment-related penalties for income tax and VAT.
3. The existing late payment penalty for income tax is 5% of tax unpaid 30 days from the due date, with further 5% penalties levied at six months and twelve months from the due date. Late payment of VAT is a 'default' which may give rise to a **default surcharge**. These income tax and VAT rules will be superseded by the proposed changes.
4. Late payment penalties will be charged in addition to interest.
5. The proposed regime would operate as follows:
  - A first penalty of 2% would be charged on tax unpaid at the end of 15 days from the due date. A further 2% would be charged on tax unpaid at the end of 30 days from the due date.
  - A second penalty would be charged on a daily basis on tax unpaid from the day after the end of 30 days from the due date to the day the tax is paid. This daily penalty would be charged at an annual rate of 4% on the tax unpaid.
8. The penalties would not be charged if the taxpayer contacts HMRC with a proposal for paying the tax due and that contact results in an agreed time to pay arrangement which is not subsequently broken.
9. The measure gives the Commissioners for HMRC the power to vary the number of days and the percentages specified by regulations. The start date will also be set by regulations.

## DETAILED COMMENTS

### Our concerns

6. In order to be effective, penalty regimes need to be simple, fair and proportionate and easily understood by those affected. ICAEW is concerned that the proposed late payment penalty regime does not adhere to these principles. The proposed rules, which will apply to both income tax and VAT, are more complex than the current late payment penalty regime for income tax on which they are partially modelled, and that regime is itself not well understood by taxpayers. We consider that, however good the communications, the proposed regime will not be well understood by taxpayers and will catch them unawares rather than acting as a deterrent.
7. The proposal creates cliff-edges at 15 and 30 days after payment due dates as within this period the taxpayer will need to contact HMRC to make a proposal for paying the tax due in order to avoid a penalty of 2% or 4% of the tax due. Even if more online contact options are made available by HMRC, these two trigger dates will only add to the pressures on HMRC helplines and taxpayers may find themselves unable to make contact, especially within the 15-day period.

### Our recommendation

8. We recommend that the government reverts to the previous proposal for late payment penalties for income tax and VAT which was to charge only what is now the second penalty calculated on a daily basis at a percentage of the tax due. We recognise that the rate at which this penalty is charged might need to change if the initial penalty is not charged.
9. If the first penalty is to be charged, we recommend that the measure be simplified for both income tax and VAT so that there is a single 30-day trigger point for the first penalty rather than two trigger points at 15 and 30 days.

### Suggested amendment

10. We suggest that the measure be amended to reflect our recommendations.

## FURTHER INFORMATION

As part of our Royal Charter, we have a duty to inform policy in the public interest.

### Contact details

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## **APPENDIX 1**

### **ICAEW TAX FACULTY – WHO WE ARE**

ICAEW Tax Faculty is internationally recognised as a source of expertise and is a leading authority on taxation. It is responsible for making submissions to tax authorities on behalf of ICAEW and does this with support from over 130 volunteers, many of whom are well-known names in the tax world. ICAEW Tax Faculty's Ten Tenets for a Better Tax System are summarised in Appendix 2.

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 150,000 chartered accountant members in over 160 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

## APPENDIX 2

### ICAEW TAX FACULTY'S TEN TENETS FOR A BETTER TAX SYSTEM

The tax system should be:

1. **Statutory:** tax legislation should be enacted by statute and subject to proper democratic scrutiny by Parliament.
2. **Certain:** in virtually all circumstances the application of the tax rules should be certain. It should not normally be necessary for anyone to resort to the courts in order to resolve how the rules operate in relation to his or her tax affairs.
3. **Simple:** the tax rules should aim to be simple, understandable and clear in their objectives.
4. **Easy to collect and to calculate:** a person's tax liability should be easy to calculate and straightforward and cheap to collect.
5. **Properly targeted:** when anti-avoidance legislation is passed, due regard should be had to maintaining the simplicity and certainty of the tax system by targeting it to close specific loopholes.
6. **Constant:** Changes to the underlying rules should be kept to a minimum. There should be a justifiable economic and/or social basis for any change to the tax rules and this justification should be made public and the underlying policy made clear.
7. **Subject to proper consultation:** other than in exceptional circumstances, the Government should allow adequate time for both the drafting of tax legislation and full consultation on it.
8. **Regularly reviewed:** the tax rules should be subject to a regular public review to determine their continuing relevance and whether their original justification has been realised. If a tax rule is no longer relevant, then it should be repealed.
9. **Fair and reasonable:** the revenue authorities have a duty to exercise their powers reasonably. There should be a right of appeal to an independent tribunal against all their decisions.
10. **Competitive:** tax rules and rates should be framed so as to encourage investment, capital and trade in and with the UK.

These are explained in more detail in our discussion document published in October 1999 as TAXGUIDE 4/99 (see <https://goo.gl/x6UjJ5>).