



# Securing Compliance with Real Time Information – Late Filing and Late Payment Penalties

## **Consultation document**

Publication date: 14 June 2012

Closing date for comments: 6 September 2012

<b>Subject of this consultation:</b>	Securing compliance with Pay As You Earn (PAYE) Real Time Information (RTI) and the late filing and late payment penalty models which will apply where compliance is not achieved.
<b>Scope of this consultation:</b>	Supplying information to HMRC under RTI is designed to be quick and simple, as it will be integrated into employers' payroll processes. HMRC wants to maximise compliance with RTI and this document seeks views on how we can achieve that. Late filing penalties will be a fallback where information is not supplied on time, and this document seeks views on how these penalties should be structured. It sets out two possible models that build on existing penalty models. Late payment penalties will also apply although under RTI the payment obligation for employers is not changing. Some refinements to the existing late payment penalty model are set out in this document and views are also sought on these.
<b>Who should read this:</b>	Those running PAYE schemes, providers of payroll services, employers and pension scheme administrators, their agents and representatives, and anyone who has an interest in RTI and PAYE issues generally.
<b>Duration:</b>	14 June – 6 September 2012
<b>Contact:</b>	Fiona Duncan, HM Revenue & Customs
<b>How to respond or enquire about this consultation:</b>	HM Revenue & Customs RTI Penalty Consultation Tax Administration Policy Team Room 1/74, 100 Parliament Street London SW1A 2BQ  Telephone: 020 7147 3186 Email: <a href="mailto:TAP@hmrc.gsi.gov.uk">TAP@hmrc.gsi.gov.uk</a>
<b>Additional ways to be involved:</b>	HMRC consultation on RTI continues, and there will be opportunities to discuss a late filing penalty model during the consultation period at various events. If you would like to be involved please contact Fiona Duncan on 020 7147 3186 or send an email to <a href="mailto:TAP@hmrc.gsi.gov.uk">TAP@hmrc.gsi.gov.uk</a>
<b>After the consultation:</b>	Responses to this consultation will be used to help us improve compliance with RTI and to develop a late filing penalty model for RTI. Draft legislation covering these penalties will be published for further consultation in the Autumn along with a summary of responses document.
<b>Getting to this stage:</b>	A number of consultation documents on the collection of Real Time Information for PAYE were published. These were followed by publication of the draft legislation on 14 November 2011 which came into force on 6 April 2012. The existing late filing and late payment penalties are set out in section 98A Taxes Management Act 1970, and Schedules 55 & 56 of Finance Act 2009 which were developed following consultations during 2008 and 2009.
<b>Previous engagement:</b>	See above.

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# 1. Introduction

## Real Time Information (RTI) under Pay As You Earn (PAYE)

- 1.1 By April 2013 most employers will be reporting PAYE in real time. All employers will be expected to report PAYE in real time before October 2013, to be ready for the introduction of Universal Credit by the Department for Work and Pensions (DWP). RTI is a key Government priority aimed at improving the operation of PAYE by making the system better for taxpayers and easier for employers and HMRC to administer.
- 1.2 PAYE has remained largely unchanged since it was introduced in 1944 and needs updating to meet the needs of the 21st century. Since PAYE was introduced, employment patterns have changed. Today it is more common for people to have more than one job or pension, and for people to change jobs more frequently.
- 1.3 Currently employers and pension providers send us pay and tax information annually under PAYE. This can make it difficult to keep individual records up-to-date.
- 1.4 The underlying process for PAYE - employers making deductions and paying them to HMRC - will not change. The payment deadlines for employers and pension providers will also remain the same. Small employers will continue to have the option of paying HMRC quarterly rather than every month.
- 1.5 Under RTI employers and pension providers will send information in 'real time' - when or before they pay their employees. The better quality, more up-to-date information will mean that, over time, individuals' repayments or bills after the end of the year will be reduced (easing the burden of a big, and often unexpected, tax bill for many of our customers).
- 1.6 DWP will need up-to-date information about employment and pension income so that they can adjust claimants' Universal Credit welfare payments to reflect their circumstances. RTI will deliver this.
- 1.7 Reporting PAYE in real time will lead to a reduction in error and fraud, and reduce the administrative burden for employers by around £300m a year (net) – the biggest single contribution any change could make. This saving comes mainly from removing the separate end of year process and integrating real time PAYE reporting with normal payroll activity. The need to send starter and leaver information to HMRC separately will also be removed as this information will form part of the RTI submission.

## Universal Credit – 21<sup>st</sup> Century Welfare

1.8 In addition RTI will support DWP in their delivery of the new Universal Credit. Universal Credit will simplify the welfare system to make work pay and combat unemployment and poverty. The aim of this new welfare system is to address the complexity within the current benefits and tax credit systems, and move people out of poverty by making work pay.

1.9 Supporting people into work is the key objective of Universal Credit. Universal Credit intends to top up earnings in a way that will make sure that there is a clear financial gain from working. In order to do this DWP will need real time information about an individual's income. For people who pay tax on their earnings through the PAYE system, Universal Credit entitlement will respond to earnings information received through HMRC's automatic 'Real Time Information' PAYE data transfer. It is therefore essential that employers comply with their obligations to report earnings via RTI.

### Employer obligations under RTI

1.10 Under RTI an employer or pension provider has to send HMRC details of every payment made to each employee/pensioner, on or before the day that payment is made. By matching the transmission of information with payroll administration procedures, it should be easy for employers and pension providers to meet this requirement.

1.11 The payment obligation under RTI has not changed. Monthly or quarterly payments still need to be made to HMRC by either the 19<sup>th</sup> or 22<sup>nd</sup> of the month or quarter. These payments represent the deductions made from an employee's salary or wages in the previous month or quarter. Some employers also have to make annual payments of certain National Insurance Contributions.

### Penalties

1.12 HMRC is working closely with employers, payroll providers and software developers in the RTI pilot to identify the best ways of making it as easy as possible for employers to comply with RTI, and to integrate it as closely as possible with their normal payroll processes.

1.13 In line with other tax regimes, the RTI obligations will be reinforced by penalties, which are designed to encourage compliance. There are a number of steps involved in issuing a penalty, and the process can be explained as follows:

- a. Where an obligation is not met in full, or on time, a default arises
- b. HMRC will tell the employer about the default
- c. The default may attract a penalty
- d. HMRC will tell the employer when a penalty arises, explain why, and notify the amount of the penalty
- e. HMRC will seek payment of the penalty.

- 1.14 There may be a number of other steps in the process, particularly if the employer wants to ask questions about the default, the penalty, or formally appeal against it.
- 1.15 This document considers how to maximise compliance with RTI and the basic automatic penalties that will apply to employers who do not meet their RTI information and payment obligations in full and on time. This consultation does not cover the penalties for filing incorrect returns which are subject to a separate process of compliance checks and which take account of the underlying behaviour of the employer.

## 2. Securing Compliance within RTI

### Helping Employers Comply with RTI

#### *Understanding our Customer*

2.1 The introduction of RTI is the biggest change to PAYE<sup>1</sup> in its history. This will have significant benefits for businesses, HMRC and taxpayers over time, but we recognise that it is a major undertaking for employers. We are therefore looking to support our customers through the transition as effectively as possible, to help them comply with their obligations.

2.2 We know that the majority of our customers want to obey the law and HMRC want to encourage this and the timely filing of RTI returns, rather than issuing penalties. HMRC are therefore working closely with employers, payroll providers, and software developers to make it as easy as possible to comply with the RTI obligations and, to that end, to integrate RTI reporting as closely as possible with the payroll process itself. Given the importance of RTI for Universal Credit we are keen to encourage voluntary compliance from all employers, so it is important that the penalties system is designed in a way that supports this. We are conducting research specifically looking at the barriers to compliance, and exploring with employers how HMRC can support them into real time reporting of PAYE information. The findings from this research will be available over the summer and, together with the responses to this consultation, will help us develop the optimal package of support and sanctions to enable employers to meet their obligations under RTI.

#### *Design*

2.3 One way to support our customers is to make it easy for them to comply. RTI does this by linking the submission of data to HMRC with the payroll process and software used by the employer. The integral nature of the reporting means that compliance is quick and easy, and virtually invisible to the employer. An added benefit is the removal of much of the current PAYE end of year process, as information provided each pay period will be on a cumulative basis, so HMRC and the employer will have easy access to “year to date” figures for pay and deductions for each employee.

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<sup>1</sup> PAYE is the system used by employers to deduct tax, national insurance contributions, Student Loan repayments and statutory payments, such as maternity, sick and adoption pay, from an employees wages. These sums are then paid over to HMRC each month or quarter.

2.4 The Business Tax Dashboard recently launched by HMRC is a step towards creating a single view of a business customer's tax position. This gives our customers a summary of their tax position on a single screen, including links to the existing, more detailed, views of liabilities and payments for corporation tax and income tax. Employers will also be able to view their liabilities and payments for PAYE and the facility to view liabilities and payments for VAT will be added shortly. This will mean that employers will be able to see how much they need to pay HMRC each month or quarter. Any employer that thinks they will struggle to make their payment should contact HMRC early to discuss options, including a Time to Pay arrangement.

### ***Paper filing for a small number of employers***

2.5 Employers who employ a carer to cater for their personal needs in their own home, and those who are a practising member of a religious society or order whose beliefs are incompatible with the use of electronic communications, will have the option of filing information monthly by paper. HMRC envisage that late filing penalties will still apply to these employers, but they will not be issued automatically.

### ***Support***

2.6 We are working closely with employers, payroll providers and software developers throughout the pilot year of RTI. The pilot allows us to test RTI and the support we provide and iron out any wrinkles before most employers join RTI from April 2013. As part of this we will be updating our guidance and communications to employers about RTI based on feedback we are receiving during the pilot.

2.7 Commercial payroll packages, including some free software packages that are available, are usually the best solution for employers of all sizes because they provide a wide range of automated support for payroll and PAYE tasks. However, employers with 9 employees or fewer, will be able to use HMRC's free RTI-enabled software. We are also developing an Assisted Digital package designed to help less IT literate small employers through the online procedures. This is particularly designed to help those who are new to online services.

2.8 We already provide a range of free support to small and medium employers to help them understand the PAYE rules and keep up to date. This includes interactive online help, webinars (online seminars), factsheets and workshops. In addition, for customers preparing to migrate to RTI, there will be dedicated webinars available to help them understand what to do and when.

2.9 More generally, we arrange a number of events for employers throughout the year, and general information on the operation of PAYE is available online on both the HMRC and Business Link websites, and from the Employer Helpline. We also publish a regular Employer Bulletin and send Employer Update emails each week to those registered for this service. These provide concise, up to date information on topics currently of interest to employers and their staff.



## The impact on employees

2.10 The information requirement under RTI has been designed to be easy for employers to meet. Universal Credit recipients in employment will see their awards regularly adjusted to take account of wages information as it is received. If these awards are delayed or incorrect it is expected that many claimants will bring this to the attention of their employer.

## Charging Penalties

2.11 Despite the support and guidance provided to employers, past experience suggests there will be a small minority who risk failing to meet their obligations under RTI. So it is important to provide clear and visible sanctions to reinforce legal obligations; these can help to change the behaviour of the more determinedly non-compliant employers. Penalties also reassure the majority who do file and pay on time that HMRC takes non-compliance seriously, and is tackling the unfairness brought about by those employers who do not obey the rules.

2.12 The new late filing and late payment penalties for RTI will be issued automatically rather than manually. As with other penalties, they will be subject to appeal.

2.13 Penalties for filing an incorrect return will also apply to RTI returns from 2013/14. These are behaviour-based and are usually applied manually following a compliance check. Where an employer has taken reasonable care to ensure their return is accurate then no penalty will be due. The detail of these error penalties can be found in Schedule 24 to Finance Act 2007.

2.14 For 2012/13 employers in the RTI pilot will not be charged a penalty in-year for inaccuracies on RTI returns submitted. Penalties will be charged after the end of the year for 2012/13 where appropriate. This will ensure employers in the RTI pilot are treated broadly in line with employers who have not yet joined RTI.

2.15 We are considering the best way to apply these error penalties for RTI from 2013/14. We want to ensure that any penalties issued are fair and easy to understand. We also want to ensure that we do not need to issue a separate penalty notice for every RTI return that contains an error, as this would be unnecessarily burdensome for employers and for HMRC.

**Q1. Do you have any comments on RTI and error penalties that will help us support businesses and promote timely filing under RTI?**

## 3. Penalty Design Principles

- 3.1 In recent years, penalties have been designed in line with a set of basic principles established in consultation with external bodies. These principles remain important for RTI, but the detailed penalty models will need to be adapted to cater for RTI.
- 3.2 As for all taxes and other areas of HMRC business, such as the collection of student loans, we want to support and encourage compliance rather than issue penalties. Therefore a key design principle of RTI is to make it as easy as possible for employers to supply the necessary information. One way of achieving this is by integrating PAYE reporting with payroll activities. We want to make compliance the easiest option.
- 3.3 But as set out in Chapter 1, penalties are needed to reinforce the legal obligations, to deter non-compliance and to ensure that the majority of employers who do what is required are not disadvantaged by the few who do not. We would therefore welcome your views on the penalties structure that would best support this aim.

### RTI-specific features

- 3.4 The RTI process has a number of features that need to be borne in mind when considering penalties for not filing a return on time. For example:
- RTI reporting should be as simple as possible for employers to encourage compliance and minimise employer burdens;
  - RTI penalties should recognise the “learning curve” faced by employers when they first join RTI;
  - The starting date for the new late filing penalties will need to balance the tensions between acknowledging the learning curve and ensuring the flow of information needed for tax, Universal Credit and the collection of Student Loans;
  - Best practice would be to notify employers at the time a default occurs (whether or not a related penalty is issued immediately) providing an opportunity for improving awareness and future compliance;
  - There should be a clear and simple process for disputing automatic penalties.

### General Penalty Principles

- 3.5 As stated above, there are a number of general principles HMRC applies when designing penalties. The purpose of these principles is to make penalties fair, simple and clear to taxpayers. The penalties for RTI should also follow these principles as far as possible, whilst building on existing penalty models for similar offences in order to ensure consistency across taxes and between taxpayers.

### 3.6 Penalties should:

#### ***Be fair***

- Proportionate
- Customer focused, recognising differences
- Subject to appeal

#### ***Influence behaviour***

- Reinforce legal obligations
- Be a visible consequence for breaking the rules
- Help return people to compliance

#### ***Be effective***

- Clear, easily understood and applicable to all
- Set out in statute
- Simple and cost effective to administer
- Separate from interest
- Applied consistently.

3.7 There are tensions between these design principles, particularly for penalties that involve a degree of automation, but the aim is to reach an equitable balance between conflicting elements in the most effective way. Examples of these tensions are

- Developing a penalty structure that is simple to understand and cost effective to administer, yet proportionate for all taxpayers regardless of their size
- The volume of returns and payments processed by HMRC means that some aspects of the penalties need to be automated rather than issued manually, and
- A penalty needs to be of sufficient size to encourage taxpayers to comply. Setting the amount of a fixed penalty which will be proportionate and effective across a range of employers of different sizes will always be difficult; applying a scale or percentage, or basing the penalty on the number of employees or amount of tax due introduces additional complications that are not necessarily easy to understand.

## Conclusion

3.8 The aim is to encourage compliance with RTI. Where this fails and a penalty is necessary, the model for penalties in RTI should build on the existing models to ensure penalties are comparable across taxes and taxpayers, whilst taking account of the specific requirements of RTI. In our view, the fundamental principles that need to be met are that RTI penalties should be fair and effective, which can be achieved by ensuring they are:

- Proportionate
- Simple
- Clearly set out in statute; and
- Cost effective to administer.

**Q2. How best can we support employers in understanding their obligations under RTI and implementing the new system?**

# 4. Existing Late Filing Penalties

## Introduction

4.1 The late filing penalties in Schedule 55 to Finance Act 2009 (FA09) (see **Annex B**) were developed using the general principles set out in Chapter 2. This Schedule contains 4 models, each based on a different filing frequency. These provisions do not yet apply across all taxes and were designed before the advent of RTI. There are a number of other late filing penalty models in the Taxes Management Act 1970 (TMA), but none of the existing models fit with the RTI information requirement. Under RTI an employer must send HMRC a return on or before the day he pays an employee. If a number of employees are paid on the same day, then a combined return can be made. If the employer operates more than one payroll, they must make a return in respect of each payroll.

## Common features of the existing late filing penalty regimes

4.2 The late filing penalty regimes set out in FA09 have a number of common features. For example,

- an initial penalty of £100,
- further penalties if the return is outstanding at the 6 and 12 month point,
- these further penalties are tax geared (subject to a specified minimum) and are based on the total tax liability on the return, and
- a higher behaviour-based penalty may be charged at the 12 month point if information to enable or assist HMRC to assess the person's liability to tax was deliberately withheld.

4.3 There are then individual features in existing penalty regimes that could be considered for RTI. For example,

- banding by number of employees (section 98A TMA),
- a penalty period (VAT Default Surcharge regime and new penalty models for monthly and quarterly returns in Schedule 55 FA09), usually 12 months but which can be extended until a full 12 months' compliance is achieved,
- a second penalty if a return is still not received after a further specified period of time, for example £200 after 2 months for the Construction Industry Scheme (CIS) monthly model in schedule 55 FA09, and daily penalties after 3 months for the Income Tax models in Schedule 55 FA09.

4.4 A combination of some or all of the above features could form the basis for RTI late filing penalties.

## Conclusion

- 4.5 The existing late filing penalty models do not easily map onto the particular RTI information requirement – that an employer submits details to HMRC every time he makes a payment to an employee. We recognise that there are some particular features of the existing penalty models which could create very high penalties, or that could be particularly difficult to administer – for example tax-geared penalties where a return is outstanding for 6 or 12 months. So adaptations may be required for the existing models to suit RTI requirements, in line with the principles set out in Chapter 3.
- 4.6 The next Chapter discusses some areas for consideration in designing new late filing penalties for RTI that might help meet the most important of the design principles. These are that the penalties should be fair and effective.

## 5. Areas for Consideration

### General RTI compliance points

- 5.1 As set out in Chapters 1, 2 and 3, we want information to be sent in under RTI at the right time, and we do not want to have to issue penalties. We are designing RTI to be as simple as possible to comply with and **welcome other ideas for encouraging employers to send in the information on time**. In addition, employees will increasingly expect their employers to send the information in promptly as it could affect their Universal Credit. The combination of these two factors is likely to mean that the RTI late filing penalty regime will be very much a backstop.
- 5.2 However, penalties are needed to change the behaviour of the more determinedly recalcitrant employer and to reassure those who do file and pay on time that non-compliance is being tackled appropriately. The following paragraphs discuss a number of ideas and options for consideration in devising a new model for late filing penalties. We recognise that there is a lot of information here, and we have brought together a number of the options in the two models which are set out in Chapter 6. The ideas are grouped by basic design questions, then more detailed questions which consider features that could be added on to any basic model. **We welcome comments on these ideas, as well as any other suggestions you may have for an effective and simple late filing penalty model.**

### THE BASIC DESIGN QUESTIONS

#### Where we have not succeeded in securing compliance, what should be penalised?

- 5.3 A default could be treated as occurring each time a payment is made to an employee and the relevant information is not passed to HMRC at the right time. This default could be linked to each employee's payday. The total number of these 'filing defaults' could be based on the number of employees and the number of paydays where information was not sent on time.
- 5.4 For example, if a weekly payer has 10 employees, he has the potential for 40 or 50 filing defaults in a month, depending whether there are 4 or 5 paydays in the month. If a monthly payer has 40 employees, he too has the potential to incur 40 filing defaults each month. We recognise that some employers may make payments more frequently than weekly, for example, as a result of TUPE transfers or employees exercising share options, and under such a model such employers could incur daily filing defaults.
- 5.5 This might seem unfair to employers who pay more frequently than monthly. However we want to ensure that if, for example, a weekly payer does not submit the return for the first week in the month, there is still an incentive for them to submit the information for future weeks. One of the aims is to balance the need to report information as it happens with a sense of proportionality across employers who pay different numbers of employees at different frequencies.

5.6 The size of the penalty could be based on the number of filing defaults in a month. The bands could follow the existing employer late filing penalty model, for example 1 – 50 filing defaults could incur £x penalty; 51 – 100 could incur a further penalty, either of £x or £y (y being higher than x), and so on. Each payment that is not reported is information that could be required by HMRC to ensure all tax is correctly deducted and accounted for in-year, and by DWP to calculate Universal Credit. In this model it would be the number of payments not reported that is the most relevant factor in calculating the size of a penalty.

5.7 Basing a penalty on the number of filing defaults reinforces the information obligation but could be complicated, especially for employers who pay employees at different frequencies. But grouping the number of filing defaults into bands and using £x for each penalty band is simple and would ensure penalties did not escalate too quickly.

**Q3. Is there a better or simpler way, than banding by potential filing defaults, of recognising the size of the employer but also the amount and regularity of the information to be supplied under RTI?**

**Q4. Are there particular adjustments that should be considered to take account of more frequent payments?**

#### **When should a default be penalised?**

5.8 Timely information is crucial to the smooth running of RTI and Universal Credit. In order to encourage timely submission of information we propose that a default will arise as soon as a return is late. This would include both a late return and no return being received when we are expecting one, for example because an employer has indicated that they have monthly paid employees but have not sent in a return for a particular month.

5.9 A penalty need not be charged at the point that a return is late. The employer could be told he has incurred a default, perhaps by an electronic alert, whether that default attracts a penalty, and when the penalty will be charged (possibly at the end of each quarter). The employer should also clearly be told how to avoid further penalties. This approach would give employers early warning that they may have incurred a penalty and could reduce the volumes of penalty notices HMRC need to issue each year.

**Q5. Should a penalty be charged as soon as a return is late or would employers prefer penalties to be charged later, perhaps each quarter?**

5.10 In the interest of both seeking alignment of penalties across regimes where it makes sense to do so, and simplicity, we propose to apply only one penalty to each PAYE scheme per month.

**Q6. Do you agree that only one late filing penalty should apply to each PAYE scheme each month, regardless of how many returns are late that month?**



## Determining the amount of the late filing penalty

- 5.11 Most late filing penalty regimes include a mixture of fixed penalties and penalties based on a percentage of sums due for a particular period. A fixed amount is simple and easy to understand. Percentage, or tax-geared, penalties are usually applied to encourage compliance where returns are some months overdue.
- 5.12 As explained in Chapter 4 most of the existing late filing penalty regimes include a fixed penalty of £100 incurred as soon as the return is late. We see no compelling reason to move away from this figure for RTI, particularly if the late filing penalty model is based on, at most, one penalty per month.
- 5.13 If the penalties are to be banded based on the number of filing defaults, then each band could attract a fixed penalty amount. This could be £100 for the first band, rising by £100 for each subsequent band, along similar lines to the existing penalty for employers submitting their end of year return late.

## THE DETAILED DESIGN QUESTIONS

### Further penalties where a return is outstanding at 6 & 12 months

- 5.14 All the models described in Chapter 4 include further penalties where a return is outstanding at the 6 and 12 month points. These penalties are designed to underline the fact that the information on a return remains important, and is still needed by HMRC.
- 5.15 RTI returns will include year to date figures showing the amount of pay, tax, student loan deductions, etc in the tax year so far. This means that if one or more returns are missing but a later return is received HMRC and DWP will have up to date information regarding the pay and tax details of each employee. Therefore it may be unnecessary to continue to seek the information on the earlier missing returns from the employer.
- 5.16 For example, if a month 2 return is still outstanding at month 8 and no return is filed in months 3 to 7, but the month 8 return containing cumulative information for the year to date is filed on time, we may not need the information on the month 2 return. Non-filing of the month 2 return will have incurred an automatic penalty, based on the number of filing defaults, but it is unlikely we would want to further penalise the non-filing of the month 2 return at the 6-month outstanding point, (i.e. month 8) as we would hold the relevant information by that date. In this example the employer would also have received automatic late filing penalties for months 3 to 7.
- 5.17 However, where no information returns are submitted for almost the entire year further penalties at 6 and 12 months could change behaviour and deter future non-compliance. Some automatic additional sanctions of this sort might be appropriate for the most non-compliant employers.

**Q7. Should the RTI late filing penalties include a further penalty if a return is outstanding at the 6 and 12 month points?**

**Introducing RTI automatic late filing penalties**

5.18 The new late filing penalty regime will not apply before October 2013 at the earliest. This is the time that all employers will have joined RTI and the main rollout of Universal Credit starts. Many employers will have been in RTI for several months, and some for significantly longer, by then and so had time to adjust to the new filing obligations before any automatic penalties will apply.

5.19 But in order to further ease employers into the new filing process, the automatic late filing penalties could be deferred and start from April 2014 for all employers.

5.20 Alternatively there could be a staged approach, with penalties applying to tranches of employers, perhaps based on the phasing of the planned migration programme or the size of the employer. They could then apply automatically to all from, say, April 2015. Notices could be issued to those not yet within the automatic penalty regime indicating if their behaviour would have incurred a penalty and how much the penalty would be had they been within the penalty rules and incurred a default. This could help them tailor their processes to ensure they avoid penalties once they are fully within the system. The downsides of this could be allowing certain employers to develop bad habits that might later prove difficult to break, and that some employers could become confused with regard to our penalty policy.

**Q8. What are the benefits and downsides of phasing the introduction of automatic late filing penalties for RTI along the lines set out above?**

5.21 There may also be good reasons for introducing some flexibility to the automatic penalties. The following paragraphs consider some of these options.

**The first default**

5.22 Some late payment penalty models include the concept of a first default that does not attract a penalty. It is not usual for late filing penalties, but with the more regular reporting requirement this could be a useful way in which to encourage a return to compliance.

5.23 So, one option to ease employers into the new RTI regime could be to not apply a penalty for the first return filed late in a year. The year could be a tax year or any consecutive 12 month period. This rule could apply to all employers, or just certain employers, for example certain micro employers. And it could apply for just the first year or perhaps for the first 2 years, for these employers.

5.24 By extension, the concept of one un-penalised default in a 12 month period would also help those employers who had been compliant for a number of years, but who then made a late submission for some reason which, while understandable, might not qualify as a “reasonable excuse”. This would mean they would not face a penalty immediately following their previous very good compliance record.

5.25 There are a number of possible combinations here, for example this could apply to all employers for the first year, with the number of defaults that do not attract a penalty being increased for certain micro employers (or other groups if appropriate).

5.26 Such an easement could be time limited (with such a limit written into the law), and would help to take account of the learning process that employers will go through as they move over to RTI. This would of course, still need to be carefully weighed against losing the compliance incentive provided by immediately charging and securing payment of a penalty if an RTI information return is made late. Again there is a danger here of allowing some employers to develop poor compliance habits that become difficult to break or of creating an unnecessarily complicated regime where minor non-compliance is implicitly sanctioned.

**Q9. Should consideration be given to including a default that does not attract a penalty along any of the lines set out above?**

### **Not charging a penalty unless or until it reaches, say, £500**

5.27 It may be possible to design a system that only actually issues a late filing penalty if it reaches a certain amount over a set period, for example £500 over a 12 month period. This is a suspended penalty system, which might encourage compliance from certain employers. But it does add complication and could very well encourage others not to fully comply with RTI in the knowledge that they will not be penalised. Another downside with this option is that the employer eventually receives a higher penalty, and that some of the amount could be related to an action that occurred some time ago.

5.28 If this element were included in the RTI late filing penalty model, consideration would need to be given to the period for which any penalties would be held over, or suspended – just for the tax year in question, over a rolling 12 month period, or forever so that any further defaults, whenever they occurred, counted towards the set amount and could trigger bringing it into charge many years later. If a deferral were to apply only within a tax year, then some smaller employers might not be charged a penalty at all under this option, despite not complying for a number of months in the year. Further considerations would be how and when an employer is told that there is a suspended penalty on his record, and the appeal time limits once a penalty is eventually charged.

5.29 The complexities involved here will not be simple for employers to understand, and could prove expensive to deliver and so might reduce resources available for other support that we could provide to employers.

## Charging penalties quarterly

5.30 Another possibility is to charge penalties at set intervals, perhaps quarterly, rather than as soon as they arise. This would reduce the number of penalties issued and could be more cost effective for HMRC to administer. Again timely information, perhaps electronic alerts to the employer or their agent, from HMRC about penalties being incurred but not yet charged would need to underpin this option. Clear guidance would be needed around appeal time limits.

## Allocating employers to “stagger periods” to smooth the issue of quarterly penalties

5.31 If penalties were issued quarterly, it is likely that we would want to issue them at different times to different employers, rather than issuing them all in the same month. Under this scenario all employers would be allocated to one of three stagger periods. Those in Stagger Period 1 would receive penalties in say, May, August, November and February; Stagger Period 2 employers would receive penalties in June, September, December and March; and Stagger Period 3 employers would receive them in July, October, January and April.

5.32 This is similar to the current VAT regime and could ease the pressure on HMRC resource by smoothing the flow of penalty work, and potentially improve HMRC response times to enquiries from employers and their agents throughout the year.

## Penalty Cap

5.33 We could also consider a ceiling for each penalty to ensure they do not become disproportionate. For example, each monthly late filing penalty could be capped at, say £3,000 or £10,000, or some other figure. A £3,000 cap is included in the CIS penalty regime; but £10,000 may be more appropriate for larger employers.

## Appeals

5.34 Under current rules all penalties are appealable and that will continue to be the case for RTI late filing penalties. All penalties will be formally assessed on an employer who will then have 30 days in which to pay or appeal the penalty. The existing time limits in schedule 55 FA09 for raising penalties will continue to apply. In most cases the time limit is 2 years from the date the penalty is incurred.

5.35 We want to ensure that the appeals process is as simple as possible. We are particularly considering two areas, and would welcome your views on these. Firstly we are looking at the feasibility and affordability of an online process for accepting RTI appeals. Secondly, we are considering the possibility of accepting objections to penalties, rather than formal appeals, over the telephone. This last could help to resolve the dispute more quickly where the facts are clear and relatively simple, for example where the employer clearly has a reasonable excuse for failing to file a return on time.

## Channels

- 5.36 Electronic filing is mandatory under the RTI legislation. There will be a small number of employers, including care and support employers, who will have the option of filing on paper, but we envisage many care and support employers being willing and able to file electronically, as this process will be much quicker and simpler than completing a monthly paper return. If any other employer sends RTI information on paper HMRC will not process it, as it will not be a legally valid return, and a late filing penalty will apply.
- 5.37 It may be possible to issue penalties electronically to employers, using the same channels as, for example, coding notices and error messages, which will be sent electronically to employers, or their payroll intermediary, via their chosen RTI transmission channel. This could be more cost effective for HMRC and mean that employers receive a penalty notice more quickly.

## Nil returns

- 5.38 If we are unaware that no relevant payments have been made to employees in a period, resources will be spent pursuing the return and an automatic late filing default will arise. If it is later found that no return was needed then any penalty charged would be cancelled, but this will take time and effort by both the employer and HMRC. To avoid issuing such penalties in the first place we need to know if a return is unnecessary. For this reason RTI will include the facility to provide a nil return and employers are encouraged to file a nil return to ensure no penalty is issued.
- 5.39 We do not intend to legislate to require the filing of a nil return where no payments have been made to employees in a pay period. To do so would result in our issuing penalties where that nil return had not been received. We believe that many employers will want to use the nil return facility voluntarily to avoid the possibility of our thinking a return is due and so automatically issuing a late filing penalty.

**Q10. We would be grateful for comments on the detailed design options set out above. In particular, how should we encourage employers to use the nil return facility where there is no information to be returned? Is any additional incentive or sanction needed over and above the fact that a late filing penalty may be issued if an expected return is not received?**

## FURTHER AREAS

### Interaction with late payment penalties

5.40 Late payment penalties under RTI are covered in Chapter 7. However, for assessment purposes, it may be appropriate to consider charging late filing and late payment penalties at the same time, especially if many elements of the two models coincide. Although the payment and filing dates are unlikely to coincide each month, there may be a case for looking at all aspects of an employer's performance within RTI on a monthly or quarterly basis, and then charging any relevant penalties in one notice following that review. This would mean charging the penalties at the same time rather than combining late filing and late payment defaults into one penalty.

**Q11. What are the pros and cons of charging penalties for late filing and late payment at the same time?**

### Elements not to be included in RTI late filing penalties

5.41 As can be seen from the above, devising a new model, even if largely based on existing models, is likely to be relatively complicated, given the number of different elements involved. We are therefore not proposing the inclusion of a further fixed amount penalty where a first return is outstanding at month 2 or 3 (as in the CIS and Income Tax models respectively). We also do not propose a tax-geared penalty where a return is outstanding at the 6 and 12 month points; nor do we propose a penalty period that is extended until the employer achieves 12 months' clear compliance (as in the VAT default surcharge regime and the new penalty models for monthly and quarterly returns in schedule 55 FA09).

## 6. Two Possible Late Filing Models

6.1 The previous Chapter discussed a number of areas for consideration in designing a late filing penalty model for RTI. For the purpose of looking at these considerations in combination, this Chapter sets out two possible models, with some simple examples of how those models might work in practice. The first model is a basic one based on existing late filing penalty models. The second builds on the basic model by including some of the additional refinements discussed in Chapter 5. Not all of these may be useful or appropriate; **the optimal model, which will also need to be cost effective for HMRC to administer, could be somewhere in between the two extremes illustrated below, and we welcome feedback on that.**

6.2 Both models have the following elements:

- i) bands based on the current bandings for employer late filing penalties, either to cover the number of filing defaults as explained at paragraphs 5.3 – 5.7 of Chapter 5, or the number of employees;
- ii) £100 penalty applying to the first band of 50 filing defaults or employees increasing by £100 for each further band or part band of filing defaults/employees for the tax month for which the return is late;
- iii) an additional penalty if a return is outstanding at the 6 month and 12 month point.

### Model 1 (Basic)

6.3 A basic model could be based on filing defaults and closely follow the models in Schedule 55 FA09. So if an employer fails to file his return on time he will immediately incur a penalty which would be charged at the end of the tax month. This could be a fixed £100 penalty or it could be a multiple of £100 determined by the number of filing defaults in the month. For example, an employer who pays 1 – 50 staff monthly but files a return late will incur a penalty of £100. An employer who pays 50 staff weekly in a four payday month but files each return late will incur a penalty of £400 (4 x £100).

6.4 If an employer from whom we are expecting information returns files none at all in a year, then a further penalty will arise at the 6 and 12 month points. RTI works on year to date information, so if no returns are filed for 5 months but the month 6 return is filed, this will satisfy the month 1 -5 information obligations and no further penalty can accrue as each unfiled return becomes 6 months old.

6.5 But without a further penalty there is little incentive for an employer who has already incurred monthly non filing penalties to file any information returns at all. The proposal is therefore to add 2 further penalties of £300 each if we have received no information returns 6 months into the PAYE year, and again at the 12 month point.



6.6 The following table illustrates this basic model.

### Basic Model, penalty rates per month

Number of defaults in tax month	1	2	3	4	5	Additional penalty - no returns received for 6 months	Additional penalty - no returns received for 12 months
<b>Band 1 employer</b> 1-50 employees	£100	£200	£300	£400	£500	£300	£300
<b>Band 2 employer</b> 51-100 employees	£200	£400	£600	£800	£1000	£300	£300
<b>Band 3 employer</b> 101-150 employees	£300	£600	£900	£1200	£1500	£300	£300
<b>Etc.</b>							

6.7 The following examples illustrate the basic model where the penalty is a multiple of £100 determined by the number of filing defaults in the month.

#### Example 1

6.8 Employer A has 3 weekly paid employees. He files information returns each week when he runs the payroll. But no return is filed for week 10. Employer A incurs a late filing penalty of £100. This will be issued at the end of the month in which the default arose, so at the end of month 3.

#### Example 2

6.9 Employer B has 75 monthly paid employees, so falls into the second band where the automatic late filing penalty is £200. He files information returns each month when he runs the payroll. He files his month 4 return a week late and incurs a penalty of £200. This is issued at the end of month 4. He then fails to file any further returns until month 12, but that return is filed on time. He will have received a penalty of £200 at the end of each of the months 5 – 11. Additionally he will receive a £300 penalty for not filing the month 5 return within 6 months of it being due. So for the whole year he will have incurred £1900 in late filing penalties.

#### Example 3

6.10 Employer C has 40 monthly paid employees. He fails to send in any return until month 8, after which he files all returns on time. He will incur £700 in automatic late filing penalties for months 1 – 7 (£100 x 7). In addition he will incur a penalty of £300 in month 7 when the month 1 return is 6 months overdue. So for the whole year he will have incurred £1000 in late filing penalties.



## Model 2 (Additional Features)

6.11 A second option could include the following features:

- banding based on the number of employees (rather than filing defaults), with the penalty increasing as set out in the current section 98A TMA70 penalty model;
- a first default not attracting a penalty;
- penalties to be charged quarterly;
- employers to be allocated to quarterly stagger periods;
- penalties not being charged until they reach £500.

6.12 Under this proposal if an employer fails to file the first month's information returns on time he will not face a penalty, but will receive a warning. If the next month's returns are not received a penalty will be incurred based on the number of employees. So if the employer has 50 employees the penalty will be £100, rising by £100 for each additional 50 employees.

6.13 An employer paying weekly will incur a default, and then possibly a penalty, if any of his weekly returns are not filed on time. For example, he may not file his week 1 return but file week 2, 3 and 4 on time and this will be the first default. When the penalty scan is run for month 1 a single default will be registered. If he continues this pattern then at the end of month 2 he will incur a late filing penalty for not sending his week 5 return on time.

6.14 Penalties will only be charged quarterly, depending on the stagger period allocation (see paragraphs 5.31 and 5.32). So an employer in Stagger Period 1 will receive penalties in May, August, November and February. But if a penalty is incurred in any month the employer will be advised of this. Additionally, penalties will only be charged when they reach £500. So an employer in Stagger Period 1 with 50 employees who fails to file a return on time for months 1 – 7 will have incurred £600 in late filing penalties (1 un-penalised default and 6 x £100). These penalties will be charged at the end of November and due for payment 30 days later.

6.15 Similar penalties will apply at the 6 and 12 month points as in the basic model.

6.16 The table on the following page illustrates this model with additional features.

## Model with Additional Features, penalty rates

	Penalty for first default in year	Penalty for 1-4 later defaults in same tax month as 1 <sup>st</sup> default for year	Penalty for 1 – 5 defaults in a later tax month	Minimum penalty to be charged per quarter (including suspended penalties coming into charge)	Additional penalty where no returns have been received for 6 months	Additional penalty where no returns have been received for 12 months
<b>Band 1 employer</b> 1-50 employees	£0	£100	£100	£500	£300	£300
<b>Band 2 employer</b> 51-100 employees	£0	£200	£200	£500	£300	£300
<b>Band 3 employer</b> 101-150 employees	£0	£300	£300	£500	£300	£300
<b>Band 4 employer</b> 151- 200 employees	£0	£400	£400	£500	£300	£300
<b>Band 5 employer</b> 201-250 employees	£0	£500	£500	£500	£300	£300
<b>Etc.</b>						

6.17 The following paragraphs pick up the examples used above to illustrate the effect of the basic model but for the additional features model.

### Example 4

6.18 Employer A has 3 weekly paid employees. He falls into the first penalty banding so will incur £100 penalty for each failure to file an information return on time. He files information returns each week but no return is filed for week 10. This registers as a default and he receives a warning, but no penalty is charged. Any subsequent late returns will incur a penalty of £100, but these will only be charged when the total reaches £500.

## Example 5

6.19 Employer B has 75 monthly paid employees, so falls into the second band where the late filing penalty is £200. He is allocated to the first stagger period, so any penalties incurred will be issued in May, August, November and February each year. He files the month 4 return late and this registers as his first default, for which he receives a warning. He then fails to file any further returns until month 12, which is filed on time. He incurs a £200 penalty for month 5 in August, of which he is also advised, but this is suspended. He then incurs £200 penalties each for months 6, 7 and 8, and these are charged along with the suspended penalty for month 5 in November (£800). Further penalties of £200 each are incurred for months 9, 10 and 11 along with a further penalty of £300 for the month 5 return as it is 6 months old. These penalties are charged together (£900) in February. He will have been charged £1700 in late filing penalties for the year.

## Example 6

6.20 Employer C has 40 monthly paid employees and fails to send in any return until month 8. He falls into the first penalty band (£100) and is allocated to the second stagger period (so will receive penalties in June, September, December and March). The month 1 failure registers as a default for which he receives a warning; the month 2 and 3 failures incur penalties of £100 each of which he is notified at the time, but these are suspended at the June penalty run as they do not reach £500. By the September penalty run Employer C has incurred a further £300 in late filing penalties; as his total penalties are now £500 these will be charged in September. He incurs a further £100 penalty in October but this is suspended as it does not reach £500.

## Example 7

6.21 Employer D has 210 monthly paid employees, so falls into the fifth penalty band, and will incur a penalty of £500 for each failure to file an information return on time. He is allocated to the first stagger period and fails to file returns on time for months 5, 6 and 7 (August, September and October). No penalty applies for the month 5 failure, but each of the month 6 and 7 failures incur a penalty of £500. £1000 in penalties will be charged at the end of November and due for payment 30 days later.

## Conclusion

6.22 Late filing penalties based on employment bands and filing defaults reflect the importance of making timely information returns, but add complication to any penalty model. Basing penalties on the number of employees is a familiar concept, and also brings a degree of proportionality to the penalty charge.

6.23 Charging penalties in £100 increments is another familiar concept and keeps matters relatively simple. Having a model where each employer can only incur one penalty per month for each PAYE scheme, and charging that penalty at the end of each month again keeps the model simple. Including further penalties where a return is outstanding at the 6 and 12 month points mirrors the newer late filing penalty models and is designed to encourage return submission and underline the fact that the information is important.

6.24 Charging penalties quarterly could smooth the workflow and improve customer service, but removes the immediacy from the penalty, and so could reduce the behavioural impact of the penalty. This could perhaps be mitigated by issuing electronic alerts to the employer at the end of each month.

6.25 Including a default that does not attract a penalty could prompt an employer to look again at his processes to ensure he does not file information late again; and charging penalties only when they reach £500 could reduce the number of penalties issued, but is likely to cause confusion and again may not bring about the desired levels of compliance within RTI.

6.26 We recognise that keeping employers informed is essential, and even more so if any element of suspension is to be included in RTI late filing penalties. We will look carefully at the trigger points in the final model to determine when it would be appropriate to automatically issue warnings during the year.

**Q12. We would be grateful for comments on these models, or any combination of the elements included in the models. We would especially welcome ideas to simplify them, but which still support and encourage compliance with the RTI information obligation.**

# 7. Late Payment Penalties

## Introduction

7.1 Under RTI HMRC will have up to date information throughout the year regarding the amounts due for payment from an employer under the PAYE system. We will therefore be aware of what is due to be paid for each tax period (a tax month or quarter). If no information is sent in we will specify an amount that we estimate is due based on the information we have available. The employer will be required to pay that amount, or file a return showing they owe a different amount.

## The RTI payment default

7.2 PAYE remittances will usually be allocated to the month to which they relate. For late payment penalty purposes under RTI a default will arise only where the overall amount owing for PAYE purposes increases between one payment date and the next. This is important to ensure that an employer is only penalised for a late payment once. For example, if an employer fails to pay month 1 but files his returns, we will know how much was due for payment in month 1 and will pursue that sum as well as a late payment penalty. If he then files and pays on time for the rest of the year, but still does not pay month 1, he will not receive a late payment penalty for every subsequent month, because we will know that only the amount that was due for month 1 remains unpaid.

## The current late payment penalty model

7.3 The late payment penalty models for PAYE and CIS Deductions are set out in Schedule 56 to FA09 (see **Annex B**). Statutory Instrument 2010/466 introduced these penalties from 6 April 2010. The student loan penalties follow these models. As the payment obligation is not changing under RTI, we do not consider that there is a need to fundamentally change these penalties.

7.4 Late payment penalties for sums due for payment under the PAYE regulations are covered at item 2 of the table in paragraph 1(4) of Schedule 56 FA09. Penalties for sums due for payment under the CIS regulations are covered at item 4 of the table. Paragraph 6(3) of the schedule provides for the first late payment during a tax year not to incur an initial default penalty. Penalties are then charged on all subsequent late payments. The penalties are based on an escalating percentage of the tax paid late for each month during the tax year. Two further penalties of 5% each are charged if any sum is outstanding for 6 or 12 months.

7.5 Schedule 56 FA09 makes various other provisions about these penalties, including a “special reduction” provision (paragraph 9), that further penalties will not be charged during the currency of an agreement for deferred payment (paragraph 10), and that HMRC has to assess each penalty and tell the taxpayer that they have done so and for what period (paragraph 11). The penalty notice gives the taxpayer 30 days to either pay or appeal it, for which the reasonable excuse provisions are available (paragraph 16). Further provisions regarding appeals are at paragraph 17.

7.6 Paragraph 11 to Schedule 56 FA09 contains a number of other provisions regarding late payment penalties, including that such a penalty can be revised once issued, and that a penalty notice can be combined with a tax assessment and can be enforced as if it were a tax assessment. It also sets the time limit for HMRC raising penalty assessments as the later of

- 2 years from the date a penalty arises, or
- 12 months beginning with the end of the appeal period for the assessment of the amount of tax in respect of which the penalty is assessed, or
- If there is no assessment, 12 months beginning with the date on which the amount of tax is ascertained.

7.7 Although we do not intend to change the basic structure of these penalties, we have identified a number of areas in the legislation that we want to amend in order to ensure the penalties operate as intended. And in addition to these changes we also set out some areas that may also be worth consideration given that these penalties will be issued automatically under RTI.

### Penalty trigger date

7.8 The penalty trigger date set out in paragraph 1(4) of schedule 56 FA09 is not very clear. We propose to reword the definition of the “penalty date” to make it absolutely clear it is the day after the date specified in column 4 of the table in paragraph 1.

### Month 12 penalty

7.9 It was intended that HMRC would be able to charge a penalty for all late payments relating to a tax year, rather than due for payment during a tax year. We propose to amend paragraph 6(1) to ensure that is the case.

### Removing the need to recalculate a penalty when further defaults occur

7.10 In order to simplify the calculation and charging of late payment penalties for RTI we propose to amend the rules set out in paragraphs 6(4) to 6(8), which specify the penalty percentage to be applied based on the total number of defaults made during the tax year. The proposed amendment will mean the percentage is fixed in relation to the specified number of defaults set out in each sub paragraph.

7.11 So defaults 1, 2 and 3 (after the initial un-penalised late payment) will incur a penalty of 1%; defaults 4, 5 and 6 will incur a penalty of 2%, etc. This will mean we will not have to revisit and recalculate earlier penalties when further defaults occur. Each penalty will be self contained which should make the system much simpler for taxpayers to understand and for us to administer.

### Amended penalties

7.12 We propose to change the wording of paragraph 11(4A) to enable the original assessment to be reduced where we find it is excessive.

**Q13. We welcome comments on these proposals.**

### Other areas for consideration

7.13 HMRC currently calculate and charge late payment penalties on a risk basis after the end of the tax year. Under RTI the intention is to calculate and charge automated penalties monthly or quarterly. The current intention is to automate these penalties, and communications relating to them, from April 2014.

7.14 It may be that some of the options considered for late filing penalties may also be beneficial for late payment penalties. For example, it may be that it would simplify matters if penalties were charged quarterly. It may also be appropriate to allocate employers to a stagger period for both late payment and late filing penalties (the same stagger period for each employer scheme).

**Q14. Should we consider charging late payment penalties quarterly?**

**Q15. Should we consider allocating employers to a quarterly stagger period for both late payment and late filing penalties under RTI?**

**Q16. Are there any particular easements that we should consider for new employers?**

### Interest

7.15 The purpose of interest is to provide a measure of recompense where money is in the wrong hands. It is not a penalty. Once all employers are within RTI, the intention is to apply the late payment and repayment interest provisions in FA09. These provisions will then apply a late payment interest charge to all sums due from employers under PAYE each tax period, as well as repayment interest on sums overpaid. No decision has yet been made regarding applying interest to penalties under RTI.

**Q17. Do you have any views on applying interest to late payment and late filing penalties under RTI?**

## Amendments to Returns

7.16 Where an employer files a return and later discovers an error, RTI provides for the correction to be reflected in the next return to be filed as soon as the employer becomes aware of the error, or in an amendment return where the correction relates to a previous tax year. These corrections and amendment returns will have no effect on late filing penalties. If the original return was late then the original late filing penalty will stand. If the original return was not late, then no late filing penalty will attach to the return that includes the correction or an amendment return. But if the employer has not taken reasonable care when making the initial return they could be liable to an inaccurate return penalty.

7.17 If an amended return shows additional sums due for an earlier tax year, interest may apply to those additional sums from the end of that tax year until the date they are paid. If the employer paid what they reported was owed at the time then a late payment penalty will not apply for the earlier period.

**Q18. Do you have any views on applying a late payment penalty as well as interest where further sums become due for a period?**

## Next Steps

7.18 The amendments to the late payment penalty model detailed above, along with any additional changes arising out of this consultation will be published for consultation alongside the proposals for a new late filing penalty model for RTI later this year. The intention is to then include legislation for the RTI automatic penalties in Finance Bill 2013.



# Tax Impact Assessment

## Late filing and late payment penalties for RTI

A Tax Information and Impact Note (TIIN) has been published for the RTI programme and this can be found here: <http://www.hmrc.gov.uk/tiin/rti-improving-payee.pdf>

As this is a first stage consultation on penalties the impact of any changes in this area is not yet quantifiable. Much will depend on the options that emerge from responses to this consultation, but HMRC welcomes input at this stage on the likely impacts of the various options set out in the consultation document. Our initial view of these impacts is set out below.

### Summary of Impacts

<b>Exchequer impact (£m)</b>	2012-13	2013-14	2014-15	2015-16	2016-17
	-	+/-	+/-	+/-	+/-
	Exchequer Impacts can only be assessed once the design of the scheme is finalised.				
<b>Economic impact</b>	The measure is expected to have no significant impacts.				
<b>Impact on individuals and households</b>	This measure will not directly impact individual employees, although the penalties may encourage employers to provide timely information to HMRC. This information will then be used by Department for Work and Pensions (DWP) to support the operation of Universal Credit.				
<b>Equalities impacts</b>	<p>Penalties are only applicable where there has been a failure to comply with obligations. The impact of RTI obligations along with plans to mitigate the effects on protected equality groups have been published separately in the TIIN mentioned above.</p> <p>It is possible that certain employers will find it more difficult to comply with the RTI filing obligation than others. In particular, care and support employers (who are likely to be disabled and/or elderly) may be unable to file electronically. In response, RTI includes the option of monthly paper filing for this group. All employers can appeal against a penalty, and if they have a reasonable excuse for not meeting the deadline the penalty will be cancelled.</p> <p>We are also looking to support people online through the RTI communications programme and by playing a full part in the wider Government agenda on the digital front – Digital by Default and associated Assisted Digital. Many care and support employers</p>				

	<p>may well be among those who opt to use digital and therefore it will be no more burdensome for them than for other employers to operate RTI.</p> <p>During the consultation process we will be seeking views or information from representative bodies on whether any of the features considered for the penalty models could potentially have an equalities impact.</p> <p>There are no impacts on other protected equality groups.</p>
<b>Impact on businesses and Civil Society Organisations</b>	<p>This measure should have no impact on compliant businesses as penalties only affect those who fail to comply with their obligations.</p> <p>The comments in the Equalities Impact box above apply equally here.</p>
<b>Impact on HMRC or other public sector delivery organisations</b>	<p>There will be implementation and IT costs for HMRC with both the new late filing penalty regime and the updated late payment penalty rules for RTI.</p> <p>In developing the final models we will take account of HMRC resource and we will refine the scenario modelling already underway. This will help us better understand the impact the penalties will have on customer contact from employers and their representatives, workloads and volumes of penalty handling, and the associated staffing implications for HMRC.</p>
<b>Other impacts</b>	<p>We will be considering the impact on small firms as part of the policy development process. We will especially be seeking to engage with small firms and their representative groups to discuss RTI generally, and these penalties specifically, to determine what aspects will particularly impact on small firms and how we can mitigate those impacts.</p>

# Summary of Consultation Questions

- Q1. Do you have any comments on RTI and error penalties that will help us support businesses and promote timely filing under RTI?**
- Q2. How best can we support employers in understanding their obligations under RTI and implementing the new system?**
- Q3. Is there a better or simpler way, than banding by potential filing defaults, of recognising the size of the employer but also the amount and regularity of the information to be supplied under RTI?**
- Q4. Are there particular adjustments that should be considered to take account of more frequent payments?**
- Q5. Should a penalty be charged as soon as a return is late or would employers prefer penalties to be charged later, perhaps each quarter?**
- Q6. Do you agree that only one late filing penalty should apply to each PAYE scheme each month, regardless of how many returns are late that month?**
- Q7. Should the RTI late filing penalties include a further penalty if a return is outstanding at the 6 and 12 month points?**
- Q8. What are the benefits and downsides of phasing the introduction of automatic late filing penalties for RTI along the lines set out above?**
- Q9. Should consideration be given to including a default that does not attract a penalty along any of the lines set out above?**
- Q10. We would be grateful for comments on the detailed design options set out above. In particular, how should we encourage employers to use the nil return facility where there is no information to be returned? Is any additional incentive or sanction needed over and above the fact that a late filing penalty may be issued if an expected return is not received?**
- Q11. What are the pros and cons of charging penalties for late filing and late payment at the same time?**
- Q12. We would be grateful for comments on these models, or any combination of the elements included in the models. We would especially welcome ideas to simplify them, but which still support and encourage compliance with the RTI information obligation.**
- Q13. We welcome comments on these proposals. (This refers to the changes to the existing late payment penalty model).**
- Q14. Should we consider charging late payment penalties quarterly?**

**Q15. Should we consider allocating employers to a quarterly stagger period for both late payment and late filing penalties under RTI?**

**Q16. Are there any particular easements that we should consider for new employers?**

**Q17. Do you have any views on applying interest to late payment and late filing penalties under RTI?**

**Q18. Do you have any views on applying a late payment penalty as well as interest where further sums become due for a period?**

# The Consultation Process

This consultation is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stages 1 and 2 of the process. The purpose of the consultation is to seek views on the detail of a late filing penalty model that fits with RTI and the general penalty design principles.

## How to respond

Responses should be sent by 31 August 2012, by e-mail to [TAP@hmrc.gsi.gov.uk](mailto:TAP@hmrc.gsi.gov.uk) or by post to:

Fiona Duncan

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RTI Penalty Consultation  
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A summary of the questions in this consultation is included at page 35.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from the HMRC Internet site at <http://www.hmrc.gov.uk/consultations/index.htm>. All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## The Consultation Code of Practice

This consultation is being conducted in accordance with the Code of Practice on Consultation. A copy of the Code of Practice criteria and a contact for any comments on the consultation process can be found in Annex A.

# Annex A: The Code of Practice on Consultation

## About the consultation process

This consultation is being conducted in accordance with the Code of Practice on Consultation.

The consultation criteria

1. When to consult - Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. Duration of consultation exercises - Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Clarity of scope and impact - Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Accessibility of consultation exercise - Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. The burden of consultation - Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Responsiveness of consultation exercises - Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Capacity to consult - Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you feel that this consultation does not satisfy these criteria, or if you have any complaints or comments about the process, please contact:

Amy Burgess, Consultation Coordinator, Budget & Finance Bill Co-ordination Group, HM Revenue & Customs, 100 Parliament Street, London, SWA 2BQ

e-mail [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

# Annex B: Current Legislation

## **SCHEDULE 55 - PENALTY FOR FAILURE TO MAKE RETURNS ETC**

### **Penalty for failure to make returns etc**

1(1)A penalty is payable by a person (“P”) where P fails to make or deliver a return, or to deliver any other document, specified in the Table below on or before the filing date.

(2)Paragraphs 2 to 13 set out—

(a)the circumstances in which a penalty is payable, and

(b)subject to paragraphs 14 to 17, the amount of the penalty.

(3)If P's failure falls within more than one paragraph of this Schedule, P is liable to a penalty under each of those paragraphs (but this is subject to paragraph 17(3)).

(4)In this Schedule—

- “filing date”, in relation to a return or other document, means the date by which it is required to be made or delivered to HMRC;
- “penalty date”, in relation to a return or other document, means the date on which a penalty is first payable for failing to make or deliver it (that is to say, the day after the filing date).

(5)In the provisions of this Schedule which follow the Table—

(a)any reference to a return includes a reference to any other document specified in the Table, and

(b)any reference to making a return includes a reference to delivering a return or to delivering any such document.



<b><i>Tax to which return etc relates</i></b>	<b><i>Return or other document</i></b>
1 Income tax or capital gains tax	(a) Return under section 8(1)(a) of TMA 1970  (b) Accounts, statement or document required under section 8(1)(b) of TMA 1970
2 Income tax or capital gains tax	(a) Return under section 8A(1)(a) of TMA 1970  (b) Accounts, statement or document required under section 8A(1)(b) of TMA 1970
3 Income tax or corporation tax	(a) Return under section 12AA(2)(a) or (3)(a) of TMA 1970  (b) Accounts, statement or document required under section 12AA(2)(b) or (3)(b) of TMA 1970
4 Income tax	(a) Annual return of payments and net tax deducted for the purposes of PAYE regulations  (b) Return of revised payments and net tax deducted for those purposes where those amounts are revised after end of tax year
5 Income tax	Return under section 254 of FA 2004 (pension schemes)
6 Deductions on account of tax under Chapter 3 of Part 3 of FA 2004 (construction industry scheme)	Return under regulations under section 70 of FA 2004
7 Corporation tax	Company tax return under paragraph 3 of Schedule 18 to FA 1998
8 Inheritance tax	Account under section 216 or 217 of IHTA 1984
9 Stamp duty land tax	Land transaction return under section 76 of FA 2003 or further return under section 81 of that Act
10 Stamp duty land tax	Return under paragraph 3, 4 or 8 of Schedule 17A to FA 2003
11 Stamp duty reserve tax	Notice of charge to tax under regulations under section 98 of FA 1986
12 Petroleum revenue tax	Return under paragraph 2 of Schedule 2 to OTA 1975
13 Petroleum revenue tax	Statement under section 1(1)(a) of PRTA 1980

**Amount of penalty: occasional returns and annual returns**

2 Paragraphs 3 to 6 apply in the case of a return falling within any of items 1 to 5 and 7 to 13 in the Table.

3 P is liable to a penalty under this paragraph of £100.

4(1) P is liable to a penalty under this paragraph if (and only if)—

(a) P's failure continues after the end of the period of 3 months beginning with the penalty date,

(b) HMRC decide that such a penalty should be payable, and

(c) HMRC give notice to P specifying the date from which the penalty is payable.

(2) The penalty under this paragraph is £10 for each day that the failure continues during the period of 90 days beginning with the date specified in the notice given under sub-paragraph (1)(c).

(3) The date specified in the notice under sub-paragraph (1)(c)—

(a) may be earlier than the date on which the notice is given, but

(b) may not be earlier than the end of the period mentioned in sub-paragraph (1)(a).

5(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this paragraph is the greater of—

(a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.

6(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P withholds information which would enable or assist HMRC to assess P's liability to tax, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—

(a) 100% of any liability to tax which would have been shown in the return in question, and

(b) £300.

(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—

(a) 70% of any liability to tax which would have been shown in the return in question, and

(b) £300.

(5) In any other case, the penalty under this paragraph is the greater of—

(a) 5% of any liability to tax which would have been shown in the return in question, and

(b) £300.

**Amount of penalty: CIS returns**

7 Paragraphs 8 to 13 apply in the case of a return falling within item 6 in the Table.

8 P is liable to a penalty under this paragraph of £100.

9(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 2 months beginning with the penalty date.

(2) The penalty under this paragraph is £200.

10(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 6 months beginning with the penalty date.

(2) The penalty under this paragraph is the greater of—

(a) 5% of any liability to make payments which would have been shown in the return in question, and

(b) £300.

11(1) P is liable to a penalty under this paragraph if (and only if) P's failure continues after the end of the period of 12 months beginning with the penalty date.

(2) Where, by failing to make the return, P withholds information which would enable or assist HMRC to assess the amount that P is liable to pay to HMRC in accordance with Chapter 3 of Part 3 of FA 2004, the penalty under this paragraph is determined in accordance with sub-paragraphs (3) and (4).

(3) If the withholding of the information is deliberate and concealed, the penalty is the greater of—

(a) 100% of any liability to make payments which would have been shown in the return in question, and

(b) £3,000.

(4) If the withholding of the information is deliberate but not concealed, the penalty is the greater of—

(a) 70% of any liability to make payments which would have been shown in the return in question, and

(b) £1,500.

(5) In any other case, the penalty under this paragraph is the greater of—

(a) 5% of any liability to make payments which would have been shown in the return in question, and

(b) £300.

12(1) P is liable to a penalty under this paragraph if (and only if)—

(a) P's failure continues after the end of the period of 12 months beginning with the penalty date, and

(b) the information required in the return relates only to persons registered for gross payment (within the meaning of Chapter 3 of Part 3 of FA 2004).

(2) Where, by failing to make the return, P withholds information which relates to such persons, the penalty under this paragraph is—

(a) if the withholding of the information is deliberate and concealed, £3,000, and

(b) if the withholding of the information is deliberate but not concealed, £1,500.

13(1) This paragraph applies—

(a) at any time before P first makes a return falling within item 6 in the Table, to any return falling within that item, and

(b) at any time after P first makes a return falling within that item, to that return and any earlier return.

(2) In respect of any return or returns to which this paragraph applies—

(a) paragraphs 10(2)(b) and 11(5)(b) do not apply, and

(b) P is not liable to penalties under paragraphs 8 and 9 which exceed, in total, £3,000.

(3) In sub-paragraph (1)(b) “earlier return” means any return falling within item 6 which has a filing date earlier than the date on which P first made a return.

### **Reductions for disclosure**

14(1) Paragraph 15 provides for reductions in the penalty under paragraph 6(3) or (4) or 11(3) or (4) where P discloses information which has been withheld by a failure to make a return (“relevant information”).

(2) P discloses relevant information by—

(a) telling HMRC about it,

(b) giving HMRC reasonable help in quantifying any tax unpaid by reason of its having been withheld, and

(c) allowing HMRC access to records for the purpose of checking how much tax is so unpaid.

(3) Disclosure of relevant information—

(a) is “unprompted” if made at a time when P has no reason to believe that HMRC have discovered or are about to discover the relevant information, and

(b) otherwise, is “prompted”.

(4) In relation to disclosure “quality” includes timing, nature and extent.

15(1) Where a person who would otherwise be liable to a 100% penalty has made an unprompted disclosure, HMRC must reduce the 100% to a percentage, not below 30%, which reflects the quality of the disclosure.

(2) Where a person who would otherwise be liable to a 100% penalty has made a prompted disclosure, HMRC must reduce the 100% to a percentage, not below 50%, which reflects the quality of the disclosure.

(3) Where a person who would otherwise be liable to a 70% penalty has made an unprompted disclosure, HMRC must reduce the 70% to a percentage, not below 20%, which reflects the quality of the disclosure.

(4) Where a person who would otherwise be liable to a 70% penalty has made a prompted disclosure, HMRC must reduce the 70% to a percentage, not below 35%, which reflects the quality of the disclosure.

(5) But HMRC must not under this paragraph—

(a) reduce a penalty under paragraph 6(3) or (4) below £300, or

(b) reduce a penalty under paragraph 11(3) or (4) below the amount set by paragraph 11(3)(b) or (4)(b) (as the case may be).

### **Special reduction**

16(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

(2) In sub-paragraph (1) "special circumstances" does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

### **Interaction with other penalties and late payment surcharges**

17(1) Where P is liable for a penalty under any paragraph of this Schedule which is determined by reference to a liability to tax, the amount of that penalty is to be reduced by the amount of any other penalty incurred by P, if the amount of the penalty is determined by reference to the same liability to tax.

(2) In sub-paragraph (1) the reference to "any other penalty" does not include—

(a) a penalty under any other paragraph of this Schedule, or

(b) a penalty under Schedule 56 (penalty for late payment of tax).

(3) Where P is liable for a penalty under more than one paragraph of this Schedule which is determined by reference to a liability to tax, the aggregate of the amounts of those penalties must not exceed 100% of the liability to tax.

### **Assessment**

18(1) Where P is liable for a penalty under any paragraph of this Schedule HMRC must—

(a) assess the penalty,

(b) notify P, and

(c) state in the notice the period in respect of which the penalty is assessed.

(2) A penalty under any paragraph of this Schedule must be paid before the end of the period of 30 days beginning with the day on which notification of the penalty is issued.

(3) An assessment of a penalty under any paragraph of this Schedule—

(a) is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),

(b) may be enforced as if it were an assessment to tax, and

(c) may be combined with an assessment to tax.

(4) A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of the liability to tax which would have been shown in a return.

19(1) An assessment of a penalty under any paragraph of this Schedule in respect of any amount must be made on or before the later of date A and (where it applies) date B.

(2) Date A is the last day of the period of 2 years beginning with the filing date.

(3) Date B is the last day of the period of 12 months beginning with—

(a) the end of the appeal period for the assessment of the liability to tax which would have been shown in the return, or

(b) if there is no such assessment, the date on which that liability is ascertained or it is ascertained that the liability is nil.

(4) In sub-paragraph (3)(a) “appeal period” means the period during which—

(a) an appeal could be brought, or

(b) an appeal that has been brought has not been determined or withdrawn.

(5) Sub-paragraph (1) does not apply to a re-assessment under paragraph 24(2)(b).

### **Appeal**

20(1) P may appeal against a decision of HMRC that a penalty is payable by P.

(2) P may appeal against a decision of HMRC as to the amount of a penalty payable by P.

21(1) An appeal under paragraph 20 is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

(2) Sub-paragraph (1) does not apply—

(a) so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or

(b) in respect of any other matter expressly provided for by this Act.

22(1) On an appeal under paragraph 20(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.

(2) On an appeal under paragraph 20(2) that is notified to the tribunal, the tribunal may—

(a) affirm HMRC's decision, or

(b) substitute for HMRC's decision another decision that HMRC had power to make.

(3) If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 16—

(a) to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b) to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 16 was flawed.

(4) In sub-paragraph (3)(b) "flawed" means flawed when considered in the light of the principles applicable in proceedings for judicial review.

(5) In this paragraph "tribunal" means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 21(1)).

#### **Reasonable excuse**

23(1) Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a return if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

(2) For the purposes of sub-paragraph (1)—

(a) an insufficiency of funds is not a reasonable excuse, unless attributable to events outside P's control,

(b) where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c) where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

#### **Determination of penalty geared to tax liability where no return made**

24(1) References to a liability to tax which would have been shown in a return are references to the amount which, if a complete and accurate return had been delivered on the filing date, would have been shown to be due or payable by the taxpayer in respect of the tax concerned for the period to which the return relates.

(2) In the case of a penalty which is assessed at a time before P makes the return to which the penalty relates—

(a) HMRC is to determine the amount mentioned in sub-paragraph (1) to the best of HMRC's information and belief, and

(b) if P subsequently makes a return, the penalty must be re-assessed by reference to the amount of tax shown to be due and payable in that return (but subject to any amendments or corrections to the return).

(3) In calculating a liability to tax which would have been shown in a return, no account is to be taken of any relief under subsection (4) of section 419 of ICTA (relief in respect of repayment etc of loan) which is deferred under subsection (4A) of that section.

#### **Partnerships**

25(1) This paragraph applies where—

(a) the representative partner, or

(b) a successor of the representative partner,

fails to make a return falling within item 3 in the Table (partnership returns).

(2) A penalty in respect of the failure is payable by every relevant partner.

(3) In accordance with sub-paragraph (2), any reference in this Schedule to P is to be read as including a reference to a relevant partner.

(4) An appeal under paragraph 20 in connection with a penalty payable by virtue of this paragraph may be brought only by—

(a) the representative partner, or

(b) a successor of the representative partner.

(5) Where such an appeal is brought in connection with a penalty payable in respect of a failure, the appeal is to be treated as if it were an appeal in connection with every penalty payable in respect of that failure.

(6) In this paragraph—

- “relevant partner” means a person who was a partner in the partnership to which the return relates at any time during the period in respect of which the return was required;
- “representative partner” means a person who has been required by a notice served under or for the purposes of section 12AA(2) or (3) of TMA 1970 to deliver any return;
- “successor” has the meaning given by section 12AA(11) of TMA 1970.

### **Double jeopardy**

26P is not liable to a penalty under any paragraph of this Schedule in respect of a failure or action in respect of which P has been convicted of an offence.

### **Interpretation**

27(1) This paragraph applies for the construction of this Schedule.

(2) The withholding of information by P is—

(a) “deliberate and concealed” if P deliberately withholds the information and makes arrangements to conceal the fact that the information has been withheld, and

(b) “deliberate but not concealed” if P deliberately withholds the information but does not make arrangements to conceal the fact that the information has been withheld.

(3) “HMRC” means Her Majesty’s Revenue and Customs.

(4) References to a liability to tax, in relation to a return falling within item 6 in the Table (construction industry scheme), are to a liability to make payments in accordance with Chapter 3 of Part 3 of FA 2004.

(5) References to an assessment to tax, in relation to inheritance tax and stamp duty reserve tax, are to a determination.



## SCHEDULE 56 - PENALTY FOR FAILURE TO MAKE PAYMENTS ON TIME

### Penalty for failure to pay tax

(1) A penalty is payable by a person ("P") where P fails to pay an amount of tax specified in column 3 of the Table below on or before the date specified in column 4.

(2) Paragraphs 3 to 8 set out—

(a) the circumstances in which a penalty is payable, and

(b) subject to paragraph 9, the amount of the penalty.

(3) If P's failure falls within more than one provision of this Schedule, P is liable to a penalty under each of those provisions.

(4) In the following provisions of this Schedule, the "penalty date", in relation to an amount of tax, means the date on which a penalty is first payable for failing to pay the amount (that is to say, the day after the date specified in or for the purposes of column 4 of the Table).

	<i>Tax to which payment relates</i>	<i>Amount of tax payable</i>	<i>Date after which penalty is incurred</i>
<i>PRINCIPAL AMOUNTS</i>			
1	Income tax or capital gains tax	Amount payable under section 59B(3) or (4) of TMA 1970	The date falling 30 days after the date specified in section 59B(3) or (4) of TMA 1970 as the date by which the amount must be paid
2	Income tax	Amount payable under PAYE regulations (except an amount falling within item 20)	The date determined by or under PAYE regulations as the date by which the amount must be paid
3	Income tax	Amount shown in return under section 254(1) of FA 2004	The date falling 30 days after the date specified in section 254(5) of FA 2004 as the date by which the amount must be paid
4	Deductions on account of tax under Chapter 3 of Part 3 of FA 2004 (construction industry scheme)	Amount payable under section 62 of FA 2004 (except an amount falling within item 17, 23 or 24)	The date determined by or under regulations under section 62 of FA 2004 as the date by which the amount must be paid
5	Corporation tax	Amount shown in company tax return under paragraph 3 of Schedule 18 to FA 1998	The filing date for the company tax return for the accounting period for which the tax is due (see paragraph 14 of Schedule 18 to FA 1998)
6	Corporation tax	Amount payable under regulations under section 59E of TMA 1970 (except an amount falling within item	The filing date for the company tax return for the accounting period for which the tax is due (see paragraph 14 of Schedule 18 to FA 1998)

17, 23 or 24)

7	Inheritance tax	Amount payable under section 226 of IHTA 1984 (except an amount falling within item 14 or 21)	The filing date (determined under section 216 of IHTA 1984) for the account in respect of the liability for that amount
8	Inheritance tax	Amount payable under section 227 or 229 of IHTA 1984 (except an amount falling within item 14 or 21)	For the first instalment, the filing date (determined under section 216 of IHTA 1984) for the account in respect of the liability for that amount. For any later instalment, the date falling 30 days after the date determined under section 227 or 229 of IHTA 1984 as the date by which the instalment must be paid
9	Stamp duty land tax	Amount payable under section 86(1) or (2) of FA 2003	The date falling 30 days after the date specified in section 86(1) or (2) of FA 2003 as the date by which the amount must be paid
10	Stamp duty reserve tax	Amount payable under section 87, 93 or 96 of FA 1986 or Schedule 19 to FA 1999 (except an amount falling within item 17, 23 or 24)	The date falling 30 days after the date determined by or under regulations under section 98 of FA 1986 as the date by which the amount must be paid
11	Petroleum revenue tax	Amount charged in an assessment under paragraph 11(1) of Schedule 2 to OTA 1975	The date falling 30 days after the date determined in accordance with paragraph 13 of Schedule 2 to OTA 1975 as the date by which the amount must be paid

**AMOUNTS PAYABLE IN DEFAULT OF A RETURN BEING MADE**

12	Income tax or capital gains tax	Amount payable under section 59B(5A) of TMA 1970	The date falling 30 days after the date specified in section 59B(5A) of TMA 1970 as the date by which the amount must be paid
13	Corporation tax	Amount shown in determination under paragraph 36 or 37 of Schedule 18 to FA 1998	The filing date for the company tax return for the accounting period for which the tax is due (see paragraph 14 of Schedule 18 to FA 1998)
14	Inheritance tax	Amount shown in a determination made by HMRC in the circumstances set out in paragraph 2	The filing date (determined under section 216 of IHTA 1984) for the account in respect of the liability for that amount
15	Stamp duty land tax	Amount shown in determination under paragraph 25 of Schedule 10 to FA 2003 (including that paragraph as applied by section 81(3) of that Act)	The date falling 30 days after the filing date for the return in question

16	Petroleum revenue tax	Amount charged in an assessment made where participator fails to deliver return for a chargeable period	The date falling 6 months and 30 days after the end of the chargeable period
17	Tax falling within any of items 1 to 6, 9 or 10	Amount (not falling within any of items 12 to 15) which is shown in an assessment or determination made by HMRC in the circumstances set out in paragraph 2	The date falling 30 days after the date by which the amount would have been required to be paid if it had been shown in the return in question

*AMOUNTS SHOWN TO BE DUE IN OTHER ASSESSMENTS, DETERMINATIONS, ETC*

18	Income tax or capital gains tax	Amount payable under section 55 of TMA 1970	The date falling 30 days after the date determined in accordance with section 55(3), (4), (6) or (9) of TMA 1970 as the date by which the amount must be paid
19	Income tax or capital gains tax	Amount payable under section 59B(5) or (6) of TMA 1970	The date falling 30 days after the date specified in section 59B(5) or (6) of TMA 1970 as the date by which the amount must be paid
20	Income tax	Amount shown in determination made by HMRC where it appears that tax payable under PAYE regulations has not been paid	The date determined by or under PAYE regulations as the date by which the amount must be paid
21	Inheritance tax	Amount shown in—  (a)  an amendment or correction of a return showing an amount falling within item 7 or 8, or  (b)  a determination made by HMRC in circumstances other than those set out in paragraph 2	The later of—  (a)  the filing date (determined under section 216 of IHTA 1984) for the account in respect of the liability for that amount, and  (b)  the date falling 30 days after the date on which the amendment, correction, assessment or determination is made
22	Petroleum revenue tax	Amount charged in an assessment, or an amendment of an assessment, made in circumstances other than those set out in items 11 and 16	The date falling 30 days after—  (a)  the date by which the amount must be paid, or  (b)  the date on which the assessment or amendment is made,  whichever is later

23	Tax falling within any of items 1 to 6, 9 or 10	Amount (not falling within any of items 18 to 20) shown in an amendment or correction of a return showing an amount falling within any of items 1 to 6, 9 or 10	<p>The date falling 30 days after—</p> <p>(a) the date by which the amount must be paid, or</p> <p>(b) the date on which the amendment or correction is made,</p> <p>whichever is later</p>
24	Tax falling within any of items 1 to 6, 9 or 10	Amount (not falling within any of items 18 to 20) shown in an assessment or determination made by HMRC in circumstances other than those set out in paragraph 2	<p>The date falling 30 days after—</p> <p>(a) the date by which the amount must be paid, or</p> <p>(b) the date on which the assessment or determination is made,</p> <p>whichever is later</p>

**Assessments and determinations in default of return**

2The circumstances referred to in items 14, 17, 21 and 24 are where—

- (a) P or another person is required to make or deliver a return falling within any item in the Table in Schedule 55,
- (b) that person fails to make or deliver the return on or before the date by which it is required to be made or delivered, and
- (c) if the return had been made or delivered as required, the return would have shown that an amount falling within any of items 1 to 10 was due and payable.

Amount of penalty: occasional amounts and amounts in respect of periods of 6 months or more

3(1) This paragraph applies in the case of—

- (a) a payment of tax falling within any of items 1, 3 and 7 to 24 in the Table,
- (b) a payment of tax falling within item 2 or 4 which relates to a period of 6 months or more, and
- (c) a payment of tax falling within item 2 which is payable under regulations under section 688A of ITEPA 2003 (recovery from other persons of amounts due from managed service companies).

(2) P is liable to a penalty of 5% of the unpaid tax.

(3) If any amount of the tax is unpaid after the end of the period of 5 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

(4) If any amount of the tax is unpaid after the end of the period of 11 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

4(1) This paragraph applies in the case of a payment of tax falling within item 5 or 6 in the Table.

(2) P is liable to a penalty of 5% of the unpaid tax.

(3) If any amount of the tax is unpaid after the end of the period of 3 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

(4) If any amount of the tax is unpaid after the end of the period of 9 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

**Amount of penalty: PAYE and CIS amounts**

5(1) Paragraphs 6 to 8 apply in the case of a payment of tax falling within item 2 or 4 in the Table.

(2) But those paragraphs do not apply in the case of a payment mentioned in paragraph 3(1)(b) or (c).

6(1) P is liable to a penalty under this paragraph of an amount determined by reference to the number of defaults in relation to the same tax that P has made during the tax year.

(2) P makes a default in relation to a tax when P fails to pay an amount of that tax in full on or before the date on which it becomes due and payable.

(3) But the first failure during a tax year to pay an amount of tax does not count as a default in relation to that tax during that tax year.

(4) If P makes 1, 2 or 3 defaults during the tax year, P is liable to penalty of 1% of the total amount of those defaults.

(5) If P makes 4, 5 or 6 defaults during the tax year, P is liable to penalty of 2% of the total amount of those defaults.

(6) If P makes 7, 8 or 9 defaults during the tax year, P is liable to penalty of 3% of the total amount of those defaults.

(7) If P makes 10 or more defaults during the tax year, P is liable to penalty of 4% of the total amount of those defaults.

(8) In this paragraph—

(a) in accordance with sub-paragraph (1), the references in sub-paragraphs (4) to (7) to a default are references to a default in relation to the tax mentioned in sub-paragraph (3),

(b) the amount of a default is the amount which P fails to pay, and

(c) a default counts for the purposes of sub-paragraphs (4) to (7) even if the default is remedied before the end of the tax year.

7 If any amount of the tax is unpaid after the end of the period of 6 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

8 If any amount of the tax is unpaid after the end of the period of 12 months beginning with the penalty date, P is liable to a penalty of 5% of that amount.

### **Special reduction**

9(1) If HMRC think it right because of special circumstances, they may reduce a penalty under any paragraph of this Schedule.

(2) In sub-paragraph (1) "special circumstances" does not include—

(a) ability to pay, or

(b) the fact that a potential loss of revenue from one taxpayer is balanced by a potential over-payment by another.

(3) In sub-paragraph (1) the reference to reducing a penalty includes a reference to—

(a) staying a penalty, and

(b) agreeing a compromise in relation to proceedings for a penalty.

### **Suspension of penalty during currency of agreement for deferred payment**

10(1) This paragraph applies if—

(a) P fails to pay an amount of tax when it becomes due and payable,

(b) P makes a request to HMRC that payment of the amount of tax be deferred, and

(c) HMRC agrees that payment of that amount may be deferred for a period ("the deferral period").

(2) If P would (apart from this sub-paragraph) become liable, between the date on which P makes the request and the end of the deferral period, to a penalty under any paragraph of this Schedule for failing to pay that amount, P is not liable to that penalty.

(3) But if—

(a) P breaks the agreement (see sub-paragraph (4)), and

(b) HMRC serves on P a notice specifying any penalty to which P would become liable apart from sub-paragraph (2),

P becomes liable, at the date of the notice, to that penalty.

(4) P breaks an agreement if—

(a) P fails to pay the amount of tax in question when the deferral period ends, or

(b) the deferral is subject to P complying with a condition (including a condition that part of the amount be paid during the deferral period) and P fails to comply with it.

(5) If the agreement mentioned in sub-paragraph (1)(c) is varied at any time by a further agreement between P and HMRC, this paragraph applies from that time to the agreement as varied.

### **Assessment**

11(1) Where P is liable for a penalty under any paragraph of this Schedule HMRC must—

(a) assess the penalty,

(b) notify P, and

(c)state in the notice the period in respect of which the penalty is assessed.

(2)A penalty under any paragraph of this Schedule must be paid before the end of the period of 30 days beginning with the day on which notice of the assessment of the penalty is issued.

(3)An assessment of a penalty under any paragraph of this Schedule—

(a)is to be treated for procedural purposes in the same way as an assessment to tax (except in respect of a matter expressly provided for by this Schedule),

(b)may be enforced as if it were an assessment to tax, and

(c)may be combined with an assessment to tax.

(4)A supplementary assessment may be made in respect of a penalty if an earlier assessment operated by reference to an underestimate of an amount of unpaid tax.

(5)A supplementary assessment may be made in respect of a penalty under paragraph 6 if—

(a)notice of the assessment of the penalty was issued before the end of the tax year, and

(b)before the end of the year, P makes a further default (so that the penalty for the earlier default is increased).

12(1)An assessment of a penalty under any paragraph of this Schedule in respect of any amount must be made on or before the later of date A and (where it applies) date B.

(2)Date A is the last day of the period of 2 years beginning with the date specified in or for the purposes of column 4 of the Table (that is to say, the last date on which payment may be made without incurring a penalty).

(3)Date B is the last day of the period of 12 months beginning with—

(a)the end of the appeal period for the assessment of the amount of tax in respect of which the penalty is assessed, or

(b)if there is no such assessment, the date on which that amount of tax is ascertained.

(4)In sub-paragraph (3)(a) “appeal period” means the period during which—

(a)an appeal could be brought, or

(b)an appeal that has been brought has not been determined or withdrawn.

### **Appeal**

13(1)P may appeal against a decision of HMRC that a penalty is payable by P.

(2)P may appeal against a decision of HMRC as to the amount of a penalty payable by P.

14(1)An appeal under paragraph 13 is to be treated in the same way as an appeal against an assessment to the tax concerned (including by the application of any provision about bringing the appeal by notice to HMRC, about HMRC review of the decision or about determination of the appeal by the First-tier Tribunal or Upper Tribunal).

(2)Sub-paragraph (1) does not apply—

(a)so as to require P to pay a penalty before an appeal against the assessment of the penalty is determined, or

(b)in respect of any other matter expressly provided for by this Act.

15(1)On an appeal under paragraph 13(1) that is notified to the tribunal, the tribunal may affirm or cancel HMRC's decision.

(2)On an appeal under paragraph 13(2) that is notified to the tribunal, the tribunal may—

(a)affirm HMRC's decision, or

(b)substitute for HMRC's decision another decision that HMRC had power to make.

(3)If the tribunal substitutes its decision for HMRC's, the tribunal may rely on paragraph 9—

(a)to the same extent as HMRC (which may mean applying the same percentage reduction as HMRC to a different starting point), or

(b)to a different extent, but only if the tribunal thinks that HMRC's decision in respect of the application of paragraph 9 was flawed.

(4)In sub-paragraph (3)(b) “flawed” means flawed when considered in the light of the principles applicable in proceedings for judicial review.

(5)In this paragraph “tribunal” means the First-tier Tribunal or Upper Tribunal (as appropriate by virtue of paragraph 14(1)).

#### **Reasonable excuse**

16(1)Liability to a penalty under any paragraph of this Schedule does not arise in relation to a failure to make a payment if P satisfies HMRC or (on appeal) the First-tier Tribunal or Upper Tribunal that there is a reasonable excuse for the failure.

(2)For the purposes of sub-paragraph (1)—

(a)an insufficiency of funds is not a reasonable excuse unless attributable to events outside P's control,

(b)where P relies on any other person to do anything, that is not a reasonable excuse unless P took reasonable care to avoid the failure, and

(c)where P had a reasonable excuse for the failure but the excuse has ceased, P is to be treated as having continued to have the excuse if the failure is remedied without unreasonable delay after the excuse ceased.

#### **Double jeopardy**

17P is not liable to a penalty under any paragraph of this Schedule in respect of a failure or action in respect of which P has been convicted of an offence.

#### **Interpretation**

18(1)This paragraph applies for the construction of this Schedule.

(2)“HMRC” means Her Majesty's Revenue and Customs.

(3)References to tax include construction industry deductions under Chapter 3 of Part 3 of FA 2004.



(4)References to a determination, in relation to an amount payable under PAYE regulations or under Chapter 3 of Part 3 of FA 2004, include a certificate.

(5)References to an assessment to tax, in relation to inheritance tax and stamp duty reserve tax, are to a determination.