
Corporate

Consultation on Making Tax Digital (MTD) – sanctions for late submission and late payment

Response to Consultation *(Published: 20 March 2017)*

Introduction

1. The Institute of Financial Accountants (IFA) welcomes the opportunity to comment on HMRC's consultation on Making Tax Digital (MTD): sanctions for late submission and late payment, which was published on 20 March 2017.
2. We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.
3. Information about the IFA is given below.

Who we are

4. Established in 1916, the Institute of Financial Accountants (IFA) is an internationally recognised professional accountancy membership body. Our members work within micro and small- to medium-sized enterprises or in micro and small- to medium-sized accounting practices advising micro and SME clients.
5. The FTA is the Tax Faculty of the IFA and is the modern membership body for agents who provide tax compliance and planning expertise to SMEs and entrepreneurs. It is the tax representative for IFA and FTA members.
6. The IFA is part of the Institute of Public Accountants (IPA) of Australia Group, the world's largest SME-focused accountancy group, with 35,000 members and students in 80 countries.
7. We are proud of our unique relationship with our members, who predominantly come from a SME/SMP background. As a professional accountancy body, we aim to provide the very best support and guidance to our members who operate within this arena, frequently tailoring policies and recommendations to meet the unique challenges and trading relationships associated with smaller business.
8. We offer a programme of professional qualifications and education as well as resources, events, training and seminars. As well as resources, events, training and seminars. IFA members uphold high standards of conduct, confidentiality and ethics and undertake annual continuing professional development (CPD) activities.
9. The IFA is a full member of the International Federation of Accountants (IFAC), the global body for the accountancy profession and is formally recognised as an awarding organisation by Ofqual, the public body responsible for monitoring standards, exams and qualifications (other than degrees) in England, underlining the quality of the IFA's work and the integrity of its qualifications. It is also authorised by HM Treasury and the Financial Services Authority in the Isle of Man as a supervisor to monitor its members for compliance with the Anti-Money Laundering regulations in the UK and the Isle of Man.

General Comments

10. We welcome HMRC's intention of creating a new penalty model under MTD which does not mechanically charge large numbers of penalties on those who are trying to comply with the new obligations and changes in approach resulting from the implementation of MTD. It is appropriate that penalties are not always applied on taxpayers who are making a reasonable effort to comply. Punitive penalties imposed automatically on taxpayers who misapply complex law or struggle to meet deadlines without much consideration of individual circumstances can do more harm than good. Tax penalties are still required as part of the overall package of measures that HMRC has at its disposal. However, when applied inappropriately, the penalties result in taxpayer resentment with the possibility of discouraging voluntary compliance and engagement with HMRC and the tax system.
11. Following a survey carried out by the IFA a number of concerns were raised which is supported by feedback from 148 members. These are detailed below.
12. The government has confirmed that taxpayers will be given a minimum period of 12 months to become familiar with the new obligations of Making Tax Digital for Business before the new late submission penalties come into effect. 80% of members who responded stated that this transition period was not sufficient. The majority of

members favoured a 24 month transition period, followed closely behind by a 36 month transition period.

13. Our members had strong views in this regard as indicated in the quotes bellows:

- “...There is no public awareness of MTD. A wee fellow in a bowler hat has been around for years clearly explaining what will happen if your tax return is late. MTD is a huge change and yet the public are unaware of it. HMRC are doing this under the radar.”
- “I think that HMRC is living in fairy land. They do not seem to grasp the fact that most self-assessment tax payers are not even aware of digital accounting let alone when it will supposedly commence.”
- “There should be no interest or penalties until the maturity stage of MTD, by then agents and their clients will be accustomed to what is expected of them.”

14. The consultation does not address how penalties should be levied at the partnership level. Based on member feedback, nearly 80% of members support that penalties should be charged to the partnership instead of individual partners.

15. The consultation touches on penalty interest but does not ask any specific questions on it. Feedback from our members on this area is as follows:

- a. 76% of members did not support the proposal that HMRC should use the statutory interest for late payment. Some members suggested that HMRC should charge the base rate for late payment and not 8% plus the Bank of England base rate. Others suggested 2.75%. Some members were of the view that no interest should be charged on penalties.
- b. The majority of members supported HMRC charging late payment interest of 2.75% when tax is not paid on time and treating the penalty interest as a single charge.
- c. Nearly 90% of members thought that 14 days was an inadequate amount of time to agree payment in full or enter into a TPP arrangement. 90% of members were of the view that 28 days was a more appropriate time period.

Specific questions

16. In addition to our general comments, our comments on specific questions set out in the consultation document are set out below.

Q 2.1. Which of the three penalty models proposed (A – Points-based, B-Regular review of compliance, or C – Suspension of penalties) do you consider to be best and why?

17. Member feedback was almost equally divided between the ‘Points Model’ and the ‘Suspension Model.’ The review model was not supported because penalties could be charged a long time after the default by the taxpayer occurred and may therefore surprise the taxpayer. Furthermore, the process would be automated as opposed to involving judgement and with the aid of guidance, treating each case on its own merits. An automated process resulting in penalties which may relate to periods of time long after the default by the taxpayer has occurred is likely to lead to taxpayer resentment and discourage voluntary compliance.

18. Further guidance and information is needed on how the ‘Points Model’ and the ‘Suspension Model’ will work in practice, particularly relating to the allocation of points for non-compliance, points thresholds and time periods to encourage compliance. Some queries relating to the ‘Points Model’ are:

- a. What factors would be taken into account when allocating points for non-compliance? Will points be issued for quarterly updates which are submitted on time but are inaccurate or complete?
- b. Would aggravating and mitigating circumstances be considered when issuing points? For example, is it appropriate to issue taxpayers with a penalty who have made every reasonable effort to comply?

- c. On what basis would the threshold be set and over what period of time? Will the threshold be reviewed and revised? If so, how frequently?
- d. Would the sustained period of good compliance be reviewed and revised? If so, how frequently?

Some queries relating to the 'Suspension Model' are:

- a. What factors would be considered for determining the time period for any outstanding submission?
- b. What type of submissions would be covered under this model? Quarterly Updates, tax returns, HMRC queries?
- c. What happens if the reason for the outstanding submission is due to a delay by HMRC?

Q 2.2. What are your views on the relative importance of the competing demands of fairness, simplicity and effectiveness?

19. While all are equally important, if asked to prioritise, the demand of fairness would trump that of simplicity and effectiveness. We are of the view that any penalty system intended to change behavior and encourage compliance should be first and foremost fair in order to prevent taxpayer resentment. Furthermore, if challenged, the courts are likely to take the principles of fairness and proportionality into account.

Q 2.3. To what extent does each of the three penalty models strike the appropriate balance between fairness, simplicity and effectiveness?

20. With the aid of robust guidance, appropriate communication and efficient and effective administration by HMRC, both the 'Points Model' and the 'Suspension Model' could strike the appropriate balance between fairness, simplicity and effectiveness.

Q 3.1. Do you agree with these proposals for the duration of the required good compliance periods?

21. Yes, we support the proposal of 24 months of sustained good compliance.

Q 3.2. Could any changes be made to the points-based penalty model to make it fairer, simpler and more effective?

22. HMRC should publish further guidance on the practical implementation of this model in order to ensure consistency of application which will aid fairness, simplicity and effectiveness.

Q 4.1. What are your views on the timing of the review?

23. Our view is that the reviews should take place as soon as practical after the due date for the end of the period statement in order to encourage compliance. So, for direct tax customers, we would prefer figure 4.2 as detailed in this consultation.

Q 4.2. Which of the three options mentioned in paragraphs 4.5 to 4.7 above for customers within Making Tax Digital for Business do you think is the most appropriate?

24. As above.

Q 4.3. Do you agree this would be a proportionate response to occasional lateness that lasted just a short time?

25. Yes, we support HMRC's proposal not to penalise taxpayers for one-off oversights. HMRC guidance on what it considers 'one-off oversights' to be would be welcome.

Q 4.4. Could any changes be made to the regular review of compliance model to make it fairer, simpler and more effective?

26. No comments.

Q 5.1. Do you agree that improved compliance should be recognised? Is there a better alternative for recognising it?

27. Yes, we support HMRC's intention of recognising good compliance and its proposal in this area.

Q 5.2. Could any changes be made to the suspension model to make it fairer, simpler and more effective?

28. HRMC should publish further guidance on the practical implementation of this model in order to ensure consistency of application which will aid fairness, simplicity and effectiveness.

Contact Details

29. Should you wish to discuss our responses further, please contact Anne Davis by email at AnneD@ifa.org.uk