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## **REVIEW OF HMRC POWERS, DETERRENTS AND SAFEGUARDS: PENALTIES FOR LATE FILING OF RETURNS AND LATE PAYMENT OF TAX**

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### **Who is likely to be affected?**

1. Taxpayers who do not file their tax returns or pay their tax liabilities on time for:
  - income tax, corporation tax (CT), Pay as you Earn (PAYE), National Insurance Contributions (NICs) and the Construction Industry Scheme (CIS);
  - stamp duty land tax (SDLT) and stamp duty reserve tax (SDRT); and
  - inheritance tax (IHT), pension schemes and petroleum revenue tax.
2. This measure will not have effect for tax credits.

### **General description of the measure**

3. Legislation will be introduced in Finance Bill 2009 to reform penalty regimes for late filing of tax returns and late payment of tax
4. These changes have been subject to recent consultation as part of the ongoing work of the Review of HM Revenue & Customs' (HMRC) Powers, Deterrents and Safeguards and Tax Administration to provide a modern framework of law and practice for HMRC.
5. The new regimes will replace the current variety of penalties and will treat late payment and late filed returns separately. Whilst broadly aligned across the taxes listed above, they are modified for PAYE and CIS.
6. The measure includes applying penalties for the first time to all employers who are late in making monthly PAYE and NICs payments and companies paying CT late. It provides for removing late payment penalties where taxpayers have agreed a time to pay arrangement with HMRC whilst creating a more robust response to prolonged and repeated delay.
7. Further explicit provision is included for the right of appeal against all penalty decisions using a common formulation for reasonable excuse.

## **Operative date**

8. Implementation of new penalties for late filing and late payment requires changes to HMRC's computer systems and is to be staged over a number of years, starting with penalties for late payment of in year PAYE, using a risk based approach, from April 2010. The new provisions will be brought into effect by Treasury Orders which will specify the dates from which they have effect.

## **Current law and proposed revisions**

9. The measure will repeal a large number of different penalty and surcharge provisions which are specific to each of the taxes covered, and replace these with more aligned penalty regimes for late filing of returns and late payment of tax and NICs.
10. The filing and payment obligations covered by this measure include those where the obligation to file or pay is annual or occasional and in addition, taxes and deductions collected through the PAYE system and CIS. The measure includes penalty models for each category with many common features, but with necessary modifications.
11. The key elements of the new penalty models are:

### Penalties for late filing where the obligation to file the return is annual or occasional.(e.g. income tax Self Assessment, CT, IHT) include:

- £100 penalty immediately after the due date for filing (whether or not the tax has been paid);
- daily penalties of £10 per day (annual obligations only) for returns that are more than three months late, running for a maximum of 90 days;
- penalties of 5 per cent of tax due for the return period for prolonged failures (over 6 months and again at 12 months); and
- higher penalties of 70 per cent of the tax due where a person fails to submit a return for over 12 months and has deliberately withheld information necessary for HMRC to assess the tax due (100 per cent penalty if deliberate with concealment).

12. Penalties for late payment where the obligation to make payment is annual or occasional (e.g. income tax Self Assessment, CT, IHT) include:

- penalties of 5 per cent of the amount of tax unpaid, generally one month after the payment due date (or at the filing date of the relevant return for CT and IHT);
- further penalties of 5 per cent of any amounts of tax still unpaid at 6 and 12 months; and
- suspension of late payment penalties where the taxpayer agrees a time to pay arrangement (where a tax debt is paid over time) with HMRC.

Penalties for late filing of CIS returns include:

- a fixed penalty of £100 for failure to submit any return by the filing date;
- an additional fixed penalty of £200 if any return is outstanding more than 3 months after the filing date;
- penalties of 5 per cent of deductions due for the return period for prolonged failures (over 6 months and again at 12 months); and
- higher penalties of 70 per cent of the deductions due where a person fails to submit a return for over 12 months and has deliberately withheld information necessary for HMRC to assess the tax due (100 per cent penalty if deliberate with concealment).

Penalties for late payment of taxes and deductions collected through the PAYE system:

- the amount of the penalty will depend on the number of defaults in any 12 month period. The first time the taxpayer defaults, they will not receive a penalty;
- a second late payment and any subsequent failures in the default period will attract a penalty of 2 per cent of the tax unpaid rising to 5 per cent of tax unpaid;
- further penalties of 5 per cent of any amounts of tax still unpaid at 6 and 12 months; and
- late payment penalties will not be charged during an agreed time to pay arrangement with HMRC unless the taxpayer defaults or misuses the arrangement.

13. The measure includes a right of appeal against all penalties using a common formulation of reasonable excuse. Taxpayers will not have to pay penalties before they can appeal.

14. It provides a statutory basis for removing late payment penalties where taxpayers have agreed a time to pay arrangement with HMRC. The removal of penalties whilst in a time to pay arrangement was first announced in the 2008 Pre-Budget Report. The use of this provision was brought forward to provide more help for taxpayers struggling to meet their payment obligations and has been applied on a case-by-case basis to penalties under existing legislation with effect from 24 November 2008. The measure will enable HMRC to re-impose penalties in some circumstances where the taxpayer has defaulted on the time to pay agreement.

**Further advice**

15. The measure was the subject of a consultation document published in November 2008 – *Meeting the obligations to file returns and pay tax on time* and draft legislation in December 2008, which built on a consultation published with the same title in June 2008. A summary of responses and a Final Impact Assessment including an explanation of any resulting changes has been published today on the HMRC website.

16. These provisions are part of a wider package of measures to modernise HMRC's administration of the tax systems to improve customer service, effectiveness and efficiency. Please see Budget Note 91 on *Interest Harmonisation*.
17. The Government intends to introduce legislation in Finance Bill 2010 to align penalties for the remaining taxes and duties administered by HMRC (VAT, climate change levy, aggregates levy, landfill tax, air passenger duty, excise duties and insurance premium tax).
18. If you have any questions about this change, please send an email to [powers.review-of-hmrc@hmrc.gsi.gov.uk](mailto:powers.review-of-hmrc@hmrc.gsi.gov.uk) or contact Maria Richards on 020 7147 3223. Information about Budget measures is available on the HM Revenue & Customs website at [www.hmrc.gov.uk](http://www.hmrc.gov.uk)