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

Who is likely to be affected?

1. Taxpayers who do not file their tax returns on time or pay their tax liabilities in full and on time for:
 - VAT and insurance premium tax;
 - aggregates levy, climate change levy and landfill tax;
 - air passenger duty, alcoholic liquor duties, tobacco products duty, hydrocarbon oil duties, general betting duty, pool betting duty, bingo duty, lottery duty, gaming duty and remote gaming duty; and
 - other excise duties.
2. This measure will not have effect for tax credits.

General description of the measure

3. This measure will complete the reform of the penalty regimes for late filing of tax returns and late payment of tax. The reform began when legislation for certain taxes was enacted in the Finance Act (FA) 2009 including income tax, corporation tax, inheritance tax and other direct taxes.
4. The Government will legislate for this measure in a Finance Bill to be introduced as soon as possible after the summer recess.

Operative date

5. Implementation of new penalties for late filing and late payment requires changes to HM Revenue & Customs' (HMRC) internal systems and processes and is to be staged over a number of years. This will also allow for the substantial education and preparatory period that will be necessary for both taxpayers and their agents. 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

6. The new regimes will replace the current variety of penalties and will treat late payment of tax and late filed returns separately. The legislation creates penalty models which reflect the more frequent filing and paying obligations for these taxes and duties compared to the direct tax penalty models enacted last year.
7. The late filing and late payment penalty models are broadly similar. These are designed to encourage filing and payment by the correct dates by introducing an escalating series of penalties depending upon the number of failures within a set penalty period. Further penalties will arise if there is a prolonged delay in filing returns or paying the tax due.
8. The new penalties will include a right of appeal against penalty decisions if the taxpayer has a reasonable excuse for the lateness. Late payment penalties may also be avoided where taxpayers have agreed a time to pay arrangement with HMRC.
9. The legislation enacted in FA 2009 included those taxes where the obligation to file or pay is either annual or occasional. It also made specific provision for the filing of Construction Industry Scheme returns and payment to HMRC of deductions collected through the Pay As You Earn (PAYE) system. This measure introduces further penalty models with common features, based upon the underlying principles of influencing behaviour, effectiveness and fairness.
10. The key elements of the new penalty models are as follows:

Penalties for late filing returns (quarterly)

- A £100 penalty immediately after the due date for filing (whether or not the tax has been paid);
- the failure also starts a penalty period, which is set for a year;
- if there are further failures within the penalty period, then the fixed penalty escalates by £100 for each of those subsequent failures, up to a maximum of £400 per failure. The penalty period is also extended to the first anniversary of the latest failure;
- if any of the failures are prolonged, then additional penalties of 5 per cent of the tax on the relevant return are charged at six and 12 months from the date of the failure; and
- if, by failing to make the return, the taxpayer is deliberately withholding information to prevent HMRC from correctly assessing the liability to tax, then penalties of up to 100 per cent of the tax on the return may be chargeable.

Penalties for late filing returns (monthly)

- This is a very similar structure to the quarterly model above, except that the fixed penalties are £100 for the first six failures in any penalty period, and then £200 for any subsequent failures.

Penalties for late payments (quarterly)

- Where a taxpayer first pays late, although there is no penalty, it does start a penalty period, which is set for a period of a year;
- any further failures within that period will attract a penalty of 2 per cent of the unpaid tax, as well as extending the penalty period to the first anniversary of the latest failure;
- a third failure within the period will attract a penalty of 3 per cent, with further failures attracting a maximum of 4 per cent; and
- if any of the failures are prolonged, then additional penalties of 5 per cent of the unpaid tax are charged at six and 12 months from the date of the failure.

Penalties for late payment (monthly)

- This is a very similar structure to the quarterly model above, except that, after the first failure, the tax-gear penalties are 1 per cent for the next three failures in any penalty period, 2 per cent of the next three failures, etc. up to a maximum of 4 per cent per failure.

11. There are special provisions to deal with circumstances where taxpayers may change from a monthly to a quarterly return, or where exceptional payment obligations may arise.

Further advice

12. This measure was previously announced at Budget 2010 and a version of this note was published as BN67. This note supersedes that version.

13. This measure has been the subject of three separate consultations: *Meeting the obligations to file returns and pay tax on time* was published in November 2008, building upon an initial consultation published with the same title in June 2008. Draft legislation was then exposed for public comment on 9 December 2009. A summary of responses was published on 25 March 2010.

14. The Impact Assessment relating to this measure was published on the HMRC website on 14 April 2009.

15. If you have any questions about this change, please contact David Lewis on 020 7147 2403 (email: david.e.lewis@hmrc.gsi.go.uk). Information about Budget measures is available on the HM Revenue & Customs website at www.hmrc.gov.uk