HMRC consultation Making Tax Digital: Tax administration
Response by the Chartered Institute of Taxation

1 Introduction

1.1 This consultation document[1] covers four main areas; compliance powers, late submission penalties, late payment sanctions and interest. We note that penalties for incorrect data and behaviour based penalties will be consulted on in the future.

1.2 The CIOT has previously responded to 'HMRC Penalties – a discussion document' on 11 May 2015 and we were heavily involved in the HMRC Powers Review which ran from 2005 to 2012. Many of the current penalties came into existence as a result of that very comprehensive review of HMRC Powers. We should not lose sight of the principles that underscored the previous review, learn from that experience and build on what has so far been achieved.

1.3 We do however note that many of the suggestions made during the powers review could not be followed up due to insufficient IT capability of HMRC, in particular in connection with linking systems across the taxes. This is less likely to be an issue in a digital age, so some of the original suggestions could be reconsidered.

1.4 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the CIOT is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.

1.5 Our response to this consultation document should be read in conjunction with our responses to the other consultation documents on MTD.

[1] https://www.gov.uk/government/consultations/making-tax-digital-tax-administration

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2 Key messages from the CIOT about Making Tax Digital

2.1 Whilst MTD will bring benefits to HMRC, the likely impact on most businesses and taxpayers will be an increased workload and / or increased costs. It is not at all clear that there will be commercial benefits to offset such costs, particularly for smaller businesses.

2.2 The timetable for mandation of MTD is far too optimistic and must be pushed back. The proposed deferral of MTD for certain small businesses over the proposed exemption threshold is insufficient. Effective software is not yet available and fully tested, so the substantial number of businesses that currently do not use software will inevitably have difficulties both selecting the appropriate software and getting to grips with its functionality. Businesses that currently do use software will be prejudiced if their provider cannot keep up with the demanding timescales.

2.3 Deferral of MTD will allow a smoother and more effective transition. The continued widespread use of spreadsheets, and an upload facility onto an HMRC portal, will assist businesses get used to updating HMRC more regularly, in a more digitised fashion, whilst ensuring that transition time and costs can be better managed.

2.4 The thresholds for mandation need to be increased. The £10,000 threshold for exemption is far too low. It could place the obligation on non-taxpayers and landlords with a single buy-to-let residential property.

2.5 That said, the case for mandating larger businesses into MTD has not been made out. These businesses are already likely to have comprehensive record-keeping systems, already in a digital format, and many corporates will be subject to independent external audit. Mandation of a particular method of digital record keeping, and quarterly reporting, will create significant administrative costs and burdens. The figures being submitted quarterly would still need to be adjusted at the end of the year for tax purposes, and the submission of unadjusted figures will be of little or no benefit to HMRC or to the business.

2.6 Real simplification of the tax system, particularly for small businesses, will help MTD work. For example, a simple income-minus-business expenses model would be easier for taxpayers to understand and report. The simplification proposed is inadequate and potentially detrimental to taxpayers. In any event, simplification should take place BEFORE introducing mandatory digital record keeping and reporting.

2.7 Agents will be an integral part of MTD, yet the consultations are worrying devoid of much mention of agents, and seemingly imply that businesses will wish to ‘do it themselves’. Agent access and functionality needs to keep progress with taxpayer access, and consideration needs to be given to the different types of agent and the various functions that they carry out.

2.8 In any event, communication of MTD, direct to businesses and individuals, is vital. There is much work to be done to educate and inform the public about these very significant proposals, and how they change the interaction they will have with HMRC. In our view, HMRC will need to step-up its promotion of MTD. Digital communications such as YouTube and Twitter will not reach businesses that currently do not use digital tools. Traditional mechanisms such as television, radio and newsprint should be considered.

3 Executive summary

3.1 MTD involves large scale change for taxpayers, advisers and HMRC. We have concerns that there may not be adequate time for appropriate coordination and reflection on consultation responses let alone further discussion, before decisions are made and draft legislation is prepared. Making changes in haste runs many risks – not least that many compliant taxpayers may become non-compliant despite trying to do what is required.

3.2 **Transitional period** – We consider 12 months is insufficient to allow customers to become familiar with the 3 year MTD programme before the new penalty regime comes into effect. We strongly recommend that the same 3 year period be applied, as was applied to the Real Time Information regime.

3.3 **Communication** - Making taxpayers aware of their changing obligations will be essential to a successful roll-out. Providing clear, concise and timely HMRC guidance will be vital. We are concerned about reports of widespread lack of awareness of MTD amongst taxpayers and suggest this needs to be addressed as a matter of urgency, once decisions to proceeed have been taken.

3.4 **Education –** Educating taxpayers, advisers and HMRC staff will, we believe, be crucial in preventing non-compliance and error. We hope that comments in para 3.35 are not intended to dismiss the importance of educating taxpayers (and agents) more generally.

3.5 **Additional safeguards** - There may also need to be additional safeguards to cover privacy and security in light of the transfer of digital information and access to software. We endorse comments made by the CIOT's Low Incomes Tax Reform Group (LITRG) in their response to this consultation in relation to the need for additional taxpayer safeguards, fraudulent activity and consumer protection.

3.6 **Enquiry windows** - We remain unclear about the enquiry window proposal. We understand that it is not HMRC's intention to have multiple enquiry windows open but fail to understand how this can be avoided under the current proposal. We are of the view that there should be one end of year declaration for the tax year, covering both MTD and non-MTD reporting.

3.7 **Expiration of penalty points** - We agree that a sustained period of compliance should result in penalty points being nullified but we favour penalty points having an expiry date (like a driving licence). The proposal of 24 months is, in our view, an unrealistically high expectation for taxpayers with multiple obligations. As an alternative, we suggest a rolling 12 month time limit similar to the VAT default surcharge. After a clear 12 months of compliance the points would be cancelled. This would provide a real incentive to comply, not a stick to beat the non-compliant.

3.8 **Right to appeal** - Penalties and penalty points must always be subject to a right of appeal. We acknowledge that a formal appeal against the imposition of a point may be premature when a point might never lead to a penalty, but there needs to be a mechanism in place giving taxpayers the right to object at the time a penalty point is issued in case enough points accrue to incur a financial penalty.

3.9 **Single points total** - The concept of a single, simple points system is an attractive prospect but as the complexities of the different taxes and multiple obligations are considered further there is a real concern about whether this would be workable, fair

and proportionate. We are of the view that four penalty points leading to a penalty is too few, given the frequency with which penalties could arise under this model.

3.10 **Late payment sanctions** – It seems reasonable to have a combination of late payment interest and tax geared penalties (Proposal B model 1), which aim to both penalise and deter the late payment of tax and act as reminders that the tax is still outstanding. This would give taxpayers a graduated and fairer period of default, enabling issues to be addressed and compliance improved yet still penalising those who continue to default.

3.11 **'Time to pay'** – Reasonable time needs to be given to allow taxpayers to enter into 'time to pay' arrangments before the imposition of penalities. We do not believe 14 days is sufficient and suggest 30 days is more reasonable.

4 Question 2.1: Do you agree that compliance legislation should be amended to replicate current enquiry powers into the Self Assessment return to the End of Year declaration?

Question 2.2: Do you agree that current HMRC and customer safeguards should also be maintained?

Question 2.3: Are there any other options for preserving HMRC's current enquiry powers in MTD?

4.1 Yes, we do agree that it seems logical to amend and apply current self-assessment enquiry powers to the end-of-year declaration, and that existing safeguards should be maintained. Additional safeguards may be needed.

4.2 **Enquiry windows**

We remain unclear about what is proposed with enquiry windows. There are references to the enquiry window running for 12 months from the submission of the end of year (EOY) declaration.

4.3 It has been explained to us by HMRC that the aim of an enquiry window is to preserve enquiry powers for HMRC (and related taxpayer safeguards) where there is no tax return (as it is envisaged that an EOY declaration will replace the Self Assessment tax return). However, when we consider how this works in practice it raises a number of questions.

4.4 We understand that it is not HMRC's intention to have multiple enquiry windows open but fail to understand how this can be avoided under the current proposal.

4.5 Where a taxpayer has multiple businesses and/or more than one accounting period in a 12 month period, this will mean multiple EOY declarations. It is also the case that many taxpayers will also still need to complete a separate self-assessment tax return (or the proposed equivalent) to declare other income sources, gift aid, mileage relief, child benefit declarations etc.

4.6 For example, a business draws up accounts to y.e. 30/04/2019 for which it is required to make an EOY declaration by 31/01/2020 (under the 9 month proposal) and indeed makes its EOY declaration on that day. This falls within the 2019/2020 tax year. Any other information relevant for that tax year is (under current rules) due

to be submitted by 31/01/2021. This raises the question of when should the enquiry window begin? 31/01/2020 or 31/01/2021?

4.7 If it is 31/01/2020 then an EOY declaration is required before the end of the tax year and before a taxpayer's full position is known. In relation to capital allowances, losses etc how will taxpayers be in a position to know what they want to do before the end of the tax year? We deal with this issue in more detail in our response to the consultation 'Bringing business tax into the digital age'. There would then be two declarations for one tax year (the EOY declaration for MTD purposes, and the reporting of other income / claims outside MTD). How would enquiry windows apply to this scenario and how can multiple enquiry windows be avoided?

4.8 If it is 31/01/2021 then the enquiry window runs until 31/01/2022 for a set of accounts covering the period 01/05/2018 to 30/04/2019. This is what would happen now (prior to MTD) and begs the question – why accelerate the EOY declaration to 31/01/2020?

4.9 We are of the view that there should be one end of year declaration for the tax year, covering both the MTD reporting and non MTD reporting, and not for the accounting period(s) falling in that year. This will mean a single enquiry window per tax year which should begin 12 months from the EOY declaration for that tax year.

4.10 We understand that enquiry windows will not apply to VAT.

4.11 **Prompts and nudges**

In an ideal world, the use of nudges and prompts should reduce the number of enquiries as taxpayers will be guided to check and verify the information as they input it. This will, of course, depend upon the relevance and accuracy of the nudges and prompts.

4.12 However, members report that currently available software (particularly for VAT) and recent experiences of the migration of guidance to Gov.uk do not fill them with confidence. We urge the Government not to underestimate the challenges involved in providing up to date and accurate prompts and nudges.

4.13 Further consideration needs to be given to the legal position of prompts and nudges. Can taxpayers rely on what has popped up in the software? If prompts and nudges are overridden, will this have an adverse effect on taxpayers in relation to behaviour based penalties and the potential suspension or mitigation of penalties?

4.14 **Additional safeguards**

There may also need to be additional safeguards to cover privacy and security in light of the transfer of digital information and access to software. We endorse comments made by LITRG in their response to this consultation in relation to the need for additional taxpayer safeguards, fraudulent activity and consumer protection.

5 Question 2.4: Do you agree with the proposed approach to replicate HMRC's compliance powers for determinations, corrections, information powers and discovery assessments?

5.1 Yes.

5.2 We note HMRC's announcement that there will be a further consultation document issued on compliance powers in relation to the process and time limits for amendments following end of year activity.

6 Question 2.5: Do you have any other comments on how compliance powers need to change to transition to MTD?

6.1 **Correcting obvious errors** - Para 2.23 states that HMRC can correct 'obvious errors' which might be simple and arithmetical or 'they might be information HMRC can see is incorrect based on other information'. We have concerns that there may be a good reason for the apparent discrepancy or information provided by a third party (such as a bank) to HMRC may be incorrect (or incorrectly attributed to the taxpayer). Care should be taken not to substitute an incorrect figure for a correct one, particularly where figures returned in the quarterly updates are different from those contained in the EOY declaration. We welcome the safeguard allowing taxpayers to reject any of HMRC's corrections, and have raised concerns in our response to the consultation 'Transforming the tax system through better use of information' with HMRC's proposed approach to correcting errors in third party data.

6.2 **Transitional Provisions -** Para 2.28 refers to the need for transitional provisions to ensure that information discovered in MTD can inform discovery assessments relating to previous SA periods. HMRC will have much more information at their disposal than previously, which could be helpful in assessing a taxpayer's position. However, it is important that this information is used appropriately and care needs to be taken not to leap to incorrect conclusions in respect of previous SA periods based on MTD information. We make further comment on transitional arrangements in our response to question 3.1 below.

6.3 **Communication -** Making taxpayers aware of their changing obligations will be essential to a successful roll-out. It will also be crucial that HMRC staff are aware and apply new powers consistently and fairly. Clear and concise HMRC guidance will be vital.

6.4 **Updates v declarations** - concern has been expressed that taxpayers would be penalised for failure to submit quarterly updates when, until now, submissions of data to HMRC have resulted in a more formal measure of certainty over a tax position for a specified period or event (be this a VAT quarter, accounting period or tax year). The introduction of quarterly submissions for businesses could be seen as non-essential in establishing a taxpayer's position yet would be subject to penalties. This is considered unfair by some. Only the EOY declaration or VAT return gives any measure of certainty over a taxpayer's true liability to tax.

7 Question 3.1: Do you agree that 12 months is an appropriate length of time to allow customers to become familiar with the new obligations before the new penalty regime comes into effect?

7.1 No.

7.2 We strongly recommend that the same 3 year period of freedom from penalties be applied, at the very least, to those small and micro-businesses who come within the scope of Making Tax Digital as was applied at the start of the Real Time Information

regime. Ideally, all businesses should have the opportunity to experience a full cycle before any penalty regime kicks in. LITRG have previously urged HMRC to carry forward any learning identified during the post-implementation review of RTI to the MTD project.

7.3 We are of the view that a light-touch penalty regime of substantial duration should be implemented until the MTD changes are embedded and operating efficiently.

7.4 The phasing-in approach of MTD that HMRC have adopted means that many taxpayers will be subject to new rules for different aspects of their business activities over a rolling 3 year programme (assuming timescales are kept to). Is it HMRC's proposal that the 12 months would apply separately to each phase eg where a sole trader is brought within the MTD rules for 2018 for income tax and then again for VAT in the following year they will have concurrent 12 month periods but for different tax obligations? It is feasible the same taxpayer may also have an incorporated business that is affected in the third year. This would result in multiple periods of grace for different tax activities and would become complex to manage both for HMRC and the taxpayer.

8 Question 3.2: Do you agree that the period to wipe the slate clean should be 24 months? If not, what other period would be appropriate?

8.1 No.

8.2 We support the concept that a sustained period of compliance should result in penalty points being nullified but we favour penalty points having an expiry date (like for a driving licence).

8.3 HMRC's proposal of 24 months of perfect compliance is, in our view, an unrealistically high expectation for a taxpayer with potentially multiple monthly, quarterly and annual business obligations under MTD.

8.4 The current proposal could mean that just (say) 4 late submissions spread over a 6-year period (eg Q4 for years 1, 3, 5 and 7) could trigger a penalty. It may have the effect of causing a taxpayer to feel like they will never achieve penalty-free status and to begrudgingly accept the penalty as a cost that has to be paid. This would be contrary to HMRC's aim to improve compliance and change behaviour.

8.5 As an alternative, we suggest a rolling time limit similar to the 12-month 'surcharge period' used for the VAT default surcharge. Under this regime, if a taxpayer defaults it enters a surcharge period. If it defaults again during this time the surcharge period is extended for a further 12 months and may result in a penalty depending upon the amount of penalty points reached in that time. After a clear 12 months of compliance the surcharge period is cancelled.

8.6 We acknowledge that the consultation document considers and dismisses a period of 12 months; thought too short by HMRC for taxpayers with only annual submission obligations. Does HMRC have statistical evidence of how many taxpayers are likely to only have annual obligations under MTD compared with taxpayers having multiple obligations?

8.7 We presume the majority of taxpayers will have multiple obligations and recommend the penalty regime should be designed to work fairly for the compliant majority.

9 Question 3.3: We invite views on the design principles outlined for the points-based penalty. For example, do you consider there are any further elements to build in to this basic model?

9.1 We broadly support the principles set out at paragraphs 2.3 and 3.16.

9.2 We would add the following elements to be incorporated:

9.3 **Right to appeal** - Penalties and penalty points must always be subject to a right of appeal. There needs to be a mechanism to allow defence of a penalty point at the time it is issued in case enough points accrue to incur a financial penalty. In line with the MTD principles that items dealt with contemporaneously are more accurate, an appeal at the time is likely to be fairer. See further comments in section 16.

9.4 **Suspension / mitigation** - we would encourage HMRC to consider how the suspension provisions could be applied more broadly in order to improve (and be seen to improve) fairness.

9.5 **Reasonable excuse claims** – improved decision making by HMRC and greater alignment with the First-tier Tribunal (FTT) decisions is needed here. The Tax Assurance Commissioner[2] reports that statutory review teams vary or overturn over half of the penalty decisions that come before them. With an increase in taxpayer obligations we would expect to see an increase in the volume of reviews undertaken by HMRC.

9.6 **Education** – education of taxpayers, advisers and HMRC staff will be a key factor in preventing non-compliance and error. We hope that the comments in para 3.35 are not intended to dismiss the importance of educating taxpayers (and agents) more generally. In line with HMRC's aim to be a customer-focused organisation, we feel there is a responsibility on HMRC to advise and educate all stakeholders on how the new MTD system will work. We are very willing to assist HMRC with this aspect.

9.7 **Communication** – clear, concise, consistent and timely communication is essential to make this a success. MTD should enable more targeted and personal communication. We are concerned about the lack of communication to taxpayers and suggest this needs to be focussed on as a matter of urgency.

9.8 **Record keeping penalties** - it is not clear from the consultation document whether a new record keeping penalty regime will be introduced for MTD or whether the existing one (section 12B TMA 1970) will be kept and modified to cope with digital record keeping. We have concerns around the timing of issue, frequency of use, amount of penalty, lack of suspension available and interaction with other penalty regimes. We understand that this provision is seldom used but wonder if it is HMRC's intention to use record keeping penalties more frequently under MTD? Perhaps there is an opportunity presented by MTD to align record keeping penalties with other penalties in a fair and balanced way. In particular it is crucial that the taxpayer's right to be represented and appoint a tax agent to deal with their record keeping is preserved. If not this will prejudice those businesses that cannot afford to employ an accountant.

[2] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/536912/How-we-resolve-tax-disputes_HMRC_2015-16.pdf

10 Question 3.4: At what stage for each of these different submission frequencies should points generate a penalty?

10.1 We observe that the models at para 3.19, 3.27 and 3.29 might cause the number of penalties to increase, at least as far as income tax is concerned. Currently there is one filing obligation a year, whereas under the new system there will be five (potentially more if a taxpayer chooses to submit updates more frequently than quarterly): four quarterly updates and one EoY declaration.

10.2 If a penalty is to be charged after incurring four penalty points, that could lead to more than one penalty a year under the new system. We do recognise, however, that if people respond to the accrual of penalty points by correcting the failure, the chance of them incurring a penalty will be diminished.

10.3 The position with multiple businesses (eg self-employment plus rental, or multiple self-employments) is concerning. At the moment, it is all dealt with in one place in Self-Assessment, so there is just one submission to consider for everything but a VAT registered business with non-aligned VAT periods, and property income, could have 12+ submissions a year.

11 Question 3.5: We would welcome comments on whether existing penalties are sufficient to support compliance with occasional filing obligations. If not, what more is needed?

11.1 The issue with occasional filing obligations is more around the need for education than penalties.

12 Question 3.6: Do you agree that, in principle, a single points total that covers all of the customer's submission obligations is the right approach?

12.1 We have received mixed responses from members. It seems the concept of a single, simple points system is an attractive prospect but as the complexities of the different taxes and multiple obligations are considered further there is a real concern about how this would be fair and proportionate, unless the tax system is radically simplified.

12.2 At present, agents dealing with different areas of tax for a client can advise on potential penalties to encourage compliance by their clients. Under these proposals, agents may not have a complete picture of compliance (unless one agent deals with all the taxes within scope of the points based system) and may not, therefore, be able to provide full advice to clients. They may decline to comment on penalty implications.

13 Question 3.7: Do you agree that the proposal outlined in paragraphs 3.25 to 3.28 is the right way to operate a single points total? If not, what alternative would you suggest that ensures the design of the penalty is kept simple?

13.1 To the extent that the proposal accords with the principle set out in question 3.6 above, we agree. However, we suggest making more use of powers to mitigate or suspend penalties.

13.2 We are of the view that four penalty points leading to a penalty is too few, given the frequency with which penalties could arise under this model. It may be fairer that the trigger for a penalty depends upon the number of filing obligations a taxpayer has.

13.3 Whilst sanctions for late submission of information and late payment of tax are needed to encourage compliance, it should not be forgotten that non-compliance can often be symptomatic of underlying issues in a business (eg administrative problems, cash flow difficulties or even a failing business). Relying on penalties as a first (or worse, sole) response to taxpayer failures of this kind might be less effective than a taxpayer/customer contact programme aimed at taking steps to avoid a recurrence.

13.4 Whichever approach HMRC decides to implement, we believe it is the way in which it is applied by HMRC staff that will determine fairness and proportionality.

13.5 Given this, HMRC's guidance to staff should make it clear that the first objective should be to identify what can be done to encourage and aid compliance before raising a penalty.

13.6 We remain unclear about how and when the VAT default surcharge regime might be replaced, but note that para 3.9 states VAT-registered businesses will not be within scope of the new sanctions and VAT default surcharge for the same failure. Presumably the default surcharge will take priority over penalty points, but this needs further explanation.

14 Question 3.8: We welcome views on whether the escalator model would be a more effective way of aligning with the five principles described in paragraph 3.2?

14.1 We received mixed views from members.

14.2 Whilst in principle a model where the penalty point liability increases if the default continues seems reasonable, in reality the escalator model as set out at para 3.31 appears to be complex to administer and difficult to understand or keep track of.

14.3 That said, a 'one off' penalty might not, in itself, encourage rectification of a default but that in conjunction with the imposition of 'penalty interest' alongside the 'failure to file' penalty might do so.

14.4 Also, it may be possible to 'design out' repeated failures by arranging the software so that, if (for example) the Q1 submission had been missed, the Q2 submission would report on both Q2 and Q1. Intelligent software should be able to spot that a reporting obligation had been missed and prompt the taxpayer accordingly: 'Do you want to report your Q1 summary at the same time?' and warn that failure to do so may result in penalties.

15 Question 3.9: Do you agree that a fixed amount penalty is appropriate?

Question 3.10: Should the amount of fixed penalty reflect the size of a business?

15.1 Our members have mixed views on fixed penalties.

15.2 A fixed penalty seems to be the right approach, provided the amount is not disproportionate to the amount of tax at stake.

15.3 We recommend that capping of fixed penalties by the amount of tax due should be reinstated in the new regime.

15.4 We acknowledge that the automatic £100 penalty for not filing the online self-assessment tax return has probably been one of the most successful automated penalties in terms of increasing taxpayers' awareness of their filing obligations and encouraging compliance. However, a £100 penalty is of no real consequence to someone earning £150,000 per year but a significant amount to someone earning £15,000 per year.

15.5 Despite awareness and publicity of the late filing penalty, large numbers of taxpayers still continue to file their ITSA returns late and so incur a penalty. Presumably, there are a variety of reasons why taxpayers are not complying with their filing obligations. Perhaps with a more targeted and personalised approach via MTD, HMRC might be able to improve filing compliance further although the challenge now is the significant increase in filing obligations that MTD will bring.

15.6 Whether the fixed penalty should increase in proportion with the size of the business is a reasonable concept. However, the difficulty is in defining and determining 'size' for this purpose. There are several different factors, such as turnover, profits, net assets, number of employees, tax liability etc. A carefully designed, tiered system may have the desired impact.

16 Question 3.11: Do you agree that points should only become appealable when they have caused a penalty to be charged?

16.1 No.

16.2 We strongly believe that if HMRC have the power to issue a penalty point, then the taxpayer should have the right to appeal at that time.

16.3 We acknowledge that a formal appeal against the imposition of a point may be premature when a point might never lead to a penalty but there does need to be a mechanism in place giving taxpayers the right to object.

16.4 As explained above, a lengthy period could elapse between the imposition of the point and the (appealable) imposition of a penalty. If penalty points simply accrue until a penalty is charged, any appeal is likely to focus on whatever defects there may or may not be in the charging of the penalty, not on whether or not a penalty point should have been issued in some previous period. With this, there are risks of evidence being mislaid or destroyed, or taxpayers forgetting that they had a valid reason to appeal a particular point.

16.5 Could a solution be similar to that which operates already in the current VAT default surcharge regime whereby the allocation of points (the equivalent of the issue of a Surcharge Liability Notice) could be open to dispute and 'local review' by HMRC[3]? If that results in acceptance by HMRC that a 'reasonable excuse' existed, the points

[3] See section 7: https://www.gov.uk/government/publications/vat-notice-70050-default-surcharge/vat-notice-70050-default-surcharge

would be removed and the business obtains certainty. If HMRC does not agree to remove the points, the fact of the dispute, and the reasons advanced by the business for disputing the points will be on file at a time when events should be reasonably fresh in the minds of the parties, and a Tribunal will be better placed to review the position later if need be

16.6 Taxpayers often find dealing with their taxation obligations to be stressful. Denying a taxpayer the right to appeal the imposition of points at all is denying them peace of mind and access to justice, particularly if they have a reasonable excuse for the failure.

17 Question 4.1: Do you agree that 14 days is an appropriate length of time to allow customers to either pay in full, or make arrangements to do so before penalty interest is charged?

17.1 Proposal A would introduce penalty interest in addition to late payment interest.

17.2 We agree that a period of grace should be allowed with a prompt from HMRC to remind taxpayers to make payment in full or enter into 'time to pay' arrangements.

17.3 However, Members advise that agreeing 'time to pay' arrangements can be a time consuming task that often takes more than 14 days (no more than 10 working days) and that it is not possible to begin the process until the tax liability has been crystallised (by the filing of a return, for example) and other avenues of funding have been exhausted.

17.4 For those reasons, we feel 14 days is too short a period of grace for payment arrangements to be put into place. 30 days might be a more reasonable period, perhaps linked to a 'time out' period while negotiations over time to pay arrangements take place.

17.5 We endorse LITRG's views on those unable or unwilling to pay online being offered alternative payment methods.

18 Question 4.2: Do you think that charging penalty interest is the right sanction for noncompliance with payment obligations?

Question 4.3: Are there other commercial models that might be appropriate for us to consider?

Question 4.4: We invite views on the design principles outlined for penalty interest. For example, do you consider there are any further elements to build into this proposal?

18.1 We agree that charging penalty interest is an appropriate sanction for late payment where there are safeguards in place for reasonable excuses. In contrast with a fixed penalty, it allows the severity of the sanction to vary according to the amount of tax outstanding, and the length of the delay in payment.

18.2 While we accept that penalty interest should be at a higher rate than borrowing from the bank, the combination of a potential rate of 10% and no tax relief, together with late payment interest, does seem to be unduly usurious.

19 Question 4.5: Does model 1 or model 2 best meet the government's objective of providing a fair and proportionate response to late payment of tax?

19.1 Proposal B would charge late payment penalties at different intervals. Model 1 proposes a 5% penalty at 1, 6 and 12 months. Model 2 proposes an escalating rate (4%, 10%, 15%) over those intervals.

19.2 We favour model 1 as it best meets the design principles in paragraph 3.2.

19.3 We see no need for model 2. Indeed, we believe that doubling and trebling the interest rate at regular intervals could soon breach the government's design principle of proportionality.

20 Question 4.6: Do you agree that the timing of late payment penalties should change to reflect the frequency of payment due dates?

20.1 Yes, to the extent that penalty interest should be charged with reference to due dates for the tax in question.

20.2 However, we do not see the necessity for charging additional penalty interest 60 days after the due date for VAT when another payment of VAT will fall due shortly thereafter presenting an opportunity to trigger a further interest charge for any VAT that remains outstanding from the earlier quarter. A three-monthly charge of VAT penalty interest balances with the six-monthly charge for income tax and we do not see the need for greater frequency.

21 Question 4.7: We invite views on the design principles outlined for late payment sanctions. For example, do you consider there are any further elements to build into these proposals?

21.1 There is a need to address the issue whereby taxpayers can be charged interest and given repayment supplement for the same period due to tax payments not being allocated against liabilities in chronological order (eg where an amendment is made to an earlier year).

21.2 Currently, HMRC refuse to reallocate unless a request is made at the time of payment for it to go against a particular liability. This is often unworkable because payments on account are generally made by bank transfer simply showing the Unique Tax Reference. Members report that clients have been charged thousands of pounds in interest without having had a penny of tax outstanding at any given point in time.

21.3 With multiple taxes being merged under voluntary pay as you go, the potential for allocations going wrong is exacerbated.

22 Question: 4.8: Which proposal best meets the design principles?

22.1 We would favour Proposal B, model 1.

22.2 It seems reasonable to have a combination of late payment interest and tax geared penalties (Proposal B model 1) which aim to both penalise and deter the late payment of tax and act as reminders that the tax is still outstanding. This would give taxpayers a graduated and fairer period of default, enabling issues to be addressed and compliance improved yet still penalising those who continue to default.

23 Question 5.1: Should the current interest rules for Income Tax and Class 4 National Insurance contributions continue to apply in MTD?

23.1 Yes.

24 Question 5.2: Do you have any initial comments about aligning interest rules across taxes?

24.1 We are mindful of the ongoing litigation in *Littlewoods Retail Ltd and others (C-591/10) and [2015] EWCA Civ 515* concerning the payment of compound interest as the appropriate remedy for overpaid VAT. HMRC have obtained leave to appeal and the Taxpayer leave to cross-appeal. The Supreme Court hearing is listed for 3-6 July 2017.

24.2 Whilst mindful of the uncertainty of Brexit, any simplification of repayment interest regimes must take account of current EU legal requirements and case precedence.

24.3 See our comments at paragraph 20.1 in relation to allocating payment and repayment interest.

25 Chapter 6 Question 6.1: Please provide details of how the proposed administrative changes will affect you, including details of any one-off and ongoing costs or savings.

25.1 Not applicable.

26 Questions 6.2: Do these administration proposals have a significant or disproportionate impact on groups with legally protected characteristics, as recognised in the Equalities Act 2010?

26.1 Although the risk of people accruing enough penalty points to merit an actual penalty will diminish if they take note of the nudges and prompts sent to them, there always will be those for whom no amount of nudging or prompting will be effective – not because they will not comply, but because they cannot.

26.2 Many in this group are likely to be people with protected characteristics under the Equality Act 2010 – old age and disability in particular – and the impact of any penalty regime on them could be disproportionate if reasonable adjustments are not made (such as a sensible attitude to reasonable excuse appeals and the scope of special reduction).

26.3 We endorse LITRG's response to this question.

27 Acknowledgement of submission

27.1 We would be grateful if you could acknowledge safe receipt of this submission, and ensure that the Chartered Institute of Taxation is included in the List of Respondents when any outcome of the consultation is published.

28 The Chartered Institute of Taxation

28.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 18,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
7 November 2016