

MTD: INTEREST HARMONISATION AND SANCTIONS FOR LATE PAYMENT

Response by the Association of Taxation Technicians

1 Introduction

- 1.1 The Association of Taxation Technicians ('ATT') is pleased to have the opportunity to respond to the HMRC consultation document *Making Tax Digital: interest harmonisation and sanctions for late payment* ('the Consultation')¹ published on 1 December 2017.
- 1.2 The primary charitable objective of the ATT is to promote education and the study of tax administration and practice. We place a strong emphasis on the practicalities of the tax system. Our work in this area draws heavily on the experience of our members who assist thousands of businesses and individuals to comply with their taxation obligations. This response is written with that background.
- 1.3 We refer within this response to matters discussed at a meeting with HMRC held on 31 January 2018 ('the Meeting').
- 1.4 In section 2, we make some general comments. In section 3, we respond to the Consultation questions on interest harmonisation and, in section 4, to the questions on late payment sanctions. In section 5, we explore possible alternative models for late payment sanctions before providing a brief summary in section 6.

2 General comments

- 2.1 Although the Consultation title refers specifically to Making Tax Digital ('MTD'), our understanding is that any legislative changes that resulted would over time apply equally to all relevant taxes regardless of the implementation or otherwise of MTD. That is important within the context of seeking harmonisation across taxes.
- 2.2 The Consultation refers specifically to VAT, Income Tax Self-Assessment (ITSA) and Corporation Tax (CT) and this response is made with those particular regimes in mind. Consistent with the objective of a common set of rules across tax regimes, it will be important to consider in detail how the Consultation proposals would work in the context of each of the other relevant tax regimes including, for example, PAYE, NIC, CIS, IHT, and SDLT and in relation to personal tax processes like P800s and simple assessment. Special considerations may arise in relation to such regimes taking into account features such as the frequency and regularity of payment. We think that detailed

¹ HMRC's Consultation can be found [here](#)

consultation will assist the identification of any special features which might need to be accommodated. Harmonisation of interest and late payment sanctions across taxes should be a strategy rather than a straitjacket.

- 2.3 Taken together, the various changes proposed in the Consultation pose an interesting question in relation to HMRC's practice of providing a soft landing for new tax regimes. Where more demanding provisions and/or tougher sanctions are being introduced, a soft landing dispensation is obviously welcomed by those who would be impacted by the changes. Conversely, where the new regime is less demanding or imposes less stringent sanctions, there is an understandable wish on the part of those who could benefit from the changes to have their introduction accelerated.
- 2.4 The Consultation proposes particularly radical changes in the context of late payment of VAT. With the imminent arrival of MTD for VAT, this raises a significant issue about timing. Whilst VAT-registered businesses may welcome a soft-landing for the introduction from April 2019 of the fundamental changes in record-keeping and reporting for VAT, we can envisage that many of those businesses would welcome the demise of the VAT Default Surcharge regime at the earliest opportunity.
- 2.5 We think that the timing tension identified above illustrates the imperative of giving detailed and comprehensive thought to the combined timetable for the introduction of:
- the various changes proposed in the Consultation;
 - the proposed points-based system for late submission of returns;
 - MTD for VAT (in April 2019); and
 - MTD for Business (not before April 2020).
- 2.6 One specific interaction between the proposed late payment sanctions and the proposed points-based system for late submission which we think may require specific consideration is whether there should be a distinction in treatment between the taxpayer who has failed both to submit a return and make payment of the relevant tax and the taxpayer who has filed the relevant return on time but not been able to pay the tax. Under the points-based model, the taxpayer will incur a point for late submission – but no actual monetary sanction as long as further points are not incurred. There would accordingly be no great incentive to submit the relevant return if a taxpayer knew that they would be unable to pay the related tax. However, a failure to submit a return may itself contribute to a failure to make payment by the due date and would certainly complicate the position should the taxpayer wish to make a Time to Pay arrangement. One way to incentivise the timely submission of the return even where the taxpayer was not in a position to make full payment of the tax would be to make an appropriate reduction in the penalty for late payment where the relevant return had been made on time. We appreciate that this would introduce an additional factor but it would appear to be consistent with the Consultation's encouragement of positive engagement with HMRC.
- 2.7 As briefly mentioned in the Meeting, the successful introduction of the extensive changes proposed in the Consultation will depend significantly upon a sustained programme of well-presented and well-targeted advance communications from HMRC.
- 2.8 In addition to the advance communications referred to in 2.7 above, we think that it will be essential following the introduction of the new interest and late-payments sanctions regimes for HMRC to issue very prompt alerts to those who have not paid their tax liabilities on time in order to

ensure that they appreciate the consequences of delayed payment. We see that as an important way to ensure that the sanctions drive the positive behaviours which they are designed to instil. If taxpayers are not warned as soon as possible of imminent sanctions, they are more likely to feel ambushed than encouraged by the new regimes. This has particular relevance in VAT where businesses may have come to rely on HMRC's frequent and prompt notifications of outstanding returns and /or payments. We hope that it may be possible for HMRC to use Personal Tax Accounts and/or Business Tax Accounts to issue the necessary prompt alerts.

2.9 We note two key distinctions between the proposed late payment sanctions and the proposed points-based system for late submission as follows:

- 2.9.1 The proposals for late payment sanctions do not include the early warning system in respect of compliance failures which is fundamental to the points-based proposals for late submission and is also a notably positive feature of the VAT Default Surcharge regime; and
- 2.9.2 Both the points-based proposals for late submission and the VAT Default Surcharge regime involve a more severe application of sanctions where there is a pattern of repeated non-compliance whereas the late payment sanction proposals treat each incident of late payment in isolation.

We think that these significant distinctions between the proposed late payment and late submission regimes (which we assume will be introduced at much the same time) will require very clear publicity in order to avoid misunderstanding and confusion. Explanation of the distinction will be particularly important for:

- VAT registered businesses - most of which are familiar with the current symmetry of the late submission and late payment sanctions;
- New businesses which are coming to terms with their various statutory obligations;
- Companies – where there will be an understanding of the current late submission sanctions but for whom there are currently no sanctions comparable to those proposed for late payment.

2.10 In terms of communicating the changes with taxpayers, we think that it will be helpful to recognise that the majority of taxpayers would far prefer to be able to meet their tax obligations on time rather than have to juggle payment of their creditors. Many of them are not trying to obtain a financial advantage by paying their tax late; they are simply trying to survive in business.

2.11 In relation to the proposed late payment sanctions (and mentioned here because it does not readily sit within a reply to any of the Consultation questions), we think that consideration may need to be given to formalising the process for seeking a review of a refusal by HMRC to agree to a Time to Pay (TTP) arrangement. We say this because that refusal may determine whether a penalty is charged and therefore need to be considered as part of the statutory review of the decision to impose penalties and/or an appeal to the tribunal.

3 Interest harmonisation

Q.1 Do you agree that in-year QIPs payments should continue to attract differential interest rates?

3.1 Yes. We agree that there is a case for a differential interest rate for QIPs.

Q.2 Do you agree the way interest is charged for CT satisfactorily mirrors the rules contained in FA09?

3.2 We agree that the way that interest is charged for CT broadly reflects the provisions of Schedule 53 (late payment interest) and Schedule 54 (repayment interest) of FA2009 rules.

3.3 However, the current absence of late payment *sanctions* for CT (as the provisions of Schedule 56 of the Act have not been implemented for CT) means that businesses within the charge to CT will need to receive clear and specifically targeted advance guidance so that they appreciate the significantly more severe implications of late payment under the Consultation proposals and can plan accordingly.

Q.3 If you do not agree please explain why.

3.4 Not applicable.

Q.4 Do the proposals for interest for VAT on late payment of a return reasonably reflect the FA09 rules?

3.5 Yes. We think that the proposals in relation to interest on the late payment of VAT which is shown to be due in a VAT return achieve substantial harmonisation with the FA 2009 rules.

3.6 We note, however, that VAT-registered businesses will need to receive very clear explanations about the very significant departures from the current Default Surcharge regime well in advance of the introduction of the changes. Targeted and relevant examples which demonstrate the implications for businesses of varying size would be very helpful.

3.7 Reference was made in the Meeting to the facility provided by Regulation 34 of the VAT Regulations 1995 for the correction of errors. The HMRC representatives indicated that there was no intention to amend that facility. We noted that this involved a lack of harmonisation with, for example, the comparable provisions for Income Tax but agreed that it was appropriate to maintain the facility. We see that as an example of the appropriate accommodation of a special feature within a regime as mentioned in 2.2 above.

Q.5 Are the proposals for VAT regarding interest on assessments and amendments sensible?

3.8 Taken as a package, we think that the proposals in relation to interest on VAT assessments and amendments are generally an appropriate way to achieve substantial harmonisation with the FA 2009 rules.

3.9 We note again that VAT-registered businesses will need to receive very clear explanations about the changes so that they understand the implications and can make necessary behavioural changes.

Q.6 Do the proposals for interest on a delayed payment of a repayment VAT return reflect the right balance between recompense for customers and the protection of public monies?

- 3.10 There will inevitably be situations where the proposed basis for interest on delayed repayment operates less advantageously for some businesses than at present but we think that with clear advance explanations it will deliver an appropriate balance of interests.
- 3.11 At the Meeting, we asked for clarification of the situation where, by reference to the proposals, repayment interest would be payable by HMRC but there were other returns outstanding. We asked for confirmation that section 4.11 of the Consultation was only intended to indicate that no payment of repayment interest would be made by HMRC until the outstanding returns had been submitted. HMRC replied that section 4.11 was intended to indicate that there would be an *absolute* loss of entitlement to repayment interest rather than simply a retention until the outstanding returns were brought up to date.
- 3.12 If our understanding of HMRC's proposal in respect of repayment interest in the situation where a return is outstanding (see 3.11 above) is correct, we need to express serious concern that the proposal is inappropriate. We can fully understand why a repayment and repayment interest might be withheld pending receipt of outstanding returns but we cannot see how it would be correct that the business should completely lose its entitlement to repayment interest. Apart from the significant objection in principle, there is the possibility (at least for the medium term) that the business would have incurred a Default Surcharge in respect of the submission failure. There is also the possibility that the late submission of the outstanding return(s) would be adversely impacted by the four-year capping restrictions imposed by s.80, VAT Act 1994², in which case the denial of repayment interest would in effect deliver a multiple penalty.
- 3.13 For the avoidance of doubt, we think that clarification is required whether the "other returns" referred to in section 4.11 of the Consultation is confined to other VAT returns.
- 3.14 As a general point in relation to the payment of VAT (and equally applicable to the sanctions for late payment), we note the assurance provided by the Government in January 2017 concerning the *payment* date for VAT as distinct from the due date for updating for MTD purposes:

"41. The current VAT return deadline allows a month and seven days for filing (with a further three working days for those on direct debit). The additional 7+3 days would still be available, but only for payment (not updating) of VAT due."³

This short extension period will need factoring into the due date for VAT purposes.

4 Sanctions for late payment

Q.7 Do the proposals for late payment penalties strike the right balance between fairness for those that pay on time and provide a reasonable time for those that need it to arrange payment?

- 4.1 By reference to the position of Question 7 in the Consultation, we read it as applying to the proposals in relation to the first 30 days after the due date for a tax payment. We answer it accordingly.

² The implications of s.80 are considered in HMRC's VAT Refunds Manual at VRM8400.

³ See: paragraph 41 on page 38 in Chapter 5 of *Bringing business tax into the digital age: Summary of responses* (HMRC, 31 January 2017) – link [here](#)

- 4.2 We see substantial merit in the objective of designing sanctions for late payment to encourage early engagement with HMRC on payment problems. That resonates with the principle that penalties are not intended to apply in situations where life got in the way. It also enables HMRC to distinguish more effectively between taxpayers who will not pay and those who cannot pay the full amount of a tax liability as it arises.
- 4.3 In order to strike the right balance between fairness to those who pay on time and those who need reasonable time to arrange payment, we think that it is essential that the system of sanctions drives positive behaviour (early engagement with HMRC) but without the risk of the relevant sanctions giving rise to results which might be seen as anomalous or disproportionate or levels of penalty which it was inefficient for HMRC to administer. The comments below follow from that position.
- 4.4 The Consultation proposes the following sanctions where the tax unpaid at the due date was either paid or made the subject of a Time-To-Pay ('TTP') arrangement within the first 30 days of the due date:
- Payment or TTP arrangement within the first 15 days
 - No sanction.
 - Payment or TTP arrangement made between 16 and 30 days
 - Late payment sanction of 2.5% of the overdue tax.
- 4.5 Section 5.15 of the Consultation refers to providing 15 (or 30) days to "pay or arrange a TTP". At the Meeting, we asked what would happen where a taxpayer had approached HMRC within the 15 (or 30) days with a request for a TTP arrangement but the arrangement had not been agreed at the expiry of the 15 (or 30) days. HMRC's representatives at the Meeting indicated that provided a TTP arrangement was agreed as a result of that approach, it would be the date of that approach (and not the date of any eventual agreement of the TTP) which determined whether the 15 (or 30) days limit had been satisfied. We welcome that as a practical and fair test which is easy to apply and which fulfils the objective of encouraging early engagement with HMRC. It also goes some way in addressing the concerns expressed to us that resource pressures within HMRC may make it difficult to finalise an arrangement with HMRC within the 15 (or 30) day time period, for example where the taxpayer is out of the UK. The remainder of this response is written with this understanding of what constitutes the making of a TTP arrangement.
- 4.6 Arising from the understanding referred to in 4.5 above, it would be very helpful to have confirmation that an approach to HMRC by a third-party (for example: family member, business partner or professional agent) on behalf of the relevant taxpayer would rank equally with that by the taxpayer in person. That would help to address the concern expressed in the responses to previous consultations that a period of just a fortnight might coincide with the period when a taxpayer was on holiday or otherwise unable to contact HMRC. Recognition of the initiation of the TTP process by the third-party within the 15 (or 30) days would of course only be effective if the taxpayer or their agent concluded a TTP arrangement.
- 4.7 In order to contain the additional pressure which the increased significance of TTP arrangements will place on HMRC resources and provide a reliable trail for when a TTP application was initiated, we think that it would be very helpful if the initial application could be made digitally – for example through a taxpayer's Personal Tax Account or Business Tax Account. That would be consistent with the Government's digital-by-default objective and could in time enable the automated approval of

TTP applications that met defined criteria. We note in this connection that it would be essential to have an effective alternative for the digitally excluded. We also note an overlap here with both the idea briefly mentioned at the Meeting of a facility to notify reasonable excuse in advance of a due date and the reference in section 5.9 of the Consultation to the possible suppression of penalties.

- 4.8 In the Meeting, the HMRC representatives indicated that a TTP arrangement could be agreed in the unusual circumstance of a taxpayer having been in a position to make full payment of the tax on the due date but failing to do so and then suffering an event which made payment impossible. We noted that TTP operated more generously here than the reasonable excuse provisions which focus solely on the circumstances prevailing on the due date.

First 15 days

- 4.9 Section 5.19 of the Consultation does not explicitly consider the situation where *part* of the amount that was unpaid on the due date was paid (or made the subject of a TTP arrangement) within the first 15 days. We assume that it would then only be the amount remaining unpaid (or not subject to a TTP arrangement) after 15 days (rather than the amount unpaid at the due date) which would be used to calculate the 2.5% late payment sanction. If that is not what is intended, we certainly think it should be.
- 4.10 Where full payment (or a TTP arrangement) is made within the 15 days, the Consultation proposals envisage no sanction. Such full payment (or TTP arrangement) within the 15-day period would mean that:
- The encouragement of early payment or the making of a TTP arrangement had been successful;
 - The Exchequer and those who pay on time benefit from either the early payment or the knowledge that the non-payment is being actively and constructively addressed by the taxpayer and HMRC;
 - The absence of any sanction is the same as under the current legislation.
- 4.11 The outcomes identified in 4.10 above indicate that the proposals as they apply to the first 15 days would achieve the right balance.

From 16 to 30 days

- 4.12 The Consultation proposes a sanction of 2.5% of the unpaid tax where full payment (or a TTP arrangement) is made in the period starting 16 days after the due and ending 30 days after the due date.
- 4.13 Our understanding from the Meeting is that the 2.5% tax-geared sanction would only be charged when the tax outstanding was paid.
- 4.14 Full payment (or a TTP arrangement) made within the day 16 to day 30 period would mean that:
- the encouragement of early payment or the making of a TTP arrangement had some success - but not as much as if the result had been achieved within 15 days;
 - the Exchequer and those who pay on time benefit from:
 - either the early payment or the knowledge that the non-payment is being actively and constructively addressed by the taxpayer and HMRC; and
 - the receipt of the 2.5% sanction;

- the taxpayer had incurred a sanction which does not exist in the current regime.
- 4.15 The outcomes identified in 4.14 above might suggest that the proposals as they apply to the first 16 to 30 days would achieve the right balance. However, we think that particular consideration needs to be given to the implications of the proposed 2.5% tax-gearred sanction.
- 4.16 If our understanding of the timing of the charging of the 2.5% sanction is correct (see 4.13 above), the ‘pain’ of the sanction is deferred until eventual payment of the relevant tax. We appreciate that it is likely to be more administratively efficient for the charging of the 2.5% sanction to be deferred but compared with the situation where a sanction is incurred on day 16, it lacks immediacy and misses the opportunity to provide a significant nudge to the taxpayer.
- 4.17 Using a fixed percentage of the outstanding tax throughout the period of 16 to 30 days (albeit a short period) provides no greater incentive to pay or make a TTP arrangement closer to the beginning of the period than at the end. Once the 15-day period has passed (and ignoring the possibility that the taxpayer might have a reasonable excuse), the amount of the sanction is constant and the associated ‘pain’ is unchanged for the next fortnight.
- 4.18 More significantly, from the perspective of the taxpayer who is looking at things commercially, a 2.5% charge at day 16 represents an annual interest rate of some 57% whereas the identical charge at day 30 represents an annual interest rate of only 30%. So deferring payment until as close as possible to day 30 is commercially sensible. Rather than incentivising early payment, the 2.5% sanction is unintentionally penalising it. We accordingly question whether the 2.5 % sanction can achieve its objective of encouraging early payment.
- 4.19 The other major issues which we identify in the use of a tax-gearred sanction after 15 days are as follows:
- 4.19.1 Introducing any new sanction within the 30-day period is going to require a significant publicity campaign by HMRC. Introducing one which is complicated by its dependence on the precise amount of tax due and which may be displaced by a penalty of 5% after 30 days will add to the difficulty of explaining the mechanism and create greater scope for misunderstanding.
- 4.19.2 Section 5.21 of the Consultation illustrates the working of the proposals by reference to an outstanding tax liability of £3,000. On the face of it, the resulting 2.5% sanction of £75 looks fairly reasonable. It is large enough to be worth avoiding (so it provides some incentive to pay) but not so large that a taxpayer would want to appeal if it were incurred (so it is unlikely to add to the resource pressures on HMRC and the Tribunals Service). However, the same 2.5% applied to outstanding liabilities that are either significantly smaller or significantly greater produces a very different picture.
- 4.19.3 With an outstanding tax liability of (say) £500, the 2.5% sanction is £12.50. At that level, the incentive to pay may be significantly less than at £75. It may also mean that HMRC could not collect the sanction on a cost-efficient basis. Both those implications would be magnified with a sanction of just £2.50 on an outstanding liability of £100.
- 4.19.4 With an outstanding tax liability of (say) £50,000, the 2.5% sanction becomes £1,250. At that level, the incentive to appeal against the imposition of the sanction (a sanction which does not currently exist) would be considerable and challenges on the basis of

proportionality (however unlikely to succeed) might be expected to increase - with consequential resource implications for both HMRC and the Tribunals Service. The incentive to resist the sanction, once imposed, would be increased with larger amounts. This has particular relevance in relation to CT liabilities where there is currently no late payment sanction.

4.19.5 In the course of preparing this response, our attention was drawn to the possibility that the potential imposition of a 2.5% tax-geared sanction after 15 days (because the taxpayer was unable to pay the relevant tax within those 15 days) might encourage taxpayers to make protective TTP applications within the first 15 days as an insurance policy against the risk of not having funds available within the 15 days. If that was a consequence of the 2.5% sanction, it would involve the creation of addition pressure on HMRC resources without any benefit for the Exchequer.

4.20 In section 5 of this response, we identify possible alternative models which might address some of the issues identified in sections 4.12 to 4.19 above.

Q.8 Do you think these general rules provide the correct balance between protecting those that pay on time and encouraging and supporting those that do not?

4.21 By reference to the position of Question 8 in the Consultation, we read it as applying to the proposals in relation to tax remaining unpaid **after** the first 30 days following the due date for a tax payment. We answer it accordingly.

4.22 Once the unpaid tax has been outstanding over 30 days from the due date, the Consultation proposes that:

- a late payment sanction of 5% of the tax outstanding will be payable immediately **and**
- penalty interest will start to accrue from day 31 onwards until payment or the making of a TTP arrangement. (The penalty interest is payable in addition to the continuing accrual of normal late payment interest but would cease at the time that a TTP arrangement was made. The latter point partly explains why the parallel charging of the two types of interest is necessary.)

4.23 The combination of the front-loaded 5% tax-geared sanction after 30 days with penalty interest accruing from the same time means that the monetary amount of the combined sanction increases gradually over time. Expressed as **a percentage of the unpaid tax** and assuming a penalty interest rate of 8%⁴, our calculations indicate the following effective rates for the combined sanction:

Day 31	5.02%
Day 90	6.32%
Day 365	12.34%.

⁴ Section 5.8 of the Consultation refers to the statutory interest rate of 8%.

- 4.24 The progression of figures in 4.23 above looks as if it should encourage early payment. However, looked at commercially and expressed as the ***annual rate of interest payable on the unpaid tax***, our calculations indicate the following effective rates for the same combined sanction:

Day 31 59.13%

Day 90 25.61%

Day 365 12.34%.

- 4.25 As can be seen from 4.24 above, the inclusion of the front loaded 5% tax-geared element *reduces* the effective rate of interest over time so that the taxpayer who makes payment on day 31 is more severely penalised in commercial terms than a taxpayer who fails to pay for much longer. That strongly suggests that the proposals in respect of the sanctions after 30 days require revisiting. We do of course appreciate that the absence of a penalty interest element within the existing Schedule 56 provisions produces an even more anomalous result but we do not see that as a justification for replacing it with a slightly less anomalous result.
- 4.26 In section 5 of this response, we identify possible alternative models which might address some of the issues identified in sections 4.21 to 4.25 above.

Q.9 Do the proposed rules provide the correct balance between protecting those that pay on time and encouraging and supporting those that do not?

- 4.27 By reference to the position of Question 9 in the Consultation, we read it as applying to the proposals in respect of the four *specific circumstances* identified in sections 5.27 to 5.32 of the Consultation. We answer it accordingly.

Determinations and prime assessments

- 4.28 Section 5.27 of the Consultation indicates that where a determination (or prime assessment in the case of VAT) is raised by HMRC in the absence of a return, the proposed late payment sanctions would only apply if the tax charged by the determination/prime assessment was unpaid at the due date related to the determination/assessment. Where, however, that determination/assessment was then displaced by the submission of a return, section 5.28 indicates that any late payment interest and any late payment sanction on the determination/assessment would both be cancelled. In their place, as we understand it, late payment interest and late payment sanctions would then be charged as if the tax liability shown by the return was known at what would have been the normal due date for the liability.
- 4.29 On first reading, the retrospective calculation of both late payment interest and late payment sanction referred to in 4.28 above appears to achieve the objective of placing the taxpayer concerned in the same position as one who *had* submitted their return by the due date but then failed to make payment by the due date. We think, however, that there are four difficulties with the proposal:
- 4.29.1 Firstly, we think that the proposal may result in taxpayers deciding not to displace determinations/assessments if the interest and sanction amounts make it uneconomic. That necessarily leaves a less than satisfactory position for HMRC as it could suggest (whether or not it actually was the case) that the amount charged by the determination or prime assessment was insufficient.

- 4.29.2 Secondly, we do not think that it does place the taxpayer concerned in the same position as one who had submitted their return on time but failed to make payment by the due date. The latter (hypothetical) taxpayer might, under the Consultation proposals, have had the possibility of either making a TTP arrangement at or about the time of the original due date or indeed of appealing against the imposition of any late payment sanction on the basis that they had a reasonable excuse at that due date for failing to make payment. By contrast, the taxpayer who had been the subject of a determination or prime assessment would only have been able to apply for TTP (or appeal on grounds of reasonable excuse) by reference to circumstances prevailing at the due date for payment under the determination or assessment. By deeming their (late submitted) return to have been submitted on time (so that the normal - but now historical- due date applied), hindsight is not being applied comprehensively. The Consultation proposal involves the presumption that they were in a position to make payment at the historical due date but chose not to do so. We have pondered whether that presumption could be made rebuttable but failed to identify a workable provision.
- 4.29.3 Thirdly, it appears to involve a significant departure from the existing provisions within Schedule 56, FA 2009. It also appears to produce a very different outcome to that for amendments and assessments (see 4.30 below).
- 4.29.4 Fourthly, we think that the proposal sits awkwardly with the capping provision within s.80, VATA 1994 (referred to in 3.12 above).

Amendments and assessments

- 4.30 Section 5.30 of the Consultation considers the situation of amendments and assessments and indicates that late payment sanctions would be charged from the later of the date the amendment/assessment is made and the date that payment is required by the amendment/assessment.
- 4.31 We consider the proposal referred to in 4.30 above to be consistent with the Consultation objectives. It also appears to be consistent with the existing late payment sanction provisions which only penalise a failure to pay by the due date related to the amendment or assessment.

Accelerated Payment Notices (APNs)

- 4.32 Section 5.31 of the Consultation concerns APNs and indicates that late payment sanctions would be charged if the APN is not paid by the due date.
- 4.33 We consider the proposal referred to in 4.32 above to be consistent with the Consultation objectives.

Payments on account

- 4.34 Section 5.32 of the Consultation concerns payments on account. It indicates that late payment penalties would only apply to balancing payments, or for CT from the normal due date (ie nine months and one day from the end of the accounting period) and not to payments on account. This reflects current practice across the taxes.
- 4.35 We consider the proposal referred to in 4.34 above to be consistent with the Consultation objectives.

Q.10 We believe that late payment penalties should apply from the payment due date. What difficulties, if any, could you see with this?

- 4.36 By reference to the position of Question 10 in the Consultation, we read it as applying to the proposals in respect of the four specific circumstances identified in sections 5.27 to 5.32 of the Consultation. We have commented on those particular situations in 4.27 to 4.35 above in response to Question 9.

Q.11 Are there any other specific circumstances that should be accounted for?

We have not identified other specific circumstances in the preparation of this response. We are not, however, suggesting that there are no other circumstances that require specific consideration.

5 Alternative models for late payment sanctions

- 5.1 In section 4 of this response, we draw attention to features of the Consultation proposals in respect of late payment sanctions which we consider do not effectively or fully achieve the stated objectives. In this section 5, we outline alternative models which we think merit consideration.
- 5.2 In 4.19.3 and 4.19.4 above, we comment on the application of the 2.5% tax-geared sanction in relation to payments of overdue tax or TTP arrangements made in the period of 16 to 30 days following the due date. At the extremes, the 2.5% charge may be either so small that it cannot be collected cost-effectively or so large as to encourage challenge on the basis of proportionality (or indeed reasonable excuse).
- 5.3 In relation to modest amounts of overdue tax, we think that it might be most efficient for no sanction to apply where the amount outstanding was such that the 2.5% tax-geared sanction was less than the amount which it was cost-efficient for HMRC to collect. An alternative to that might be a fixed monetary sanction of a modest level where the 2.5% charge would otherwise produce an amount which was uneconomic for HMRC to collect. We recognise, however, that any such fixed monetary amount would produce a disproportionately heavy sanction on very small amounts of unpaid tax.
- 5.4 In relation to large outstanding liabilities, we think that consideration might be given to a capping of the amount payable under the 2.5% provision. Here, however, the capping would produce a disproportionately light sanction on very large amounts of unpaid tax.
- 5.5 Taking both very small and very large amounts of unpaid tax into account, another alternative would be to have a single monetary amount (or an incremental scale of monetary charges). This could be simpler to operate than any tax-geared model but, however structured, it would be able to produce sanctions that could be either disproportionately heavy or disproportionately light – so potentially the worst of both worlds.
- 5.6 Reflecting on the disadvantages of the alternative models noted in 5.2 to 5.5 above, we have concluded that the fairest model in respect any sanctions within the first 30 day period and the one which might best encourage early payment or the making of TTP arrangements would work as follows:

- 5.6.1 There would be no 2.5% tax geared charge;
 - 5.6.2 Penalty interest would accrue immediately from the first day after the due date, thereby ensuring that the Exchequer would stand to benefit by more than simply late-payment interest if the taxpayer failed to make either payment or a TTP arrangement within 15 days;
 - 5.6.3 That accrued interest would be cancelled if payment (or a TTP arrangement) was made in the 1 to 15 day period, thereby rewarding the positive behaviour which the Consultation proposals are designed to instil;
 - 5.6.4 If payment (or a TTP arrangement) was made in the 16 to 30-day period, that would stop the accrual of further penalty interest but not result in the deletion of penalty interest already accrued to that point, thereby meaning that the sanction had grown at a consistent rate as long as the failure to make payment or a TP arrangement had continued.
- 5.7 The suggestion in 5.6 above would produce the same result as the Consultation proposal in relation to the 1 to 15-day period (no sanction) but would then deliver increasing encouragement to make payment (or a TTP arrangement) throughout the 16 to 30 day period. It would also avoid the features identified in 5.2 above.
- 5.8 Another advantage of replacing the 2.5% tax-geared sanction at Day 16 with the continuing accrual of penalty interest at that date is that it would reduce the cliff-edge impact of the marginal day. The significant incentive to pay (or make a TTP arrangement) no later than Day 15 would be preserved but the marginal cost of not doing so until a day or two later would be more easily understood as attributable to the further accrual of interest. Instead of the imposition of a sanction for failing to do something by a certain day, our suggestion would involve the waiving of a charge for positive behaviour by a certain day – a carrot in place of a stick.
- 5.9 In 4.21 to 4.25 above, we focus on the combined sanction of a 5% tax-geared amount and penalty interest and note that the front-loaded tax-geared amount can actually discourage payment once the 5% penalty has been incurred. We appreciate that the Government wants to provide maximum encouragement to making payment (or a TTP arrangement) within the first 30 days but we think that it is essential that the penalty structure should continue to provide encouragement after Day 30. Rather than having a high up-front tax-geared penalty, we think consideration could be given to a lower “entry charge” to the over-30 day regime (whether a fixed monetary amount or a lower percentage tax-geared amount) coupled with a differential (higher) rate of penalty interest might provide a better encouragement to make payment (or a TTP arrangement) and interface more logically with the basis of sanction for the 16 to 30 day period.

6 Summary

- 6.1 In summary, our main conclusions [*with cross references to the main text*] are as follows:
- 6.1.1 Detailed consideration to the timing of the introduction [2.5 above];
 - 6.1.2 A sustained and well differentiated programme of advance communications with the various groups which the proposals will impact [2.7 above];

- 6.1.3 A continuing programme of very prompt communications following their introduction in order to encourage taxpayers who have not paid by the due date to make payment or a TTP arrangement at the earliest opportunity [2.8 above];
- 6.1.4 Clear explanation of the distinct differences in principle between the proposed late payment sanctions and those proposed for late submission [2.9 above];
- 6.1.5 Adequate resourcing within HMRC of the TTP facility including appropriate harnessing of digital efficiencies [4.5; 4.7; 4.19.4 above];
- 6.1.6 Detailed consideration of the particular impact of the proposals on relevant taxes other than ITSA, CT and VAT [2.2 above]; and
- 6.1.7 Consideration of the need for a formal review process where a TTP application is refused [2.11 above].
- 6.2 The Consultation proposals in respect of the harmonisation of late-payment interest are broadly appropriate subject to the detailed comments made in section 3 above.
- 6.3 The underlying principles behind the Consultation proposals for late payment sanctions (balancing the interests of those who pay on time and those who need some time to do so) are basically sound [4.2 and 4.3 above].
- 6.4 However, the implications of the introduction of a tax-gearred sanction at Day 16 do not appear to have been fully considered and might actually:
 - 6.4.1 discourage early engagement with HMRC [4.17 and 4.18 above];
 - 6.4.2 encourage requests for statutory review of (or appeals to the tribunal against) the resulting penalties [4.19.4 above];
 - 6.4.3 encourage the making of protective TTP applications, thereby wasting HMRC resources [4.19.5 above].
- 6.5 The Consultation proposals in respect of determinations and prime assessments appear to require reconsideration [4.28 and 4.29 above].
- 6.6 Our suggested model for late payment sanctions in the first 30-day period [see 5.6 to 5.8 above] provides an alternative which:
 - delivers the same outcome as the Consultation proposals where payment or a TTP arrangement is made in the first 15 days;
 - is simpler to understand and explain;
 - avoids the potential for disproportionately high or low sanctions arising after 15 days;
 - is less likely to encourage requests for statutory review or appeals to the tribunal in relation to the sanction; and
 - rewards and reinforces the positive behaviour which the proposals are designed to instil.

7 Contact details

- 7.1 We would be pleased to join in any further discussion relating to this Consultation. Should you wish to discuss any aspect of this response, please contact our relevant Technical Officer, Will Silsby, on 01905 612098 (mobile 07970 655813) or at wsilsby@att.org.uk.

Yours sincerely

Yvette Nunn

Co-Chair of ATT Technical Steering Group

8 Note

- 8.1 The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.
- 8.2 Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.
- 8.3 The Association has over 8,000 members and Fellows together with over 5,700 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.