



**IMPLEMENTATION OF COMPANIES ACT 2006**

**SECTION 453: CIVIL ADMINISTRATIVE PENALTIES FOR THE LATE  
DELIVERY OF COMPANY ACCOUNTS (“LATE FILING PENALTIES”)**

**Response by**

**THE SOCIETY OF PROFESSIONAL ACCOUNTANTS**

**OCTOBER 2007**

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## LATE FILING PENALTIES

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## LATE FILING PENALTIES

### 1. Executive Summary

The Society welcomes the opportunity to comment on the consultation document, and endorses the general direction and ambition of the proposals, albeit that we do not feel they are strong enough.

- 1.1. We have previously submitted our thinking to the then DTI on Company Law Reform and, in particular, the ease with which a Limited Company may be formed without proper responsibility necessarily being accepted by its directors. We feel that being entrusted to run a Limited Company is a privilege that directors should both acknowledge and respect in terms of their duty to file correct accounts on time, and where we feel that a greater responsibility should be reflected.
- 1.2 The consultation paper provides no statistics of the extent of late filing by either SMEs or quoted PLCs. Hence whilst most SME and unquoted PLC company activities will, by definition mainly have very little impact on the general public, that of quoted PLCs has widespread impact on suppliers, employees and customers alike. We do not feel your proposals reflect this heightened responsibility, and have suggested in our table at Appendix I significantly higher penalties for non-compliance.
- 1.3 We feel that there are almost no acceptable circumstances in which a company may fail to file its statutory accounts beyond three months of the filing date and, in such instances there should be an automatic penalty for criminal negligence on each of the company directors.

- 1.4 We feel penalties for late filing should also be applied to UK branches of overseas companies.
- 1.5 We consider that Companies House should exercise discretion when external factors such as postal strikes affect timely delivery of filed accounts.
- 1.6 Given that there may be exceptional mitigating circumstances, it is anticipated that an appeals procedure would be set up.
- 1.7 We have attached at Appendix II other matters relating to the filing of statutory accounts we feel should be considered by you alongside any changes to the late filing penalty regime.

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### 2. Background to SPA

- 2.1 SPA is a wholly independent society of small practitioners holding a qualification issued by a recognised professional accountancy Institute. It was formed in early 1996 and currently there are some 1800 principals in 1400 member practices. Our members provide accountancy and taxation services to an estimated 175,000 private businesses, small limited companies and individuals.
- 2.2 The Society's stated policy is to promote and improve the relationship between members and their Institutes by providing constructive criticism together with practical proposals for improvements. Further to provide commentary and proposals to other authorities influencing our practising environment.
- 2.3 SPA has previously made submissions on small businesses limited company activities to the DTI on Audit Exemption levels, to the Accountancy Standards Board on Financial Reporting Standards for Small Entities (FRSSE), to the DTI on Modern Company Law 'Developing the Framework'. Also to the Chancellor of the Exchequer concerning individual tax payers on 'Advancing Self Assessment Tax Return Filing Dates', and to HM Revenue and Customs on 'Payments, Repayments and Debt'.

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### 3. Responses to the Consultation Document

3.1 Would the proposed new regime meet our objective of persuading companies to file their accounts on time?

3.1.1 Our view on your proposals is that they would fail to persuade many more companies to file on time as the penalties are relatively small, and in our view far too small for quoted PLCs and do not address the directors personally for what may be viewed as wilful delay on their part.

3.1.2 We agree that for repeat offences the penalties should be doubled.

3.2 Would the proposed new regime be a fair and proportionate response to the issue of late filing?

For the reasons given in 3.1 above we do not feel your proposals would be a fair and proportionate response, particularly towards quoted PLCs, to the issue of late filing.

3.3 Should the date on which the new penalties come into force be 1 February 2009, or should it be either earlier or later?

We agree that the introduction date should be 1 February 2009.

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### APPENDIX I

#### SPA's Proposed Table of Penalties

	<b>How late are the accounts delivered?</b>	<b>Penalty – Private Company and Unquoted PLC</b>	<b>Penalty - Quoted PLC</b>
1	Not more than one month	£100	£7,500
2	More than one month but not more than three months	£500	£37,500
3	More than three months	£1,000 per Director	£75,000 per Director
4	Two consecutive years' accounts filed late	Double (1), (2) or (3)	Double (1), (2) or (3)

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### **APPENDIX II**

#### **Other Considerations**

##### **II.1 Absorption of 'Extra Days'**

II.1.1 In conjunction with HM Revenue and Customs we suggest that, if formed later than the first day of the month, any 'odd' days between the date of a company's formation and the end of that calendar month be aggregated into the first period of the accounts or its Annual Return.

II.1.2 This would considerably simplify filing dates which might otherwise be various dates during a month. Additionally it would simplify presentation of tax information where the 'extra' days beyond a calendar year, e.g., formed 6<sup>th</sup> January, Accounts made up to 31<sup>st</sup> January – 25 extra days would have to be allocated within a separate corporation tax return, but for corporation tax purposes, would be deemed a single 'calendar' year.

##### **II.2 Filing Abbreviated Accounts Online**

Currently there is provision for filing accounts online, but the experiences of our members is that this is not 'user friendly'. Small companies are entitled to submit 'Abbreviated' accounts, and ideally these should be capable of being filed online utilising a simplistic format as is adopted by HM Revenue and Customs for online statements of self employed accounts.

### **II.3 Concern with Quality of Filed Accounts**

It is suggested that, in conjunction with existing accounts production software companies, and incorporating an interactive checklist process for possibly omitted items, Companies House consider the provision of a standard filing format for small company accounts. This should help provide completeness and accuracy of filed accounts where currently the Public Oversight Board has indicated a significant percentage have minor or significant errors.

### **II.4 Appointment of Qualified Accountant**

In an earlier submission to the DTI we suggested that an independent professionally qualified accountant should be appointed to each SME Limited Company before it was entitled to commence trade, to assist companies with Tax and Company law, and with this probity of the filed accounts. Also that the details of the appointed accountant should form part of the company's ongoing Companies House record and subsequently part of the company's Annual Return signed by both a director and the appointed accountant.

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