



**HM REVENUE & CUSTOMS**

**MODERNISING POWERS, DETERRENTS AND SAFEGUARDS**

**MEETING THE OBLIGATIONS TO FILE RETURNS AND PAY TAX ON TIME**

**Response by**

**THE SOCIETY OF PROFESSIONAL ACCOUNTANTS**

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## **MODERNISING POWERS, DETERRENTS AND SAFEGUARDS**

### **MEETING THE OBLIGATIONS TO FILE RETURNS AND PAY TAX ON TIME**

#### **1. Executive Summary**

The Society of Professional Accountants (SPA) is pleased to respond to the consultation paper dated 19 June 2008.

- 1.1.1.** SPA maintains that the adopted system of filing dates and tax payment dates, plus associated interest or penalties for late submission, should, whenever possible, contain the same elements of certainty, simplicity, synchronicity, fairness and an appropriate appeals process.
- 1.1.2.** Paramount to the success of (1.1.1) above is the requirement that all pages of forms for electronic or paper filing should be available to the tax payer from 6 April each year.
- 1.1.3.** In our view the Bank of England Official Bank Rate (BEOBR) plus 3% should be adopted as the general Tax Interest Rate, with tax related penalties being applied at a rate of 2% of tax due per month.
- 1.2.** The application of the adopted system should, whenever possible, be consistent across all taxes and duties, with specific current inconsistencies between taxes meriting early attention in order that fairness in the system may be seen to be provided.
- 1.3.** We have highlighted the current lack of synchronicity of approach between the treatment and payment of taxes arising from small businesses – distinctly different whether income tax where unincorporated, or corporation tax where

incorporated; significant cash flow impact arises from widely differing tax payment dates (see Appendix 1).

- 1.4.** We also maintain that the vast majority of taxpayers, particularly those represented by a professionally qualified accountant, both file and pay on time; it appears to us that a very small minority cause problems associated with late filing or payment.
- 1.5.** In equity it appears a tax payer having no tax to pay should not be penalised, and late delivery of such returns within a reasonable period of the due date should be condoned. In our experience, such instances frequently reflect cases of hardship or loss making activities.
- 1.6.** For those having some tax to pay late filing of a tax return should attract a minimum penalty, and in our view the existing £100 penalty remains valid, particularly for those having a small income. Once a period of say 3 months has elapsed, this penalty should be stepped up to a tax related percentage (see 1.1.3. above).
- 1.7.** For late payment of tax the suggested interest rate in 1.1.3 above appears an adequate penalty to apply to those missing the due date by up to one month. Beyond that timescale a tax related penalty could be applied month by month at a penalty rate as suggested in 1.1.3. above.
- 1.8.** Such penalties as suggested in 1.7 above might also be applied to those failing to adhere to any “time to pay” arrangements.

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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, and approaching 500,000 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' and 'Income Shifting'.

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#### **3. Detailed Response to Questions posed**

##### **Chapter 3**

**Q.1.** Do you agree with the analysis of filing and payment behaviour set out in Chapter 3? Do you have any further insight or evidence that you could share with HMRC?

**A.1.** We agree with the analysis provided.

##### **Chapter 4**

**Q.2.** What should the relationship between time to pay and penalties be? If a taxpayer enters into a time to pay arrangement after the due date, how should they be treated? If someone fails to adhere to their time to pay arrangements how should they be treated with respect to penalties?

**A.2.1.** The cash flow impact of periodic tax bills can be severe, however, we consider that there is sufficient lead time between the end of the fiscal year – or accounting reference date – and the tax payment date to initiate contact with the Collector with any ‘time to pay’ requests. By inference any such request, if approved, should bear the adopted interest charge, suggested as BEOBR plus 3%.

**2.2.** Where ‘time to pay’ has been agreed the application of the adopted Tax Interest Rate appears a sufficient penalty.

**2.3.** Where ‘time to pay’ arrangements are not adhered to then a monthly tax related penalty should be applied of 2% of tax due.

## **Chapter 5**

**Q.3.** Are the safeguards for taxpayers suggested in chapter 5 adequate: What other safeguards would be appropriate?

**A.3.** The safeguards provided are adequate.

## **Chapter 6**

**Q.4.** What are the advantages and disadvantages of “capping” (where a late filing penalty is capped to the amount of tax due)? Are there any other safeguards that could be put in place that would protect vulnerable taxpayers without reducing the effectiveness of the penalty?

**A.4.** Capping minimum late filing penalties to the amount of tax due ensures a proportionate approach is taken to those having small incomes.

## **Chapter 7**

**Q.5.** Do you agree there are benefits to alignment of penalties for failing to file a return or pay the tax owed by the due date? Are there any benefits we have missed?

**A.5.1.** We agree that wherever practical penalties should be aligned, and suggest the current £100 minimum is relevant for a late return reflecting up to £5000 tax payable, with 2% of tax due as the monthly penalty above this level.

**5.2.** Interest at the adopted Tax Interest Rate for late payments up to 1 month should be applied, with an additional penalty of 2% of tax due added for each month thereafter.

**Q.6.** How should HMRC use the tools discussed in Chapter 7 be most effectively reinforce both obligations – to file a return and to pay the tax due?

**A.6.** It is held that the simplistic structured approach discussed in answer to Q.5 would provide sufficient incentive or penalty to encourage the filing of returns and the payment of tax up to a stage where legal action might be considered.

**Q.7.** How could the tools described in Chapter 7 be most effectively structured to tackle late or non filing and payment? An illustration is provided in this chapter but there may be many alternative structures and HMRC would welcome your thoughts on this?

**A.7.** Discussed in answer to Q.5.

**Q.8.** If the requirement for pre approval of daily penalties was removed, would the other safeguards suggested in this chapter including: a right of appeal against the penalty, internal review, and a possible limit on how large daily penalties can get be adequate to protect the taxpayer?

**A.8.** In our view application of daily penalties, whether pre-approved or not, should not be applied until a return is more than 6 months late. However we believe it to be more important that tax payers all be informed of any new interest and penalty regime to encourage timely compliance, and that similar warning notices be sent to recalcitrant tax payers after a return is three months late to alert them to the daily penalties that will be applied. At the same time such communication should urge the taxpayer to make contact with HMRC or obtain guidance from a professionally qualified accountant.

**Q.9.** How could HMRC ensure that the package when considered as a whole doesn't get disproportionate?

**A.9.** Establish reasonable limits for maximum interest or penalties suggested as 100% of tax due.

**Q.10.** Should those who file or pay shortly after the due date be treated differently from those who file their return or pay later?

**A.10.** Those who file or pay within a month of the due date should be treated differently from those who file or pay later, as discussed in answer to Q.5.

**Q.11.** How should those who repeatedly file or pay late be treated?

**A.11.** The tax related penalty system should be sufficient to punish repeat offenders as outlined in our answer to Q.5.

**Q.12.** How well do the approaches suggested in Chapter 7 balance elements of design principles?

**A.12.** We hold that it is paramount that simplicity and certainty prevail in any synchronised system for encouraging tax payer behaviour. We suggest our response at A.5 would satisfy these criteria, and enable a clear and comprehensible statement of the benefits or penalties of adherence or non- adherence respectively to be provided to tax payers; the fewer elements such a design incorporated, the better the system would flow, and we consider the suggested outline in Chapter 7 appears overly complex and difficult to evaluate in terms of interest or penalties

## **Chapter 8**

**Q.13.** How effective are the approaches suggested for frequent filing and payment obligations in Chapter 8 likely to be in encouraging timely payment and filing? Are there alternative structures that may be more effective at encouraging on time filing and payment?

**A.13.** Discussed in our answer to Q.12.

**Q.14.** HMRC would welcome views on the best way of encouraging employers to pay their in year PAYE in full and on time, without creating unreasonable burdens on employers.

**A.14.** We consider it reasonable that all employers should make monthly or 4/5 weekly submissions of payroll summaries, so that any interest due for late payment could be calculated in accordance with the principles suggested in our answer to Question 5.

**Q.15.** How well do the approaches suggested in Chapter 8 balance the elements of the design principles?

**A.15.** Discussed in our answer to Q.12.

## APPENDIX 1

### THE TAXING OF SME LIMITED COMPANIES AND SELF EMPLOYED

1. The choice of vehicle for a business can potentially provide a substantial advantage in the way tax is paid.
  - i. The opening years for either a limited company or self employed business are taxed broadly in a consistent manner, with tax paid 9 months after the first twelve months of trading.
  - ii. Self employed businesses then enter a 'payment on account' system – half approximately two months before and half approximately 4 months after the fiscal year end of 5 April – on average 7.5 months earlier than for a limited company.
  - iii. Limited Companies continue to pay 9 months after the end of their accounting period with no payment on account required.

Those self employed are thus disadvantaged in terms of cash flow and interest on borrowings, and it is suggested this anomaly be rectified by obtaining similar payments on account from SME Limited Companies based on prior year profits, and with the same facility to appeal against or reduce these.

2. A similar distortion arises on penalties applied on filing of late 'nil tax to pay' returns.
  - for self assessed individuals no penalty arises
  - for partnerships, companies and others, penalties are applied

This distortion should, in our view, be eliminated by applying a consistent approach to such returns.

3. It is reasonable that all 'nil' returns be filed within one month after the due date. Thereafter a warning notice should be issued that a penalty would be applied in all cases where the overdue return was not filed within a further month.

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