

Penalties (Lecture P1255 – 10.58 minutes)

Clause 112 introduces a new penalty regime which is then detailed in Schedules 23 and 24. Schedule 25 describes penalties due for late payment of tax.

Late submission penalties

The first part replaces the existing late submission penalties with a points-based system. Each return which falls within these provisions is divided into groups with different penalty points being awarded for each group of returns.

The returns are grouped into

1. 'Column A' (basically annual returns),
2. 'Column B' (quarterly returns) and
3. 'Column C' (monthly returns).

Where a business has agreed a non-standard return period that is not exactly monthly, quarterly or annual, these will be treated as the next longest accounting period. For example, a return period between 3 and 12 months would be treated as an annual return.

Within each Column there is then:

1. Group 1 – income tax returns,
2. Group 2 – trust returns
3. Group 3 – partnership returns, and
4. Group 4 – VAT returns.

The returns within Column B include the periodic returns which will become due once Making Tax Digital is live for income tax self-assessment purposes.

There are specific provisions where a taxpayer has multiple businesses where there will be separate submissions for each business (such as MTD business updates and End of Period statements). The points apply per group so that even if one or more submission is late, they will only get one point added to their points total. The exception to this is VAT where if a person makes separate return for each business, then the penalty point will accrue on each set of returns.

If you fail to make a return on or before the due date, then you become liable for one penalty point for the group of returns to which the return belongs. You only get one penalty point if there is more than one failure in the same month relating to either:

- (a) An ITSA annual return, trust annual return or partnership annual return group
- (b) Any VAT return due (whether annual, quarterly or monthly)
- (c) Any digital reporting sub-group of returns.

A person is not liable to a penalty point for a group of returns if they have already had the maximum penalty points for that group. The maximum is:

- Column A (annual) group: 2 points
- Column B (quarterly) group: 4 points
- Column C (monthly) group: 5 points

Example

An individual who is mandated to file under MTD for both income tax and VAT fails to file quarterly returns for the period to 30 June 20xx and 30 September 20xx. The person is filing two income tax MTD returns as they have property income as well as trading income.

This individual reaches 4 points with one of the returns due in relation to 30 September and so becomes liable for a penalty at that stage.

HMRC must notify the person that they have been awarded a penalty point and there is a time limit for it to do that otherwise the penalty is not deemed to be awarded.

The individual points expire at the end of the 'relevant period' unless at that date, the person has the maximum number of penalty points for that group of returns. The relevant period is 24 months although the date from which this runs varies in different cases.

All of the points for a particular group of returns expire at the beginning of the first day on which both condition A and condition B are met.

- A. The person has made each return in the group on or before its due date for the 'relevant length of time'. This is 'x' months with x being 24 months for Column A returns, 12 months for Column B returns and 6 months for Column C returns.
- B. Condition B is met on any day if that person has made all the returns in the group whose due date fell in the period of 24 months ending with the previous day, whether or not those returns were made on time.

HMRC must notify the person if their penalty points have expired.

If a person moves from one group to another, so that the frequency of their submissions change, then there will need to be an adjustment to the points. If you had no points for the old submission frequency, then there will be no points for the new submission frequency. Otherwise the adjustment is:

- Annual to quarterly +2 points
- Quarterly to annual – 2 points
- Annual to monthly + 3 points
- Monthly to annual – 3 points
- Quarterly to monthly +1 point
- Monthly to quarterly – 1 point

The points cannot go lower than zero. If you are reducing the points, the oldest points are treated as expiring; if the points are increasing, the points are treated as being awarded in respect of the most recent failure. The provisions allowing for all points to expire are also amended in these cases so that the starting point for condition A is one month after the first submission under the new frequency.

If you fail to submit a return on time and either this means you reach the points threshold or you are already at the points threshold, there will be a £200 penalty levied.

For ITSA customers mandated to MTD who have multiple businesses, only one penalty will accrue per quarter per obligation after the penalty threshold is reached.

The points awarded are removed if HMRC issues a notice stating that a return does not need to be filed.

HMRC must notify the taxpayer that the penalty has been levied but no penalty will be due if the taxpayer has a reasonable excuse for the failure. Any appeal can cover both the financial penalty and the points which led to that penalty. The first tier tax tribunal can hear any appeal.

If a tribunal cancels a point or points, HMRC has 12 months from that decision to award points which were not previously awarded because the taxpayer was already at the maximum number of points. The guidance notes give the following example:

An MTD mandated ITSA customer who has missed all 4 quarterly return obligations has reached the penalty points threshold and accrued a £200 penalty. They have appealed the penalty and the FTT decides to cancel the point relating to the Q3 regular update, so the penalty is cancelled. However, the same customer also missed the deadline for the end of period statement. A point did not accrue because the customer was already at the penalty deadline. HMRC will have 12 months from the date of the FTT decision to levy this point and any resulting penalty.

There are amendments to the basic rules for returns to be submitted by partnerships and settlements.

Commencement

These provisions will apply for VAT for accounting periods beginning on or after 1 April 2022, for ITSA taxpayers coming within MTD from 2023 for all accounting periods beginning on or after 6 April 2023 and for all other ITSA taxpayers for accounting periods beginning on or after 6 April 2024.

Deliberate withholding of information

Schedule 24 contains provisions relating to the penalties payable when a person fails to make a return (either individual self-assessment, partnership, trust or MTD return) and then deliberately withholds information which would enable HMRC to assess their tax liability.

The penalty is the same as applies for an inaccurate return (with a de-minimis of £300 applying for all offences) so it depends on whether it is a category 1, 2 or 3 offence and whether it is careless, deliberate and not concealed or deliberate and concealed.

Penalties can be mitigated dependent on behaviour and HMRC must assess the penalty within the relevant time limits.

The implementation date is the same as the provisions within Schedule 23.

Late payment of tax

Schedule 25 makes provision for penalties for late payment of taxes as specified within the table in Paragraph 1, which covers most liabilities due from taxpayers.

No penalty is payable if the tax is paid before the end of 15 days from the due date.

A penalty of 2% of the tax due is levied for the amount unpaid at the end of the 15-day period and another 2% is due if the tax remains unpaid at the end of a 30-day period after the due date. These amounts will not become due and payable if a time to pay arrangement is in place at the penalty date although if the time to pay arrangement is not complied with, then the penalty comes back into charge.

If tax is still outstanding at the end of day 30, then a penalty of 4% per annum, calculated daily will be applied until the liability is paid in full or time to pay proposals are accepted by HMRC.

These initially apply for income tax and VAT obligations only but will be extended in due course to other liabilities.

These will apply for all late VAT payments for return periods starting on or after 1 April 2022 (replacing default surcharges), for ITSA taxpayers who join MTD in 2023/24 for payments relating to that year onwards, and for all other ITSA taxpayers for payments relating to 2024/25 onwards.

Consequential amendments

Clause 114 introduces Schedule 26 which contains amendments to existing legislation which are consequential on the introduction of the new penalty regime.

Follower notices

A Follower notice may be issued to a person who has used tax arrangements in an attempt to gain a tax advantage where HMRC have successfully litigated against other similar schemes. Anyone who receives a Follower notice must either pay the tax or continue their dispute or risk a 50% penalty if they are ultimately unsuccessful.

Clause 115 and Schedule 27 reduce the initial penalty to 30% but with an additional 20% penalty to be levied if a tax tribunal finds that person has unreasonably pursued litigation in relation to the tax scheme. This will apply from the date of Royal Assent.