



HMRC
Making Tax Digital
Tax administration

3 November 2016

About ICAS

1. The following submission has been prepared by the ICAS Tax Committee. The ICAS Tax Committee, with its five technical sub-Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 committee members. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants and we represent over 21,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.
2. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members in the many complex issues and decisions involved in tax and financial system design, and to point out operational practicalities.

General comments

3. ICAS welcomes the opportunity to respond to the HMRC consultation 'Making Tax digital: Tax administration', issued by HMRC on 15 August 2016.
4. ICAS supports the overall objectives of 'Making Tax Digital' (MTD), as set out by HMRC in December 2015. The four 'foundations' are laudable goals, but we have significant reservations about the timescale and the mandatory approach: particularly so for small and medium enterprises. To describe MTD as a reform of tax compliance obscures the reality that it is a colossal IT and change management project affecting some 5.4 million businesses and many more taxpayers. A project on this scale needs careful risk management to maximise both its success and acceptance by users.
5. This is the most elusive of the consultations on making tax digital. Little concrete detail is given: this is postponed to the realm of 'further consultation' which makes it difficult to comment on some aspects of the proposals.
6. The lack of clarity is also concerning because the powers and administrative duties are at the core of any tax system – they are central to effective tax assessment and collection.
7. We also remain very concerned about the negative messages about tax agents which are being suggested by publicity around MTD, and also the exclusion of agents from viewing their clients' online accounts. Development of agent services consistently runs behind the development of the business and personal tax accounts. We believe agents are vital to implementation and every effort should be made to work with agents and ensure that they can assist their clients in dealing with the huge challenge of MTD.

Specific questions

Compliance powers

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?

8. Replicating the self-assessment compliance powers to include the end of year MTD declaration seem sensible.

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

9. Safeguards under MTD should be no less than those under self-assessment.

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

10. It is appropriate for the basic powers to be replicated under MTD.
11. However, clarification is needed of exactly what will happen to time limits once self-assessment returns are no longer required. Presumably, the end of year review and declaration is effectively a self-assessment, but it is not clear that this is the case. Nor is it clear whether the proposals for 'End of year activity' for landlords, the self-employed and businesses are likely to mean that individuals have a deadline for the 'End of Year' declaration for these activities of 9 months after the end of their business period. If the deadline for data checking/personal tax declarations in the PTA remains 31 January they will therefore, in many cases, have a different deadline for their business and personal 'returns'. Will the MTD duplicated powers mean that taxpayers face two reporting regimes and their associated powers?
12. For example, the consultation proposes that a determination would be replaced by the taxpayer's figures by submission of an End of Year declaration within 12 months. The current rule is that it is the later of 12 months from the issue of a determination or 3 years from the 31 January self-assessment filing date.
13. Once self-assessment is replaced by MTD, there would presumably be no 31 January filing date for business tax. Does this mean that the time limit for replacing determinations would be reduced?

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

14. There may need to be guidance on how digital records are accessed in an enquiry situation.

Late submission penalties

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?

15. 12 months is the minimum which should be allowed.

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?

16. The MTD requirements for quarterly updates are likely to disproportionately burden smaller business. Unless there is a significant increase in the threshold for inclusion in MTD, the penalty bar seems too low for micro-business; and a 24 month lag too long before starting again.
17. For larger business, the possibility of attracting more penalty points for missing one return in adjacent months, as against one point for missing two returns in one month seems inequitable.
18. Twelve months is the normal VAT default surcharge period, and this seems sufficient. Late annual submissions could extend the 12 month 'default' period.

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?

19. Under the proposed system any late return would attract the same level of penalty. This does not reflect the gravity of the delay. Consideration should be given to weighting the late submission penalty for seriousness.

20. Missing a quarterly update for income tax which gives, at best only an approximation of liability, should not be considered as serious as, say, missing a VAT quarter.

Question 3.4: At what stage for each of the different submission frequencies (monthly/quarterly/annual/one-off) should points generate a penalty?

21. While it is superficially attractive to have one system for all, it is potentially unfair for businesses to be exposed to higher penalties, simply because of the filing pattern within that tax regime.
22. Consideration should be given to retaining separate systems for different regimes; or quarterly penalties across the range. For example, on a simple points system, monthly PAYE returns would be exposed to higher potential penalties than, say, quarterly VAT returns.

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?

23. As suggested, one-off filing obligations, such as for IHT, would not easily fit within a penalty point system. The existing penalties are sufficient.

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?

24. See comments under 3.3 and 3.4. The gravity of the offence is not reflected by a one size fits all approach.

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?

25. Simplicity needs to be balanced against fairness. It may be fairer for some defaults to attract more points. For equity there may need to be different limits for the smallest business, for whom compliance is more onerous due to more limited resources in terms of time, people and money.

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?

26. The escalator model gives too little time for the business to respond, and could be a disincentive to compliance.

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

27. Fixed penalties do not reflect the gravity of the default. They can be disproportionate for an offence which results in negligible revenue loss, and miss the gravity of deliberate late submission intended to delay payment or chasing of a debt.
28. An element of tax gearing may be more appropriate.

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

29. Size of business is not necessarily the key factor. Why should a late submission by a large business be considered more deserving of a large penalty than a default by a small business or individual? The amount of tax at stake, ability to pay and effect on compliance behaviour need to be considered.
30. The reason for the late filing and the impact of the late return would seem to be more important.

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

31. Penalty points should be appealable as soon as they are charged. This is only reasonable as business owners may not have the necessary evidence to hand if they are only able to challenge the matter later.
32. The proposed system suggests a 24-month penalty period. Businesses could therefore be required to plead reasonable excuse for something which happened almost 2 years before: by which time it may be difficult to obtain the evidence.
33. It is unreasonable to charge penalties based on points which should not have been accrued.

Late payment penalties

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?

34. Payment period should be related to notice period. 30 days would be a more appropriate period.

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

35. Penalty interest is an appropriate sanction for late payment. Fixed percentage late payment penalties make no distinction between payment one day after the deadline and many days after the deadline.
36. The interest rate could increase depending on the time the debt is outstanding.

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

37. A commercial model could include encouragements to pay, before moving to sanctions. It might start with payment incentives for early or on-time payment, then move to late payment penalties and on to debt recovery. The HMRC system does not yet appear fully integrated in this regard. Late payment penalties may not be charged at all (for example, a de minimis VAT default surcharge), or charged at six monthly intervals.
38. This approach does not give urgency to settlement. Where late payment sanctions have not produced payment, the debt would need to be moved on to recovery action to maintain pressure. Recovery action should be consistent.

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?

39. We have no comments on question 44.

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?

40. Neither model seems ideal. Somewhere between the two may be more effective. The current VAT default surcharge model is far from ideal: where initial penalties at low rates are waived and when a penalty comes to be charged it is at a high rate.
41. A graduated model in which effective reminders are included, including details of the advantages of making time to pay agreements, is preferable.
42. Reducing penalties when time to pay has been agreed is sensible. This should be possible for all future penalties, not ones already incurred.

43. Future penalties should be suspended even if time to pay is agreed after the first penalty date: otherwise the incentive to agree time to pay is reduced.

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

44. Timing of late payment penalties should reflect the time the debt is outstanding. The current regime has gaps of up to 6 months in which no rise in penalty. Payment penalties could be increased in steps over 30 day periods, up to, say, 90 days.
45. At that stage, other recovery methods might be appropriate.

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?

46. As mentioned under 4.3, late payment and recovery action need to be seen as interlocking aspects of the same process.
47. The current late payment penalty regime allows significant delays of up to a year. It might be more effective to reduce the size of the penalties, and the timeframe over which they are applied, and move into recovery action much sooner.

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

48. Model two seems better, but penalty rates should be lower, say maximum of 6% rather than 10% (otherwise the debtor might consider the situation as spiralling out of reach). There could be three penalty stages, moving into recovery action if there is no response after stage three.

Interest on late payments

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

49. The current Interest rules for income tax and Class 4 NIC should continue to apply in MTD, but consideration needs to be given to interim payments. Currently interest is due on payments on account but the situation has anomalies: interest is due where payments on account are reduced and the final amount due is higher than expected.
50. It is hard to see how interest could be applied fairly to quarterly payments within MTD. It might be preferable to encourage early payment with positive interest, and only apply default interest after the end of year submission.

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

51. Alignment or simplification of interest rules would be beneficial.

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

52. It is difficult to estimate the impact until specific proposals have been agreed. Clarity of responsibility is key if costs are to be minimised.

Question 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?

53. There is a significant group of disabled self-employed people; many of whom are on relatively low incomes. To protect this group, provision should be made for penalties to

be cancelled or suspended once contact has been made with HMRC. Penalties should be graduated, being matched to ability to pay. smallest for those on lower incomes.