



## PENALTIES FOR FAILURE TO PAY TAX FINANCE (NO.2) BILL 2019-21 CLAUSE 113 AND SCHEDULE 25

Issued 12 April 2021

Text of ICAEW briefing for MPs on **Finance (No.2) Bill 2019-21** clause 113 and Schedule 25 Penalties for failure to pay tax published by government on 11 March 2021.

This briefing submitted on 12 April 2021, followed by suggested amendments on 14 April 2021, has been prepared by the ICAEW Tax Faculty. Internationally recognised as a source of expertise, the Tax Faculty is a leading authority on taxation and is the voice of tax for ICAEW. It is responsible for making all submissions to the tax authorities on behalf of ICAEW, drawing upon the knowledge and experience of ICAEW's membership. The Tax Faculty's work is directly supported by over 130 active members, many of them well-known names in the tax world, who work across the complete spectrum of tax, both in practice and in business.

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## EXECUTIVE SUMMARY

1. ICAEW considers that the proposed late payment penalty regime is overly complex and as a result will not be understood by taxpayers and therefore will not act as an effective deterrent. We recommend that the measure be simplified.

## THE MEASURE

2. The measure introduces a new penalty regime for late payment of income tax and VAT. It replaces the existing late payment-related penalties for income tax and VAT.
3. The existing late payment penalty for income tax is 5% of tax unpaid 30 days from the due date, with further 5% penalties levied at six months and twelve months from the due date. Late payment of VAT is a 'default' which may give rise to a default surcharge. These income tax and VAT rules will be superseded by the proposed changes.
4. Late payment penalties will be charged in addition to interest.
5. The proposed regime would operate as follows:
  - A first penalty of 2% would be charged on tax unpaid at the end of 15 days from the due date. A further 2% would be charged on tax unpaid at the end of 30 days from the due date.
  - A second penalty would be charged on a daily basis on tax unpaid from the day after the end of 30 days from the due date to the day the tax is paid. This daily penalty would be charged at an annual rate of 4% on the tax unpaid.
8. The penalties would not be charged if the taxpayer contacts HMRC with a proposal for paying the tax due and that contact results in an agreed time to pay arrangement which is not subsequently broken.
9. The measure gives the Commissioners for HMRC the power to vary the number of days and the percentages specified by regulations. The start date will also be set by regulations.

## DETAILED COMMENTS

### Our concerns

10. In order to be effective, penalty regimes need to be simple, fair and proportionate and easily understood by those affected. ICAEW is concerned that the proposed late payment penalty regime does not adhere to these principles. The proposed rules, which will apply to both income tax and VAT, are more complex than the current late payment penalty regime for income tax on which they are partially modelled, and that regime is itself not well understood by taxpayers. We consider that, however good the communications, the proposed regime will not be well understood by taxpayers and will catch them unawares rather than acting as a deterrent.
11. The proposal creates cliff-edges at 15 and 30 days after payment due dates as within this period the taxpayer will need to contact HMRC to make a proposal for paying the tax due in order to avoid a penalty of 2% or 4% of the tax due. Even if more online contact options are made available by HMRC, these two trigger dates will only add to the pressures on HMRC helplines and taxpayers may find themselves unable to make contact, especially within the 15-day period.

### **Our recommendation**

12. We recommend that the government reverts to the previous proposal for late payment penalties for income tax and VAT which was to charge only what is now the second penalty calculated on a daily basis at a percentage of the tax due. We recognise that the rate at which this penalty is charged might need to change if the initial penalty is not charged.
13. If the first penalty is to be charged, we recommend that the measure be simplified for both income tax and VAT so that there is a single 30-day trigger point for the first penalty rather than two trigger points at 15 and 30 days.

### **Suggested amendment**

14. We suggest that the measure be amended to reflect our recommendations.

### **SUGGESTED AMENDMENTS SUBMITTED ON 14 APRIL 2021**

- Schedule 25, Page 264, Line 9, leave out '15' and insert '30'
- Schedule 25, Page 264, Line 11, leave out '15' and insert '30'
- Schedule 25, Page 264, Line 12, leave out '15' and insert '30'
- Schedule 25, Page 264, Line 15, leave out Paragraph 5
- Schedule 25, Page 264, Line 31, leave out Paragraph 6
- Schedule 25, Page 264, Line 40, leave out Paragraph 7
- Schedule 25, Page 265, Line 8, leave out 'Second'
- Schedule 25, Page 265, Line 26, leave out 'Second'
- Schedule 25, Page 265, Line 36, leave out Paragraph 10(2)
- Schedule 25, Page 266, Line 16, leave out Paragraph 11(a)
- Schedule 25, Page 266, Line 22, leave out Paragraph 11(c)
- Schedule 25, Page 266, Line 23, leave out Paragraph 11(d)

### **FURTHER INFORMATION**

As part of our Royal Charter, we have a duty to inform policy in the public interest.