



HM Revenue  
& Customs

# Making Tax Digital: Tax administration

## **Consultation Document**

Publication date: 15 August 2016

Closing date for comments: 7 November 2016

<b>Subject of this consultation:</b>	The consultation covers certain aspects of the tax administration framework that need to change to support Making Tax Digital. It also sets out our proposals for new late filing and late payment penalty models and our proposals to align interest across taxes.
<b>Scope of this consultation:</b>	We're asking for comments on the proposed changes to aspects of the tax administration framework and on our proposals for new penalty models and for interest.
<b>Who should read this:</b>	The government would like to hear views from anyone who is affected by or interested in these proposals including individuals, businesses, agents and representative bodies.
<b>Duration:</b>	The consultation will run for 12 weeks from 15 August 2016 to 7 November 2016.
<b>Lead official:</b>	Sue Harper, HMRC
<b>How to respond or enquire about this consultation:</b>	Please send email responses to <a href="mailto:MTDTA@hmrc.gsi.gov.uk">MTDTA@hmrc.gsi.gov.uk</a> Please send written responses to: HM Revenue and Customs Making Tax Digital Tax Administration Room 1C/06 100 Parliament Street London SW1A 2BQ
<b>Additional ways to be involved:</b>	If you're interested in discussing these proposals with us, please contact us using the details above.
<b>After the consultation:</b>	A summary of responses will be published as soon as possible after the consultation closes. Draft legislation will also be published.
<b>Getting to this stage:</b>	This is the first consultation document on tax administration as HMRC transforms to deliver digital services in <a href="#">Making Tax Digital</a> .
<b>Previous engagement:</b>	We published <a href="#">HMRC Penalties: a Discussion Document</a> on 2 February 2015, seeking views on how to change the way that penalties are applied as we transform our administration to deliver more digital services, based around our customers. <a href="#">HMRC Penalties: a Discussion Document – Summary of Responses</a> published on 17 September 2015 reflected the views of respondents and stakeholders.

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**On request, this document can be produced in Welsh and alternate formats, including large print, audio and Braille format.**

# 1. Introduction

- 1.1 On 14 December 2015, HM Revenue and Customs (HMRC) published the [Making Tax Digital roadmap](#) which sets out how we will transform the tax system so that it is more effective, more efficient and easier for customers. Today, HMRC has published six Making Tax Digital (MTD) consultation documents, of which this is one. To see the others, please go to [MTD consultations](#).
- 1.2 MTD will be introduced in phases: April 2018 for income tax and National Insurance obligations; April 2019 for VAT obligations; and April 2020 for corporation tax obligations. Changes to the tax administration legislation will reflect this gradual introduction.
- 1.3 The tax administration legislation governs the way in which HMRC interacts with its customers. This includes tax returns, assessments, claims, data-gathering, payment, compliance, interest, penalties, information powers, appeals and time limits. These need to adapt to enable the wider changes under MTD to be introduced.
- 1.4 The government's aim is to make the system clearer and simpler for our customers to ensure that it is as easy as possible for customers to comply with all aspects of tax administration.
- 1.5 Not every customer can use digital services, and HMRC will ensure that customers who cannot engage digitally will also benefit from changes which simplify tax administration.

## What we are consulting on

- 1.6 We are seeking comments on how to adapt existing tax administration powers for MTD; proposing new penalty models which build on previous consultation; and setting out the first steps towards alignment of tax administration legislation across taxes with proposals on the alignment of interest rules.
- 1.7 This consultation focuses on proposed changes to tax administration required in Finance Bill 2017 to deliver MTD and proposed changes to penalties rules. The areas covered are:
  - **Compliance:** adapting existing income tax compliance powers to fit the way information will be provided in MTD. This will not mean any extension of powers; in particular, no new powers are proposed for enquiries into the new regular updates and existing customer safeguards will be retained. (Chapter 2);
  - **Late submission penalties:** The approach for penalties should be simple, fair and proportionate. MTD provides an opportunity to revise penalty powers

in line with the principles which gained wide support in [HMRC Penalties: a Discussion Document](#). This consultation document sets out proposals for a graduated model whereby each failure would attract penalty points and only once the points reach a set level would a penalty be charged. The new model also includes a proposal that customers within scope of the new submission obligations introduced by MTD should have a period to gain familiarity with the new submission obligations before the new penalty regime is introduced. (Chapter 3);

- **Late payment sanctions:** the proposed changes to the late payment penalties reflect the principles in HMRC Penalties: a Discussion Document. We are seeking views on two proposals for new sanctions for paying tax late (Chapter 4); and
- **Interest:** aligning the rules for interest across different tax regimes where customers underpay or overpay tax. For interest on income tax no change is proposed (Chapter 5).

1.8 This consultation does not include other aspects of tax administration. Changes to inaccuracy penalties will be covered in subsequent consultations.

1.9 A summary of responses will be published as soon as possible after the consultation closes. Draft legislation will also be published.

### **Who should read this consultation document?**

1.10 All individual and business customers, agents and representative bodies with an interest in tax administration should read this consultation document which includes proposed changes to tax administration to be included in Finance Bill 2017. These proposals include changes to penalties.

1.11 Unless expressly exempted, all businesses, with income tax, National Insurance contributions, VAT or Corporation Tax obligations will be impacted by MTD as they will need to keep track of their tax affairs digitally and update HMRC more regularly using digital tools. In particular, the compliance, penalty and interest proposals in this document will affect businesses.

## 2. Checking a customer's tax position – compliance powers

- 2.1. HMRC has considered the way our compliance powers should work so that the ability to check a customer's tax position in a digital world is retained. As Making Tax Digital will apply to businesses within scope of income tax from April 2018, HMRC's powers will need to be adapted to fit with the MTD processes in time for this. Customers' safeguards will be maintained under MTD, including the right for customers to request a review or appeal against HMRC decisions and appropriate time limits for the ability of HMRC to enquire into a customer's tax position.
- 2.2. HMRC's 'Promote, Prevent, Respond' strategy builds compliance into everything we do, helping those who need support to get things right. The aim is to:
  - promote compliance by designing it into systems and processes;
  - prevent non-compliance at or near the time of filing; and
  - respond to non-compliance through a well-designed approach.The 'respond' element of the strategy includes the use of powers to tackle the minority who choose to cheat the system.
- 2.3. MTD will mean the introduction of simple, secure and personalised digital tax accounts for businesses and individuals. By 2020, most businesses will be required to use software or apps to keep their business records and to provide regular updates of information, which they will be able to see via their digital tax account.
- 2.4. MTD will help more customers get their tax affairs right first time. Digital 'prompts' and 'nudges' will alert customers to common errors, inconsistencies or missing information, and so allow customers to correct them. These digital tools are part of the 'Promote' and 'Prevent' elements of HMRC's compliance strategy. Prompts and nudges are described further in chapter 3 of the Bringing Business Tax into the Digital Age consultation.
- 2.5. The introduction of digital tax accounts provides more opportunities to help customers understand and meet their obligations. As a result it is expected that there will be fewer compliance interventions for the majority of customers who want to get their tax right. But the change must not be an opportunity for those actively seeking to avoid or evade tax, or an excuse for greater carelessness.
- 2.6. The power to intervene to check a customer's tax position and, if necessary, take action against non-compliance, remains very important. This is the 'Respond' part of HMRC's compliance strategy. This consultation sets out proposals to achieve this by adapting, rather than extending, HMRC's compliance powers so that they deliver the same outcomes as now.

## Changes needed for MTD

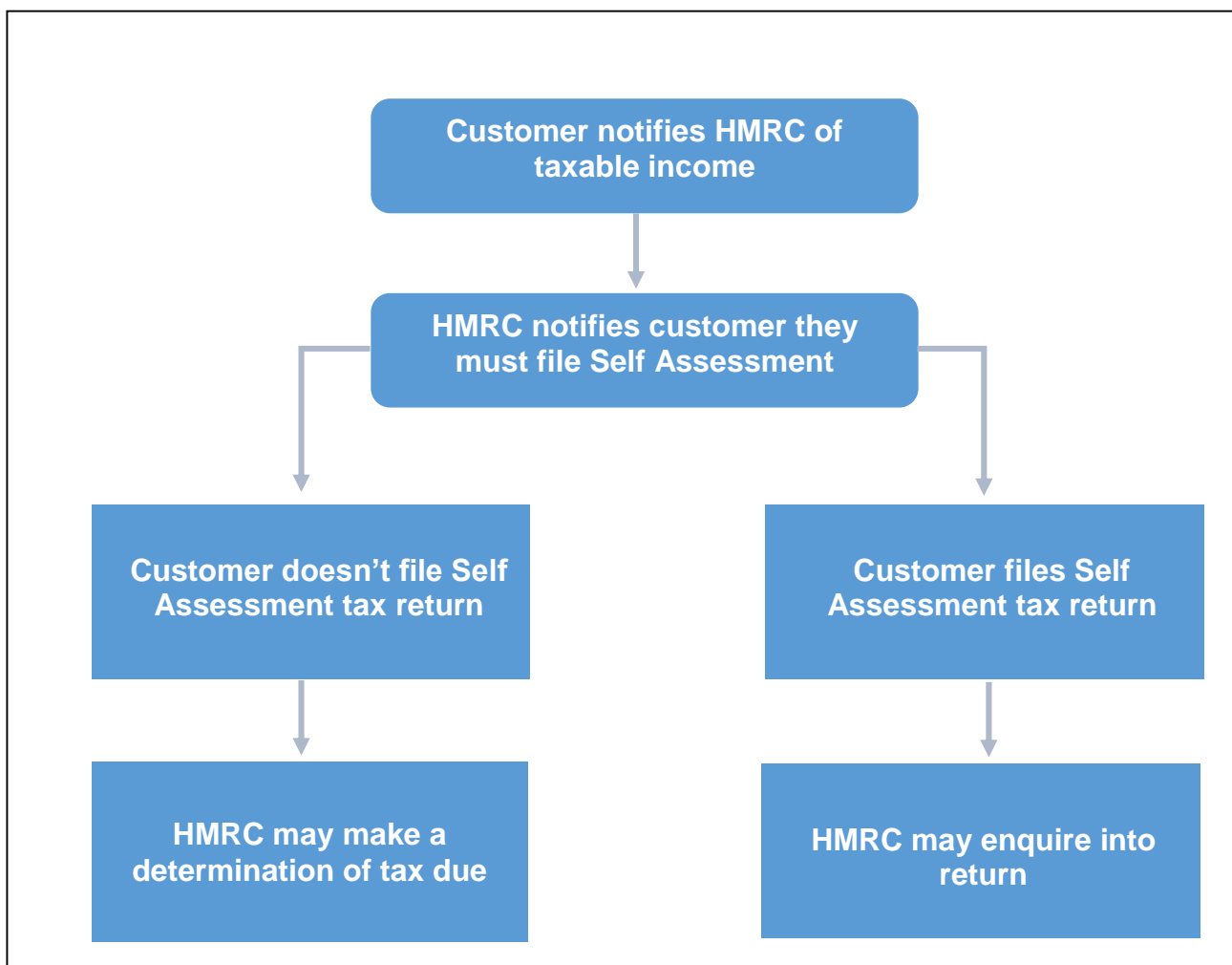
- 2.7. This chapter sets out proposals for changes to tax administration to facilitate the introduction of regular updates, End of Year activity and the declaration (End of Year declaration) that customers with unincorporated business will make under MTD. The government intends to consult on any future changes to the tax administration framework that are required for MTD.
- 2.8. HMRC sometimes needs to ask about a customer's tax return or a claim to establish that the right amount of tax is paid. HMRC might also need to make a determination of tax where a customer fails to send us a tax return. However, there is no proposal to introduce a power to enable HMRC to enquire in-year into regular updates, nor increase the overall number of compliance interventions as a result of these updates.
- 2.9. Under MTD most business customers will provide us with regular updates of income and expenses. The business' taxable profit will need to be finalised for a period through their End of Year declaration. Customers will review the information they have provided in their regular updates, make accounting adjustments and claim any reliefs or allowances. These changes are described in more detail in the Making Tax Digital: Bringing business tax into the digital age consultation.
- 2.10. The regular updates and End of Year declaration mean that the government needs to change current legislation so HMRC can continue to be able to check a customer's tax position to tackle errors, evasion and avoidance whilst supporting customers who are compliant. This includes making changes to replicate important customer safeguards.
- 2.11. Currently, customers have to keep records to support the information provided in their Self Assessment tax return and HMRC may ask to see them as part of an enquiry. As described in chapter 3 of Bringing Business Tax into the Digital Age, there will be a new obligation for certain customers to keep these records digitally on software that links to and updates HMRC. Existing record keeping legislation will need to be modified to reflect those proposals.
- 2.12. Moving to regular updates will be a significant change for some customers. To help customers get used to the new system, we propose that the familiar, existing approach to compliance be maintained.

## Partnerships

- 2.13. The current compliance framework has specific rules that apply for partnerships. For example, the nominated partner is obliged to file a partnership tax return and a notice of enquiry into the partnership tax return is deemed to be notice of an enquiry into the partners' tax returns.
- 2.14. Chapter 4 of the [Bringing business tax into the digital age](#) consultation sets out HMRC's proposed digital reporting obligations for nominated partners and individual partners. We propose maintaining our current approach to partnership compliance, including the links between nominated and individual partners' activity.

## Enquiries

- 2.15. The Self Assessment tax return is the current way customers tell HMRC about their taxable income, reliefs and allowances. Enquiry powers extend to anything that should be contained in the return. (See Figure 1).



**Figure 1 – Current steps required to make a determination or make an enquiry.**

- 2.16. While we are not proposing that HMRC should have a new power to enquire into regular updates, it is important that HMRC can check any of the information that is included in a customer's End of Year declaration and is used to calculate their tax. The customer's digital records may form part of any enquiry. For example, a business using cash basis accounting may confirm its cumulative position when the End of Year declaration is made. The information in the updates would form an essential part of the calculation of the tax liability and we propose to replicate HMRC's current compliance powers to make enquiries into this information after the End of Year declaration is made.
- 2.17. The most straightforward way to retain these vital compliance powers is to amend the existing legislation to allow HMRC to enquire into the End of Year declaration to check the tax position. We also propose to replicate the 'enquiry



window' safeguard which, in simple terms, restricts HMRC from serving notice of an enquiry more than 12 months from the point at which a return is delivered. This power would not allow HMRC to make an enquiry into regular updates. Prompts and nudge messages during the year will not constitute a notice of enquiry.

- 2.18. The existing compliance legislation in relation to Income Tax Self Assessment will need to remain in place. This approach would mean that during the transitional period there would be two very similar compliance regimes in operation, with similar obligations and safeguards for customers and HMRC. The consistency and familiarity of this approach should support customers as their interactions with HMRC change. It also reflects the important role of the End of Year declaration in computing a customer's Income Tax position.
- 2.19. We propose that the scope of any enquiry should include all aspects of the customer's affairs that are currently required in the return. In transition, this means that the enquiry may include information reported in the Self Assessment tax return and that reported via the digital tax account for those customers who complete both. The thinking here is that, for a given tax year, the scope of an enquiry should include all aspects that are currently required in the return, however they are reported to HMRC.
- 2.20. Where information for a tax year is reported in both the Self Assessment tax return and via the digital tax account, we propose that HMRC should be able to serve notice of an enquiry within 12 months of the Self Assessment tax return being delivered. And, where a customer amends the information provided in their End of Year declaration or Self Assessment tax return, as now, the 12 month enquiry window would run from the date the amendment is made

**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?**

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

**Question 2.3: Are there any other options for preserving HMRC's current enquiry powers in MTD?**

### **Other compliance powers**

- 2.21. Under MTD, the government will maintain and, as appropriate, replicate current customer compliance safeguards.

### ***Determinations***

- 2.22. Where a customer does not provide their Self Assessment tax return by the statutory deadline HMRC can currently make a determination of their Income Tax to the best of its information and belief. We propose a similar power for situations where a customer does not make their End of Year declaration. We also propose to replicate the safeguard that customers should be able to

supersede the determination if the customer completes their End of Year declaration within 12 months of the determination.

### ***Corrections and amendments***

- 2.23. HMRC can currently correct any obvious errors in a tax return, with a customer retaining the right to reject the correction. This means that in depth formal enquiries are not used to rectify obvious errors. These errors might be simple and arithmetical or they might be information HMRC can see is incorrect based on other information. In MTD, prompts and digital tools like auto-summing will reduce the potential for simple errors. We propose to replicate the power for HMRC to correct obvious errors made in the End of Year declaration to avoid unnecessary enquiries. This would include retaining the safeguard that allows a customer to reject any of HMRC's corrections.
- 2.24. There will be a separate consultation on the process and time limits for amendments following the End of Year activity, as confirmed in chapter 6 of the [Bringing business tax into the digital age](#) consultation. We will consider appropriate compliance powers in light of the proposals in that consultation. We propose to maintain similar principles to those that currently apply. For example, enquiries into a customer amendment outside of the enquiry window for the return as a whole are currently limited in scope to the amendment and its effect.

### ***Information powers***

- 2.25. In MTD, there need to be appropriate information powers and customer safeguards. Broadly speaking, current powers allow HMRC to require further information to check their tax position. We propose to replicate these powers, maintaining similar safeguards, for the End of Year declaration.

### ***Discovery assessments***

- 2.26. Where HMRC discovers that a customer has reported income that is too low, claimed a relief that is too high, or failed to report any income at all in a Self Assessment return, a discovery assessment to prevent a loss of tax can be made.
- 2.27. We propose to replicate the power to make a discovery assessment in relation to the End of Year declaration.
- 2.28. Transitional provisions may be needed to make sure that information discovered in MTD can inform discovery assessments relating to previous Self Assessment periods.

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

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

## 3. Late submission penalties

### Introduction

- 3.1. In [HMRC penalties: a discussion document](#), published on 2 February 2015, the government invited views on five principles which we considered should underpin future penalty regimes.
- 3.2. The principles are:
1. The penalty regime should be designed from the customer perspective, primarily to encourage compliance and prevent non-compliance. Penalties are not to be applied with the objective of raising revenues.
  2. Penalties should be proportionate to the offence and may take into account past behaviour.
  3. Penalties must be applied fairly, ensuring that compliant customers are (and are seen to be) in a better position than the non-compliant.
  4. Penalties must provide a credible threat. If there is a penalty, we must have the operational capability and capacity to raise it accurately, and if we raise it, we must be able to collect it in a cost-efficient manner.
  5. Customers should see a consistent and standardised approach. Variations will be those necessary to take into account customer behaviours and particular taxes.
- 3.3. The principles attracted widespread support and in the summary of responses to [HMRC penalties: a discussion document](#) we stated that we would design future penalties with them in mind. The introduction of Making Tax Digital (MTD) will necessitate some changes to penalties, so we are taking this opportunity to start transforming penalties to meet the principles.
- 3.4. The summary of responses to [HMRC penalties: a discussion document](#) said that the government would consult first on proposals for new penalties for late filing and late payment. It also said that the goal is to charge fewer penalties, for penalties to be well-targeted, and to take account of the customer's compliance history.

### Current late filing models

- 3.5. By 2020 Income Tax, VAT and Corporation Tax will come within the scope of MTD. Currently these are all subject to different late-filing penalty regimes, brief details of which are set out in Annex B.

### Scope of this chapter

- 3.6. This chapter sets out the government's proposals for a new approach to late submission penalties. Unless specified, the word "submission" in this chapter is used to cover both the regular updates and the End of Year declaration under MTD and failure to file a return required under the different tax regimes.
- 3.7. This new late submission penalty model has been developed with MTD in mind. In MTD business customers will need to provide regular updates. This

consultation proposes a new way of addressing failures to provide regular updates and carry out the End of Year declaration.

- 3.8. Instead of applying penalties to each failure, we propose a much more gradual model whereby each failure would attract penalty points. Only once the points reach a set level would a penalty be charged.
- 3.9. MTD makes no changes to the timing of mandatory tax payments. Chapter 4 sets out the government's proposals for new sanctions to deal with late payments of tax. The expectation is that those sanctions, combined with the new late submission penalty, will in due course replace default surcharge for VAT. VAT-registered businesses will not be within the scope of the new sanctions and VAT default surcharge for the same failure.
- 3.10. We propose that the existing inaccuracy penalty (Schedule 24, Finance Act 2007) will apply to inaccuracies in the End of Year declaration and VAT quarterly returns. The government will further consider the application of penalties for inaccuracies following feedback to this document, but in the meantime we welcome initial comments.

### **Customer who cannot engage digitally**

- 3.11. Customers will be notified of their penalty position online, but HMRC will make separate arrangements to notify customers who cannot engage digitally.

### **Transitional arrangements**

- 3.12. In line with the approach set out in the discussion document on penalties, the government proposes that customers who are within the scope of new submission obligations being introduced by MTD should have a period to gain familiarity with the new system before we introduce the new penalty regime. We propose 12 months as an appropriate length of time to allow customers to become familiar with the new obligations before the new penalty regime comes into effect.

**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?**

### **Objectives for the new late submission penalty**

- 3.13. Perception is an important driver for compliance: where customers believe that penalties are being used excessively their engagement with the tax system may be lessened, weakening the effectiveness of such penalties in driving improvements in compliance.
- 3.14. Many respondents to [HMRC penalties: a discussion document](#) questioned the proportionality of an automatic fixed amount penalty which does not differentiate between a short, uncharacteristic period of delay, and a deliberate failure to file on time. A quarter of respondents were concerned that the VAT default surcharge produces very substantial penalties for comparatively trivial transgressions and does not differentiate between periods of lateness that last one day or several months.

3.15. In response, we propose a proportionate approach towards those customers who try to comply with their submission obligations and so seeks to remove much of the fear of receiving a penalty. We have sought to design a simple penalty system that is easy for customers to understand. However, the more sophisticated the model becomes, the harder it is to achieve simplicity.

### **Principles for the new late submission penalty**

3.16. We propose a points-based penalty that would:

- ensure customers are not charged a penalty the first time they are unintentionally late in complying with a submission obligation;
- draw customers' attention to their failure and the consequences for penalty purposes, giving them the opportunity to put right for the future what had gone wrong and to avoid a penalty being charged; and
- take account of their history of compliance with their submission obligations.

3.17. One function of penalties is to reassure the compliant majority that they will not be disadvantaged by those who do not play by the rules. With that in mind, the proposal is that a stronger response should be applied to those who are deliberately non-compliant. The amount of any penalty charged would reflect the help received from the customer to establish the correct amount of tax due.

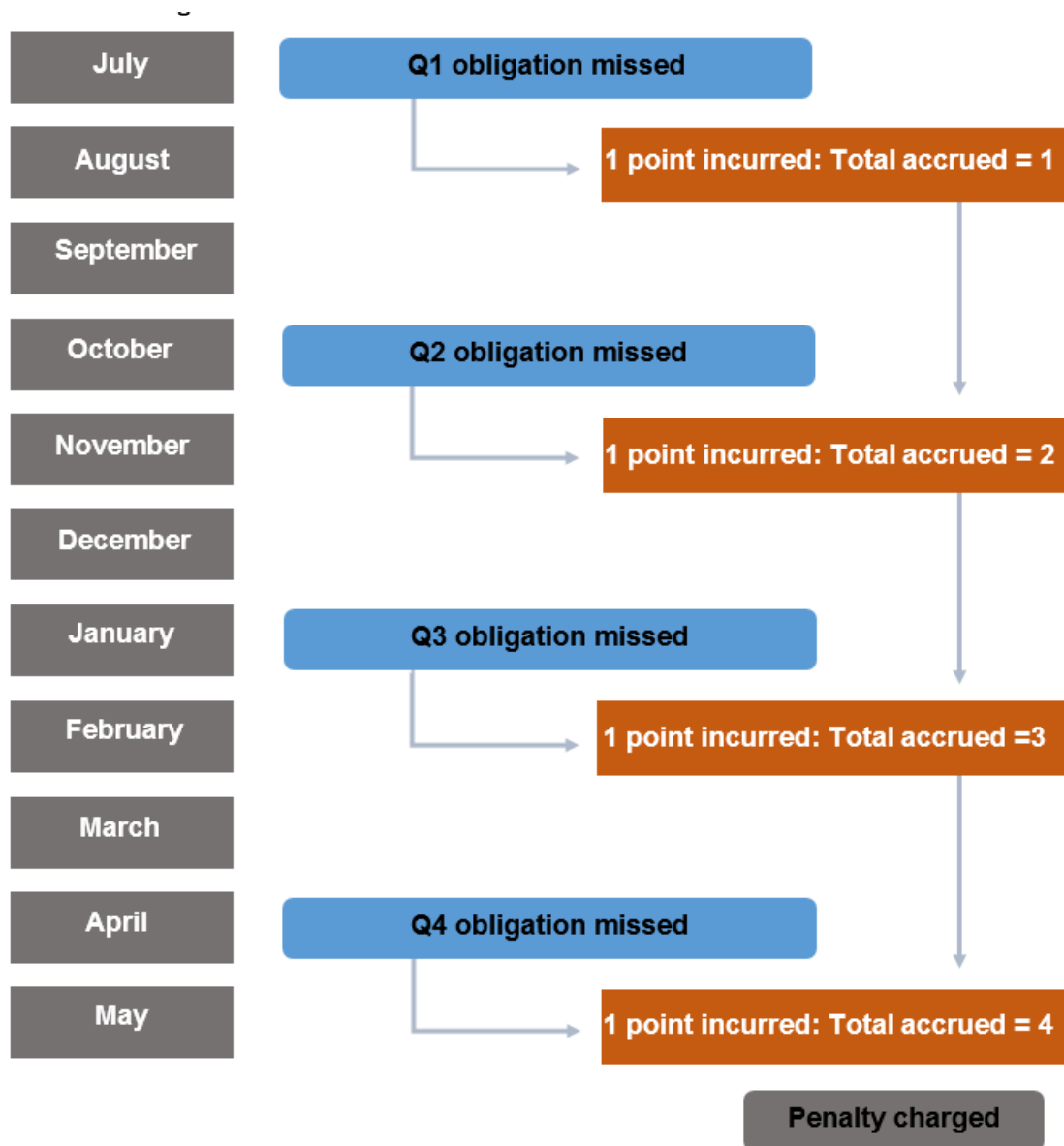
3.18. Paragraphs 3.19 to 3.28 explain how a basic points-based model might work and how it might need adapting to cope with more or less frequent existing obligations. A potential variation on the model is outlined in paragraphs 3.29 to 3.33. Finally, paragraph 3.38 sets out proposals for a penalty for deliberate failures to make submissions in order to withhold information that would otherwise lead to a tax liability.

### **The points-based penalty for non-deliberate failures to make submissions**

#### ***Model 1 - Basic model***

3.19. Under this model the customer would incur one or more penalty points each time they failed to submit information on time, including making an End of Year declaration. When the points reach a certain level they would become liable to a penalty. Fig 2 illustrates how this could work. For the purposes of illustration, one point is incurred for each late submission and a penalty is charged when four points have accrued. For customers who are moving to new submission obligations being introduced by MTD this model would be used only once the new processes introduced by MTD have settled in.

**Figure 2**  
**Points-based penalty: basic model applied to a quarterly submission obligation.**



3.20. Once a penalty has been incurred, the customer would incur further penalties if they failed to meet their subsequent submission obligations. The points total would remain unchanged until such time as a sustained period of compliance caused it to be re-set to zero.

3.21. The points total would be re-set to zero after the customer has achieved 24 months of compliance with their submission obligations. We had considered a

period of 12 months, but concluded that would be too short for customers with annual submission obligations.

**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?**

3.22. The customer's digital tax account will show how many points they have accumulated so they can see how close they are to receiving a penalty.

**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?**

3.23. We consider this model could work for monthly, quarterly and annual obligations and for information-only obligations such as EC Sales Lists. However the number of points incurred for the failed obligation might need to vary depending on the frequency of the obligation to ensure that the customer has enough time to remedy their non-compliance before the points result in a penalty.

**Question 3.4: At what stage for each of these different submission frequencies should points generate a penalty?**

### ***Occasional filing obligations***

3.24. The basic points-based penalty would be unsuitable for occasional obligations (such as the filing of Inheritance Tax returns). In these cases it is unlikely that points incurred could act as a warning system to encourage a return to compliance.

**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?**

### ***Customer compliance history***

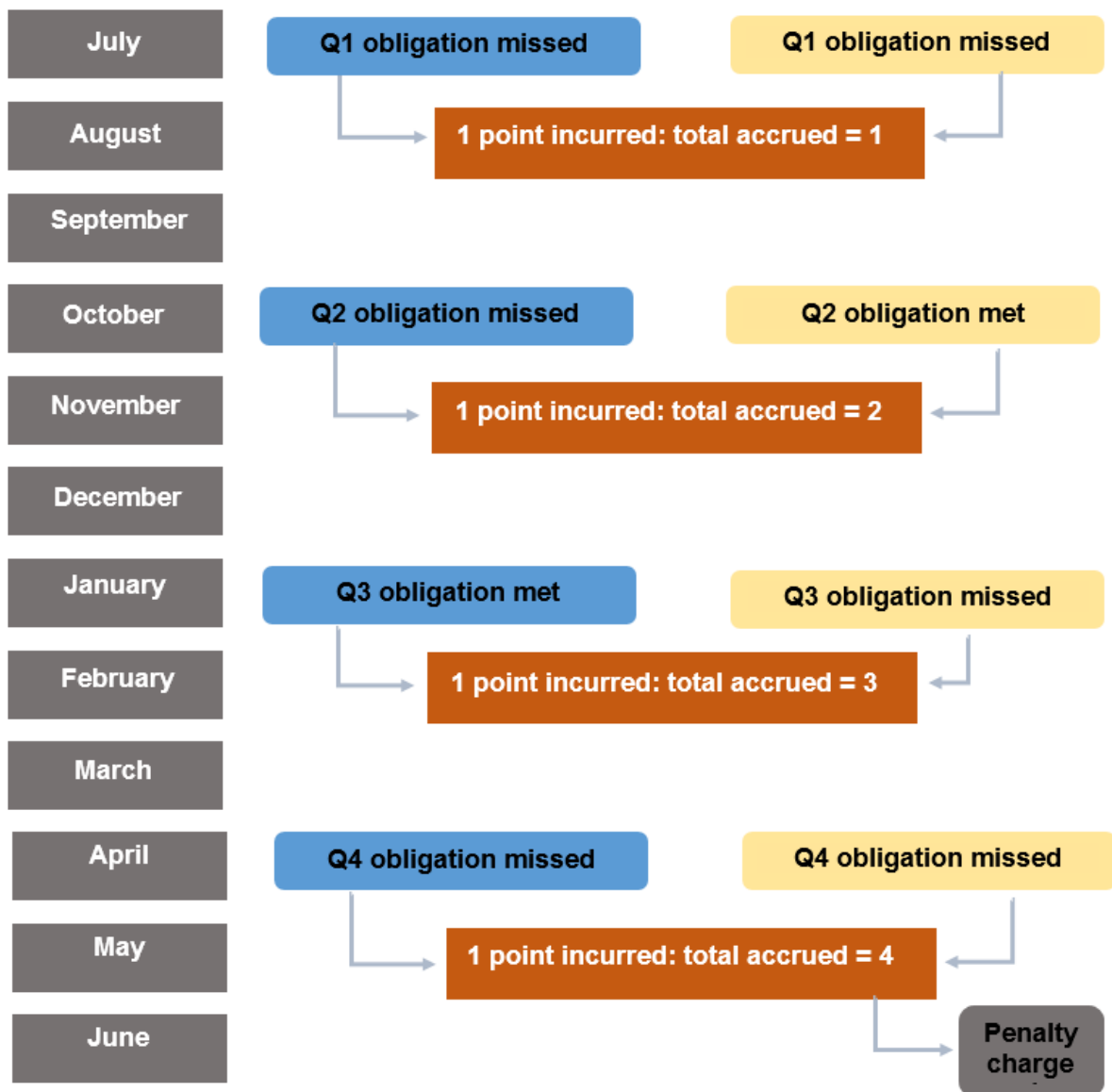
3.25. Many customers are subject to a number of separate obligations. For example, an individual in business and having employees would have to provide quarterly updates and finalise those updates after the end of the tax year for their own Income Tax purposes and regularly submit PAYE information about their employees via Real Time Information (RTI). The summary of responses to [HMRC penalties: a discussion document](#) said that the government would explore options for taking account of the customer's compliance history across all of the taxes they are involved with in developing a new late submission penalty.

3.26. Paragraph 3.15 has explained that the aim is to design a simple penalty regime that is easy for customers to understand. This desired simplicity becomes harder to achieve the more sophisticated the penalty model becomes. Operating a single points-based penalty that covers all of the customer's submission obligations while keeping the design of the regime relatively simple would mean giving points on each occasion that submissions due at the same

time were late, but not multiplying the number of points given to reflect the number of submissions involved. This reflects the fact that the purpose of the points is to act as a warning and encouragement to improve compliance and thereby avoid being charged a penalty. In practical terms, all submissions due in the same calendar month would have to be treated as being due “at the same time”.

3.27. Figure 3 illustrates how this might work. In this example one point is incurred each time one or more submissions are late and a penalty is charged when four points have accrued.

**Figure 3: Two quarterly submission obligations**





3.28. This proposal would ensure that the customer only needs to look at one points total. For this reason it is more beneficial for the customer to have a points-based penalty regime that has a single points total. Given its simplicity, this model means that a customer who has continued to accrue points for one kind of submission obligation could be charged a penalty the first time they were late on a different submission obligation. Operating a single points total is the government's preferred approach.

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?

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?

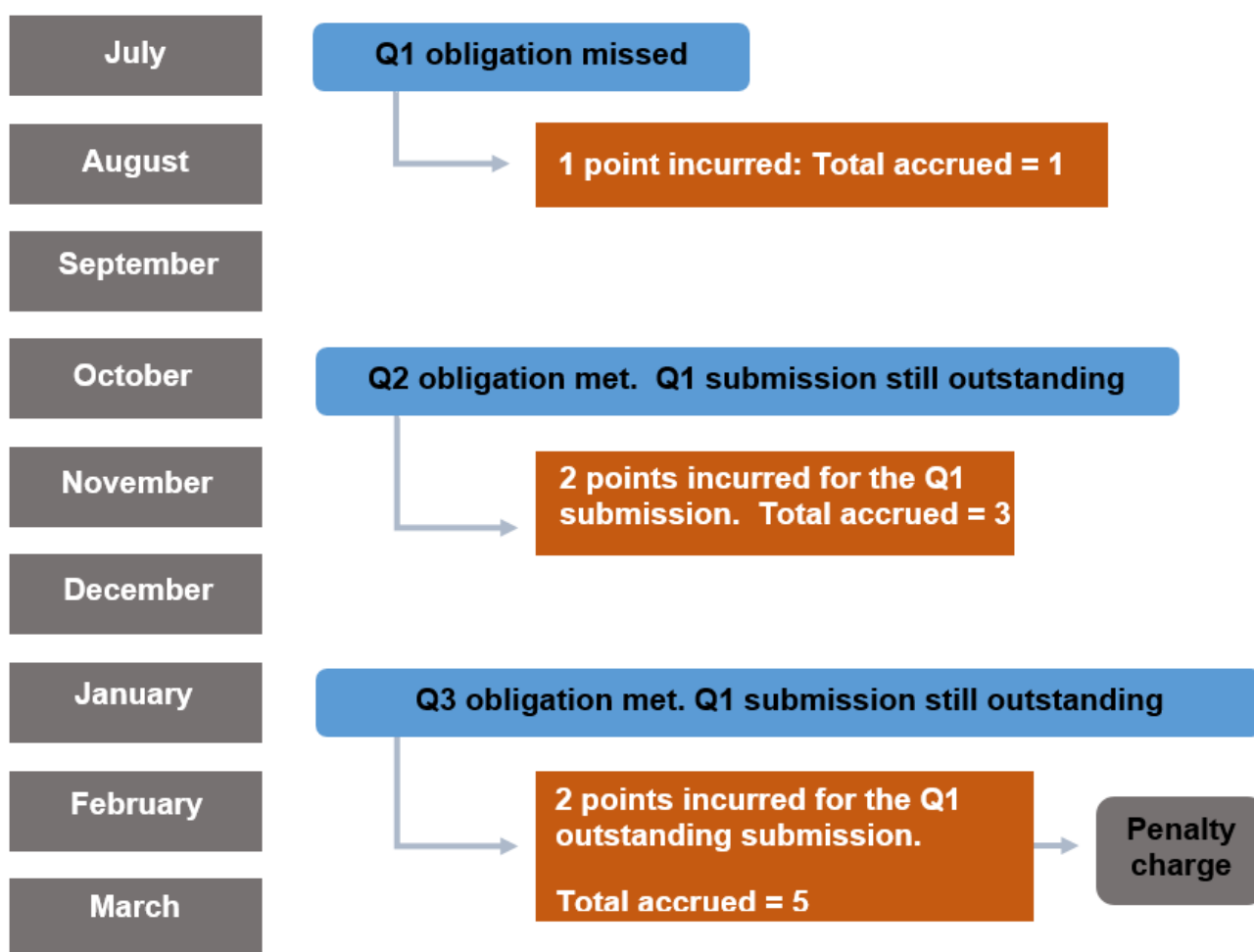
### ***Model 2 - Escalator model***

3.29. The basic model is designed to be simple but it lacks an incentive for those who have missed making a particular submission to remedy that failure.

3.30. One way to address this would be for customers to incur further points to reflect the fact that a submission was still outstanding. This would focus the customer's attention on remedying what has already gone wrong as well as encouraging good compliance in the future.

3.31. Figure 4 shows how the escalator model could work. For the purposes of illustration, one point is incurred for each occasion of lateness and a further two are added if the submission remains outstanding when the next submission (and any subsequent submissions) are due. A total of five points will trigger a penalty.

Figure 4 – Escalator model applied to a quarterly submission obligation



3.32. The escalator model might be unsuitable for monthly obligations because points could accumulate very quickly and the customer might have insufficient time to heed and act upon the warning.

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?

**Type of penalty**

3.33. We are proposing a penalty that is set at a fixed amount rather than a tax related penalty calculated as a percentage of the tax involved. It is easy to understand; gives the customer certainty about the penalty they will be charged if their non-compliance continues; and ensures that the same kinds of failures are penalised in the same way. The penalty could provide for tiered amounts so that larger businesses are charged a larger amount. The focus is on getting the model right, and we are not making any proposals about the amount of the penalty at this time.

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

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

### ***Offering education rather than charging a penalty***

- 3.34. Some respondents to [HMRC penalties: a discussion document](#) considered education about obligations, and the consequences of failing to fulfil those obligations, was key to improving compliance. They suggested that attendance at educational events could be offered as an alternative to a monetary penalty.
- 3.35. Guidance is already available to customers about filing dates. Formal educational events to underline this guidance are not likely to be effective and we do not intend to pursue this as an alternative to charging a late submission penalty. The points-based penalty would give any customer who is unclear about their obligations time to obtain advice about them and meet their future obligations before reaching the stage where a penalty is charged.

### ***Safeguards***

- 3.36. Reviews, appeals and reasonable excuse provisions will continue to apply to the penalty as they do now. At the time of the review or appeal the points giving rise to the penalty would be relevant to it. If one or more of the points was removed because the customer had a reasonable excuse for the related failure, causing the total number of points to fall below the level that makes the customer liable to a penalty, the penalty would be cancelled.
- 3.37. We are not proposing that customers should have the right to appeal against points as they arise. The aim is that, in most cases, a customer will act upon the early warning provided by the points with the consequence that no penalty is ever charged, so the customer would gain nothing material from being able to appeal the points at the time when they are incurred.

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

### ***Penalty for a deliberate failure to make a submission***

- 3.38. For some tax regimes we currently have the ability to charge tax-geared penalties where, by failing to file a return, the customer deliberately withholds information about their tax liability. We consider HMRC will continue to need this stronger sanction to respond to customers who will not play by the rules. The government therefore proposes that a penalty calculated according to the amount of tax involved may be appropriate where there is sufficient evidence to support a decision that a customer deliberately failed to meet a submission obligation in order to withhold information that would otherwise lead to a tax liability. This tax-geared penalty for a deliberate failure would be calculated as a percentage of the tax that would have been due if the submission had been made, but would take account of any fixed penalty charged using the points-based system. It could be charged before the total number of points

accumulated had reached the level that would cause a fixed penalty to be charged. Failures to make information-only submissions would not be liable to the penalty for deliberate failure. The amount of a tax-geared penalty would be reduced where a customer who has deliberately failed to meet a submission obligation helps us to establish the correct amount of tax due.

## 4. Late payment sanctions

### Introduction

- 4.1. Chapter 3 sets out the five principles that underpin future penalties regimes.
- 4.2. Respondents to [HMRC penalties: a discussion document](#) raised several points relevant to late payment including:
  - there is the potential for very substantial penalties for comparatively trivial transgressions which many viewed as disproportionate;
  - the VAT regime does not differentiate between payments that are one day or several months late; and
  - penalties can rapidly accumulate when a business already has cash flow problems.
- 4.3. The government aims to address these issues as it modernises and simplifies the sanctions applied for late payment. Sanctions will only be effective if they encourage customers to pay on time. They are not intended as a means of raising revenue, but instead as a way to help customers understand and meet their payment obligations. MTD) makes no changes to the timing of mandatory tax payments.

### Current late payment sanctions

- 4.4. Currently, there are different late payment sanctions in place for different taxes. The regimes for VAT, Income Tax, and Corporation Tax are outlined below with further details set out in Annex B.
- 4.5. For VAT, the Default Surcharge is a combined late return and late payment sanction. Default Surcharge is a system of escalating surcharges based on the number of occasions a business defaults during a rolling 12 month period, by failing to pay the full amount of VAT, shown on a return, by the due date.
- 4.6. For Income Tax and Class 4 National Insurance contributions, late payment penalties are charged automatically when tax is outstanding on specific dates after the due date. They are not applied if the customer has entered into, and adhered to, a time to pay arrangement with HMRC to pay the taxes due. Late payment interest is also charged for unpaid Income Tax and Class 4 National Insurance contributions.
- 4.7. For Corporation Tax, late payment interest is charged for unpaid tax. No late payment penalties are currently applied for Corporation Tax.

### Objectives for new late payment sanctions

- 4.8. This chapter gives two proposals for late payment sanctions, both of which are intended to support the five principles in paragraph 3.2 by:
  - providing a fair and proportionate response to late payment of tax; and
  - giving adequate opportunity for those who have accidentally underpaid or overlooked a liability to correct this before sanctions apply.

## Customers who cannot engage digitally

- 4.9. Customers will be notified of their penalty position in their digital tax account and HMRC will make separate arrangements to notify customers who cannot engage digitally.

## Scope of this chapter

- 4.10. We considered a points-based system, similar to that proposed for late submission penalties in Chapter 3, but believe that a system which could allow for a number of late payments before a financial sanction is raised would not encourage customers to pay on time, or enter into and adhere to time to pay arrangements. A points-based system would not be a proportionate response to late payment of tax.
- 4.11. With this in mind, we are proposing to treat payment obligations as distinct and separate from obligations to submit information.
- 4.12. We are seeking views on two proposals for new sanctions for paying tax late to HMRC:
- A. the use of penalty interest to be charged on customers who fail to pay in full within fourteen days of the due date, or who before that date have failed to enter into arrangements to pay over an agreed period to which they then adhere
  - B. revision of existing legislation to deliver an aligned penalty regime for income tax, VAT and corporation tax.
- 4.13. In both proposals, HMRC would provide advance notice of payment due dates to help customers pay on time or enter into payment arrangements. For customers who miss the payment due date, HMRC would prompt them through their digital tax account, providing advance notice of the potential for late payment sanctions.
- 4.14. We also propose to maintain current customer safeguards where customers have grounds for a reasonable excuse for late payment and to ensure that reviews and appeals will apply.

## Proposal A: penalty interest

- 4.15. The use of penalty interest was attractive to respondents to [HMRC penalties: a discussion document](#) as it is seen to be proportionate to the period of lateness and the amount of tax outstanding. It should be easily understood by customers.
- 4.16. Currently, late payment interest is charged to customers who do not pay their tax by the due date and have not entered into, and adhered to, time to pay arrangements.
- 4.17. This proposal would introduce and apply a rate of penalty interest in addition to late payment interest. This penalty interest would be charged if tax is outstanding fourteen days after the payment due date and where the customer has not entered into, and adhered to, time to pay arrangements.
- 4.18. We propose 14 days as enough time for customers to either pay in full or enter into time to pay arrangements without incurring penalty interest. The

introduction of penalty interest after 14 days would provide a clear advantage for customers who are willing to comply with their payment obligations.

**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?**

4.19. The penalty rate of interest should be set at a rate to encourage full payment as quickly as possible, and which is higher than that charged for commercial bank loans. A debt owed to HMRC should not be a lower priority than amounts owed to other creditors.

4.20. We propose that penalty interest should not be deductible in calculating taxable income.

4.21. At this stage we are interested in the principles behind the use of a penalty rate of interest as a sanction for late payment. The focus is on getting the model right, so we are not making any proposals here about the level of interest. However it will be helpful for respondents to have an idea of the order of magnitude, and so for illustrative purposes respondents might like to have in mind a rate of penalty interest in the order of 10%.

**Question 4.2: Do you think that charging penalty interest is the right sanction for non-compliance with payment obligations?**

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

4.22. We propose that the penalty rate of interest should fluctuate with changes to the Bank of England base rate. This would maintain the advantages for customers who pay their liabilities early.

**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?**

### **Proposal B: revise and align existing late payment penalty regimes**

4.23. The following paragraphs look at how the provisions within Schedule 56, Finance Act (FA) 2009 might be revised to deliver a proportionate approach to the sanctions for late payment. This includes late payment of Income Tax, Class 4 National Insurance contributions, Corporation Tax and VAT.

4.24. Under Schedule 56, FA2009 the timing of late payment sanctions currently differ for different taxes as follows:

- Income Tax and Class 4 National Insurance contributions: penalties are first incurred 30 days after the due date of the tax

- Corporation Tax: penalties are incurred on the filing date, which is typically 12 months after the end of the accounting period
- VAT: penalties are first incurred 30 days after the due date of the tax.

4.25. The following paragraphs set out two alternative models in which the existing rules could be modified to deliver the objectives stated in paragraph 4.8. The models are based on the assumption late payment sanctions are aligned across different types of tax as the taxes come within the scope of MTD. Before any penalty is charged HMRC will notify customers of the intention to charge a penalty and give customers the opportunity to either pay the tax or enter into a time to pay arrangement.

#### Model 1

- 4.26. Introduce a model based on the Income Tax late payment penalty regime for each of the three taxes coming into scope of MTD.
- 4.27. Income Tax charges three late payment penalties at three different points in time over the course of a 12 month period. As an illustration, the model could be:

*Prompts provided to customer to remind them to pay*

1. *First penalty charged at 5% of tax outstanding at the first penalty date (30 days after the due date)*
2. *Second penalty charged at 5% of tax outstanding at the second penalty date (six months after the due date)*
3. *Third penalty charged at 5% of tax outstanding at the third penalty date (12 months after the due date)*

This would be most effective for annual payment obligations such as income tax and corporation tax.

- 4.28. A period shorter than 12 months would be a more effective way to encourage prompt payment of VAT due quarterly. To reflect more frequent payment obligations, VAT could be liable to two late payment penalties at two different points in time over the course of a quarterly VAT cycle. As an illustration, the model could be:

*Prompts provided to customer to remind them to pay*

1. *First penalty charged at 3% of tax outstanding at the first penalty date (30 days after the due date)*
2. *Second penalty charged at 3% of tax outstanding at the second penalty date (60 days after the due date)*



## Model 2

- 4.29. Introduce a tapered system where the late penalty percentage rate increases the longer the debt remains outstanding. This would encourage customers to fulfil their payment obligations sooner, before a higher penalty rate is reached.

*Prompts provided to customer to remind them to pay*

1. *First penalty charged at 4% of tax outstanding at the first penalty date (30 days after the due date)*
2. *Second penalty charged at 10% of tax outstanding at the second penalty date (six months after the due date)*
3. *Third penalty charged at 15% of tax outstanding at the third penalty date (12 months after the due date)*

As an illustration, this model could be:

- 4.30. As with model 1, a period shorter than 12 months would be a more effective way to encourage prompt payment of VAT due quarterly. VAT could charge two late payment penalties at two different points in time over the course of a quarterly VAT cycle. As an illustration, the model could be:

*Prompts provided to customer to remind them to pay*

1. *First penalty charged at 3% of tax outstanding at the first penalty date (30 days after the due date)*
2. *Second penalty charged at 10% of tax outstanding at the second penalty date (60 days after the due date)*

**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?**

- 4.31. We propose that late payment interest would apply from the due date until the tax is paid in full.

- 4.32. Where a customer has agreed a time to pay arrangement before the date the first penalty could be raised, penalties would not be charged. We need to consider further the circumstances in which HMRC could charge late payment penalties, in the event that time to pay arrangements are cancelled.

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

**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?**

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

## 5. Interest

- 5.1. Late payment interest provides financial compensation to the Exchequer when tax is not paid to HMRC on time. HMRC pays repayment interest on overpayments of tax. These are the basic principles that the government proposes it should continue to follow in future.
- 5.2. Currently, there are different interest rules for the regimes covered by MTD. There is an opportunity to simplify and align the rules around interest, making it clearer to customers when interest is due to or from them. The government plans to take a phased approach to align the interest regimes to ensure a simpler, clearer system in future across the taxes.

### **Income Tax and Class 4 National Insurance contributions (NICs)**

- 5.3. The current interest rules for Income Tax and Class 4 NICs, introduced in 2009 and 2010, are simple, clear and appropriate. In summary, HMRC charges interest on late payment of tax from the date that tax is due until the point that the tax is paid (Section 101 and Schedule 53, Finance Act 2009). HMRC pays repayment interest from the later of the due date and payment date until the date the tax is repaid (Section 102 and Schedule 54, Finance Act 2009).
- 5.4. We propose to continue with these current rules for Income Tax and Class 4 NICs when MTD starts in April 2018.

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

### **VAT and Corporation Tax**

- 5.5. VAT and Corporation Tax currently have different interest regimes to Income Tax and NICs. The government wants tax administration to be as easy as possible for customers to understand and, to enable a simpler system, will consider the alignment of interest rules across income tax, VAT and corporation tax. At this stage, we welcome your initial comments.

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

## 6. Initial assessment of impacts

- 6.1. This chapter sets out our initial assessment of the impacts of the changes proposed in this document. A comprehensive impact assessment for these proposed changes will be published alongside draft legislation once the policy design has been finalised.
- 6.2. The initial assessment of impacts of new requirements for most business both to maintain digital records and provide regular updates to HMRC using digital tools is set out in Chapter 8 of [Bringing business tax into the digital age](#).
- 6.3. We will continue to consult with interested parties throughout 2016 to develop our evidence and insight in a number of the impacts on customers. We welcome comments providing further evidence about the level of impact of the proposed changes set out in this tax administration document, and providing suggestions for how the government can mitigate that impact.

### Impact of compliance proposals (Chapter 2)

- 6.4. MTD will allow us to provide targeted guidance and tailored prompts for customers. In addition, the government has stated that it is not seeking to increase compliance interventions on the basis of regular updates. So we expect there will be fewer compliance interventions and more digital interactions, for example prompts and nudges, to help customers get things right first time.
- 6.5. The proposed changes to compliance legislation to facilitate the introduction of regular updates will allow us to enquire into the information used to calculate a customer's tax position through their End of Year declaration.
- 6.6. Replicating the existing compliance approach in MTD will minimise the impact on HMRC's operations and customers.

### Impact of late submission penalties proposals (Chapter 3)

- 6.7. Under the proposed new late submission penalty, failures to meet a submission obligation will initially attract points rather than penalties. In most cases, no penalty will become chargeable unless enough points are accumulated.
- 6.8. We expect this better targeting of penalties will reduce uncertainty for customers who are trying to comply with their obligations. It should also save time and costs for us and for our customers in resolving queries about penalties.

### Impact of late payment sanction proposals (Chapter 4)

- 6.9. Under the proposed new late payment sanctions, customers will only become subject to a sanction where they have failed to meet a payment obligation, or have failed to enter into, and adhere to, time to pay arrangements.
- 6.10. We expect this better targeting of late payment sanctions will benefit customers who are trying to comply with their obligations. It should also save time and

costs for us and for our customers in resolving queries about the imposition of late payment sanctions.

### **Impact of interest proposals (Chapter 5)**

6.11. We are proposing to maintain the legislation on interest for Income Tax and National Insurance contributions. We therefore expect no cost or impact for customers or HMRC.

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

Questions 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?

# 7. Summary of consultation questions

## Chapter 2

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?

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

Question 2.3: Are there any other options for preserving HMRC's current enquiry powers in MTD?

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

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

## Chapter 3

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?

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?

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?

Question 3.4: At what stage for each of these different submission frequencies should points generate a penalty?

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?

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?

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?

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?

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

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

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

## Chapter 4

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?

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

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

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?

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?

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

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?

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

## Chapter 5

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

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

## Chapter 6

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

Questions 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?

## 8. The Consultation Process: How to respond

This consultation is being conducted in line with the Tax Consultation Framework.

There are five stages to tax policy development:

- Stage 1 Setting out objectives and identifying options
- Stage 2 Determining the best option and developing a framework for implementation, including detailed policy design
- Stage 3 Drafting legislation to effect the proposed change
- Stage 4 Implementing and monitoring the change
- Stage 5 Reviewing and evaluating the change.

This consultation is taking place during stage 2 of the process.

The purpose of the consultation is to seek views on the detailed policy design and a framework for implementation of a specific proposal, rather than to seek views on alternative proposals.

### How to respond

We would like to hear from organisations or individuals on the points raised by this document. A summary of the questions in this consultation is included at chapter 7.

Responses should be sent by 7 November 2016, by e-mail to [MTDTA@hmrc.gsi.gov.uk](mailto:MTDTA@hmrc.gsi.gov.uk)

or by post to:

HM Revenue and Customs  
Making Tax Digital Tax Administration  
Room 1C/06  
100 Parliament Street  
London  
SW1A 2BQ

Telephone enquiries should be made to Sue Harper on 03000 578939 (from a text phone prefix this number with 18001).

The consultation will run for 12 weeks from 15 August 2016 to 7 November 2016.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC Inside Government](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

## Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals with, among other things, obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs (HMRC).

HMRC will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

## Consultation Principles

This consultation is being run in accordance with the Government's Consultation Principles. The period of consultation runs until 3 November 2016.

If you are interested in attending a meeting at this stage to discuss this work, please send an email to [MTDTA@hmrc.gsi.gov.uk](mailto:MTDTA@hmrc.gsi.gov.uk).

The Consultation Principles are available on the Cabinet Office website: <http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue and Customs, 100 Parliament Street, London, SW1A 2BQ.

Email: [hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk](mailto:hmrc-consultation.co-ordinator@hmrc.gsi.gov.uk)

Please do not send responses to the consultation to this address.



## Annex A: Additional detail: Income Tax Self Assessment compliance powers

Compliance power	Statutory reference	Main features to be maintained under MTD
Enquiries	<p>Taxes Management Act (TMA) 1970:</p> <p>ss9A, 12AC, 28A, 28B, 28ZA-ZE, Schedule 1A, para 5 &amp; 7</p>	<ul style="list-style-type: none"> <li>• Scope limited to all of the customer’s tax affairs that are included in the Self Assessment return, or required to be included;</li> <li>• Scope can also be limited to one aspect of the return, not prejudicing right to expand enquiry to cover full return;</li> <li>• Only one enquiry can be made into a Self Assessment return or amendment;</li> <li>• Enquiry can generally only be made within 12 months of the delivery of the customer’s Self Assessment return (‘enquiry window’);</li> <li>• Where customer amends return, enquiry may only be into the amendment and its effect if enquiry window has closed for return as a whole;</li> <li>• Customer may amend return during enquiry, but has effect on tax assessment after enquiry has closed;</li> <li>• HMRC may only amend the Self Assessment during an enquiry where there is likely to be a loss of tax without the amendment;</li> <li>• Customer may apply to the Tribunal to instruct HMRC to close enquiry;</li> <li>• Closure notice from HMRC setting out conclusions and making amendments required to close enquiry;</li> <li>• Customer and HMRC can jointly refer questions to the Tribunal on the subject matter of the enquiry, the answer to which are binding;</li> </ul>
Determinations	TMA 1970: S28C	<ul style="list-style-type: none"> <li>• Where customer fails to provide a Self Assessment return by statutory filing date, HMRC can make a determination of the amount of tax chargeable and payable;</li> <li>• Determination can be superseded by customer’s Self Assessment, within 12 months of that determination being made;</li> <li>• Determination must be made within 3 years of the statutory filing date;</li> </ul>

Corrections	TMA 1970: S9ZB	<ul style="list-style-type: none"> <li>• HMRC can correct obvious errors in a Self Assessment return including arithmetical errors, or those where other information held by HMRC indicates an error;</li> <li>• HMRC must issue notice of correction, and customer may reject it;</li> </ul>
Information	Finance Act (FA) 2008: Schedule 36	<ul style="list-style-type: none"> <li>• Information notice requiring information in addition to Self Assessment return can be issued by HMRC to a customer (or a third party) if it is reasonably required for the purpose of checking the customer's tax position for a tax year/period of assessment;</li> <li>• An information notice relating to a tax year/period can either be issued before a Self Assessment return has been submitted by a customer, or if they have already provided a return, only if: <ul style="list-style-type: none"> <li>- An enquiry has been made into that return;</li> <li>- There is reason to suspect the return may be incomplete (i.e. a potential Discovery assessment); or</li> <li>- The information is required for a different tax or other deductions like PAYE.</li> </ul> </li> <li>• An information notice can only be issued to a third party with the approval of the customer or permission from the Tribunal;</li> </ul>
Inspection	FA 2008: Schedule 36	<ul style="list-style-type: none"> <li>• HMRC may enter a business property to check the premises, business assets and business documents in order to check the customer's tax position;</li> <li>• Areas of the property that are used solely as a dwelling are excluded from the inspection powers;</li> <li>• Inspection must be either: <ul style="list-style-type: none"> <li>- At a time agreed in advance by the customer; or</li> <li>- With 7 days notice (and at a reasonable time); or</li> <li>- At any reasonable time with the approval of an authorised HMRC staff member or the Tribunal.</li> </ul> </li> </ul>
Discovery assessments	TMA 1970: S29	<ul style="list-style-type: none"> <li>• If HMRC discovers that a previous Self Assessment return has omitted income, makes too low an assessment or claimed a relief that is too high (or where a claim for repayment of tax</li> </ul>

		<p>should not have been made), it may make a 'Discovery assessment' for the loss of tax;</p> <ul style="list-style-type: none"><li>• An assessment for loss of tax can be made where it was caused by:<ul style="list-style-type: none"><li>- An error that was careless or deliberate; or</li><li>- A customer failing to fully explain their tax position to HMRC;</li></ul></li></ul> <p>But not later than</p> <ul style="list-style-type: none"><li>- Four years after the tax year; or</li><li>- Six years after the tax year if the error was careless; or</li><li>- Twenty years after the tax year if the error was deliberate or a person failed to properly disclose an avoidance scheme.</li></ul>
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# Annex B: Additional details: current late filing and payment penalties

## Income tax Self Assessment

The deadlines for filing returns are 31 October (for paper returns) and 31 January (for online filing) after the tax year. The consequences of failing to file by the due date increase the longer the return is outstanding, as set out in the table below.

Amount of time overdue	Penalty	Additional detail
Missed deadline	£100	Chargeable as soon as the return is late
Three months	+ £10 per day	The daily penalty applies up to a maximum of 90 days, that is, £900
Six months	+ £300 or 5% of tax	Whichever is greater
12 months	+ £300 or 5% of tax	Whichever is greater  A higher 12-month penalty applies where the customer deliberately withholds information. If the withholding of information was deliberate, but not concealed, the penalty is the greater of £300 or 70%. If it was deliberate and concealed, the penalty is the greater of £300 and 100%. These penalties are higher if the information concerns certain offshore matters.  Reductions are possible to the higher 12-month penalties for disclosure from the customer.

The deadline for the payment of Income Tax and Class 4 National Insurance contributions is 31 January, after the tax year. The consequences of late payment of income tax are set out in the table below.

Trigger date for late payment penalties	Penalty percentage of tax due
30 days late	5% of tax due at that date
6 months late	5% of tax due at that date
12 months late	5% of tax due at that date

## VAT

The VAT Default Surcharge is a combined late-return and late-payment sanction.

The rules for dealing with the first and second defaults differ depending on whether the VAT-registered business's taxable turnover is above or below £150,000. Those with a taxable turnover of less than £150,000 receive a 'help' letter first, followed by a surcharge liability notice (a warning) when the second default occurs. For those with a taxable turnover of £150,000 or more the surcharge liability notice is issued the first time the business defaults. Once the surcharge liability notice has been issued, a penalty may be charged on the amount of VAT paid late calculated according to an escalating surcharge rate (shown in the table below) each time a default occurs within a rolling 12 month period. Rate escalation is geared to late payment only (rather than a late return). Each default (late return or payment) extends the 12 months period.

<b>Number of defaults (late payment or late return) during the rolling 12 month period</b>	<b>Surcharge if turnover is less than £150,000</b>	<b>Surcharge if turnover is £150,000 or more</b>
1st	No surcharge but if the customer defaults within 12 months they enter a surcharge period	No surcharge but the customer enters a surcharge period
2nd	No surcharge but the customer enters a surcharge period	2% (or no surcharge if it's less than £400)
3rd	2% (or no surcharge if it's less than £400)	5% (or no surcharge if it's less than £400)
4th	5% (or no surcharge if it's less than £400)	10% or £30 (whichever is more)
5th	10% or £30 (whichever is more)	15% or £30 (whichever is more)
6 or more	15% or £30 (whichever is more)	15% or £30 (whichever is more)

## Corporation Tax

The deadline for filing is 12 months from the end of the company's accounting period. Similar to Income Tax Self Assessment, the consequences of failing to file by the due date increase the longer the return is outstanding. The table below sets out the consequences for Corporation Tax.

<b>Amount of time overdue</b>	<b>Penalty</b>	<b>Additional details</b>
Missed deadline	£100	These amounts are increased to £500 and £1,000 where a company files late for the third consecutive accounting period.
Three months	+ £200	
18 months from the end of the accounting period	10% of the unpaid tax if the return is delivered within two years after the end of the accounting period 20% of the unpaid tax in any other case	