



# Association of Accounting Technicians response to the HMRC consultation document “Making Tax Digital: Tax Administration”

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## 1. Introduction

- 1.1. The Association of Accounting Technicians (AAT) is pleased to have the opportunity to respond to the consultation paper the HMRC consultation document “Making Tax Digital: Tax Administration”, published on 15 August 2016.
- 1.2. AAT is submitting this response on behalf of our membership and for the wider public benefit of achieving sound and effective administration of taxes.
- 1.3. AAT has added comment in order to add value or highlight aspects that need to be considered further.
- 1.4. AAT has focussed on the operational elements of the proposals and has provided opinion on the practicalities of implementing the measures outlined.
- 1.5. Furthermore, the comments reflect the potential impact that the proposed changes would have on SMEs and micro-entities, many of which employ AAT members or would be represented by our 4,250 licensed accountants.
- 1.6. AAT is happy to participate in future Making Tax Digital (MTD) consultations and its members are willing and able to participate in any MTD pilots in order to assist with the smooth implementation of this important programme.

## 2. Executive summary

- 2.1. **AAT wholeheartedly supports the ambition to make our tax system the most digitally advanced tax system in the world.** However, AAT is concerned about the timetable for implementation.
- 2.2. **AAT is concerned about the costs MTD will place on businesses and taxpayers.** A recent survey of AAT licensed accountants found that well over three quarters were concerned about software costs and time spent familiarising themselves with the new processes. Almost half are concerned about hardware costs and other, as yet unknown, costs.
- 2.3. **It has been difficult to fully respond to each of the six MTD consultation documents given so much technical uncertainty remains.** HMRC must delay implementation if significant technical difficulties arise rather than proceeding regardless. Proceeding under such circumstances risks both reputational damage and reduced compliance. Universal Credit (UC) serves as a recent reminder of a less than successful government IT programme where pressing ahead despite the consequences has caused difficulties for recipients, financial losses for the taxpayer, reputational damage for all involved parties and a legacy of mistrust for future large scale government projects. The National Audit Office described the UC programme as beset by “weak management, ineffective control and poor governance” with £34m written off on failed IT programmes and at least one hundred million more on the programme as a whole. It is vital that HMRC learns the lessons from examples such as this.
- 2.4. **AAT favours a phased implementation programme for MTD.** The threshold should be set at £83,000 (the current VAT threshold) falling to £11,000 (the personal allowance) over a three year period. This will help the business community whilst simultaneously helping HMRC achieve the best possible outcome. This proposal is explained in full at

3.83-3.84 of AAT's response to "Making Tax Digital: Bringing business tax into the digital age."

- 2.5. **AAT agrees that legislation should be amended to replicate current enquiry powers and that existing safeguards must be maintained** but strongly differ with HMRC on the issue of how long customers should be allowed to familiarise themselves with the various changes before penalties become payable.
  - 2.6. **On the issue of penalties AAT believes that points should be immediately appealable.** The only logical reason for preventing immediate appeals is administrative convenience for HMRC. AAT is also of the view that the potentially disproportionate system of fixed penalties could be avoided by working on a percentage basis penalty instead.
  - 2.7. **AAT strongly agrees with HMRC that a single points total that covers all of the customer's submission obligations is the right approach.** Having different points for different areas would make the system unnecessarily complex and bureaucratic.
  - 2.8. **AAT members do not agree with the HMRC proposal 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.** Only 3.5% of AAT licensed accountants agree that this was an appropriate length of time to wait until penalty interest becomes payable. Most practitioners believe that 30 days is required (47%) and this is closely followed by 46% who believe customers should have 60 days or longer to pay. In short, with over 95% of AAT licensed accountants believing that 14 days is not an appropriate length of time, AAT urges HMRC to look at this issue again.
  - 2.9. **AAT firmly believes in a simplified tax system. As a result, it is AAT's view that simplifying and aligning the rules around interest, making it clearer to customers when interest is due to or from them, is an opportunity that should not to be missed.** AAT also agrees that the 2009 and 2010 interest rules for Income Tax and Class 4 NICs are simple, clear and appropriate and the proposal to continue with them is welcome.
  - 2.10. **It is clear that significant costs will be incurred by agents due primarily to the time consumed in familiarisation and dealing with these changes to the penalty regime.** However, AAT believes that such costs specifically relating to penalties and interest are likely to be greater only in the first year or two of the MTD programme as agents and their clients get to grips with the new requirements. Furthermore, there are potential cost savings as the work flow for agents evens out across the year (quarterly) and well-designed software, apps etc. lead to further time saving. This point is separate to the one made in relation to the broader cost implications as AAT has outlined in its response to the "Making Tax Digital: Bringing business tax into the digital age" consultation document.
  - 2.11. **AAT and its members can and will play a vital role in helping make a success of MTD.** AAT members are already educating and raising awareness of MTD amongst their client base (and adopting a phased implementation will give them much needed time to do so). In addition AAT is utilising various channels to provide information, advice and guidance to members on successful MTD implementation.
3. **AAT response to the HMRC consultation document "Making Tax Digital: Tax Administration"**

## 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?

- 3.1. AAT agrees it is important that HMRC can check any of the information that is included in a customer's End of Year declaration and recognises that the customer's digital records may legitimately form part of any enquiry. As a result it appears sensible to replicate

HMRC's current compliance powers to make enquiries into this information and amending existing legislation to allow this is the easiest way of doing so.

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

- 3.2. Yes. Customers' safeguards must be maintained under MTD, including the right for customers to request a review or appeal against HMRC decisions and appropriate time limits for HMRC to enquire into a customer's tax position.

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

- 3.3. There do not appear to be any other options for preserving current enquiry powers other than those listed.

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

- 3.4. An AAT focus group established to examine the issue of MTD and tax administration reached general agreement that existing enquiry powers are being used far more effectively than in the past. This approach has seen the targeting of those who are deliberately seeking to avoid paying the correct amount of tax rather than those who make innocent mistakes and has proved effective and proportionate. AAT is therefore comfortable with such powers being replicated.
- 3.5. AAT members believe that compliance must be light touch – at least to start with – whilst businesses get to grips with the new MTD environment in which they are being expected to operate.

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

- 3.6. No additional comments.

### **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?**

- 3.7. A very large majority of AAT members who responded to the AAT survey believe that 12 months is an insufficient length of time for customers to familiarise themselves with the new obligations, with only 16% believing this is an appropriate amount of time. Instead, 44% of AAT members would like at least 24 months and a further 40% would like even longer.
- 3.8. It is also worth noting that not a single member who completed the survey supported a time frame of less than 12 months.

**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?**

- 3.9. Yes. AAT believes that this is an appropriate period and these views were supported by attendees at the AAT focus group which discussed the merits of both longer and shorter periods but favoured the proposed approach.

**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?**

- 3.10. There is little more to add given the customer's digital tax account will show how many points they have accumulated, enabling them to see how close they are to receiving a penalty. As many users will not frequently view their digital tax account it would also be useful if customers were to receive an email or text alert when they are close to receiving a penalty.

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

- 3.11. The consultation document suggests that the number of points incurred for the failed obligation might need to vary depending on the frequency of the obligation. However, it's not clear why this would need to be the case. In the interests of consistency and fairness surely the number of points should not vary. When points reach a certain level they should generate a penalty, irrespective of whether monthly, quarterly or annual obligations.

**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?**

- 3.12. Existing penalties are sufficient. The fact it may take more time for a penalty to become owing due to the occasional nature of the tax owed is immaterial.

**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?**

- 3.13. Absolutely. Having different points for different areas would make the system unnecessarily complex and bureaucratic.
- 3.14. It is essential that customers only need to look at a single points total as such simplicity provides customers with certainty as well as a simple understanding of what is required to ensure compliance.
- 3.15. The fact a customer may accrue points for one kind of submission obligation but be charged a penalty the first time they were late on a different submission obligation is far from complicated and provided this fact is made clear at the outset would be widely understood and accepted.

**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?**

- 3.16. Yes, HMRC proposals as outlined in paragraphs 3.25 to 3.28 appear to be a sensible way in which to operate a single points total. It has the merits of being easy to understand, simple, fair and likely to be effective.

**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?**

- 3.17. The escalator model could work but would not be favoured for the reasons acknowledged in the consultation document i.e. for monthly obligations points could accumulate very quickly and the customer might have insufficient time to heed and act upon the warning.
- 3.18. It would not make sense or adhere to the simplification agenda to have a different system based on the frequency of reporting obligations either.

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

- 3.19. A fixed amount penalty can be unfair and unreasonable if insufficient to deter bad behaviour. Whilst a few hundred pounds could be an enormous sum to many SMEs it is

barely noticeable to most larger organisations. This potentially disproportionate system of fixed penalties could be avoided by working on a percentage basis penalty instead.

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

3.20. Not necessarily. This would likely produce unintended consequences for many businesses because some SME and even micro-businesses enjoy very large turnovers and profits where as some limited companies have a very small turnover and very small profits. Again, a more reliable approach would be to work on a percentage of turnover basis. This would ensure all are treated equally.

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

3.21. AAT believes that points should be immediately appealable. The only logical reason for preventing immediate appeals is administrative convenience for HMRC.

3.22. There may be a significant lapse in time between penalties. As a result, only being able to appeal on the third occasion may mean the appellant is unable to adequately remember what happened on the first or second occasion or unable to provide sufficient evidence due to the passage of time.

3.23. In addition, having the unwanted stigma of a penalty that may have been issued by mistake and is deemed unfair or undeserved but for which there is no right of appeal is certainly not treating customers fairly.

## **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?**

3.24. Only 3.5% of AAT licensed accountants agree that 14 days is an appropriate length of time to wait until penalty interest becomes payable. Most practitioners believe that 30 days is required (47%) and this is closely followed by 46% who believe customers should have 60 days or longer to pay. In short, with over 95% of AAT licensed accountants believing that 14 days is not an appropriate length of time, AAT urges HMRC to look at this issue again.

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

3.25. Yes, in most cases charging penalty interest, which is effectively a fine, has an impact on concentrating customer's minds and encouraging them to make payments instead of harming their own financial interests. In essence, they prove an effective deterrent for many.

3.26. However its success is not universally the case, with significant numbers unlikely to be deterred by this solely punitive approach.

3.27. A number of AAT members have suggested that some form of educational programme from HMRC may better work here. An analogy being the Speed Awareness course taken by approximately one million people per annum in lieu of penalty points on a driving license.

3.28. However, it is worth noting that whilst these courses enjoy widespread support from police, government and road safety campaigners, there is no hard evidence that they actually change behaviour. As a result any educational alternative to penalty interest must be fit for purpose and demonstrably change behaviour i.e. increase future compliance.

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

3.29. Again, the Speed Awareness Course example given above may be worth examination.

**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?**

3.30. HMRC proposes that the penalty rate of interest should fluctuate with changes to the Bank of England base rate.

3.31. Instead it may want to consider having a fixed amount of interest plus the Bank of England base rate. This would replicate the system for late commercial payments where the interest charged if one business is late paying another for goods services has to pay 'statutory interest' which is 8% plus the Bank of England base rate for business to business transactions.

**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?**

3.32. There are advantages and disadvantages to both model 1 and model 2 but on balance model 2 would appear a more proportionate response to the late payment of tax due.

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

3.33. Yes. Late payment penalties relate to exactly that, missing payment due dates. As a result it is reasonable to change the timing to reflect the frequency of payment 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?**

3.34. AAT has no further suggestions on the design principles.

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

3.35. Model 2 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?**

3.36. AAT firmly believes in a simplified tax system. As a result, AAT asserts that simplifying and aligning the rules around interest, making it clearer to customers when interest is due to or from them, is an opportunity that should not to be missed.

3.37. AAT also agrees that the 2009 and 2010 interest rules for Income Tax and Class 4 NICs are simple, clear and appropriate and the proposal to continue with them is welcome.

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

3.38. The consultation document highlights that VAT and Corporation Tax currently have different interest regimes to Income Tax and NICs but that HMRC will consider the alignment of interest rules across income tax, VAT and Corporation Tax. This may be easier said than done but as an organisation that it is wholly committed to a simpler tax system we would actively encourage HMRC to align interest regimes across all taxes as soon as is reasonably practicable. This would offer certainty and simplicity to taxpayers as well as HMRC.

## 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.**

- 3.39. Costs will be incurred by agents primarily due to the time consumed in familiarisation and dealing with the new late filing and late payment penalty models as well as the proposals to align interest across taxes. This in turn will lead to increased costs being passed on to consumers. Some businesses may be unwilling or unable to pay these increased costs and this consequently could result in loss of income through lost business for agents.
- 3.40. Despite the above, AAT believes that such costs relating to penalties and interest are likely to be greater only in the first year or two of the MTD programme as agents and their clients get to grips with the new requirements.
- 3.41. In fact there are potential cost savings as the work flow for agents evens out across the year (quarterly) and well-designed software, apps etc. lead to further time saving. This provides the potential for less staff time and even headcount reductions as one very digitally engaged AAT licensed accountant demonstrated at our recent focus group.

**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?**

- 3.42. No. As far as AAT is aware, these proposals should not have a significant impact on any groups with legally protected characteristics.

## 4. About AAT

- 4.1. AAT is a professional accountancy body with approximately 50,000 full and fellow members and 80,000 student and affiliate members worldwide. Of the full and fellow members, there are over 4,250 licensed accountants who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types.
- 4.2. AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

## 5. Further information

If you have any questions or would like to discuss any of the points in more detail then please contact Aleem Islan, AAT Technical Consultation Manager, at:

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