



Chartered
Institute of
Taxation

Excellence in Taxation

**Draft Legislation Finance Bill 2018-2019
Clause 30 & Schedule 11 - Penalties for Failure to Make Returns etc and
Clause 32 & Schedule 14 – VAT: repayment interest
Comments by the Chartered Institute of Taxation**

1 Introduction

- 1.1 We are pleased to provide some written comments on the draft legislation in Finance Bill 2018-2019 Clause 30 and Schedule 11, and Clause 32 and Schedule 14. We also met with HMRC in August 2018 to discuss the draft legislation in Clauses 30 to 32 and Schedules 11 to 14 and would refer HMRC to the discussions we had at that meeting in conjunction with this written response.
- 1.2 As an educational charity, our primary purpose is to promote education in taxation. One of the key aims of the Chartered Institute of Taxation (CIOT) is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. Our comments and recommendations on tax issues are made solely in order to achieve this aim; we are a non-party-political organisation.
- 1.3 Our stated objectives for the tax system include:
- A legislative process which translates policy intentions into statute accurately and effectively, without unintended consequences.
 - Greater simplicity and clarity, so people can understand how much tax they should be paying and why.
 - Greater certainty, so businesses and individuals can plan ahead with confidence.
 - A fair balance between the powers of tax collectors and the rights of taxpayers (both represented and unrepresented).
 - Responsive and competent tax administration, with a minimum of bureaucracy.

2 Schedule 11 – Penalties for Failure to make Returns etc

- 2.1 **Para 2 tables** – we query whether the same ‘relevant tax’ could have the same number in each of the three tables. Whilst this would mean that in some tables there would be a number without a ‘relevant tax’ next to it since not every tax is in every column, we think this would simplify the Schedule overall.
- 2.2 **Para 3 (8)** – we think some clarity will be necessary generally regarding the interaction of the End of Period Statement (EOPS) and the final declaration, as we are hearing from our members that this is an area where there is already confusion - i.e. not just regarding how it can affect when and what late filing points are awarded but also how the end of year filing obligations will vary from taxpayer to taxpayer depending on their own personal circumstances. HMRC will need to get the message out to taxpayers and advisers at large at the right time. CIOT can help with this.
- 2.3 **Paras 6 & 18** – the legislation permits HMRC a good length of time to issue points and penalties. In practice, if the issue of points and penalties is automated, there would seem to be no reason why they should not be issued as soon as the failure has occurred. In our view HMRC’s systems should be set up so that this is the default position so as to enable the taxpayer to have time to put things right quickly and file their next return on time i.e. to encourage compliance.
- 2.4 Given the likelihood of there being a substantial number of contested points and penalties for HMRC to deal with, we would suggest that HMRC consider making it mandatory to first request a statutory review by HMRC before an appeal can be lodged with the tribunal. This process should help accelerate the resolution of disputes and significantly ‘de-clog’ the system before appeals reach Tribunal stage. The proportion of VAT default surcharges overturned on review clearly demonstrates that an automated penalty system cannot make the necessary value judgements around reasonable excuse and special circumstances and some sort of ‘filter’ is required to avoid the tribunal system being overwhelmed.
- 2.5 We understand from our discussions with HMRC that the taxpayer will be able to notify HMRC of a reasonable excuse in advance of a submission failure, for example one caused by a software or hardware issue. This will be very useful. This facility must also be available to agents (as must the facility to appeal points and penalties on clients’ behalf) and should be built into the systems under development.
- 2.6 **Para 26** - giving the Tribunal the power to consider not just the appeal against the penalty but at the same time the points awarded leading to the penalty sounds like a flexible and practical approach. Taxpayers will all react differently to getting a point (some may appeal immediately, others won’t), so the system needs to be designed as far as possible to ensure it runs smoothly and fairly for all concerned.

3 Schedule 14 – VAT: repayment interest

- 3.1 **Para 3** - we remain concerned at the provisions to exclude interest for periods during which HMRC enquire into a return (12E) (especially considering the removal of the Repayment Supplement ‘incentive’ for HMRC to carry out and conclude enquiries timeously), and for periods during which there are outstanding VAT returns (12F).
- 3.2 Unlike most other taxes, VAT is part of a business’s working capital. The above provisions do not recompense the business for the time cost of the loss of funds, and

(notwithstanding the aims of achieving consistency across the interest regime) actually introduce inconsistencies which are not present in other taxes.

3.3 We would suggest that a fairer approach would be:

- In relation to 12E, to pay interest in relation to periods for which there are enquiries by HMRC, on amounts of tax which (after HMRC's enquiries have been concluded) are properly repayable; and
- In relation to 12F, to pay interest on the 'net' amounts outstanding, when those amounts can be finally calculated.¹

4 The Chartered Institute of Taxation

4.1 The Chartered Institute of Taxation (CIOT) is the leading professional body in the United Kingdom concerned solely with taxation. The CIOT is an educational charity, promoting education and study of the administration and practice of taxation. One of our key aims is to work for a better, more efficient, tax system for all affected by it – taxpayers, their advisers and the authorities. The CIOT's work covers all aspects of taxation, including direct and indirect taxes and duties. Through our Low Incomes Tax Reform Group (LITRG), the CIOT has a particular focus on improving the tax system, including tax credits and benefits, for the unrepresented taxpayer.

The CIOT draws on our members' experience in private practice, commerce and industry, government and academia to improve tax administration and propose and explain how tax policy objectives can most effectively be achieved. We also link to, and draw on, similar leading professional tax bodies in other countries. The CIOT's comments and recommendations on tax issues are made in line with our charitable objectives: we are politically neutral in our work.

The CIOT's 18,000 members have the practising title of 'Chartered Tax Adviser' and the designatory letters 'CTA', to represent the leading tax qualification.

The Chartered Institute of Taxation
31 August 2018

¹ As currently drafted, even an outstanding earlier repayment or nil return would preclude interest from being paid on a properly submitted repayment return.