CHARTER TAX

Helpsheet

NEW VAT PENALTY SYSTEM FROM 1 JANUARY 2023

Background

A new penalty regime for VAT will take effect for VAT periods beginning on or after 1 January 2023.

This new system will replace the current default surcharge system and will consist of two different penalty systems – one for late submission of returns and one for late payment of liabilities.

Late submission penalties

Taxpayers will no longer receive an automatic late filing penalty if they fail to meet a submission deadline. The new system is intended to increase compliance with deadlines, without punishing taxpayers who make an occasional mistake, instead penalising only those who persistently make late submissions.

Penalty threshold

A point will be incurred when a submission is missed. At a certain threshold of points, determined by the frequency of submission, a penalty of £200 will be charged. The penalty threshold will be as follows:

Submission frequency	**Penalty threshold**
Annual	2 points
Quarterly	4 points
Monthly	5 points

Once a threshold has been reached, a £200 penalty will be charged for that late submission, and every subsequent late submission until the conditions for the points to be reset to zero have been met (see below).

One important change from the current system is that repayment returns will also be subject to a potential penalty.

Expiration of points

To prevent historic late submission combining with occasional recent late submission to cause a penalty, points will expire after two years, unless you go over the penalty threshold.

Points will not expire when a taxpayer is at the penalty threshold. Instead, after a tax payer has reached the penalty threshold, the points will be reset to zero once the following conditions have been met:

1. All submission deadlines are met on time within a period of compliance, determined by the submission frequency; and

2. All submissions due within the preceding 24 months have been submitted, even if these were submitted late.

The periods of compliance are:

Submission frequency	Period of compliance
Annual	24 months
Quarterly	12 months
Monthly	6 months

Late payment penalties

Up to 15 days overdue

No penalty will be charged if the tax is paid within the first 15 days of the due date.

Between 16 and 30 days overdue

Payments that are between 16 and 30 days late will trigger a penalty of 2% of the amount outstanding at Day 15. However, to help businesses transition to the new regime, HMRC will not apply this rule during 2023 unless payments are more than 30 days late.

31 days or more overdue

Payments that are 30 days late or more will trigger a first penalty of 2% of the amount outstanding at Day 15 plus 2% penalty of the amount outstanding at Day 30 (a total of 4% if nothing has been paid).

In addition, a second penalty will be charged on the amount outstanding. This penalty accrues on a daily basis, at a rate of 4% per annum.

Time-to-Pay arrangements

Taxpayers will have the option of requesting a Time-to-Pay (TTP) arrangement, by approaching HMRC and agreeing a schedule for paying the outstanding tax. From a penalty position, the TTP arrangement, if agreed by HMRC, has the same effect as paying the tax, and so stops further penalties accruing.

HMRC discretionary powers

HMRC will have discretionary powers to reduce or not charge a penalty for late payment, and not charge a penalty for late submission, if they consider it appropriate to do so in the particular circumstances of the taxpayer.

Reviews and appeals

A taxpayer has the right to appeal against each late payment or late submission penalty, as well as late submission points. This can be both through an internal HMRC review process and an appeal to the First Tier Tax Tribunal.

Late payment interest and repayment interest

Late payment interest will be charged on tax that is outstanding after the due date, irrespective of whether late payment penalties have also been charged. Interest will apply form the date the payment was due until the date it is received by HMRC, including late payment under a TTP arrangement. Interest will be calculated at 2.5% + the Bank of England base rate.

Repayment interest will be paid on any tax due to be repaid from either the last day it was due to be received or the day it was actually received, whichever is later, until the day the repayment is made. Interest will be calculated at the Bank of England base rate less 1% (with a minimum rate of 0.5%).

Further extension of the new penalty regime

The new penalty regime will be extended to Making Tax Digital for Income Tax Self Assessment (MTD ITSA) reporting requirements from April 2024 (although at the time of writing there is speculation that the introduction of MTD ITA is being delayed from April 2024 to April 2026) and traditional Self-Assessment for Income Tax (ITSA) from April 2025.

Points tallies will apply to each submission type, therefore a point incurred for VAT will not impact the points incurred for ITSA.

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We undertake to apply reasonable care and skill in the provision of advice. We do not guarantee that tax planning steps will in all circumstances achieve a certain legal effect.