

## Further written evidence submitted by the Association of Taxation Technicians (ATT) (FB12)

### Finance Bill 2017-19: Clause 60

#### Digital reporting and record-keeping for income tax etc

#### Penalty for failure to comply with record-keeping requirements

#### Overview

1. Clause 60 contains provisions for introducing digital reporting and record-keeping requirements for Income Tax in a new Schedule A1 to be inserted in TMA 1970. Our focus in this written evidence is on the provision concerning the penalty for failure to comply with the obligation to keep business records *digitally* for income tax purposes.
2. The penalty provision is in paragraph 12 of Schedule A1 and is reproduced in the appendix below for ease of reference. It stipulates that *the amount of the penalty must not exceed £3,000*.
3. We believe that the particular penalty provision:
  - sits uncomfortably with the wider penalty regime which is being designed to accommodate the introduction of HMRC's *Making Tax Digital* (MTD) programme;
  - will not provide HMRC with a sufficiently flexible penalty structure to encourage compliance with the digital record-keeping requirements; and
  - should be completely redesigned before the introduction of the digital record-keeping requirements for income tax purposes which the Government has indicated will not be before April 2020.

#### Background

4. The various and disparate penalty provisions which previously applied in relation to non-compliance with the many provisions of the Taxes Acts were very substantially modernised and consolidated by the Finance Acts of 2007, 2008 and 2009.
5. A notable exception to this major restructuring of penalties was the penalty for failing to *keep all such records as may be requisite for the purpose of enabling him to make and deliver a correct and complete return for the year or period* which is contained in section 12B(5) Taxes Management Act (TMA) 1970. The section had been inserted into TMA 1970 by Finance Act 1994.
6. The provision contained in paragraph 12 of the Bill appears to owe its design to section 12B(5), TMA – it has the same monetary limit and the paragraph 12 penalty cannot apply where a section 12B(5) penalty applies. The key difference between the two is that section 12B(5) applies where there has been a failure to *keep* records; paragraph 12 applies where there has been a failure to keep records *digitally*.

#### HMRC Consultation

7. On 20 March 2017, HMRC opened a consultation entitled *Making Tax Digital - sanctions for late submission and late payment*<sup>1</sup>. In section 2.4 of the consultation, the first stated principle reads:

---

<sup>1</sup> See: <https://tinyurl.com/y9emc6kc> The Government's response to the consultation has yet to be announced.

“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.”

8. The consultation then invited comments on three alternative proposals for sanctions in respect of late submission of quarterly MTD returns and late payment of tax. Common to all three alternatives was the concept that a penalty would not be imposed for a first failure. In this way, the emphasis would be on encouraging compliance as distinct from making businesses feel ‘punished for making honest mistakes’.

#### **HMRC’s Business Records Checks**

9. Between 2011 and 2015, HMRC operated a programme of *Business Records Checks*. The only sanction available to HMRC where inadequate records were discovered was that provided by section 12B(5), TMA. It is significant that rather than seeking to impose such penalties, HMRC very sensibly adopted a policy of giving relevant businesses three months to get their records in order. That practice had much more in common with modern concepts like the suspension of penalties for careless errors<sup>2</sup> and the principles advanced in the March 2017 consultation (see above) than how penalties were viewed back in 1994 when section 12B(5) was introduced.

#### **Conclusion**

10. As the digital record-keeping requirements for income tax will not be introduced before April 2020, we think that the opportunity should be taken in the intervening period to design a sanction for failure to comply with those requirements which:
  - integrates with whatever penalty regime is decided upon for late submission of MTD quarterly returns and tax payments;
  - provides HMRC with a practical statutory ability to encourage businesses to comply with digital record-keeping requirements; and
  - avoids giving businesses the impression that they are being punished for failing to manage the imposed conversion of their record-keeping to a digital system.
11. It would be very helpful to know as soon as possible that consideration is being given to the complete redesign of the paragraph 12 penalty provision with a view to meeting the above objectives.

#### **Appendix:**

##### **1. Paragraph 12 as drafted:**

- “12 (1) This paragraph applies where requirements imposed by regulations under paragraph 11 for any period are not complied with.
- (2) The person, or in the case of a partnership each relevant partner, is liable for a penalty.
- (3) “Relevant partner” means any person who was a partner in the partnership at any time during the period in question.

---

<sup>2</sup> See: Finance Act 2007, Schedule 24, paragraph 14.

(4) The amount of the penalty must not exceed £3,000.

(5) A person or relevant partner is not liable to a penalty under this paragraph in relation to a period if the person or relevant partner is liable to a penalty under section 12B(5) in relation to that period.”

## **2. The Association of Taxation Technicians**

The Association is a charity and the leading professional body for those providing UK tax compliance services. Our primary charitable objective is to promote education and the study of tax administration and practice. One of our key aims is to provide an appropriate qualification for individuals who undertake tax compliance work. Drawing on our members' practical experience and knowledge, we contribute to consultations on the development of the UK tax system and seek to ensure that, for the general public, it is workable and as fair as possible.

Our members are qualified by examination and practical experience. They commit to the highest standards of professional conduct and ensure that their tax knowledge is constantly kept up to date. Members may be found in private practice, commerce and industry, government and academia.

The Association has over 8,300 members and Fellows together with over 5,000 students. Members and Fellows use the practising title of 'Taxation Technician' or 'Taxation Technician (Fellow)' and the designatory letters 'ATT' and 'ATT (Fellow)' respectively.

*October 2017*