

# Tax compliance framework

## **Proposed legal and policy changes 2017-2019**

A consultation document outlining the Taxes Office's proposals to Ministers for changes to the legal framework, to improve voluntary compliance with the taxes laws

Closing date for comments: 16 June 2017

- Subject of this consultation:** The consultation examines the tax compliance framework, particularly the penalties for error, avoidance, and evasion. It also discusses administrative penalties for failing to file and pay, and covers the introduction of charging late payment interest on tax debts.
- Scope of this consultation:** Views are invited on the proposed changes to the tax compliance framework. We would also welcome comments on related matters that are not explicitly covered in this document.
- Who should read this:** We would like to hear comments from anyone who is affected by these proposed changes, including individuals, businesses, employers, tax agents and accountants, and representative bodies.
- Duration:** The consultation will run for 12 weeks from 27 March 2017 to 16 June 2017.
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- Note that it is our intention to be able to publish responses. Please indicate if you do not wish your comments to be published.
- After consultation:** A summary of responses will be presented to Ministers to inform the way ahead. The States Assembly will consider draft legislation in 2017, 2018, and 2019.

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## 1. Introduction

- 1.1. The Taxes Office is responsible for administering both the Income Tax (Jersey) Law 1961 (the “Income Tax Law”) and the Goods and Services Tax (Jersey) Law 2007 (the “GST Law”). The Income Tax Law is especially outdated in its compliance provisions, and the two laws frequently set out different sanctions for the same non-compliant behaviours.
- 1.2. In order to modernise and harmonise the two laws, the Comptroller of Taxes has advocated a new Taxes Administration Law. The timeline for the new law envisages its introduction in January 2020. This timeline is dependent on the successful implementation of the new taxes IT system, which will allow us to administer our compliance framework much more effectively, and enable us to move more Taxes Office functions online. For example, we expect personal taxpayers to be able to file their tax returns online in 2019 or 2020, followed a year later by corporates. The shift to an online environment will enable us to process and understand data more quickly. An increasing amount of correspondence will also be undertaken online, meaning less paper and faster resolutions to problems for taxpayers.
- 1.3. There are some compliance measures that do not rely heavily on new technology – particularly consideration of ‘behavioural’ penalties for providing incorrect information. A behavioural penalty is where the behaviour of the taxpayer will determine the level of penalty available. For example, deliberately avoiding one’s obligations will result in a higher penalty than where the behaviour has been careless. The Taxes Office is proposing that Ministers and the States Assembly consider introducing these measures by January 2018, immediately following the closure of the 2017 Taxes Disclosure Opportunity.
- 1.4. Another key theme of this consultation document is the move away from a reliance on criminal penalties, which are costly to enforce and can only be levied by a court, to a civil penalty regime. The Taxes Office rarely uses its criminal powers – primarily because the process is expensive and time consuming – so the move to civil penalties will allow the Comptroller to administer penalties more efficiently and Jersey to recover the costs of non-compliant taxpayer behaviour.
- 1.5. This document discusses the broader ‘compliance framework’, that is, the legal and regulatory framework, in addition to internal policies and processes, in which the Taxes Office conducts its compliance activities. For the avoidance of doubt, references in this document to ‘tax’ also refer to Long Term Care (LTC) contributions, which the Taxes Office collect on behalf of the Social Security Department. The document makes recommendations and poses questions for further discussion.
- 1.6. In introducing a civil penalty regime, careful consideration will have to be given to safeguarding the appeal rights of those affected by the penalties. While we seek views on safeguarding in this document, we are also requesting advice from the Law Officers’ Department.

- 1.7. Following the conclusion of this consultation, the Taxes Office will submit its final proposals to the Minister for Treasury and Resources, for consideration for Budgets 2018 and 2019.

## 2. Incorrect declaration penalties

### Background

- 2.1. Article 137 of the Income Tax Law sets out the penalties for fraudulently or negligently:
  - (a) Delivering an incorrect statement under Article 16 (i.e. a tax return);
  - (b) Making an incorrect statement, return or declaration in connection with any claims for any allowance, deduction or relief; and
  - (c) Delivering incorrect accounts.
- 2.2. If a person commits an offence under Article 137, they will be liable to a fine, or a fine and imprisonment (where the offence is committed fraudulently). These are criminal penalties, so require a criminal investigation to be carried out by the Taxes Office and/or the Police, and resulting fines can only be levied by a court. But in many cases where a person has made an incorrect statement negligently, it may not be appropriate to prepare a court case: for example, where the costs of preparing a case exceed the potential additional revenue to be gained; or where it is obvious there was no criminal intent.
- 2.3. It is our proposal to move away from the current reliance on these criminal sanctions. Whilst we intend to undertake an increasing number of compliance interventions in the near future, we do not wish to take up valuable court time when the taxpayer's behaviour does not warrant it. A shift towards a civil penalty regime will allow the Comptroller to levy penalties more quickly and ultimately recover the cost of non-compliant behaviour.
- 2.4. Currently, where the Taxes Office wishes to impose a penalty for an incorrect declaration, without taking criminal action, it relies on the power contained in Article 137(4), which allows the Comptroller to accept a 'pecuniary settlement' instead of instituting court proceedings. One of the main benefits of using Article 137(4) is that it allows the Taxes Office's compliance team to bring investigations to a swift conclusion.
- 2.5. The disadvantage of this approach is that any resulting penalty charged on a person are not calculated transparently, because the Taxes Office does not publish its methodology for calculating what is termed 'penalties and interest'. We consider that taxpayers and Taxes Office staff would benefit from clear policies and guidance that set out when and why penalties are chargeable, and how they are calculated.

### Behavioural penalties

- 2.6. Most tax administrations throughout the world charge incorrect return penalties based on the behaviour of the person concerned. Appendix A of this document shows examples of behavioural penalties from a number of jurisdictions. While they differ, the common theme is that the level of penalty is determined by the taxpayer's behaviour. We recommend adopting the international best practice of applying

behavioural civil penalties for incorrect declarations made to the Taxes Office, to be in place by January 2018. This will have immediately followed the closure of the 2017 Disclosure Opportunity, which will have given all taxpayers the opportunity to correct previous under-declarations.

- 2.7. We consider there should be a clear distinction between penalties where a taxpayer's behaviour ranges from carelessness to a deliberate intention to evade tax. There should be no penalties for a taxpayer who has made an innocent error.
- 2.8. In formulating a behavioural penalty matrix for Jersey to achieve that aim, Table 2.1 provides a transparent framework that clearly delineates defined types of behaviour. The category of negligence has purposefully been avoided, because it can often blur the boundary with deliberate behaviour.

**Table 2.1 – Percentage penalties for an incorrect declaration**

<b>Behaviour</b>	<b>Standard penalty*</b>	<b>Definition</b>
<b>Innocent error</b>	0%	Reasonable care has been taken
<b>Careless</b>	20%	Not taking the care that a reasonable person in same circumstances would take
<b>Grossly careless</b>	50%	High degree of carelessness and disregard for consequences. More likely than not to result in wrong tax
<b>Deliberate</b>	100%	Intentional disregard for the law; fully aware of tax obligation

\*Penalty is a percentage of the potential lost revenue. The potential lost revenue is the additional amount of tax that is due or payable as a result of correcting the inaccuracy.

*Question 1: Do you agree with the broad categories of behaviour, and the associated standard penalties? If not, what other categories would be more appropriate? Particular regard should be had to the tables in Appendix A.*

- 2.9. We consider that Comptroller should have the power to increase or decrease the standard penalty. Significant reductions should be available for voluntary disclosures, in order to promote better voluntary compliance. Penalties should also be reduced where good cooperation has been demonstrated by the taxpayer under enquiry, whereas a penalty might be increased if it is a repeat offence.
- 2.10. Clear internal guidelines for Taxes Office staff would be agreed and published to ensure consistency. The guidelines should provide examples, and set out circumstances under which reductions and increases on the standard penalty would be allowed.
- 2.11. Table 2.2 expands on Table 2.1. It provides further detail, including penalties for repeat offences of up to 50% more than the standard penalty. It also makes a distinction where a taxpayer has made a voluntary disclosure, in order to incentivise

recalcitrant taxpayers to do the right thing. The definition of a voluntary disclosure is when the person making the disclosure has no reason to believe that the Taxes Office has discovered or is about to discover the incorrect statement.

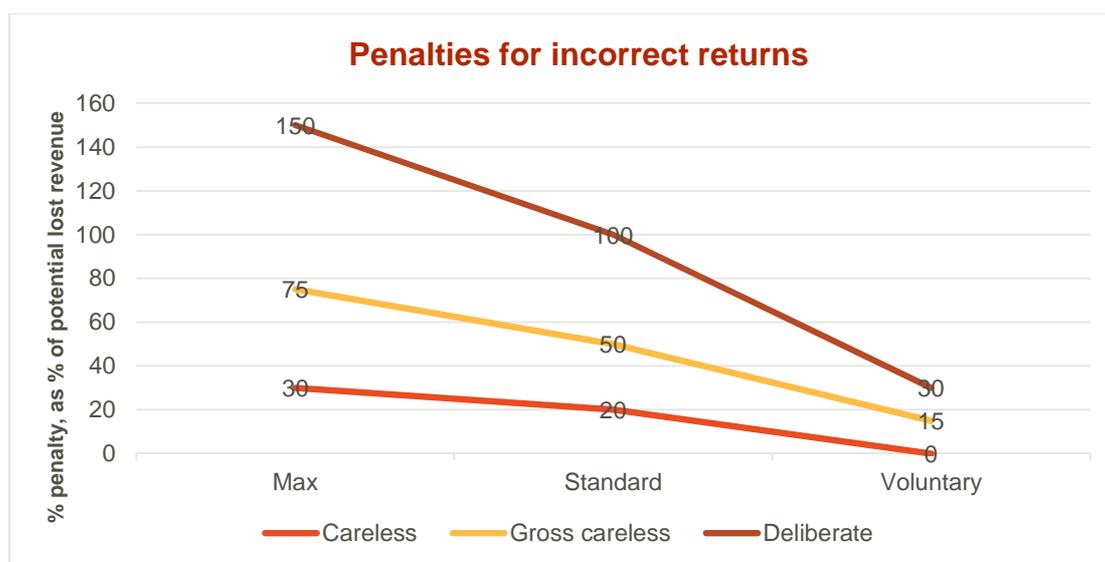
**Table 2.2 – Detailed percentage penalties for an incorrect declaration**

Behaviour	Standard penalty	Max. penalty	Voluntary disclosure (minimum penalty)
Innocent	0%	0%	0%
Careless	20%	30%	0%
Gross carelessness	50%	75%	15%
Deliberate	100%	150%	30%

\*Penalties are a percentage of potential lost revenue. The potential lost revenue is the additional amount of tax that is due or payable as a result of correcting the inaccuracy.

2.12. The graph below (Table 2.3) shows the decrease in the proposed penalties where the defined behaviours are demonstrated.

**Table 2.3**



*Question 2: Do you consider the proposed increases and reductions to the standard penalty to be appropriate? What increases and reductions would you propose instead?*

## Criminal offences

2.13. Although the majority of cases will be dealt with under the new civil penalty regime, it will be appropriate to continue to take certain cases to court. We envisage that cases where repeated non-compliance has taken place, and in serious cases of tax fraud, we will work collaboratively with the Joint Financial Crimes Unit (JFCU), to investigate criminality.

### Definition: Joint Financial Crimes Unit

The main purpose of the Joint Financial Crimes Unit (JFCU) is to combat economic crime, including fraud, money laundering and terrorist financing. Its three functions are:

- The Island's Financial Intelligence Unit (FIU)
- Financial Crime Investigations; and
- Asset Recovery.

### Investigations into suspected fraud

- 2.14. In the UK, in cases where a criminal investigation has not been started, HM Revenue and Customs (HMRC) is able to investigate using the [Code of Practice 9](#) (COP9) investigation of fraud procedure. The recipient of a COP9 notice is given a time-limited opportunity to make a full disclosure. If HMRC does not consider the recipient to have made a full disclosure, they may begin a criminal investigation that could result in prosecution.
- 2.15. We recommend a Jersey-equivalent to COP9, and do not envisage having to make any changes to the law in order to introduce it.
- 2.16. To compensate for the shift towards civil penalties and away from criminal (which would naturally fall into the public domain), the Taxes Office is also considering whether to propose to Ministers and the States Assembly the option to deny anonymity in cases where a taxpayer has accepted a civil penalty in respect of very serious tax evasion.

*Question 3: In principle, do you support the denial of anonymity in cases where a taxpayer has accepted a civil penalty in respect of very serious tax evasion? Comments are welcomed on the definition of 'very serious tax evasion'.*

### 3. Administrative penalties

- 3.1. Administrative penalties are different from penalties for making an incorrect declaration. They are aimed at encouraging better compliance in respect of submitting returns and information, and at paying promptly.
- 3.2. Taxpayers should be discouraged from missing deadlines with penalties that are consistent and easy to understand. Currently there are various provisions across the different tax types that set out different penalties for similar actions. Some are civil penalties administered by the Taxes Office, whereas others are criminal penalties that can only be dealt with by a court.
- 3.3. Table 3.4 at the end of this section summarises the proposed changes.

#### Penalty units

- 3.4. We propose to introduce a fixed ‘penalty unit’ (PU) that equates to a fixed sum of money. All references in the tax laws would refer to PU, which themselves could be governed by regulations, similar to the criminal Standard Scale of Fines. This would make it quicker and easier to adjust the level of penalties over time, most likely by the Comptroller by Direction, or by Ministerial Order.
- 3.5. We recommend an initial PU of £50. All further references to fixed penalties in this document will refer to PU.

*Question 4: Do you agree that the introduction of a ‘penalty unit’ is appropriate? We welcome comments on any issues that you envisage with a penalty unit regime.*

#### Failure to register (income tax, ITIS, and GST)

- 3.6. Although a ‘new taxpayer’ is required to provide the Comptroller with certain information within one month of commencing employment,<sup>1</sup> there are no specific enforcement provisions contained in the relevant article.

#### Definition: ‘New taxpayer’

A person who first commences employment or becomes a sub-contractor, in Jersey, on or after 1 January 2006; or

A person who returns to Jersey and takes up employment on or after 1 January 2015, after having been non-resident in Jersey for at least one year of assessment immediately before returning.

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<sup>1</sup> Income Tax Law, Article 41H

- 3.7. New residents are currently required to register with the Social Security Department, which in turn informs the Taxes Office. Therefore, we do not consider it necessary to introduce either enforcement powers in respect of Article 41H, or a separate registration requirement and associated penalty for failing to register, solely for tax purposes. Instead, we propose to maintain only the requirement for individuals to furnish the Taxes Office with a tax return, when they are chargeable to income tax (see section on failure to file tax returns, below).

*Question 5: Do you agree that it is unnecessary to introduce a separate registration requirement and associated penalty, solely for tax purposes?*

- 3.8. We do not consider there to be a significant risk in capturing new business registrations, as there are sufficient reporting mechanisms in place, via the Social Security Department and the Jersey Financial Services Commission.
- 3.9. With regard to ITIS, an employer (or building contractor) must notify the Comptroller within one month of becoming an employer, or they will have committed an offence and be liable to a level 3 fine (£10,000).<sup>2</sup> We do not consider this to be proportionate to the offence, and propose to introduce a civil penalty of at least 12 PU (£600), for all employers, irrespective of the number of employees it has.
- 3.10. The GST law provides for a penalty for failing to notify the Comptroller when the £300,000 turnover threshold is reached.<sup>3</sup> The penalty is currently the higher of £200 and 10% of the relevant GST. We recommend increasing the penalty to at least 12 PU (£600), but to maintain the *ad valorem* 10% element.

*Question 6: Do you agree that the increase (to £600) of the penalty for failing to register, either as an employer or for GST, is appropriate? If not, what penalty do you consider to be more appropriate?*

- 3.11. Where an individual has a level of income such that the process of issuing a tax return and completing an assessment is considered poor value for money, the Taxes Office will write to the individual informing them their file is being closed and to contact the Taxes Office if their income situation changes (in excess of inflation). Since there is currently no enforcement action available to the Taxes Office, we recommend introducing a legal obligation either (i) to notify the Comptroller of an increase in income, or (ii) furnish a tax return where the income warrants it. We also recommend a tax-geared penalty in the event an individual fails to do so.

*Question 7: Do you agree that the legal onus should be on the taxpayer, rather than the Comptroller, to take the appropriate steps when the circumstances alter to the extent that a return is required (for example, after the Comptroller has closed the taxpayer file)?*

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<sup>2</sup> Income Tax Law, Article 19A

<sup>3</sup> GST Law, Article 73

## Failure to file a return

- 3.12. There are three main types of return that the Taxes Office requires throughout the year: tax returns (personal and corporate income tax); employer ITIS returns; and GST returns. Each will be dealt with in turn below.

### *Failure to file: Personal tax returns*

- 3.13. Personal income tax returns submitted late attract a one-off penalty of £250.<sup>4</sup> We recommend increasing the initial personal tax return penalty to 6 PU (£300). This increase is in line with inflation (the previous increase being in 2009). We propose to maintain the current abatements available in the Income Tax Law<sup>5</sup> that reduce the penalty under certain circumstances, for example when a person is not ultimately liable to tax.
- 3.14. A tax-geared penalty for the late delivery of personal tax returns was considered, i.e. the higher the tax liability, the higher the penalty. However, some taxpayers would inevitably be less likely to understand the financial consequences of late submission, so in the interests of simplicity and clarity, we considered an initial fixed penalty to be fairer.
- 3.15. Once the deadline for submission has passed, there is currently little incentive for a taxpayer to submit the return. In order to drive better compliance, taxpayers who have missed the initial deadline should be incentivised to furnish the return by a daily or monthly charge that increases the longer the failure to deliver the return continues.
- 3.16. We suggest a monthly penalty of one PU (£50) that begins one month after the original deadline date, for a maximum of 11 months. The maximum penalty would therefore plateau at 17 PU (£850), and from that point would attract interest (see Section 4) and would be subject to legal action.

*Question 8: Is an initial penalty of 6 PU (£300), followed by monthly penalties of one PU (£50) per month, an appropriate sanction for late personal income tax returns? If not, what alternatives, such as daily penalties or tax-geared penalties, do you consider to be more appropriate?*

- 3.17. The Income Tax Law allows the Taxes Office to take legal action against a person who has not submitted returns.<sup>6</sup> This is a power that the Taxes Office uses infrequently, with the last case going to court in November 2010.<sup>7</sup> The amount of reminders that were sent to the taxpayer, along with the delay in commencing legal action, was specifically criticised in the judgment in AG v da Silva, which stated: “an excessive number of reminders spread over a long period is doing no one any favours.”

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<sup>4</sup> Income Tax Law, Article 17A

<sup>5</sup> Income Tax Law, Article 17A (3) and (4)

<sup>6</sup> Income Tax Law, Article 136

<sup>7</sup> [https://www.jerseylaw.je/judgments/unreported/Pages/\[2010\]JRC216.aspx](https://www.jerseylaw.je/judgments/unreported/Pages/[2010]JRC216.aspx)

- 3.18. We therefore propose a policy to begin the process of bringing legal action when a person has not submitted an income tax return up to 12 months following the original filing deadline. This would go some way to addressing the concerns raised in the da Silva judgment.

#### *Failure to file: Company income tax returns*

- 3.19. The current penalty for a company filing a late return is the same as for personal income tax returns (£250), but the filing deadline is 31 December in the year following the year of assessment. We propose an initial penalty of 6 PU (£300), followed by monthly penalties of 2 PU (£100), for a maximum of 11 months. We consider the higher monthly penalties for companies, in comparison to individuals, to be proportionate.
- 3.20. We also recommend mirroring the proposed policy for personal income tax returns, with regard to taking legal action where a return has not been submitted up to 12 months following the original filing deadline.

*Question 9: Do you agree that the additional monthly penalties (of £100) for late company income tax returns are appropriate? If not, what further penalties would be more appropriate?*

#### *Failure to file: ITIS returns*

- 3.21. An employer has two separate duties in respect of its employees: (1) they must deduct monies from their employees and remit the deductions to the Taxes Office; and (2) they have to submit an ITIS return to the Taxes Office every month, detailing each employee's wage and the ITIS deducted (if any).<sup>8</sup> This sub-section discusses ITIS returns, rather than the remittance of deductions, which is covered later.
- 3.22. While the failure to remit employees' ITIS deductions is the more serious offence, the failure to submit an ITIS return can still create significant problems. If an employer fails to submit a return, the employee is not allocated the ITIS credit, regardless of whether the employer has actually remitted the monies. This can result in the Taxes Office unnecessarily pursuing payment, or issuing inaccurate balances. It can also cause unnecessary distress to a taxpayer.
- 3.23. If an employer fails to file an ITIS return, they are subject to the provisions of Article 136, which means a court can impose an unlimited criminal fine, and a further level 2 fine (£1,000) for each day the failure continues.
- 3.24. The Income Tax Law states that employers must submit ITIS returns by "the time limited by the notice".<sup>9</sup> This limitation is unclear, especially so when employers are filing returns online, and allows the Comptroller to determine the filing deadline at his

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<sup>8</sup> Income Tax Law, Article 20

<sup>9</sup> Income Tax Law, Article 20

discretion. We therefore recommend including in the law a clear 15 day deadline for the submission of ITIS returns.

- 3.25. While the majority of employers demonstrate good compliance, there are a minority who persistently miss deadlines, often failing to submit returns for extended periods of time. Non-compliant employers also create a significant and disproportionate amount of additional work for the Taxes Office. There are no civil penalties available to use in respect of a non-compliant employer.
- 3.26. We consider that the Taxes Office needs to be able to apply civil penalties to employers who miss the monthly filing deadline, in common with most jurisdictions.
- 3.27. The first option is to charge a fixed penalty in respect of any employer who fails to file on time, which would bring us into line with Guernsey. If this option is chosen, we recommend a fixed penalty of 6 PU (£300).
- 3.28. However, employers can vary in size, from sole traders with one or two occasional employees, to multinational companies with many hundreds of staff and dedicated payroll teams. In comparison to a late personal tax return, therefore, the argument for a fixed penalty for a late ITIS return is weaker.
- 3.29. An alternative option is to break down employers into four categories: micro, small, medium, and large. The number of employees per category is based on the current Labour market statistics, produced by the Statistics Unit.<sup>10</sup> Applying a greater penalty to larger employers is justified because their non-compliance affects more people, and it is reasonable to expect a higher standard from companies that have dedicated payroll teams. An initial penalty would be applied if a return is not submitted on time, in accordance with Table 3.1.

**Table 3.1 – Initial penalties for employers filing late ITIS returns, by no. of employees**

Employer size	No. of employees	Initial penalty
Micro	<5	2 PU (£100)
Small	<20	5 PU (£250)
Medium	<100	10 PU (£500)
Large	100+	20 PU (£1,000)

- Level of penalty to be defined in primary law
- Four categories of employer size to be defined by Ministerial Order

*Question 10: In respect of late ITIS returns, is it reasonable to introduce penalties for employers based on the number of employees it has, rather than having a fixed penalty? Is the proposed penalty table (3.1) fair?*

- 3.30. It is not clear whether a geared penalty alone would be sufficient to deal with the majority of non-compliant employers; it could be a first step. There is an option also

<sup>10</sup> <https://www.gov.je/Government/JerseyInFigures/EmploymentEarnings/Pages/LabourMarket.aspx>

to impose daily or monthly penalties, in line with the proposed penalties for personal income tax returns.

*Question 11: Do you agree that it is fair to introduce a daily or monthly penalty in addition to the initial penalty for late ITIS returns? If not, what alternatives do you propose?*

- 3.31. We are considering incentivising compliance by waiving a ‘first offence’ penalty. If an employer has submitted the previous 12 months’ ITIS returns on time, then its first failure thereafter should not attract an initial penalty. The first failure would reset the employer’s compliance history ‘clock’ to zero. A second or further failure within a 12 month period would then attract a penalty.

*Question 12: We invite views on the principle of waiving ‘first offence’ penalties for employers, and whether consideration should be given to a broader implementation of this principle.*

- 3.32. Taking inspiration from the Social Security Department, consideration has also been given to permit the Taxes Office to contact directly the employees of an employer who fails to file ITIS returns on time. Contact could be made after an employer has failed to submit a return for 2 consecutive months. This would have the effect of creating bottom-up pressure on employers.

*Question 13: Do you agree that the Taxes Office should be permitted to contact directly employees in cases where an employer has failed to submit ITIS returns? Is a non-compliant period of 2 months appropriate?*

### **Failure to file: GST returns**

- 3.33. GST returns are usually submitted quarterly. If a business submits a GST return late, it is liable to a £50 “surcharge” on the amount of GST it is required to pay in respect of the period to which the return relates.<sup>11</sup>
- 3.34. Given that businesses are only required to register for GST when their turnover exceeds £300,000, we are of the view that the current £50 surcharge is too low to be an effective disincentive to not filing. The simplest option is to increase the fixed penalty to a figure that is more likely to have a deterrent effect, for example 12 PU (£600). This figure is double the proposed penalty for the late filing of a personal income tax return.
- 3.35. There is a second option: to differentiate GST late return penalties in relation to the size of the business, in a similar way to the ITIS proposals, above. Rather than penalties being based on number of employees, however, it would be logical to categorise businesses according to turnover, and levy larger penalties on larger non-compliant businesses, as demonstrated in Table 3.2. Research would have to be conducted to determine the appropriate banding of small, medium, and large businesses.

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<sup>11</sup> GST Law, Article 74

**Table 3.2 – Penalties for GST registered businesses filing late quarterly GST returns**

Business size	Turnover (example)	Initial penalty
Small	<£600,000	8 PU (£400)
Medium	<£1,500,000	16 PU (£800)
Large	£1,500,000+	24 PU (£1,200)

*Question 14: In respect of late GST returns, do you consider (1) a fixed penalty; or (2) a differentiated penalty based on turnover, to be likely to be more effective and/or proportionate to the non-compliant behaviour?*

- 3.36. As with employer ITIS returns, it is unclear whether a higher initial penalty alone will deter persistent offenders. It is therefore prudent to consider introducing additional monthly penalties in cases of continued non-compliance.

*Question 15: In respect of late GST returns, do you agree there should be further monthly penalties, in addition to the initial penalty, when the failure continues? Are there any other options, such as daily penalties, you think we should consider?*

- 3.37. If a company does not file its GST returns on a quarterly basis, we propose to apportion the penalties. For example, a business filing on a monthly basis would receive a penalty of one-third of the quarterly penalty; a business filing on an annual basis would receive a penalty 4 times the quarterly penalty.

## Failure to pay

- 3.38. This section deals with the provisions available to the Taxes Office in the event that a taxpayer fails to make a payment on time. It does not cover the charging of late payment interest, which is included in section 2 of this paper.

### *Failure to pay: Personal income tax*

- 3.39. Currently, if a personal or corporate taxpayer fails to pay their income tax liability on time they are subject to a late payment surcharge of 10%.<sup>12</sup> This is not applied when an outstanding balance is below £50, or in cases where a taxpayer pays 70% or more of their liability by ITIS.
- 3.40. With reference to personal income tax, the two main problems with the current arrangements are: (1) only non-ITIS taxpayers (i.e. mainly self-employed and pensioners, both of whom pay their tax by way of two lump sum payments each year) are subject to the surcharge; and (2) the flat 10% penalty is a one-off charge, so like the late filing penalty, there is little incentive for a taxpayer to make the payment once the surcharge deadline has passed.

<sup>12</sup> Income Tax Law, Article 411

- 3.41. In order to incentivise taxpayers to pay, we propose to maintain the 10% surcharge and to introduce further 5% surcharges at 3 and 6 months following the original deadline. The 5% surcharges would be based on the balance outstanding at the 3 and 6 month dates, and would also be subject to the £50 *de minimis* rule.
- 3.42. Where a taxpayer has a ‘deferred payment plan’ (sometimes known as a ‘time to pay’ arrangement) that has been agreed by the Taxes Office, the Comptroller will be permitted to waive the 5% surcharges (but not interest charges – see Section 4).

#### *Failure to pay: Corporate income tax*

- 3.43. Although corporate entities are less likely to incur the surcharge, for consistency we propose to mirror the proposed changes to the personal income tax regime, in bringing in further 5% surcharges at 3 and 6 months after the initial deadline.

*Question 16: In respect of late personal and corporate income tax payments, do you agree that the proposed additional 5% surcharges will promote better compliance? What alternatives, if any, do you think we should consider?*

#### *Failure to pay: Employer ITIS deductions*

- 3.44. Since 2006, employees have been required to hand their effective rate notice to their employer. The employer must deduct the appropriate percentage and remit the monies to the Taxes Office within 15 days of the end of each month.<sup>13</sup> This is how the majority of people in Jersey pay their income tax. Employers who deduct monies from the wages of their employees but do not subsequently remit them to the Taxes Office should be significantly penalised – it is not the employer’s money to use.
- 3.45. The seriousness of this offence is reflected in the current law: a court can impose an unlimited fine.<sup>14</sup> To date, however, the Taxes Office has not taken legal action against an employer for failing to remit the monies deducted from its employees. The main reason for this is the time taken to prepare a case for the Law Officers’ Department. Instead, the Taxes Office raises an estimate, based on previous months’ ITIS submissions, and obtains a court judgment against the employer for the amount if it is not paid.
- 3.46. We propose to keep the current 15 day deadline for remitting ITIS deductions, and introduce new civil penalties for employers who fail to do so. We have had to take into consideration the fact that employers who do not remit ITIS are also likely to have not filed an ITIS return. As a result, they are often going to be liable to two separate penalties.
- 3.47. We consider that the fairest way to impose a late payment penalty (and to be consistent with other late payment penalties) is to charge a certain percentage of the amount due. This means larger employers are likely to face larger penalties if they do

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<sup>13</sup> Income Tax Law, Article 41B (5)

<sup>14</sup> Income Tax Law, Article 41B (9)

not remit monies deducted from their employees' salaries. We recommend an initial penalty of 10% of the amount due. For the biggest employers, this could potentially be a significant amount. Our records show that the biggest employers tend to have a good ITIS compliance record and are therefore less likely to be affected.

- 3.48. ITIS deductions are not, and are at no point, the employer's monies. Therefore we consider the one-off penalty to be insufficient on its own. Deducting money from an employee's wage and not remitting the amount to the Comptroller is a serious offence. We therefore propose to introduce monthly penalties of 5%, commencing one month following the initial deadline date, in respect of ITIS balances that go unpaid. As before, in cases of continued non-compliance a criminal sanction will continue to be a realistic prospect.

*Question 17: For employers who continue to fail to remit ITIS deductions, do you consider a monthly 5% penalty to be reasonable? If not, what measure would you propose instead?*

### **Failure to pay: GST**

- 3.49. If a business fails to pay its quarterly GST bill on time, it is subject to a surcharge of 2.5%. The figure used to be 10% – in line with the personal income tax late payment surcharge. However, it was deemed more equitable to create a 2.5% surcharge for each quarter, because a business could suffer four separate surcharges in the course of one year.
- 3.50. We propose that the initial penalty needs to revert to 10%, and that each penalty should only be charged on the quarter to which it relates.
- 3.51. In order to harmonise the late payment regime, we propose to mirror the proposed income tax measures (non-payment of ITIS deductions is a more serious offence), to introduce 5% penalties at 3 months and 6 months after the initial payment date.

### **Pensions schemes**

- 3.52. Occupational pension scheme managers are required to provide information to the Comptroller outside of the requirements to deliver a return under Article 16 of the Income Tax Law. The Income Tax (Jersey Occupational Pension Schemes) (Jersey) Order 2014 sets out the information to be provided, but does not provide a compliance framework through which enforcement action can be undertaken.

*Question 18: Is there any reason why the proposed compliance framework and civil penalty regime (see Table 3.4 at the end of this section) cannot be extended to the pension sector?*

### **Penalty interest**

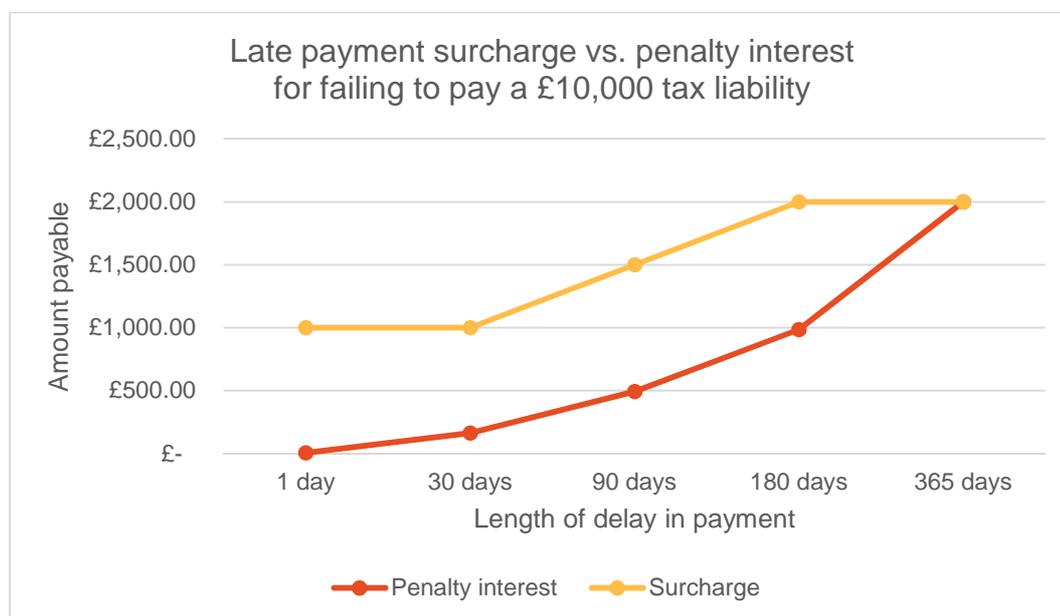
- 3.53. As an alternative to a revised the late payment surcharge (see Recommendation R09), consideration can be given to the imposition of 'penalty interest'. This is similar

to a proposal made in the HMRC consultation ‘Making Tax Digital: Tax Administration’.<sup>15</sup>

3.54. The main appeal of penalty interest is that the penalty payable is more proportionate to the lateness of the action. In other words, for every day that a payment is withheld, the surcharge increases. For the avoidance of doubt, penalty interest would be chargeable in addition to late payment interest (see section 4).

3.55. The graph below (Table 3.3) shows the gradual increase in penalty interest (charged at 20% per annum) over the course of one year, in contrast to the ‘stepped’ nature of the surcharge, in respect of an unpaid tax liability of £10,000. The disadvantage of penalty interest is that it may not provide a sufficient incentive to make a payment on or before the due date.

**Table 3.3**



*Question 19: Is the charging of late penalty interest a realistic alternative to the surcharge regime? Are there any alternatives we should consider?*

<sup>15</sup> Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/546001/Making\\_Tax\\_Digital-Tax\\_administration-consultation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/546001/Making_Tax_Digital-Tax_administration-consultation.pdf)

**Table 3.4 – Summary of current and proposed administrative sanctions**

<b>Failure to register</b>	<b>Current</b>	<b>Proposed</b>
<b>Income tax</b>	None	None
<b>ITIS</b>	Criminal level 3 fine (£10,000)	Maintain criminal sanction; New civil penalty - 12 penalty units (£600)
<b>GST</b>	Higher of £200, and 10% of GST	Maintain criminal sanction; New civil penalty - higher of 12 penalty units (£600), and 10% of GST
<b>Failure to file</b>	<b>Current</b>	<b>Proposed</b>
<b>Income tax</b>	Criminal sanction; £250 one-off civil penalty	Maintain criminal sanction, but policy to refer more cases to AG; New civil penalty - 6 penalty units (£300) initially; then 1 penalty unit (£50) per month thereafter for max. 11 months
<b>ITIS</b>	Unlimited criminal fine, followed by criminal level 2 fine each day	Maintain criminal sanction; New civil penalty - 6 penalty units (£300) initially, OR initial penalty based on employer size; Potential additional monthly penalties
<b>GST</b>	£50 surcharge	12 penalty units (£600) initially, OR initial penalty based on turnover of business; Potential additional monthly penalties
<b>Failure to pay</b>	<b>Current</b>	<b>Proposed</b>
<b>Income tax</b>	10% one-off surcharge	10% initially 5% at 3 and 6 months
<b>ITIS</b>	Unlimited criminal fine	10% initially 5% each month thereafter
<b>GST</b>	2.5% surcharge	10% initially 5% at 3 and 6 months

## 4. Statutory interest

- 4.1. Interest is not currently charged by the Taxes Office on any outstanding debt, either in respect of income tax or GST. However, a repayment supplement is added to repayments made by the Taxes Office in cases that have been under appeal, at a rate of 0.03% per month.
- 4.2. The vast majority of jurisdictions charge interest on outstanding tax debts, and add credit interest to repayments. The charging of interest itself should not be considered a penalty, but reflects the time value of money. As a principle, it should not be waived or subject to compromise. This includes cases where a deferred payment arrangement has been reached.
- 4.3. The purpose of charging interest is to discourage *de facto* 'borrowing' from the government, by failing to pay tax, and to encourage the settling of debts in a timely manner.
- 4.4. We propose to charge daily interest on all outstanding debts, compounded each month, across all tax-types. That means personal income tax (including LTC contributions and any other charges administered by the Taxes Office), corporate income tax, GST, and deductions made by employers under ITIS. We envisage interest charges to commence in January 2019 or 2020, alongside the introduction of online services for personal taxpayers.
- 4.5. We further propose that all outstanding debt at 31 December 2018 (or 2019) will bear interest from that date.

*Question 20: The 'Long-Term Tax Policy' document from September 2014<sup>16</sup> proposes a monthly interest charge, compounded if it remains unpaid. Do you consider a daily or monthly interest charge to be more appropriate? (assuming there are no IT considerations)*

- 4.6. We recommend that the rate be linked to a base rate, for example the Bank of England (BoE) official bank rate, plus a certain additional percentage. We envisage the Minister for Treasury and Resources being able to adjust the rate by Order, in accordance with external factors.
- 4.7. In order to disincentivise individuals and businesses from borrowing from the taxpayer, we have considered the merits of charging an interest rate above the commercial rates offered by the UK clearing banks. The lowest rates currently available in the UK are between 3% (for loans of £15,000+) and 10% (for loans of £1,000-£2,000). With reference to the current UK interest rate on late commercial payments,<sup>17</sup> we tentatively propose to charge interest on outstanding tax debts at a rate of 8% above the BoE base rate.

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<sup>16</sup> <http://www.statesassembly.gov.je/AssemblyReports/2014/R.133-2014.pdf>

<sup>17</sup> <https://www.gov.uk/late-commercial-payments-interest-debt-recovery/charging-interest-commercial-debt>

*Question 21: We invite comments on the proposed debit interest rate of 8% above the BoE base rate.*

- 4.8. We recommend interest is chargeable from the day following the original due date. We considered a grace period before which interest is charged, but believe a grace period would have the effect of undermining the purpose of the deadline. We also considered a *de minimis* level below which interest would not be charged. However, a *de minimis* would compromise the concept of the time-value of money; it may also encourage a taxpayer with multiple debts to move money across tax types in order to avoid an interest charge.

*Question 22: Do you agree that interest should be charged from the day following the original due date? Comments on a grace period and a de minimis would also be appreciated.*

- 4.9. A repayment supplement will continue to be added in cases that have been appealed. The current rate of 0.03% per month (equating to 0.36% per annum) appears to us to be about right in the current climate, but in order to align the repayment rate policy with that of the debit interest rate, we propose a daily charge and that it be set at a rate equivalent to the BoE base rate (0.25% at the time of writing).

*Question 23: Do you agree that it is fair that the rate of repayment interest is set at the same level as the BoE base rate?*

- 4.10. We have given careful consideration to extending credit interest to cases where a taxpayer has overpaid their tax, and/or when a repayment has been too slow in being processed. However, the current flexibility of ITIS means that many of our taxpayers choose to overpay their tax, and a minority of employers do not meet their obligations in sending ITIS data and the associated remittances, meaning the Taxes Office would have great difficulty in determining whether the overpayment was a result of a Taxes Office miscalculation, and would have trouble identifying when a repayment has been “too slow” in being processed.
- 4.11. Should ITIS be fundamentally changed in the future to remove those flexibilities, we would seek to pay interest on repayments where appropriate.

*Question 24: We welcome comments on the interaction between the charging of debit interest and those individuals who pay tax through ITIS, especially where an employer has not submitted ITIS returns on time.*

## 5. Record keeping and production of documents

- 5.1. As we move to online filing, we will be asking our taxpayers to provide fewer documents in support of their returns, at the point they submit their return. Instead, through a programme of targeted and random audit, we will ask taxpayers to produce supporting documentation on request. It is therefore important that the record keeping obligations are strong, and that the Taxes Office has the power to enforce the production of documents when necessary.

### Record keeping requirements

#### *Record keeping: Businesses*

- 5.2. A person who is required to deliver a return in respect of a business must keep information for a period of 6 years from the end of the year as assessment to which the records relate.<sup>18</sup> No recommendation is made in respect of this obligation.

#### What business records must be kept?

The Income Tax Law states that business records must be sufficient to:

- Show and explain the transactions of the business during the year of assessment; and
- Give a true and fair view of the financial position of the business at any time during the year of assessment.

- 5.3. In addition to the Income Tax Law, the Taxation (Accounting Records) (Jersey) Regulations 2013,<sup>19</sup> which apply to businesses and those letting out property, also stipulate a record retention period of 6 years.

#### *Record keeping: Personal income tax*

- 5.4. Article 16B of the Income Tax Law does not currently provide a record-keeping requirement for non-businesses. We consider the law needs to be explicit on what is expected of our personal taxpayers, with regard to what information must be kept and how long records should be kept. In the UK, HMRC requires taxpayers who self-assess to keep records for between 15 and 22 months, depending on when they submit their return. In Guernsey, records must be kept for a minimum of 2 years following the end of the year in which the return is submitted, except for records to be kept in respect of a business or a rental property, which should be kept for 6 years.<sup>20</sup>

<sup>18</sup> Income Tax Law, Article 16B

<sup>19</sup> Available at: <https://www.jerseylaw.je/laws/revised/Pages/17.850.05.aspx>

<sup>20</sup> [The Income Tax \(Keeping of Records, etc\) Regulations, 2006](#) (Guernsey)

- 5.5. We recommend broadly following Guernsey in requiring records to be kept for a minimum period of 2 years from the end of the year as assessment to which the records relate, and 6 years in respect of those taxpayers letting out property. This requirement would also harmonise with the Accounting Records Regulations.

#### *Record keeping: Employer ITIS*

- 5.6. An employer is required to “maintain a record” of the amount of tax deducted from its employees, and the effective rate applied in each case.<sup>21</sup> There are no time periods for which an employer is required to keep that information. We therefore recommend that the law is changed to compel an employer to keep the required information for a period of 6 years. This would also harmonise an employer’s record keeping requirements with the requirements of Social Security legislation.<sup>22</sup>

#### *Record keeping: GST*

- 5.7. A business registered for GST must keep documents for a period of 6 years after the supply has been made.<sup>23</sup> There is no proposition to make any change in respect of this requirement, which is consistent with the requirements placed upon businesses in the Income Tax Law and the Accounting Records Regulations.

*Question 25: We welcome comments on the proposed record keeping requirements, with respect to income tax, and employer ITIS.*

### **Failing to keep records**

- 5.8. There should be penalties when taxpayers have failed to keep adequate records, in accordance with the obligations set out in legislation. A distinction should be drawn between careless behaviour, which could result in the imposition of a civil penalty, and deliberate behaviour for which a criminal penalty may be more appropriate.

#### *Failing to keep records: Income tax*

- 5.9. Currently, a business that fails to keep records for the requisite 6 year period can face an unlimited court fine.<sup>24</sup> We propose to introduce a new civil penalty for cases in which the taxpayer has demonstrated careless behaviour, and maintain the criminal sanction for deliberate behaviour (for example, destroying documents). We recommend a new civil penalty of 20 PU (£1,000) when a careless failure occurs.
- 5.10. As already discussed, there is at present no requirement for non-businesses to keep records. In the event that our recommendation for non-businesses to keep records is adopted, we recommend introducing a penalty of 10 PU (£500) when a careless failure occurs, in line with our recommendation in respect of businesses.

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<sup>21</sup> Income Tax Law, Article 41B (4)

<sup>22</sup> [Social Security \(Collection of Class 1 and Class 2 Contributions\) \(Jersey\) Order 2013](#), Article 7

<sup>23</sup> [Goods and Services Tax \(Jersey\) Regulations 2007](#), Regulation 18

<sup>24</sup> Income Tax Law, Article 16B

*Question 26: Do you agree there should be civil penalties in respect of carelessly failing to keep records, in addition to standard scale criminal fines for more serious offences?*

### *Failing to keep records: Employer ITIS*

- 5.11. Although an employer is required to ‘maintain a record’ of its employees’ ITIS, there are no explicit provisions for failing to do so. A transgression by an employer would not be captured by Articles 136 or 137. Therefore, we consider there should be available a criminal fine on the standard scale that a court can impose, in order to harmonise ITIS with the other areas of the tax framework.
- 5.12. We also recommend, if desirable (see question 26, above), a civil penalty of 20 PU (£1,000) be put in place for employers who fail to maintain adequate records, in less serious cases.

*Question 27: Do you agree there should be both criminal and civil penalties available to the Comptroller, in respect of ITIS non-compliance?*

### *Failing to keep records: GST*

- 5.13. Failing to keep records for the 6 year period can result in an unlimited criminal fine on the standard scale, imposed by a court.
- 5.14. If the recommendation to introduce civil penalties for failing to keep adequate records in respect of income tax and ITIS is followed, we propose to introduce an equivalent civil penalty for GST-registered businesses who carelessly fail to keep adequate records.

### *Condition of records*

- 5.15. The tax laws do not currently stipulate in what condition records should be kept. However, the Accounting Records Regulations require records to be furnished ‘in legible form’.<sup>25</sup> The Electronic Communications (Jersey) Law 2000 provides requirements for the assurance of the integrity of information held in electronic form, and that the documentation is made “available for inspection in a visible and legible form.”<sup>26</sup> We consider that the Income Tax Law and GST Law should oblige record-keepers to keep their records in a condition sufficient to establish tax liabilities according to law.

## **Powers to request documents**

- 5.16. Under the Income Tax Law, the Comptroller can “serve a notice on any person chargeable to tax [...] requiring the person to furnish in support of a” [tax return] “such documents and information as the Comptroller may require.”<sup>27</sup> The Comptroller can also serve a notice on a third person, requiring them to produce information in respect

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<sup>25</sup> [Taxation \(Accounting Records\) \(Jersey\) Regulations 2013](#), Regulation 1

<sup>26</sup> [Electronic Communications \(Jersey\) Law 2000](#), Article 15

<sup>27</sup> Income Tax Law, Article 16A (1)

of another person chargeable to tax.<sup>28</sup> Strictly, this may impede the Taxes Office when investigating cases where it is unknown as to whether a person is chargeable to tax or not. We consider the scope of these requirements should therefore be widened to include those persons who, in the view of the Comptroller, 'may be chargeable to tax'.

- 5.17. There are no specific enforcement provisions within Article 16A, but failing to comply with a notice would result in an offence being committed under Article 136, where a court can levy an unlimited criminal fine, and a level 2 fine (£1,000) for each day the failure continues.
- 5.18. In an online filing and assessment environment, in order to reduce the costs of compliance, the Taxes Office will not generally expect documents to be appended to electronic tax returns. Therefore, we expect tax officers will need to request supporting documentation more frequently than in the past. Where a taxpayer does not respond to a request for supporting documentation, an Article 16A notice should be issued.
- 5.19. We consider that in addition to the criminal sanctions available under Article 136, civil penalties should be available when a taxpayer is not compliant with an Article 16A notice. The time given to produce the information would logically depend on the volume and nature of the information requested. A 30 day timeframe is considered reasonable in most circumstances. If a taxpayer does not provide the information within the specified timeframe, we recommend that a penalty of 1 or 2 penalty units (£50-£100) is imposed.
- 5.20. In the event a taxpayer continues to fail to produce requested documents, we recommend introducing a daily penalty of 1 penalty unit (£50), if the failure continues for a period of, say, up to 60 days following the initial deadline.
- 5.21. In respect of ITIS, the Comptroller has no power in the Income Tax Law to require production of additional information from an employer. The powers under Article 16A are not broad enough because an employer is not necessarily 'chargeable to tax'. Therefore, we recommend a new power that allows the Comptroller to serve a notice to require an employer to produce documents or other information, for ITIS compliance purposes. We also recommend introducing civil penalties for an employer who does not comply with the notice, in line with those considered in paragraphs 5.19 and 5.20, above.
- 5.22. The Comptroller is authorised to call for information for GST purposes, by direction.<sup>29</sup> Failing to comply with a direction can result in an unlimited criminal fine. The Comptroller may also apply for a court to make an order requiring compliance with the direction.<sup>30</sup> In order to ensure consistency across both tax types, we recommend that a civil penalty be available in respect of failing to provide GST information when requested.

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<sup>28</sup> Income Tax Law, Article 16A (2)

<sup>29</sup> GST Law, Schedule 8, paragraph 18

<sup>30</sup> GST Law, Schedule 8, paragraph 18

## Powers to enter premises

- 5.23. In respect of income tax and employer ITIS, an authorised person may enter business premises, and take copies of any business document. They may also, by notice, request specified business documents.<sup>31</sup>
- 5.24. In respect of GST, an authorised person may at a reasonable hour enter “premises used in connection with the carrying on of a business”. An officer is then able to examine goods, services, records, devices, equipment, and take samples. An authorised person may also obtain a court warrant in connection with an offence or suspected offence.<sup>32</sup> We propose to bring the powers in the Income Tax Law into line with the wider powers contained in the GST Law.

*Question 28: Do you agree the powers to enter premises in the Income Tax Law should be aligned with the powers in the GST Law? We welcome views on other aspects of the access powers not specifically addressed here.*

### *Obstructing officers*

- 5.25. A person who obstructs an officer from carrying out their duties under Article 141B of the Income Tax Law can be liable to 6 months’ imprisonment and a fine.<sup>33</sup> The exact same sanction is available in respect of GST.<sup>34</sup> We do not make any recommendations as to the introduction of civil penalties, in addition to the criminal penalties, for obstructing officers.

### *Altering/destroying documents*

- 5.26. The provisions available in respect of taxpayers who alter, suppress, or destroy documents in respect of income tax<sup>35</sup> and GST<sup>36</sup> appear to relate only to those persons upon whom a notice or direction to produce information has been served. In respect of income tax, for example, the document in question has to have been specified in a notice pursuant to Article 141B. This leaves a gap in both tax laws that means a taxpayer is not guilty of an offence if the altered/destroyed document was not specified in a notice. We recommend this gap is closed.

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<sup>31</sup> Income Tax Law, Article 141B

<sup>32</sup> GST Law, Schedule 8

<sup>33</sup> Income Tax Law, Article 141C

<sup>34</sup> GST Law, Article 90

<sup>35</sup> Income Tax Law, Article 141C

<sup>36</sup> GST Law, Schedule 8, paragraph 6

**Table 5.1 – Summary of record-keeping obligations and associated sanctions**

<b>Record keeping</b>	<b>Current</b>	<b>Proposed</b>
<b>Income tax</b>	6 years for businesses; No specified time period for non-businesses	No change for businesses; Records must be kept for 2 years in support of return, and 6 years for those with rental income
<b>ITIS</b>	Employers required to 'maintain a record'	A minimum 6 year period
<b>GST</b>	6 years	No change
<b>Failing to keep records</b>		
<b>Income tax</b>	Unlimited criminal fine	Maintain criminal sanctions for deliberate behaviour; New civil penalty for businesses (20 PU - £1,000); New civil penalty for individuals (6 PU - £300)
<b>ITIS</b>	None	Introduce new criminal sanctions for deliberate behaviour; New civil penalty (20 PU - £1,000)
<b>GST</b>	Unlimited criminal fine	Maintain criminal sanctions; New civil penalty (20 PU - £1,000), if introduced in Income Tax Law
<b>Failing to produce documents</b>	<b>Current</b>	<b>Proposed</b>
<b>Income tax</b>	Unlimited criminal fine; level 2 fine (£1,000) for each day failure continues	Maintain criminal sanctions; New civil penalty (1 or 2 PU - £50 or £100), followed by further daily penalties if non-compliance continues
<b>ITIS</b>	None	New criminal sanctions; New civil penalties
<b>GST</b>	Unlimited criminal fine	Maintain criminal sanctions; New civil penalties, if introduced in Income Tax Law
<b>Obstructing officers</b>	<b>Current</b>	<b>Proposed</b>
<b>Income tax/ ITIS</b>	Imprisonment of 6 months and an unlimited fine	No change
<b>GST</b>	Imprisonment of 6 months and an unlimited fine	No change
<b>Altering/destroying documents</b>	<b>Current</b>	<b>Proposed</b>
<b>Income tax/ ITIS</b>	5 years imprisonment and an unlimited fine	Widen to include persons on whom a notice is not served
<b>GST</b>	5 years imprisonment and an unlimited fine	Widen to include persons on whom a notice is not served

## 6. Filing due dates

- 6.1. This section deals with filing dates. We do not propose to change the payment dates for either income tax, employer ITIS, or GST.
- 6.2. With regard to filing deadlines, we propose to maintain the current filing dates for employer ITIS returns and GST returns. However, there are certain changes required for income tax returns to prepare for the availability of personal income tax online filing by January 2019 or 2020, followed a year later by corporates.
- 6.3. Currently the filing due date for personal tax returns is 6pm on the last Friday in May; this is extended to 6pm on the last Friday in July for taxpayers who are represented by an agent. For companies, the due date for returns is midnight on 31 December.<sup>37</sup>
- 6.4. We want to encourage as many taxpayers as possible to use our online channels, which should be available by 2020 at the latest. One way of incentivising take up of online filing is to give taxpayers more time to file online, compared to filing on paper. This differentiated approach in filing deadline dates is a common tool used by tax administrations to encourage electronic filing.
- 6.5. Therefore we propose to make adjustments to income tax filing due dates, as shown in Table 6.1.

**Table 6.1 – Current and future filing dates, for paper and online**

	Current	Future	
		Paper	Online
<b>Personal</b>			
- <b>Unrepresented</b>	6pm last Friday in May	6pm last Friday in May	Midnight 31 July
- <b>Represented</b>	6pm last Friday in July	6pm last Friday in May	Midnight 31 July
<b>Companies</b>	Midnight 31 December	6pm last Friday in July	Midnight 31 December

*Question 29: Do you agree with the proposed changes to the filing deadlines as shown in Table 6.1? If not, what changes would you propose instead?*

<sup>37</sup> Income Tax Law, Article 17A

## 7. Officers' liability

- 7.1. In some jurisdictions, where a penalty that is payable by a company arises because of a negligent or deliberate action by an officer of a company, the officer can be personally liable to pay the penalty.
- 7.2. This power is usually limited to cases where (1) the officer in question gained personally from the wrongdoing, or (2) in cases where the company is likely to become insolvent.
- 7.3. An officer in this context can be a director, secretary, or manager of the company.
- 7.4. Areas where this policy could be considered appropriate include:
  - incorrect declarations
  - failing to pay employee ITIS deductions
  - failing to keep accurate records, and
  - the enforcement of the repayment of debt (38/52 of countries surveyed by the OECD are able to pursue company debt from company directors)

*Question 30: Do you agree officers of a company should sometimes be personally liable for a company's penalty? If so, under what circumstances? If not, why not?*

## 8. Appeal rights

- 8.1. In moving towards a compliance regime that relies more heavily on the administration of penalties by civil service officers, it is imperative that sufficient safeguards are included in the taxes laws to provide taxpayers with a right of appeal.

*Question 31: Where do you consider there should be safeguards in the taxes laws? We would welcome views under what circumstances you consider taxpayers be allowed to appeal penalties and/or decisions made by the Comptroller, and in what form these appeals should take.*

## 9. Summary of recommendations

Ref	Recommendation
<b>R01a</b>	To introduce a civil penalty framework for incorrect declarations, with percentage penalties based on the behaviour demonstrated by the taxpayer
<b>R01b</b>	To provide a penalty matrix as detailed in Table 2.2 in this document
<b>R02</b>	To introduce a policy to commence a civil investigation into suspected fraud, along the lines of HM Revenue & Customs' Code of Practice 9 (COP9)
<b>R03a</b>	To introduce a fixed civil penalty unit regime
<b>R03b</b>	To set an initial penalty unit (PU) value of £50
<b>R04a</b>	To introduce a civil penalty of at least 12 PU (£600) for employers who fail to notify the Comptroller within one month of becoming an employer
<b>R04b</b>	To increase the penalty for failing to register for GST to at least (the higher of) 12 PU (£600) and 10% of the relevant GST
<b>R04c</b>	To introduce an obligation either (i) to notify the Comptroller in the event of an increase in income following the Comptroller's decision to close a file; or (ii) to furnish a tax return where the income warrants it
<b>R04d</b>	To introduce a tax-geared penalty in the event of non-compliance with either of the recommendations made in R04c
<b>R05a</b>	To increase the penalty for the late filing of a personal income tax return to 6 PU (£300), and to introduce a monthly penalty of 1 PU (£50) for continued non-filing, for a maximum of 11 months
<b>R05b</b>	To increase the penalty for the late filing of a corporate tax return to 6 PU (£300), and to introduce a monthly penalty of 2 PU (£100) for continued non-filing, for a maximum of 11 months
<b>R05c</b>	To introduce a policy to begin legal action when a person fails to submit an income tax return up to 12 months following the original filing deadline
<b>R06</b>	To introduce a clear 15 day deadline for employer ITIS returns
<b>R07</b>	To introduce a civil penalty for failing to submit an employer ITIS return on time, either in the format of (i) a fixed penalty of 6 PU (£300), or (ii) a penalty based on number of employees
<b>R08a</b>	To increase the penalty for failing to submit a quarterly GST return either to (i) 12 PU (£600); or (ii) a penalty based on the turnover of the business
<b>R08b</b>	To apportion the quarterly GST penalty for businesses that do not file on a quarterly basis

<b>R09</b>	To introduce surcharges of 5% in income tax cases (personal and corporate) where a balance remains unpaid, at 3 and 6 months following the deadline for payment (in addition to the initial 10% surcharge)
<b>R10a</b>	To introduce new civil penalties for employers who fail to remit ITIS deductions
<b>R10b</b>	To introduce a 10% penalty for employers who fail to remit ITIS deductions
<b>R10c</b>	To introduce monthly penalties of 5% for continued failure to remit ITIS deductions, for a maximum of 11 months
<b>R11a</b>	To increase the penalty for failing to pay GST from 2.5% to 10%
<b>R11b</b>	To introduce penalties of 5% in cases where a GST balance remains unpaid, at 3 and 6 months following the deadline for payment
<b>R12a</b>	To charge daily interest on all outstanding tax debts, chargeable from the day following the payment due date
<b>R12b</b>	To compound interest every month
<b>R12c</b>	To charge interest on all existing debts outstanding at 31 December 2018 (or 2019)
<b>R12d</b>	To charge interest at a set percentage above the Bank of England base rate (tentatively proposed at 8% above BoE)
<b>R12e</b>	To pay daily repayment interest on appeal cases at a rate equivalent to the BoE base rate
<b>R13a</b>	To introduce a time period for how long a person should keep records in support of their tax return
<b>R13b</b>	To introduce a requirement for records to be kept for 2 years, and 6 years in respect of let property
<b>R14</b>	To introduce a 6 year period for which an employer must keep records in respect of its ITIS obligations
<b>R15a</b>	To introduce a civil penalty of 20 PU (£1,000) for businesses that carelessly fail to keep adequate records for the specified time period
<b>R15b</b>	To introduce a civil penalty of 10 PU (£500) for non-businesses who carelessly fail to keep adequate records for the specified time period
<b>R16a</b>	To introduce a criminal offence for employers who fail to keep adequate records for the specified amount of time
<b>R16b</b>	To introduce a civil penalty of 20 PU (£1,000) for employers who carelessly fail to keep adequate records for the specified amount of time

<b>R17</b>	To introduce a civil penalty of 20 PU (£1,000) for GST businesses who carelessly fail to keep adequate records for the specified amount of time
<b>R18</b>	To introduce a requirement for records to be kept in a condition sufficient to establish tax liabilities according to law
<b>R19a</b>	To widen Article 16A of the Income Tax Law to allow a notice to be served on a person who, in the view of the Comptroller, may be liable to tax
<b>R19b</b>	To introduce a civil penalty of 1 or 2 PU (£50-£100) for income tax payers who fail to produce documents within a stated timeframe, when required by notice
<b>R19c</b>	To introduce a daily penalty of 1 penalty unit (£50), if a failure to produce documents continues for period of, say, up to 60 days following the initial deadline
<b>R20a</b>	To introduce a new power to call for information from employers by notice
<b>R20b</b>	To introduce a civil penalty for employers who fail to produce documents when required by notice
<b>R21</b>	To introduce a civil penalty for GST businesses that fail to provide information when required by direction
<b>R22</b>	To align the access powers contained in the Income Tax Law with the powers contained in the GST Law
<b>R23a</b>	To amend the provisions in the Income Tax Law to provide an offence for altering/destroying documents not listed in a notice
<b>R23b</b>	To amend the provisions in the GST Law to provide an offence for altering/destroying documents not listed in a notice
<b>R24a</b>	To amend the tax return filing deadline date to 31 July for all personal tax online filing
<b>R24b</b>	To amend the tax return filing deadline to 6pm on the last Friday in May, for represented personal tax payers filing on paper
<b>R24c</b>	To amend the tax return filing deadline to 6pm on the last Friday in July, for companies filing on paper
<b>R25</b>	To provide adequate safeguards to a taxpayer who does not agree with the decision of the Comptroller (e.g. to issue a penalty)

## 10. Summary of questions

Ref	Question
Q01	Do you agree with the broad categories of behaviour, and the associated standard penalties? If not, what other categories would be more appropriate? Particular regard should be had to the tables in Appendix A
Q02	Do you consider the proposed increases and reductions to the standard penalty to be appropriate? What increases and reductions would you propose instead?
Q03	In principle, do you support the denial of anonymity in cases where a taxpayer has accepted a civil penalty in respect of very serious tax evasion? Comments are welcomed on the definition of 'very serious tax evasion'.
Q04	Do you agree that the introduction of a 'penalty unit' is appropriate? We welcome comments on any issues that you envisage with a penalty unit regime
Q05	Do you agree that it is unnecessary to introduce a separate registration requirement and associated penalty, solely for tax purposes? With regard to personal income tax registration, are there any risks we have failed to address?
Q06	Do you agree that the increase (to £600) of the penalty for failing to register, either as an employer or for GST, is appropriate? If not, what penalty do you consider to be more appropriate?
Q07	Do you agree that the legal onus should be on the taxpayer, rather than the Comptroller, to take the appropriate steps when the circumstances alter to the extent that a return is required (for example, after the Comptroller has closed the taxpayer file)?
Q08	Is an initial penalty of 6 PU (£300), followed by monthly penalties of one PU (£50) per month, an appropriate sanction for late personal income tax returns? If not, what alternatives, such as daily penalties or tax-geared penalties, do you consider to be more appropriate?
Q09	Do you agree that the additional monthly penalties (of £100) for late company income tax returns are appropriate? If not, what further penalties would be more appropriate?
Q10	In respect of late ITIS returns, is it reasonable to introduce penalties for employers based on the number of employees it has, rather than having a fixed penalty? Is the proposed penalty table (3.1) fair?
Q11	Do you agree that it is fair to introduce a daily or monthly penalty in addition to the initial penalty for late ITIS returns? If not, what alternatives do you propose?
Q12	We invite views on the principle of waiving 'first offence' penalties for employers, and whether consideration should be given to a broader implementation of this principle.
Q13	Do you agree that the Taxes Office should be permitted to contact directly employees in cases where an employer has failed to submit ITIS returns? Is non-compliant period of 2 months appropriate?
Q14	In respect of late GST returns, do you consider (1) a fixed penalty; or (2) a differentiated penalty based on turnover, to be more likely to be more effective and/or proportionate to the non-compliant behaviour?

<b>Q15</b>	In respect of late GST returns, do you agree there should be further monthly penalties, in addition to the initial penalty, when a failure continues? Are there any other options, such as daily penalties, you think we should consider?
<b>Q16</b>	In respect of late personal and corporate income tax payments, do you agree that the proposed additional 5% surcharges will promote better compliance? What alternatives, if any, do you think we should consider?
<b>Q17</b>	For employers who continue to fail to remit ITIS deductions, do you consider a monthly 5% penalty to be reasonable? If not, what measure would you propose instead?
<b>Q18</b>	Is there any reason why the proposed compliance framework and civil penalty regime (see Table 3.4) cannot be extended to the pension sector?
<b>Q19</b>	Is the charging of late penalty interest a realistic alternative to the surcharge regime? Are there any alternatives we should consider?
<b>Q20</b>	The 'Long-Term Tax Policy' document from September 2014 proposes a monthly interest charge, compounded if it remains unpaid. Do you consider a daily or monthly interest charge to be more appropriate? (assuming there are no IT considerations)
<b>Q21</b>	We invite comments on the proposed debit interest rate of 8% above the BoE base rate
<b>Q22</b>	Do you agree that interest should be charged from the day following the original due date? Comments on a grace period and a <i>de minimis</i> would also be welcomed
<b>Q23</b>	Do you agree that it is fair that the rate of repayment interest is set at the same level as the BoE base rate?
<b>Q24</b>	We welcome comments on the interaction between the charging of debit interest and those individuals who pay tax through ITIS, especially where an employer has not submitted ITIS returns on time
<b>Q25</b>	We welcome comments on the proposed record keeping requirements, with respect to income tax, and employer ITIS
<b>Q26</b>	Do you agree there should be civil penalties in respect of carelessly failing to keep records, in addition to standard scale criminal fines for more serious offences?
<b>Q27</b>	Do you agree there should be both criminal and civil penalties available to the Comptroller, in respect of ITIS non-compliance?
<b>Q28</b>	Do you agree the powers to enter premises in the Income Tax Law should be aligned with the powers in the GST Law? We welcome views on other aspects of the access powers not specifically addressed here
<b>Q29</b>	Do you agree with the proposed changes to the filing deadlines as shown in Table 6.1? If not, what changes would you propose instead?
<b>Q30</b>	Do you agree officers of a company should sometimes be personally liable for a company's penalty? If so, under what circumstances? If not, why not?
<b>Q31</b>	Where do you consider there should be safeguards in the taxes laws? We would welcome views under what circumstances you consider taxpayers be allowed to appeal penalties and/or decisions made by the Comptroller, and in what form these appeals should take

## Appendix A – behavioural penalties in other jurisdictions

### Australia

Behaviour	Base amount	Obstruction/knowledge of shortfall/repeat offence
Failure to take reasonable care	25%	45%
Recklessness	50%	70%
Intentional disregard	75%	95%

Australia also has penalties for incorrect statements where no shortfall occurs

### Canada

Behaviour	Penalty
Repeated failure to report income*	10% of the current understatement AND 50% of the potential lost revenue (PLR)
False statements/omissions	Greater of CAD100 and 50% of the PLR

\*Repeated means 3 years

### Isle of Man

Circumstances	Penalty (%)
voluntary disclosure – simple	0
voluntary disclosure – complex	10 – 15
voluntary disclosure – incomplete	15 – 25
investigation – full co-operation	25 – 35
investigation – limited co-operation	35 – 50
investigation – little or no co-operation	up to 100
investigation – fraud	up to 200

### New Zealand

Shortfall penalty categories	Standard %
Not taking reasonable care	20%
Unacceptable tax position	20%
Gross carelessness	40%
Adopting an abusive tax position	100%
Evasion	150%

New Zealand allows reductions for voluntary disclosures, and increases penalties by 25% for hiding or destroying information.

## Singapore

In cases where the error/omission/discrepancy in the tax return was made **without any intention to evade taxes**, the taxpayer may, under [the Income Tax Act](#) :

- a. face a penalty up to 200% of the amount of tax undercharged;
- b. be fined up to \$5,000; and/or
- c. be imprisoned up to three years.

In cases where the error/omission/discrepancy in the tax return was made **with intention to evade taxes**, the taxpayer may, under the Income Tax Act:

- a. face a penalty up to 400% of the amount of tax undercharged;
- b. be fined up to \$50,000; and/or
- c. be imprisoned up to five years.

## South Africa

1	2	3	4	5	6
<i>Item</i>	<i>Behaviour</i>	<i>Standard case</i>	<i>If obstructive, or if it is a 'repeat case'</i>	<i>Voluntary disclosure after notification of audit or investigation</i>	<i>Voluntary disclosure before notification of audit or investigation</i>
(i)	'Substantial understatement'	10%	20%	5%	0%
(ii)	Reasonable care not taken in completing return	25%	50%	15%	0%
(iii)	No reasonable grounds for 'tax position' taken	50%	75%	25%	0%
(iv)	Gross negligence	100%	125%	50%	5%
(v)	Intentional tax evasion	150%	200%	75%	10%

## UK

<b>Behaviour</b>	<b>Max*</b>	<b>Prompted (min)</b>	<b>Unprompted (min)</b>
Careless	30%	15%	0%
Deliberate but not concealed	70%	35%	20%
Deliberate and concealed	100%	50%	30%

\*There are higher penalties for certain offshore matters

## USA

<b>Behaviour</b>	<b>Penalty</b>
Substantial understatement*	20%
Negligence and disregard of the rules and regulations	20%
Civil fraud	75%

\*The understatement is substantial if it is more than the larger of 10 percent of the correct tax or \$5,000 for individuals