

VAT Alert:

New UK VAT penalty regime enters into force on 01 January 2023

HMRC is introducing a new VAT penalty regime for VAT return periods starting on or after 1 January 2023. The new system is designed to penalise persistent offenders rather than those who make occasional mistakes.

All businesses should familiarise themselves with the changes, particularly as certain businesses could be subject to penalties for the first time.

What is changing?

The old default surcharge regime is being replaced with both a late payment and a late submission penalty system. The late payment penalty applies to VAT not paid by the end of day 15 after the payment due date. In addition, late payment interest will be charged on all tax paid late at a rate of 2.5% above the Bank of England base rate. A new points-based penalty system will apply to VAT returns submitted late.

Disadvantages of the current default surcharge penalty regime

The main issue with the existing default surcharge system is that a business gets charged the same penalty regardless of whether a VAT payment is one day late or one year late. And whilst there is currently no penalty due on the first late payment, each subsequent default within the default period gives rise to increasing penalty rates (2%, 5%, 10% and finally 15%) which can result in substantial penalty charges for businesses.

The new late payment penalty

Under the new penalty system, no penalty is charged if VAT is paid by the end of day 15 after the VAT Return payment due date. This will benefit businesses, for example, who may be one day late with their VAT return payment due to an oversight.

After day 15 the penalty charged will increase according to how long the payment is outstanding:

- a 2% penalty will be charged for tax owed at the end of day 15 after the due date,
- and a further 2% will be charged for tax still outstanding by the end of day 30,
- an annualised penalty rate of 4% will apply thereafter.

In addition, interest will be charged from day one. This is commercial restitution to compensate HMRC for late payments.

There is a clear incentive therefore for businesses to pay any outstanding VAT as soon as possible or make part payments if they are unable to pay the VAT due in full.

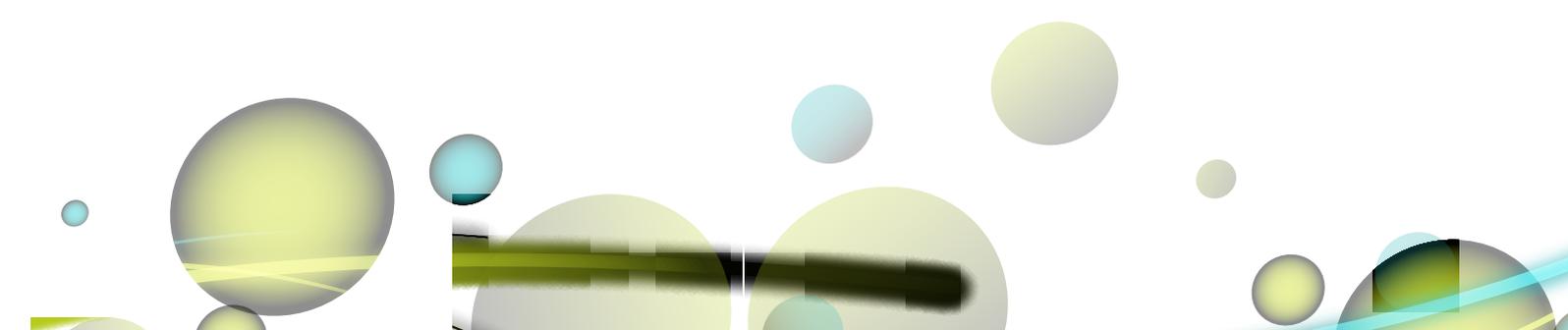
The new late submission penalty

The new regime for late VAT returns will be based on a points accumulation system: a business will get one point for each late return it submits, and a £200 penalty will be issued by HMRC when it reaches its points threshold. The threshold depends on the frequency that returns are due.

VAT Return Frequency	Points Threshold
Monthly	5
Quarterly	4
Annually	2

All returns will fall within the late filing penalty regime, including repayment and nil returns. Repayment traders should therefore note that they could incur penalties for the first time.

A business will receive a £200 penalty once it has reached the relevant penalty threshold. Each subsequent late return will incur a further penalty of £200. However, individual points will expire once they are two years old.



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Points will not expire when a taxpayer is at the penalty threshold. In these circumstances a period of compliance must be achieved first. A business will return to zero points once two conditions are fulfilled:

- all returns for the previous 24 months have been submitted,
- the business must have submitted all returns on time for 12 months after reaching the relevant points threshold (24 months for a business on annual returns and 6 months for monthly returns).

Repayment interest

The repayment supplement regime will be withdrawn from 1 January 2023. It will be replaced with a less favourable system of repayment interest. Interest will be calculated according to the Bank of England base rate minus 1%. If the rate falls below 1% a minimum rate of 0.5% will apply.

Interest will be calculated from the day after the due date for the period in question or the date of submission – whichever is later – until the day that HMRC fully pays the repayment amount that is due.

For more information about this VAT Alert, please contact your RBC representative or email us at info@rbcvat.com

Key Points

These are significant changes to the VAT penalty system. Some practical points for businesses to note are:

1. There will be no conversion of the old default surcharge system to the new points system for those businesses currently in a default surcharge liability notice period. All traders will start with zero points.
2. The late submission penalty points system will apply to all VAT returns (including repayment and nil returns), therefore, if a business is not able to submit a return on time, it could be beneficial to submit a nil return by the due date and correct it later to avoid incurring a penalty point.
3. Similarly, businesses should submit a return on time even if they are unable to pay the VAT owed by the due date. VAT payments made within 15 days of the due date will not be subject to a penalty.
4. As a first-year concession a late payment penalty will not be issued by HMRC if all tax owed on a VAT return is paid in full within 30 days of the payment due date.
5. Businesses will be able to appeal a penalty on the grounds of having a "reasonable excuse".
6. If a time to pay arrangement is agreed with HMRC the late payment penalty clock stops. However late payment interest will still be charged.
7. HMRC will have discretionary powers to reduce or not charge a penalty for late payment if it considers it appropriate.

Businesses should familiarise themselves with the penalty changes to avoid getting caught out by some of the finer detail.