HM Revenue & Customs (HMRC) expects all UK taxpayers to pay the tax they owe, in full and on time, whenever they are able to do so. However, in circumstances where a taxpayer is unable to meet its liability, HMRC is able to exercise a discretion to allow the taxpayer to pay tax after the due date, over an agreed period, and without incurring late payment penalties. This is known as “Time to Pay” (TTP). The primary purpose of TTP is to assist HMRC to collect taxes due efficiently and effectively. It is worth emphasising that there is no right for taxpayers to be granted TTP.

At Budget 2020, the UK government introduced a dedicated HMRC helpline, highlighting the availability of TTP, to help businesses adversely impacted by COVID-19. It also confirmed that HMRC would “waive late payment penalties and interest where a business experiences administrative difficulties contacting HMRC or paying taxes due to COVID-19”. By January 2021, more than 644,000 taxpayers had agreed TTP arrangements with HMRC. The total tax covered by those arrangements exceeded £4 billion.

Now that the pandemic appears (hopefully) to be in retreat, and as businesses are able to return to something akin to normal practice, some have questioned whether HMRC’s stance on TTP arrangements will change. This note considers what a TTP arrangement is, the considerations HMRC takes into account when entering one, and how TTP is monitored and can be brought to an end.

It is important to establish that HMRC is bound to operate TTP in a particular way and in accordance with its published guidance. However, an improving economic context is likely to affect HMRC decision-making in the coming months.

**What Is TTP?**

TTP arrangements help HMRC collect tax effectively. They recognise that in certain circumstances, outside of the control of businesses, a tax deadline can lead to commercial difficulties. TTP is intended to allow viable businesses, which genuinely cannot pay tax on the date it is due, to pay it over a realistic period of time. Most arrangements will last for a period of months and will involve regular monthly payments. They rarely exceed 12 months and will only do so in exceptional circumstances.

**Who Is Eligible for TTP?**

There are no fixed rules. The same principles should be applied to all taxpayers, with each case being considered on its merits and the level of risk to the Exchequer (that is, of non-payment of tax). As a result, any TTP arrangement should be agreed “on a case-by-case basis and … tailored to individual circumstances and liabilities”.

Generally, larger tax liabilities, requests for longer TTP periods and a questionable compliance record are likely to attract greater due diligence, information requests and investigation by HMRC. The business’ previous compliance record is likely to be especially important in relation to the success or otherwise of obtaining TTP.

Where a business has a good record, and has made tax payments on time, HMRC is more likely to consider a request for TTP to be genuine. In contrast, a poor record, previous late payments and repeat applications will result in closer scrutiny. Even in COVID-19 situations, HMRC is likely to view previous payment problems as symptomatic of deeper problems and will be less likely to agree TTP.

Making a successful application for TTP depends on the business being able to show it is:

- In genuine difficulty
- Unable to pay its tax on the due date
- Able to pay if HMRC allowed more time – this necessitates not only proving that it has (or will have) the means to meet the scheduled TTP payments, but also that it can meet any other tax liabilities that will (or may) become due during the TTP period

HMRC will seek to make the TTP period as short as possible. Importantly, in light of improving post-COVID-19 trading conditions, where a business’ ability to pay improves during the TTP period, it has an obligation to contact HMRC to increase its payments and clear the debt more quickly.

Briefly put, the business must be ready to engage and be fully prepared to explain and evidence the situation in which it finds itself. It should be willing to enter into reasonable negotiations with HMRC in relation to the terms and conditions of the TTP arrangement, including in relation to the amount covered and the overall time period involved.
Business Viability – Cannot Pay or Will Not Pay?

TTP is only available to viable businesses. Before agreeing to TTP HMRC will try to understand why a business cannot pay (in COVID-19 situations, this will be pretty straightforward) and, just as importantly, what it is doing to address this in the future. HMRC will assess whether the business’ plans (whether to reduce costs or increase sales) are realistic in the context of the size of the tax debt relative to the business’ turnover. This will be the benchmark against which any TTP agreement will be monitored.

Critically, the TTP arrangement must be reasonable. Neither the business nor HMRC will want to enter a TTP arrangement that commits the business to a repayment schedule that it cannot afford such that it results in further default. Equally important, to HMRC at least, is that the business does not request a period that is longer than absolutely necessary to clear the debt. In deciding whether a business is eligible for a TTP arrangement, HMRC will draw a distinction between:

- **Eligible “cannot pay” businesses** – That is, those that want to make the payment but currently do not have the means to do so, or, although they do, making that payment could force them out of business (because other liabilities could not be met). HMRC will expect businesses to have explored accessing new or increased borrowing facilities before approaching HMRC for a TTP arrangement. It should be noted that wanting to pay, however genuinely held, is not enough: a business that cannot pay, or cannot satisfy HMRC that it has a realistic plan to ensure it can afford its future liabilities, will be refused TTP.

- **Ineligible “will not pay” businesses** – That is, those that can, but will not, pay the tax. HMRC will refuse TTP and is likely to take swift enforcement action in such cases. HMRC will be looking to the business to prove that it is eligible for TTP. Therefore, when preparing to apply, the business should be ready to provide HMRC with as much information as is relevant to support the submission. This will ideally include providing:

  - **Detailed financial information** – this should include recent management accounts and (even more importantly) future budgets and cash flow expectations.
  
  - **Details of the steps the business has taken to seek support from other stakeholders** – this might include outlining discussions the business has had concerning new or additional financial support from existing or new lenders, current shareholders, management and any other forms of support (e.g. extending credit or relaxing payment terms) from other creditors and suppliers.

Early engagement, followed by regular and transparent communications, with HMRC by the business are also imperative, especially in situations where the facts and particular circumstances are not entirely straightforward. As might be expected, many businesses affected by COVID-19 are contacting HMRC to discuss their tax affairs and to seek a TTP arrangement. This has created delay in the system, which will be exacerbated by complex situations that HMRC wants to examine more closely.

Monitoring, Review and Enforcement

Even if a TTP arrangement is in place, businesses should be aware that HMRC will actively monitor and review the agreement to ensure compliance. HMRC will be looking to confirm that:

- The agreed payments are being made as agreed on time
- Other tax liabilities are being met
- Tax administration and compliance obligations are being satisfied (i.e. computations and returns are being submitted)

At the same time, HMRC is likely to be using the data it collects to identify any change in the business’ ability to pay the tax due. Nonetheless, once it agrees to it, HMRC is bound by a TTP agreement and businesses should take a degree of comfort from the fact that, provided they continue to abide by the terms and conditions of TTP, HMRC cannot seek to unilaterally accelerate recovery of the tax debt.

That said, HMRC will assert its right to withdraw from (i.e. cancel) a TTP arrangement in the following specific circumstances:

- New facts come to light that mean TTP is no longer appropriate or available in the circumstances, or mean recovery of the tax due is at increased risk
- The business has misled or lied to HMRC
- The business defaults on the terms or conditions of the arrangement

In cases where HMRC believes a business is in breach of a TTP agreement, its first course of action will be to contact the business by issuing a reminder letter. In cases where an instalment payment has been missed, the reminder letter will set out the amount of tax that is now overdue, demand immediate payment and explain that failing to comply will mean the TTP arrangement will be cancelled.

If the business fails to respond, HMRC will issue a cancellation letter. At that point, the TTP arrangement falls away and HMRC will demand full payment of all tax amounts overdue. The chance of agreeing a new TTP arrangement at that point is remote and, if the tax is not paid, HMRC will initiate enforcement proceedings utilising all and any of the (growing number of) powers at its disposal.
It is worth noting that the current restrictions on winding-up petitions (introduced as a direct result of the pressures on business arising from COVID-19) remain in place until at least 31 March 2021, and are widely expected to be extended until the end of June 2021. The moratorium is being observed by HMRC and so provides a layer of protection against any immediate HMRC action. However, the restrictions will soon be lifted and businesses are best advised to ensure that they proactively manage their tax affairs, ensuring they are up-to-date with payments and submissions, processes are efficient and effective, and everything is well documented.

Post-COVID-19, as the country seeks to recover, HM Treasury seeks revenue to start to pay for the government support provided during the crisis, and as HMRC removes the relaxations put in place during the crisis, expect HMRC to demand strict adherence to existing TTP arrangements and tax compliance obligations more generally.

Time to Pay?

TTP is a valuable formal procedure that will protect viable, compliant businesses facing genuine difficulties in meeting their tax liabilities on time. The protection a TTP arrangement affords can provide a business with critical time to plan for recovery without tax liabilities weighing on its cash flow.

However, it is also important to appreciate that TTP merely defers the point at which the tax is payable; the liability does not go away and will instead simply fall due under the TTP schedule. In addition, new tax liabilities and compliance obligations will continue to arise.

Entering into a formal arrangement with HMRC for the payment of overdue tax provides certainty, but also brings additional compliance obligations and opens the business to greater scrutiny from HMRC. A TTP arrangement should not be sought lightly and, once it is obtained and agreed, a business must make every effort to comply with its terms and conditions. It is crucially important that businesses do not overpromise under TTP, continue to monitor their own compliance and promptly communicate any change in circumstance that could affect the agreement (positively or negatively) to HMRC.

HMRC examines requests for TTP carefully and will be monitoring a business’ compliance with an agreement equally carefully. It is worth remembering that the primary purpose of HMRC is to collect taxes due and protect the Exchequer. In appropriate cases, HMRC uses TTP as a tool to help it achieve that aim. However, where there is a breach of a TTP agreement, HMRC will not shy away from exercising its enforcement powers to recover the tax owed. In addition, as the extraordinary challenges presented by COVID-19 start to recede, one might expect HMRC to adopt an increasingly aggressive stance on enforcement and revenue recovery.

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