CHAPTER 13

SELF ASSESSMENT – FURTHER ASPECTS

In this chapter you will cover some further aspects of self assessment including:
– when payments on account are not required;
– claims to reduce payments on account;
– repayment interest;
– discovery and disclosure;
– HMRC information and inspection powers.

In this chapter, all tax years are assumed to consist of 365 days and the effects of leap years have been ignored.

13.1 No requirement for Payments on Account

Normally each payment on account is 50% of the tax due for the previous year. However, not every UK taxpayer is required to make payments on account. No payments on account are required where either the tax due for the previous year was less than £1,000, or more than 80% of the tax liability for the year was collected at source. For example, payments on account will not be required for 2015/16 where the taxpayer’s outstanding income tax liability for 2014/15 was less than £1,000. TMA 1970, s.59A(1); SI 1996/1654

By collection at source, we either mean tax paid under PAYE or tax deducted at source from interest and dividend income. If the tax deducted at source is more than 80% of the total liability, no payments on account need to be made for the following tax year. This means that for most taxpayers in the UK, no payments on account will actually be required as the majority of UK taxpayers are employees whose tax is deducted at source under PAYE.

13.2 Claims to Reduce Payments on Account

Taxpayers who are required to make payments on account can, in certain instances, make a claim to reduce their payments on account. If the taxpayer anticipates that his current year tax liability will be less than the tax due for the previous year, he can ask HMRC to accept lower payments on account. TMA 1970, s.59A(4)

When making a claim to reduce payments on account, the taxpayer must specify the amount that he or she wishes to pay. The taxpayer must make this claim by notice in writing, giving reasons why the payments on account should be reduced. The claim can be made at any time up to 31 January after the end of the tax year concerned.

In practice HMRC are normally quite relaxed about accepting claims to reduce payments on account. However they do state that if the reduction is excessive so that the taxpayer finishes up paying far less on account than in reality he ought to, HMRC can charge penalties.

In practice, HMRC will only charge such penalties if this was done fraudulently or negligently by the taxpayer. If a taxpayer deliberately makes a claim to reduce his
payments on account purely for the benefit of obtaining a cash flow advantage when in reality he knows that his tax liability for the year will be higher than the amount paid then **HMRC reserves the right to charge a penalty.** The maximum penalty is 100% of the tax underpaid. TMA 1970, s.59A(6)

If tax is paid late, HMRC will always charge interest on the overdue tax. The same principle will apply where a taxpayer excessively reduces the payments on account that he should be making.

**Illustration 1**

Amanda had tax due for 2014/15 of £16,000. Her payments on account for 2015/16 should be £8,000 each, due on the 31 January 2016 and 31 July 2016.

Amanda does some calculations and anticipates that her 2015/16 tax due will be lower than in the previous year and will be £11,000. She therefore makes a claim to reduce her payments on account to £5,500 each.

Amanda subsequently makes these payments on the 31 January 2016 and on the 31 July 2016 respectively.

Amanda finally gets around to preparing her 2015/16 tax return which she submits (electronically) on 19 February 2017. The return shows tax due for the tax year of £13,000. Amanda will be required to make a balancing payment of £2,000 as £11,000 has been paid on account.

Amanda makes this balancing payment at the same time as she submits her tax return on 19 February 2017, i.e. 19 days late.

**Calculate any penalties and interest due in respect of 2015/16.**

If Amanda’s calculations had been correct in the first place, she should actually have made payments on account not of £5,500 each, but of £6,500 each (50% of the actual 2015/16 tax due of £13,000). Therefore, each of the two payments on account were actually £1,000 less than they should have been. HMRC will therefore charge interest on the late paid tax.

Interest will be charged on the unpaid £1,000 from the due date of 31 January 2016 to the date of payment of 19 February 2017. Interest will therefore be charged for 384 days as the tax was paid 384 days late.

HMRC will also charge interest on £1,000 from 31 July 2016 to 19 February 2017. Interest will be charged for 203 days.

If we assume an interest rate of 3%, the calculation will be as follows:

<table>
<thead>
<tr>
<th>Interest:</th>
<th>£</th>
</tr>
</thead>
<tbody>
<tr>
<td>1,000 × 384/365 × 3%</td>
<td>32</td>
</tr>
<tr>
<td>1,000 × 203/365 × 3%</td>
<td>17</td>
</tr>
</tbody>
</table>

A late payment **penalty is only due if the balancing payment is more than 30 days late.** Here the balancing payment is only 19 days late so no penalty will be due.

Finally, we must not forget that Amanda did not submit her online return until 19 February 2017. As the return was 19 days late, she will be charged a £100 late filing penalty. If we add together all the interest and the penalty, the total amount levied on Amanda is £149.
13.3 Repayment Interest

FA 2009 contains provisions in respect of repayment interest. FA 2009, s.102; FA 2009, Sch 54

If a taxpayer pays his tax late, HMRC will charge interest on the tax underpaid. If a taxpayer pays too much tax and HMRC owes a tax repayment, they may credit the taxpayer with some interest. This interest is called repayment interest.

Repayment interest will be added to repayments where payments on account have proved to be excessive, or when a return is amended such that the tax liability decreases, or where tax reliefs become available after the tax return has been filed. In each of these instances, HMRC will add repayment interest to the tax repayment due. Repayment interest can also be added where a penalty is repaid to the taxpayer.

The interest rate used by HMRC to calculate repayment interest on tax repayments is lower than the rate of interest that we use to calculate interest on tax paid late. Interest paid by HMRC will be at the Bank base rate minus 1, but with a minimum rate of 0.5%. At the time of writing, the rate is therefore 0.5%.

Repayment interest is tax free. This interest received does not therefore need to be brought in to the income tax computation.

Repayment interest runs from the repayment interest start date until the date on which repayment is made. For repayments of amounts paid to HMRC, for example payments on account or balancing payments, the repayment interest start date is the date on which the tax was paid or the normal due date if this is later.

If the tax that is being repaid to the taxpayer is tax that has been deducted at source – for instance tax deducted under Pay As You Earn or tax withheld from bank interest – the repayment interest start date is 31 January following the end of the tax year.

For example, if an employee is reclaiming some tax which has been withheld from his salary under PAYE for the tax year 2015/16, we pretend that all of this tax was actually paid on 31 January 2017.

This is a harsh rule because in reality, the tax is actually paid to HMRC earlier than 31 January 2017 – PAYE is paid on a monthly basis throughout the year. Therefore, if PAYE for 2015/16 is being repaid and HMRC issues the repayment before 31 January 2017, there is no repayment interest.

When a taxpayer receives a repayment, it is therefore important that we identify exactly what sort of tax is being repaid. Tax repayments are identified with tax payments in the following order: FA 2009, Sch 54 para 13

i. The first tax to be repaid is deemed to be the balancing payment.

ii. The second tax to be repaid is deemed to be the payments on account allocated equally between the two payments.

iii. The last tax to be repaid is deemed to be the tax deducted at source either under PAYE or from bank interest.

We need to “match” payments and repayments in order to calculate the amount of repayment interest due.
Illustration 2

Cindy submits her 2014/15 return on 15 January 2016. The return shows tax due of £20,000 which was paid as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First POA made 25.1.15 (due 31.1.15)</td>
<td>9,000</td>
</tr>
<tr>
<td>Second POA made 30.7.15 (due 31.7.15)</td>
<td>9,000</td>
</tr>
<tr>
<td>Balancing payment 15.1.16 (due 31.1.16)</td>
<td>2,000</td>
</tr>
<tr>
<td></td>
<td>20,000</td>
</tr>
</tbody>
</table>

On 28 June 2016, Cindy spots a mistake in her return and gives notice of amendment. Tax of £3,000 is repaid to Cindy on 16 July 2016.

Calculate the repayment interest due.

In order to calculate the repayment interest due to Cindy (let's assume an interest rate of 3.5% for the purposes of illustration), the tax repaid will be identified with payments as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st</td>
<td>Balancing payment 15.1.16</td>
</tr>
<tr>
<td>2nd</td>
<td>First POA 25.1.15 and Second POA 30.7.15</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3,000</td>
</tr>
</tbody>
</table>

The repayment interest start date is the later of the date of payment or the due date. So although Cindy paid the tax due before the due dates, repayment interest will only run from the due date. As with interest on tax paid late, we effectively ignore the start date when calculating the number of days repayment interest is due.

The repayment interest is calculated to the nearest day as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (£)</th>
</tr>
</thead>
<tbody>
<tr>
<td>On BP (31.1.16–16.7.16)</td>
<td>2,000 × 166/365 × 3.5%</td>
</tr>
<tr>
<td>1st POA (31.1.15–16.7.16)</td>
<td>500 × 531/365 × 3.5%</td>
</tr>
<tr>
<td>2nd POA (31.7.15–16.7.16)</td>
<td>500 × 350/365 × 3.5%</td>
</tr>
<tr>
<td>Total repayment interest</td>
<td></td>
</tr>
</tbody>
</table>

13.4 Discovery Assessments

HMRC may in certain circumstances make an assessment on an individual which is not a self-assessment. This is known as a discovery assessment. The rules in relation to discovery assessments are contained in s29 TMA 1970. TMA 1970, s.29

HMRC can make a discovery assessment if they discover that:

a. an amount which ought to have been assessed has not been assessed;

b. an assessment is or has become insufficient; or

c. relief has been given which is or has become excessive. TMA 1970, s.29(1)

The assessment is to be in an amount which is considered necessary to make good the loss of tax.
The circumstances in which a discovery assessment can be made would include, for example where a tax return is in some way incorrect or incomplete. However, there are restrictions on HMRC’s ability to make a discovery assessment.

Where a taxpayer has delivered a return for a tax year, no discovery assessment may be made for that period unless:

a. the loss of tax was brought about carelessly or deliberately by or on behalf of the taxpayer; or TMA 1970, s.29(4)

b. the HMRC officer could not reasonably have been expected, on the basis of information available to him at the material time, to be aware of the facts giving rise to the loss of tax. TMA 1970, s.29(5)

As regards (b), the “material time” is the latest date on which the officer could give notice of an intention to enquire into the return or the date on which he advised the taxpayer that the enquiry was completed.

Therefore, where the taxpayer has not adequately disclosed information within the tax return, the Officer could not have been expected to realise that the return was incorrect or incomplete. Therefore HMRC can issue a discovery assessment to recover the tax lost.

On the other hand, if sufficient information was disclosed within the return to enable an Officer to be aware of the situation giving rise to a loss of tax, once the enquiry notice period is over no “discovery” can be made and the additional tax due cannot be collected.

For this purpose, information is regarded as available to an officer if it is:

a. contained in- TMA 1970, s.29(6)
   i. the tax return (or in accompanying documents) for the tax year concerned or either of the two preceding tax years;
   ii. any claim by the taxpayer (or in accompanying accounts, statements or documents);
   iii. any documents, accounts or information provided in the course of an enquiry into such a return or claim; or

b. information whose existence and relevance-
   i. the officer could reasonably have been expected to infer from information under (a); or
   ii. has been notified in writing by the taxpayer.

HMRC regard the onus as being on the taxpayer to draw attention to any important information relevant to a tax liability, particularly if there is some doubt as to the interpretation which could be placed on that information.

The legislation contains another restriction in that an error in a return cannot give rise to a discovery if it is attributable to an error in the basis of computation and that basis was in accordance with the practice generally prevailing at the time the return was made. TMA 1970, s.29(2)
The time limit for HMRC making a discovery assessment depends on the reason for the incomplete disclosure.

The general rule is 4 years from the end of the tax year to which the assessment relates.

However, if the loss of tax is due to careless behaviour by the taxpayer, the deadline is extended to 6 years from the end of the tax year to which it relates. The deadline is extended to 20 years from the end of the tax year to which it relates where the loss of tax was caused deliberately.

In a Press Release dated 31 May 1996 HMRC confirmed that where all relevant facts have been disclosed, taxpayers can be certain (except in cases of careless behaviour or where loss of tax is caused deliberately) that they have gained finality at the end of the enquiry period.

The case of *Langham v Veltempa* (2004) considered what level of disclosure was required by a taxpayer in order to prevent the possibility of a discovery assessment. The decision in this case determined that disclosure not only needed to be extensive, it needed to clearly notify HMRC of an actual, rather than potential, insufficiency in an assessment.

Following the decision in Veltempa, HMRC issued SP 1/06 setting out their views. In particular SP 1/06 states that where extensive information is provided, there is no protection from discovery if HMRC could not reasonably be expected to be aware of the significance of a particular piece of information without their attention being specifically drawn to it by the taxpayer. As a result, disclosures in the ‘white space’ on a tax return have become more comprehensive in recent years. However, subsequent cases have given additional guidance on how the legislation and the decision of the Veltempa case should be applied in practice. SP 1/06

In the case of *Dr Michael Charlton and Others v HMRC* in 2011 the taxpayers had disclosed the use of a tax avoidance scheme on their returns along with the scheme reference number as required by the legislation. The tax avoidance scheme failed but HMRC did not open an enquiry within the period allowed due to administrative errors. The subsequent issue of a discovery assessment on the basis that whilst the returns contained factual details of the scheme, they did not highlight the actual insufficiency, was found to be not valid. The Tribunal determined that had a reasonably competent officer looked at the returns within the required time frame, he would have had sufficient information to determine whether an enquiry was necessary. HMRC were given the right to appeal this decision. The Upper Tribunal also found in the taxpayer’s favour.

In conclusion, if there has been full disclosure in the first place, then once the enquiry period has ended, the return can be closed and will not be revisited.

The disclosure will need to be complete and comprehensive. Merely alluding to a transaction will not give protection against future discovery. Where a return is made on a basis that is contrary to a view held by HMRC, the position needs to be clearly stated such that HMRC are notified of the insufficiency. In a case where the position is not clear cut, full facts should be provided together with a detailed argument to support the figures in the return.
13.5 Information and Inspection Powers

One of HMRC's responsibilities is to check that correct amounts of tax have been paid at the right time, and if necessary issue a discovery assessment to collect additional tax due. To do that HMRC may need to gather information and examine documents or inspect business premises and the assets and documents on those premises. The legislation enabling HMRC to do this is contained in Schedule 36 FA 2008.

Generally HMRC use an informal approach to obtain information. If an informal approach is not successful, HMRC will issue a legal notice to provide information or produce documents, which is known as an information notice.

HMRC can issue a written notice requiring a taxpayer to provide information or produce a document if it is reasonably required for the purposes of checking the taxpayer's tax position. This is known as a taxpayer notice. FA 2008, Sch 36 para 1

In addition, a third party notice can be issued to a person requesting information or documents reasonably required to check another taxpayer's position. Third party notices are generally only issued where the information required cannot be obtained from the taxpayer themselves. FA 2008, Sch 36 para 2

HMRC cannot issue a third party notice unless the approval of the taxpayer or the tribunal has been obtained. Approval is not needed for taxpayer notices but HMRC can choose to obtain approval. FA 2008, Sch 36 para 3

Third party notices must be copied to the taxpayer to whom it relates unless the Tribunal disapplies this requirement. FA 2008, Sch 36 para 4

HMRC can also issue a notice to a third party to provide information or produce documents about a taxpayer whose identity is not known. The Tribunal must approve the notice and will only do so where a serious loss of tax is suspected. FA 2008, Sch 36 para 5

In addition, where HMRC had identifying information (such as a bank account number) a notice can be issued to a third party to obtain the name, address and date of birth of the taxpayer, provided the third party obtained the information in the course of business. FA 2008, Sch 36 para 5A

A person must comply with the requirements of a notice within the period specified in the notice and, if specified, in the manner stated. FA 2008, Sch 36 para 7

There are a number of restrictions to HMRC's powers in respect of information notices. If a person has submitted a tax return, then HMRC may only exercise their information powers if they have reason to suspect, for example, that an amount has not been assessed to tax. FA 2008, Sch 36 para 21

A person cannot be required to produce a document unless it is in their possession or they have the power to produce it, i.e. they have the ability to get the document from whoever holds it. FA 2008, Sch 36 para 18

An information notice does not have the power to request a person to provide information relating to the conduct of a pending appeal, i.e. a document brought into existence as part of the presentation of a tax appeal; journalistic material or personal records, i.e. records concerning an individual's physical, mental, spiritual or personal welfare. FA 2008, Sch 36 para 19
In addition, a **person cannot be required to produce privileged information**, which broadly covers documents containing confidential communications between a lawyer and client for the purposes of legal advice and documents produced for the purposes of contemplated or actual litigation.  *FA 2008, Sch 36 para 23*

Of particular relevance to us, a **tax adviser cannot be required to produce relevant communications**, which are communications whose purpose is to give or obtain advice about a person's tax affairs.  *FA 2008, Sch 36 para 25*

There is a **right of appeal** against information notices, unless the tribunal approved the issue of the notice.  *FA 2008, Sch 36 para 32*

HMRC also have the **power to enter a person's business premises** and inspect the premises and business assets and documents on the premises if the inspection is reasonably required for the purpose of checking that person's or another person's tax position. HMRC may ask the tribunal to approve an inspection.  *FA 2008, Sch 36 paras 10 and 10A; FA 2008, Sch 36 para 13*

**Inspections can be announced or unannounced.** With an announced inspection, the inspection takes place at a time agreed with the person or with at least 7 days notice. An unannounced inspection can only take place by or with the agreement of an authorised HMRC officer.  *FA 2008, Sch 36 para 12*

Finally, HMRC have the power to impose **penalties** in respect of information notices and inspections. Where an information notice is not complied with or where an inspection approved by the tribunal is obstructed, a penalty of £300 can be charged. If the failure or obstruction continues after the first penalty is imposed, daily penalties of up to £60 per day can be imposed. In addition, a tax geared penalty can be imposed by the Upper Tribunal where HMRC believe a significant amount of tax is at risk.  *FA 2008, Sch 36 paras 39, 40 & 50*

If a person produces information containing a careless or deliberate inaccuracy, a penalty of up to £3,000 can be charged for each inaccuracy.  *FA 2008, Sch 36 para 40A*

Penalties will not be charged if the person has a reasonable excuse for the failure.  *FA 2008, Sch 36 para 45*

There is a right of appeal against the penalties.  *FA 2008, Sch 36 para 47*


**EXAMPLES**

**Example 1**

Les had tax due for 2014/15 of £18,000. He made a claim to reduce his payments on account for 2015/16 to £6,000 each. His 2015/16 tax due was £14,000 and was paid on the following dates:

<table>
<thead>
<tr>
<th>Date</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>26 January 2016</td>
<td>£6,000</td>
</tr>
<tr>
<td>11 August 2016</td>
<td>£6,000</td>
</tr>
<tr>
<td>30 January 2017</td>
<td>£2,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>£14,000</strong></td>
</tr>
</tbody>
</table>

Calculate to the nearest day the total interest charges levied on Les, assuming an interest rate of 3%.

**Example 2**

Which of the following statements is FALSE?

a. Repayment interest is tax free

b. Interest on tax overpaid runs from the due date for payment to the date on which repayment is made.

c. Tax deducted at source is treated as paid on 31 January following the tax year.

d. Repayment interest can be added to any penalties which are repaid to the taxpayer.
ANSWERS

Answer 1

Originally Les would have had payments on account of £9,000 each.

He claimed to reduce these to £6,000, but then paid a balancing payment of £2,000 so the reduction was excessive.

He should have made two payments on account of £7,000 (£14,000 × 50%), i.e. each payment on account was £1,000 too low.

Interest chargeable will be as follows:

<table>
<thead>
<tr>
<th>Payment on Account</th>
<th>Amount Underpaid</th>
<th>Interest Rate</th>
<th>Interest Charged</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st payment on account - 1,000 underpaid</td>
<td>364/365 × 1,000 × 3%</td>
<td>£30</td>
<td></td>
</tr>
<tr>
<td>2nd payment on account - 1,000 underpaid</td>
<td>183/365 × 1,000 × 3%</td>
<td>£15</td>
<td></td>
</tr>
<tr>
<td>2nd payment on account - 6,000 actually paid late</td>
<td>11/365 × 6,000 × 3%</td>
<td>£5</td>
<td></td>
</tr>
<tr>
<td>Total interest</td>
<td></td>
<td>£50</td>
<td></td>
</tr>
</tbody>
</table>

Answer 2

Answer B is False

Repayment interest runs from the repayment interest start date which is the later of the actual payment date and the due date (to the date on which repayment is made).