CHAPTER 19

INTEREST AND OTHER POINTS

19.1 Interest

A taxable person may be charged interest in the following circumstances.

(*a*) Where HMRC raise an assessment to recover VAT which has been underdeclared or overclaimed on a VAT return.

(*b*) Where HMRC raise an assessment relating to a VAT period which exceeds three months and begins on the date with effect from which the person concerned was, or was required to be, registered.

(*c*) Where HMRC raise an assessment relating to a VAT period at the beginning of which the person concerned was, but should no longer have been, exempted from registration.

(*d*) Before 1 September 2008 interest was not charged on errors notified by disclosure, but HMRC now reserve the right to charge it.

In general, HMRC only charge interest where they consider it represents "commercial restitution"', i.e. if they have been deprived of this VAT for a period of time. They would not, for example, generally charge interest if VAT is underdeclared which would have been immediately reclaimable as input tax by a third party.

An example of such a situation would be where a trader makes a standard-rated supply to another business, but in error treats the supply as zero-rated and does not charge 17.5% VAT. If the supplier had charged VAT then the customer would have reclaimed that VAT as input tax and so there has been no overall loss to the Exchequer. In a case like this, HMRC will raise an assessment for the VAT that the trader should have charged at the standard rate, but will not charge interest.

HMRC can now go back 4 years.

19.2 Discovery of Errors

If a trader discovers an error himself, he should disclose that error to HMRC immediately. A trader should make a disclosure because it may enable him to **avoid or reduce any penalty**. However, interest will be charged according to the rules outlined above. Notification of an error can be made by letter to the local VAT office, or on form **VAT 652.**

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Alternatively, under the error correction regime, certain 'small' net errors do not have to be disclosed, but **may be corrected by adjusting the** next VAT return. Adjustments can be made for errors made despite taking reasonable care and also for careless errors. The errors which may be corrected in this way cannot exceed the greater of:

- **£10,000; or**
- **1% of turnover (subject to an upper limit of £50,000).**

When such net errors are discovered and are corrected on a VAT return, interest will not be charged.

Deliberate errors cannot be corrected on a later return under the error correction regime, even where they are within the limits. Such errors must always be disclosed to HMRC by separate notification.

Under the new penalty regime for incorrect returns (discussed in an earlier chapter), **those who have made errors despite taking reasonable care will not be penalised;** however those who have made an error through **careless or deliberate behaviour will now be liable to a penalty.** This penalty can be reduced by disclosure to HMRC.

FA2007, Sch 24

Under the penalty provisions of Sch 24 FA 2007, where a person discovers an error in a return after it has been sent to HMRC and the **error was not due to a failure to take reasonable care, a penalty will not be charged provided the person takes reasonable steps to inform HMRC of the error**. In this situation, i.e. where the error was not careless, if a correction is made by the person **on the return for the period of discovery** under the error correction regime, HMRC treat the person as having taken reasonable steps to inform them of the error. As a result, no penalty will be charged.

FA2007, Sch 24 Para 3(2)

However, where **the error is careless** i.e. due to a failure to take reasonable care, making an adjustment on a later return is **not disclosure for the purposes of the penalty provisions.**

Careless errors, even if they are adjusted for in the return for the period in which they are discovered, require a separate notification to HMRC if the notification is to be considered an unprompted disclosure.

Remember, deliberate errors must always be notified separately and cannot be adjusted for on a later return.

19.3 Disclosing VAT avoidance schemes

In order to curtail anti-avoidance schemes, Finance Act 2004 introduced various disclosure requirements in respect of such schemes.

VATA 1994, Sch 11A

A statutory list of schemes that have to be disclosed has been published by HMRC. The use of one of these schemes by a business with supplies in excess of £600,000 must be notified to HMRC. The notification must be made within 30 days of the due date for the first return to which a 'listed' scheme applies. The penalty for failing to disclose at the proper time will be 15% of the tax avoided.

Certain businesses must disclose "schemes that have certain hallmarks of avoidance". The notification must be made within 30 days of the due date for the first return to which the scheme applies. The penalty for failing to notify a scheme will be £5,000. However, businesses will be excused from notifying purchased schemes if the promoter has registered it with HMRC.

A business is only liable to disclose hallmarked schemes if it exceeds the minimum turnover limits.

VATA 1994, Sch 11A Para 7

These limits are either:

a) total taxable and exempt supplies in the year prior to the return periods included in a voluntary disclosure affected by a scheme must exceed £10 million; or

b) the total taxable and exempt supplies must exceed the appropriate proportion of £10 million in the prescribed accounting period immediately prior the prescribed accounting period in which the requirement to notify arose.