CHAPTER 11

PAYMENT DATES, INTEREST AND PENALTIES

11.1 Payment of tax

Tax for the 2010/11 tax year is paid in two stages. Firstly, a taxpayer makes two Payments on Account (POA) of income tax for the tax year. The first payment on account is made on 31 January in the relevant tax year. For the **tax year 2010/11**, the **first payment** on **account** is made on **31 January 2011**. The **second payment on account** is made six months later, on **31 July 2011.** TMA 1970 , s.59A

The taxpayer will **submit** his **tax return generally no later than 31 January 2012** and at this point he will be in a position to finalise his tax liability for the tax year 2010/11. Therefore on this date - i.e. on **31 January 2012** - he will make a "**balancing payment**". TMA 1970 , s.59B

This means that having calculated the tax due for the tax year, he will deduct the two payments on account already made and pay the balance of tax no later than 31 January 2012.

Therefore, the final date by which all tax must be paid for the tax year is 31 January following that tax year. For 2010/11 the final deadline for the payment of tax and for the submission of the tax return is 31 January 2012.

The only exception to this is where the return is issued late. In this case the date for filing the return and paying the tax is 3 months after the issue of the return. TMA 1970 , s.59B(3)

Each payment on account for a tax year is **50% of the tax due for the previous tax year**. We look back to 2009/10, work out the tax due for the previous tax year - tax due being tax liability less tax deducted at source - and we divide this by two. The resulting number is each payment on account for 2010/11.

Payments on account are only made in respect of income tax. No payments on account are required in respect of capital gains tax. CGT is always due and payable on 31 January following the year in which the capital gain was made. Therefore CGT for 2010/11 is payable in one lump sum on **31 January 2012.**

Illustration 1

Roger has the following tax liabilities:

	2009/10	*2010/11*
	£	£
Income tax liability	14,000	18,000
Less: deducted at source	(8,000)	(10,000)
Income tax due	6,000	8,000
CGT payable	1,500	5,000
Total tax due	7,500	13,000

Tax for 2010/11 would be paid as follows:

	£
IT due	8,000
CGT due	5,000
Total	13,000
Less:	
Payment on account 31.1.11 (50% x 6,000)	(3,000)
Payment on account 31.7.11 (50% x 6,000)	(3,000)
Balancing Payment due 31.1.12	**£7,000**

However, if you were writing to Roger in practice, you would **not** simply advise him to pay the sum of £7,000 on 31 January 2012.

Do not forget that on **31 January**, as well as making a balancing payment for the previous year, Roger will also have to make his **first payment on account** for the following year.

This will be £4,000 – i.e. 50% of the income tax due for 2010/11 of £8,000. A few months later you would need to remind Roger to make a second payment on account of £4,000 on 31 July 2012. HMRC usually sends out reminders to taxpayers a few weeks before the due date.

11.2 Interest on tax paid late

If tax is paid late, HMRC will charge interest on any overdue tax. Interest will be charged if either the payments on account are late or the final balancing payment is late. FA 2009, s.101

Interest runs from the **normal due date for payment of the tax** to the **day before payment is actually received** by HMRC.

HMRC charges interest at an **interest rate** (calculated as Bank Base Rate plus 2.5%). At the time of writing the HMRC rate is 3%.

Illustration 2

Simon has the following tax liabilities:

	2008/09	*2009/10*
	£	£
Tax liability	18,000	22,000
Less: deducted at source	(5,000)	(6,000)
Tax due	13,000	16,000

Simon pays his 2009/10 tax on the following dates:

	£
30 January 2010	6,500
18 September 2010	6,500
29 January 2011	500
1 May 2011	2,500

The interest (assuming a rate of 3%) that Simon will have to pay is calculated as follows:

The first POA was on time but the second POA was late. Also £2,500 of the balancing payment was late.

Interest	£
£6,500 x $\frac{49}{365}$ x 3% (31 July – 17 September)	26
£2,500 x $\frac{90}{365}$ x 3% (31 January – 30 April)	18
Total interest	**£ 44**

11.3 Penalty regime

Schedule 56 FA 2009 contains new penalty provisions in respect of late payment of tax. Although these rules have not yet been implemented in respect of income tax, for the purposes of the examination you are **only required to know the new rules**. You will NOT be examined on the old rules.

Where the tax due in respect of a tax return is outstanding **more than 30 days** after the **payment due date**, a penalty of 5% of the unpaid tax will be charged. Para 3 Sch 56 FA2009

A further 5% penalty will be charged in respect of tax outstanding **more than 5 months** after the first penalty is charged.

Finally, an additional penalty of 5% will apply to tax still outstanding more than **11 months** after the first penalty is charged.

Note that payments on account paid late do not suffer separate late payment penalties.

Illustration 3

Sarah, an employee, has an outstanding tax liability of £4,000 in respect of 2010/11 as a result of a capital gain she had made in the year. She filed her tax return by the due date of 31 January 2012, but did not pay the tax due until 1 May 2012.

Sarah will be liable to a late payment penalty of £4,000 x 5% = £200 as the tax is paid more than 30 days after the due date of 31 January 2012.

Illustration 4

Josh was due to make payments on account in respect of 2010/11 of £5,000 on 31 January 2011 and 31 July 2011. He paid £5,000 on 1 July 2011 but failed to make the second payment on account. His final liability for 2010/11 was £13,000. He paid £6,000 on 31 March 2012 and the remaining £2,000 on 31 August 2012. His tax return form had been issued to him on 6 April 2011. No tax had been deducted at source.

Although Josh paid the first payment on account late and failed to make a second payment on account before the final due date, no separate penalties are charged in respect of these failures.

Tax of £8,000 is outstanding more than 30 days after the payment due date of 31 January 2012.

The penalty charged will be £8,000 x 5% = £400.

Tax of £2,000 is still outstanding more than 5 months after the first penalty was levied.

A further penalty will be charged of £2,000 x 5% = £100.

Taxpayers who fail to make payments of tax by the due date may request that **payment be deferred** for a period. If HMRC agree to the deferral request (known **as 'an agreed time to pay arrangement'**), the taxpayer will not be charged any late payment penalties.

However, if the terms of the agreement are broken, for example if the taxpayer fails to pay the amount due at the end of the deferral period, HMRC can charge the late payment penalties.

Late payment penalties must be **paid within 30 days** of the date the notice assessing the penalty is issued, or interest will be charged. Para 11 Sch 56 FA2009

The decision to issue a penalty or the amount of the penalty payable **can be appealed against** by the taxpayer. Para 13 Sch 56 FA 2009

Penalties will not be charged if the taxpayer has a reasonable excuse for the late payment. An insufficiency of funds is not a **reasonable excuse** (unless due to events outside the taxpayers control). Relying on a third party is also not a reasonable excuse, unless the taxpayer took reasonable care. Para 16 Sch 56 FA 2009

HMRC have the power to reduce the penalties if there are special circumstances.

11.4 "Reasonable excuse"

Where penalties have been correctly charged by HMRC, the taxpayer's only grounds for appeal are that he had a "reasonable excuse" for paying the tax or delivering the return late.

The term "reasonable excuse" is not defined in the legislation and HMRC's view is that each claim should be considered on its own unique merits. HMRC has issued guidance booklets outlining the appeals procedure in respect of penalties and interest and some advice is given as to what may, or may not, be considered as a "reasonable excuse".

Examples of when a "reasonable excuse" claim may be accepted are:

- if the taxpayer did not receive the tax return;
- if the return or payment was posted in good time but arrived late/never arrived due to disruption to the postal service or other factors beyond the taxpayer's control;
- if the taxpayer (or a member of his or her family) suffered serious illness or bereavement which prevented the taxpayer attending to his tax affairs in the proper time;
- if the taxpayer's records were lost or destroyed and could not be replaced in time to meet the statutory deadline;
- if the taxpayer's payment cheque is dishonoured due to bank error and the taxpayer sought to rectify the error immediately.

HMRC would **not** be likely to accept the following excuses as "reasonable":

- pressure of work or other commitments (except illness or bereavement) on the part of the taxpayer or his agent;
- failure by an agent to complete the return in time/advise on tax payments in time;
- the tax return is too complicated to complete;
- insufficient funds to pay the tax;
- the lack of reminders from HMRC before a filing date or payment date;
- not enough information available (reasonable estimates should be made in these instances).

Example 1

Janet has the following tax liabilities in 2010/11:

	£
Income tax	19,000
Capital gains tax	4,200
	23,200
Income tax paid under PAYE	(14,000)
Balance due for year	£ 9,200

In 2009/10 her income tax liability was £16,000 of which £12,000 was deducted under PAYE.

Calculate the total tax payment to be made by Janet on 31 January 2012.

Example 2

Billy's tax due for 2010/11 amounts to £14,000. This is discharged as follows:

	£
First POA paid 26.3.11	5,000
Second POA paid 21.7.11	5,000
Balance paid 2.9.12	4,000
	14,000

Calculate Billy's interest and penalties, assuming an interest rate of 3%.

Answer 1

	£
Income tax due £(19,000 – 14,000)	5,000
Capital gains tax due	4,200
	9,200
Less: payments on account for 2010/11	
£(16,000 – 12,000) x 50% x 2	(4,000)
Balancing payment 2010/11	5,200
Add: first Payment on account for 2011/12	
£(19,000 – 14,000) x 50%	2,500
Due 31 January 2012	**£7,700**

Answer 2

	£
First POA:	
Interest from 31.1.11 – 25.3.11	
$£5,000 \times \frac{54}{365} \times 3\%$	22
Second POA:	
Paid on time so no interest	Nil
Balancing payment:	
Interest from 31.1.12 – 1.9.12 (214 days)	
$£4,000 \times \frac{214}{365} \times 3\%$	70
Penalty:	
4,000 x 2 x 5% (> 6 months late)	400
Total	**£492**