CHAPTER 12

SELF ASSESSMENT: FURTHER ASPECTS

12.1 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 2010/11 where the taxpayers outstanding income tax liability for 2009/10 was less than £1,000. TMA 1970, s.59A(1) SI 2008/838

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.

TMA 1970, s.59A(4)

12.2 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.**

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 2009/10 of £16,000. Her payments on account for 2010/11 should be £8,000 each, due on the 31 January 2011 and 31 July 2011.

Amanda does some calculations and anticipates that her 2010/11 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 2011 and on the 31 July 2011 respectively.

Amanda finally gets around to preparing her 2010/11 tax return which she submits (electronically) on 19 February 2012. 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 2012, i.e. 19 days late.

As well as having interest and potential penalties, Amanda will be liable to the £100 fine for sending in a late return.

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 2010/11 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 31 January 2011 to 18 February 2012 (the day before the tax was actually paid). The number of days in this period is 384.

They will also charge interest on £1,000 from 31 July 2011 to 18 February 2012, a period of 203 days.

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

	£
Interest: $£1,000 \times \frac{384}{365} \times 3\%$	32
$£1,000 \times \frac{203}{365} \times 3\%$	17
	£49

A **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, there will be a fixed penalty of £100 for Amanda submitting her tax return late. If we add together all interest and penalties, the total amount levied on Amanda is £149.

12.3 Repayment interest

FA 2009, s102
FA 2009, Sch 54

A new regime for repayment interest was introduced by FA 2009. This is being implemented gradually. For the purposes of the examination you will only be tested on the new rules.

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.

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. At one point the rate of repayment interest was actually 0%. However, as from September 2009 a new minimum rate takes effect. Interest paid by HMRC will be at the Bank base rate minus 1, but with a minimum 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.

Interest on overpaid tax runs from the date on which the tax is paid (or the normal due date if this is later) to the day before the repayment is made.

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 – such tax is all deemed to have been paid on 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 2010/11, we pretend that all of this tax was actually paid on 31 January 2012.

This is a harsh rule because in reality, the tax is actually paid to HMRC earlier than 31 January 2012 – PAYE is paid on a monthly basis throughout the year. Therefore, if PAYE for 2010/11 is being repaid and HMRC issues the repayment before 31 January 2012, 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

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 supplement due.

Illustration 2

Cindy submits her 2009/10 return on 15 January 2011. The return shows tax due of £20,000 which was paid as follows:

	£
First POA made 25.1.10 (due 31.1.10)	9,000
Second POA made 30.7.10 (due 31.7.10)	9,000
Balancing payment 15.1.11 (due 31.1.11)	2,000
	£20,000

On 28 June 2011, Cindy spots a mistake in her return and gives notice of amendment. Tax of £3,000 is repaid to Cindy on 16 July 2011.

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:

	£
1st = Balancing payment 15.1.11	2,000
2nd = First POA 25.1.10	500
and Second POA 30.7.10	500
	£3,000

The repayment interest is calculated as follows:

		£
On BP (31.1.11-15.7.11)	$£2{,}000 \times \frac{166}{365} \times 3.5\%$	32
1st POA (31.1.10-15.7.11)	$£500 \times \frac{531}{365} \times 3.5\%$	25
2nd POA (31.7.10-15.7.11)	$£500 \times \frac{350}{365} \times 3.5\%$	17
Total repayment interest		**£74**

Repayment interest runs from the later of the actual date of payment and the normal due date.

12.4 Disclosure

Every taxpayer has a duty to submit a correct and complete return to the **best of his knowledge**. The person will sign a declaration to this effect when submitting the tax return. If the return turns out not to be correct and complete, HMRC has the power to charge penalties for incorrect returns. TMA 1970, s.8 FA 1998, Sch 18 Para 3

It is in the taxpayer's interests to ensure that all factors relevant to the tax liability are adequately disclosed. This ensures that;

(i) the taxpayer maintains a good relationship with HMRC whereby HMRC can see that the taxpayer is acting in good faith; and
(ii) the taxpayer is more likely to be protected from a "discovery" assessment (see later).

It is for the taxpayer to decide what should and should not be disclosed to HMRC. The taxpayer should at all times take account of factors such as:

- Tax law as it stands at the time of filing;
- Any element of doubt which exists as to the treatment of an item (and the view taken by the taxpayer and his/her adviser);
- The manner in which disclosure is to be made;
- The materiality of the item in question.

HMRC guidance in this area in relation to income tax self-assessment is given in a Press Release dated 31 May 1996, and in the booklet Professional Conduct in Relation to Tax, which forms part of your ethics studies.

12.5 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. FA 1998, Sch 18 TMA 1970, s.29

HMRC can make a discovery assessment if they discover that— FA 1998, Sch 18 Para 41

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

(b) an assessment is or has become insufficient; or TMA 1970, s.29(1)

(c) relief has been given which is or has become excessive.

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.

In the Press Release from May 1996 HMRC confirmed that where **all relevant facts have been disclosed**, taxpayers can be certain (except in cases of careless or deliberate behaviour) that they have **gained finality at the end of the enquiry period**.

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

(a) contained in—

(i) the tax return (or in accompanying documents) for the tax year concerned or either of the two preceding tax years; TMA 1970, s.29(6)

(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 (or on behalf of the company).

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.

There are two main cases you should be aware of in respect of discovery assessments. SP 8/91

In *Cenlon Finance Co Ltd v Ellwood (1962),* a company submitted corporation tax computations and after some discussions, these were accepted by the case Officer. A second Officer later reviewed the position and disagreed with his colleague. The second Officer raised further assessments to recover tax lost.

The Courts held that the second Officer was technically correct and a discovery had been made. However, no assessment could validly be made because the **point in dispute had been specifically discussed and agreed**. Essentially, the second **Officer is bound by the decision of the first** and the Revenue could not change their mind on information previously available to them.

In the case of *Scorer v Olin Energy Systems Ltd (1985)*, a company made a claim to carry forward a trading loss. The claim was incorrect in law, but the mistake was not spotted by the Officer who initially reviewed the accounts and tax was paid on the basis that the claim was correct. A second Officer later sought to reverse the claim by making a "discovery" assessment under s.29 to recover the tax lost.

The Courts held that HMRC were **not allowed to reopen the assessment** because (although the claim was technically inadmissible);

- there had been no deliberate intention by the taxpayer or his agent to mislead HMRC; and
- the claim has been sufficiently described in the computation for its significance to be apparent and in those circumstances, the Officer must have understood and agreed the claim.

The final conclusions we should therefore draw on the subject of discovery are that;

- If HMRC has **specifically agreed a point**, they will not later go back on that point and seek to change their minds; and

- If there has been **full disclosure in the first place** (i.e. sufficient information is made available to HMRC and its relevance explained), then once the enquiry period has ended, the **return can be closed and will not be revisited**.

Further guidance from HMRC can be found in SP 1/06.

12.6 Information and Inspection Powers

One of HMRC's responsibilities is to check that correct amounts of tax have been paid at the right time. 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

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. 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

Example 1

Les had tax due for 2009/10 of £18,000. He made a claim to reduce his payments on account for 2010/11 to £6,000 each. His 2010/11 tax due was £14,000 and was paid on the following dates:

	£
26 January 2011	6,000
11 August 2011	6,000
30 January 2012	2,000
	£14,000

Calculate 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 day before repayment.

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.

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 x 50%), i.e. each payment on account was £1,000 too low.

Interest chargeable will be as follows:

	£
1st payment on account - £1,000 underpaid	
31.1.11 – 29.1.12	
$\frac{364}{365} \times 1{,}000 \times 3\%$	30
2nd payment on account - £1,000 underpaid	
31.7.11 – 29.1.12	
$\frac{183}{365} \times 1{,}000 \times 3\%$	15
2nd payment on account - £6,000 actually paid late	
31.7.11 – 10.8.11	
$\frac{11}{365} \times 6{,}000 \times 3\%$	5
Total interest	**£50**

Answer 2

Answer B is False

Interest runs from the later of the actual payment date and the due date to the day before repayment.