These notes refer to the Finance Act 2009 (c.10) which received Royal Assent on 21 July 2009

FINANCE ACT 2009

EXPLANATORY NOTES

INTRODUCTION

Section 101Schedule 53: Late Payment Interest on Sums Due to Hmrc

Summary

1. Section 101 sets out the general proposition for applying late payment interest to any sum due under or by virtue of an enactment to HM Revenue & Customs (HMRC) but paid late. Schedule 53 sets out the special provisions concerning the amounts, start date and end dates for charging late payment interest as well as further provisions to clarify the effect of interest on certain reliefs.

Details of the Section

2. Subsection (1) provides that the section applies to the late payment of any sums which are payable by a person to HMRC. The section is designed to cover those sums due to be paid to HMRC as imposed by statute, while excluding those sums paid to HMRC as an organisation (such as sums paid in respect of the provision of supplies or rent).

3. Subsection (2) provides for the exclusion of amounts of corporation tax and petroleum revenue tax. In addition this subsection provides a power for the Treasury to specify in an order those other payments which will not fall within the scope of this legislation.

4. Subsection (4) sets out the general rule for the late payment interest start date. This general rule is subject to the special provisions that follow.

5. Subsection (5) introduces Schedule 53 which caters for the exceptions where the general rule set out at subsection (4) where special provisions apply.

Details of the Schedule

6. Paragraph 1 provides that this provision applies where a person makes a claim to reduce their payments on account due under income tax self assessment and is then due to make a balancing payment. The paragraph is designed to reproduce the effect of the current law set out at section 86(4)-(6) of the Taxes Management Act 1970 (TMA).

7. Paragraph 1(1) provides for the conditions under which paragraph 1 applies.

8. Paragraph 1(2) sets out how to calculate the late payment interest in this situation and how much should be paid as a balancing payment.

9. Paragraph 1(3) sets out how to determine what amount if any is payable by the taxpayer.

10. Paragraph 2 deals with the application of late payment interest where payments on account of income tax are due from a person who is also entitled to a repayment of an overpayment.

11. Paragraph 2(1) states that paragraph 2 applies where payments on account are due from a taxpayer who is also entitled to a repayment of an overpayment.

12. Paragraph 2(2) provides for the amount of late payment interest that can be applied in the situation defined in paragraph 2(1).

13. Paragraph 2(3) sets out how to determine the size of the repayment if any, that is repayable.

14. Paragraphs 3(1) and (2) encompass such alterations to the tax liability after it has been initially established, and provide that the late payment interest start date in such cases is the date that would have applied if the assessment had been complete and accurate and made on time, and the amount had been due and payable as a result of the assessment.

15. Paragraph 3(3) provides further explanation of the words 'an assessment which ought to have been made' as used in this paragraph. This then provides clarity regarding the charging of interest where a person fails to notify HMRC of their liability to tax as required under section 7 of TMA.

16. Paragraph 4 provides the start date for late payment interest in respect of amounts postponed under section 55 of TMA (as specified).

17. Paragraph 5 provides the start date for late payment interest on an overpayment of tax recovered by virtue of an assessment under section 30 of TMA.

18. Paragraph 6 repeats the provisions of section 87A(5) of TMA relating to recovery of company tax credits or interest on such payments. The late payment interest start date on assessments made to recover such payments is the date when the payment of the tax credit or interest was made.

19. Paragraph 7 provides the late payment start dates for certain instalments of inheritance tax made under sections 227 and 229 of the Inheritance Tax Act 1984 (IHTA).

20. Paragraph 8 recreates the effect of section 236(2) of IHTA to ensure that where an amount of inheritance tax is underpaid as a result of an order made under the specified sections that late payment interest will not run until that order is made.

21. Paragraph 9 provides the start date for late payment interest in respect of amounts payable under section 147(4) of IHTA.

22. Paragraph 10 provides the date to start charging late payment interest in cases where VAT has been paid late as a consequence of a trader failing to register with HMRC for VAT purposes.

23. Paragraph 11 provides the date to start charging late payment interest where VAT has been charged on an invoice by a trader who has not registered with HMRC for VAT purposes and is subsequently recovered by HMRC.

24. Paragraph 12 legislates for the concessionary interest treatment currently applied where a taxpayer dies before payment of income tax is due (see Extra-statutory Concession A17).

25. Paragraph 12(1) describes the conditions that must apply for the rule set out in paragraph 12(2) to apply.

26. Paragraph 12(2) provides that such amounts do not carry interest from the date of death until the later of the normal late payment interest start date or the day after the end of the period of 30 days beginning with the grant of probate or letters of administration.

27. Paragraph 13 is designed to replicate the rules regarding the date to which late payment interest runs for those entities falling within the provisions of Chapter 15 of Part 15 of the Income Tax Act 2007 (ITA) (deposit takers, building societies and certain companies liable to deduct tax on behalf of others and pay it over to HMRC). The rules set out in this paragraph replace those currently set out at section 87 of TMA.

28. Paragraph 13(1) explains that this provision applies where tax was not paid when due by a deposit-taker, building societies and certain companies but was subsequently discharged or repaid because it was collected by deduction at source in a later period.

29. Paragraph 14 deals with acceptance of property in lieu of payment of inheritance tax. This paragraph states that late payment interest running in such cases will cease from the date when the property is valued.

30. Paragraph 15 restates elements of section 91 of TMA and provides that, where certain conditions are met, adjustments will be made to the amount of late payment interest payable, and if necessary, such sums will be repaid.

31. Paragraph 15(1) provides that, where certain conditions are met, adjustments will be made to the amount of late payment interest payable, and if necessary, such sums will be repaid.

32. Paragraphs 15(2) and (3) set out the conditions referred to in paragraph 15(1). These are that the interest must have arisen on sums due under income tax self assessment and that relief from tax has to be given by discharge.

33. Paragraph 16 permits a person receiving relief from tax by repayment of income tax to require it to be treated as a discharge of a qualifying charge to tax.

34. Paragraph 16(3) states that the repayment cannot be treated as a discharge of any assessment made after the relief was given, or as reducing without reducing to nil the tax charged in more than one assessment.

Background Note

35. Section 101 is designed to apply a simple and consistent interest charge to late payments across all taxes and duties. Late payment interest will apply, for the majority of payments due to HMRC and made late, from the payment due date until the date that payment is received. The interest charged will be simple interest, and will not generally be deductible in computing profits or income.

36. The section sets out a general proposition for applying late payment interest to any sum due to HMRC but paid late. The formulation follows that used at section 127(1) of the Finance Act 2008 designed to facilitate recovery action for sums owed to HMRC.

37. Both corporation tax and petroleum revenue tax are excluded from the Finance Act 2009 legislation which does not currently accommodate either tax. The intention is to introduce parallel legislation for both taxes in Finance Act 2010.

38. This Schedule sets out the exceptions to the general rules set out in the section and how interest will operate in particular situations. These provisions cater for particular regime-specific rules. Although the aim is to harmonise the application of interest across taxes, some rules of this kind are necessary given the different structure and operation of the various taxes.

39. Part 1 of this Schedule sets out the amounts to which late payment interest will apply in particular circumstances. The first two paragraphs deal with claims to incorrectly reduce the payments on account due under the income tax self assessment system.

40. Part 2 sets out the situations where the late payment interest start date does not coincide with the date that the tax for the period or on the transaction is due for payment. The main situation where this applies is when a tax charge changes after it has been initially established, either due to amendment, correction or by some other method. The other situation where the late payment interest start date does not coincide with the date that the tax is due for payment is where HMRC brings tax into charge, usually by making an assessment where one has not already been made.

41. Part 3 sets out the situations where the late payment interest end date does not coincide with the date that the tax for the period or on the transaction is due for payment.

42. Part 4 restates elements of section 91 of TMA, defining how interest is to be treated in circumstances where the taxpayer qualifies for a relief. As well as defining the conditions that must be met for the taxpayer to qualify, the legislation sets out how any overpayments of late payment interest are to be repaid to the taxpayer.