



## FIELD COURT TAX CHAMBERS

### **Interest and penalties<sup>1</sup>**

When attempting to settle or agree a liability with HMRC, there will often be issues involving a degree of compromise. (Not many, because of the rather unhelpful HMRC litigation and settlement strategy – but I am talking principles here).

Sometimes a penalty arises but HMRC has a wide discretion to agree a penalty which befits the circumstances – allowing it to be reduced because of special circumstances, or even suspended in certain cases. Unfortunately, and to the frustration of many taxpayers, there is no such discretion when it comes to interest on the unpaid tax under TMA 1970 s 86. The interest is a statutory imposition over which HMRC has no discretion. Nor has the tribunal. And when the tribunal did reduce the interest in the case of *Gretton v HMRC* ([2010] UKFTT 521 (TCC)), it was quickly overturned on appeal ([2012] UKUT 261 (TCC)).

However, HMRC has issued some new guidance in their *Debt Management Manual* saying that you can object to late payment interest where there are mitigating circumstances. We do not know what might represent mitigating circumstances for this purpose – and there could be no greater mitigating circumstances than those which occurred in *Gretton* where a blameless elderly couple were victims of a fraud, but that did not help them.

Anyway, this is very welcome. I would not dream of complaining – but if the tribunal has no power to mitigate the interest, I have real difficulty in understanding how HMRC can have authority do so. Never mind. I am appropriately grateful.

Nearly everybody will remember that during the periods of lockdown and the upheaval to professional life caused by Covid, there was a general appreciation that many things happened (or couldn't happen) as they should. HMRC were aware of that too – and made allowances, one example being the relaxation of the rules relating to exceptional days in determining a person's residence for tax purposes.

The widespread advice during that time was that people should keep detailed records and documentary evidence where possible, to be able to explain the difficulties. The thinking was that memories are short, and when the pandemic is over, HMRC might have forgotten the difficulties faced by taxpayers during that time and be unsympathetic to any defaults such as the late submission of returns or information.

The recent case of *Hughes Property Partners Ltd v HMRC* [2023] UKFTT 453 (TC) shows that this was good advice.

The case concerned the late filing of an ATED return. There was no liability to tax because the company was a property developer, but a return still had to be made. The accountant called HMRC for some guidance (but was told that they were working from home and could not help).

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The ATED return for the year ended 31st March 2021 should have been filed in September 2020. It was late and a penalty was charged.

The accountant explained that there were some special and extenuating circumstances: the pressures that he and other firms faced during the pandemic, the difficulty in contacting HMRC officers who were not in their offices, and there was no tax due anyway.

No deal, said HMRC – there were no special circumstances and no reasonable excuse to relieve them from the penalty. The tribunal were no more sympathetic. They took the view that there was no connection between the Covid situation and the failure to file the return. Short memories indeed.

**Peter Vaines**

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