

Analysis

Time is money: how to mitigate late payment interest in tax disputes

Speed read

From 6 April 2025, HMRC late payment interest rose to 8.5%, representing a more than threefold increase since the beginning of 2022. This presents significant challenges for taxpayers who face potentially prolonged tax disputes and raises questions of unfairness where delays can be attributed to the actions of HMRC. While it is possible to 'object' to late payment interest in certain circumstances, taxpayers should expect strong resistance from HMRC. Where a payment on account is not possible, efficient case management has never been more important. There are various practical steps that taxpayers might take to minimise delays in their disputes with HMRC and thereby mitigate any additional interest charged.



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Many taxpayers will have been left frustrated by extended delays when facing HMRC investigation or assessment. As recently reported in *Tax Journal* (25 April 2025), research suggests that HMRC investigations into UK's largest businesses now last an average of 45 months.

Another key challenge that this presents is in relation to late payment interest. Historically, the rate of late payment (simple) interest charged by HMRC tracked at 2.5% above the Bank of England base rate. In recent years, base rate increases have brought late payment interest into sharper focus. This trend is set to increase with the rate now being set at 4% above the Bank of England base rate from 6 April 2025. The current rate of late payment interest is therefore 8.5% (announced to reduce slightly to 8.25% from 28 May 2025).

Interest automatically runs from the original due date for payment until finally paid. This applies even where the tax liability is disputed and HMRC have granted a postponement application (direct taxes, TMA 1970 s 55) or a hardship application (indirect taxes, VATA 1994 s 84) to suspend payment pending the outcome of an appeal. Therefore, if a taxpayer is facing a potential dispute with HMRC, it will need to take late payment interest into account. Interest is of course only payable if the disputed tax is ultimately determined to be due. However, given the uncertainty with any litigation, appropriate consideration needs to be given to interest at the outset of a dispute; the high rate of interest means that this may represent a material sum, particularly where disputes are prolonged.

Payments on account

The easiest way to mitigate interest is by making payment (or part payment) of the disputed tax on account. If it is ultimately

decided that there is no liability, HMRC should repay this amount to the taxpayer (albeit with a significantly lower repayment interest rate, currently 3.5%). However, a taxpayer's ability to pay a substantial sum upfront depends on its individual circumstances – even where a taxpayer may have sufficient cash reserves, for example, payment may impact on other investment decisions.

Taxpayers can generally make a payment on account at any time during an investigation or dispute. Financially speaking, it would be best to do so as soon as possible but strategic considerations often come into play. Historically, some taxpayers have been reluctant to make a payment on account on the basis that this might be perceived as a sign of weakness in their case. In the author's view, this is something of a myth (although making a payment on account prior to HMRC making a final decision might well embolden them to issue an assessment). Certainly, with interest rates now so high, HMRC should recognise that making a payment on account, if possible, is simply the prudent decision for any taxpayer.

Objection!

Whilst there is no standalone right of appeal against a late payment interest charge, it is possible to ask HMRC to exercise their discretion to waive all or part of the interest in certain circumstances. As set out in HMRC's *Debt Management and Banking Manual* (at DMBM405010 onwards), this includes when part of the interest charged would not have arisen but for a mistake or unreasonable delay on the part of HMRC.

Objections to interest charged should be made to the relevant HMRC case officer but the decision will be referred to the Interest Review Unit (IRU), a specialist team within HMRC.

According to published reports of responses to Freedom of Information requests, from 2019/20 to 2023/24 the number of cases being reviewed by the IRU has risen sharply (no doubt reflecting the rise in interest rates and presumably also an increasing dissatisfaction with HMRC service levels). However the vast majority of objections have been rejected (either in full or in part). The paucity of upheld objections is unsurprising in the context of the IRU's general principles (set out in HMRC guidance DMBM405020) that make clear that the circumstances in which interest will be waived are narrow:

'All taxpayers are expected to make full payment by the due date. Charging interest is simply our way of recognising that tax has been paid later than when it was due. As a result the scope for setting aside interest on late payment is not as wide as it may be in a commercial setting.'

Similarly, DMBM405070 makes clear that any request for sympathetic treatment based on personal circumstances, including illness, mental incapacity, or a lack of funds, will be disregarded by HMRC (albeit with an expression of sympathy).

The burden is on the taxpayer to set out the case for waiving interest. In the author's experience of preparing these applications, even where there are good grounds for interest being waived, the taxpayer should expect strong resistance from HMRC.

To increase the probability of seeing interest waived, taxpayers would be well advised to raise any issues around HMRC conduct or delay issues in writing as soon as possible. Interest objections are generally not always formally considered before the underlying tax is paid and interest charged (DMBM405020), but this does not prevent an objection being placed on the record for later consideration. The threat of an interest objection could potentially speed up the relevant HMRC case officer in the interim.

There is limited recourse for the taxpayer to challenge the IRU's decision. There is no statutory right to appeal, and whilst HMRC's guidance (DMBM405020) cites the potential for making a complaint, the complaints handlers have no capacity to overturn the decision. The remaining potential avenue for disgruntled taxpayers would be judicial review – an expensive undertaking with often limited chance of success depending on the relevant facts.

Practical tips

Given the rise in late payment interest rates and the difficulties that any interest objection would likely face, there are various practical steps that taxpayers might take to minimise delays in their disputes with HMRC and thereby mitigate any additional interest charged (where making a payment on account is not possible for whatever reason).

1. **Getting the right advice:** It goes without saying that taxpayers, when faced with a HMRC investigation or assessment, should appoint a specialist adviser with tax disputes experience sooner rather than later.
2. **Front foot forward:** Understandably, businesses often try to limit professional fees by preparing the initial responses to HMRC themselves but this unfortunately often results in higher costs (particularly at the current rate of interest). There are often circumstances where it may be useful to submit a fuller response upfront to HMRC, rather than simply responding to their piecemeal requests. Anticipating HMRC's responses and further questions can save considerable time. Critically, putting forward the taxpayer position and tackling any difficult points at the outset can also help to shape the course of the investigation before HMRC's position becomes entrenched.
3. **Information requests and correspondence:** We often see taxpayers and advisers resisting informal requests for information, even where that information might otherwise be 'reasonably required' within the meaning of FA 2008 Sch 36. Taxpayers also often like to construe information requests narrowly to limit disclosure. Whilst there may be strategic justifications for this approach, it is often a waste of time as HMRC will ultimately issue formal notices under FA 2008 Sch 36 to obtain all reasonably required information. Refusing to comply with reasonable informal requests may also impact the level of any behavioural penalties charged (for example, under the 'telling', 'helping' and 'giving access' criteria in FA 2007 Sch 24 para 9). Therefore, barring a fundamental concern over for example data privacy or legal privilege, it may not be in the taxpayer's best interests to resist informal requests. Taxpayers should take appropriate advice on receipt of any information request. Similarly, correspondence received by HMRC should be responded to promptly wherever possible. Sometimes more time, and even extension requests, are necessary but taxpayers should bear in mind that interest will be accruing and any taxpayer delay may undermine any potential arguments as to HMRC's conduct in any subsequent interest objection.
4. **HMRC meetings:** Inefficient back and forth correspondence with HMRC can, in appropriate cases, be avoided by asking for a meeting (with the adviser present!). HMRC officers sometimes resist such requests, but taxpayers should refer them to HMRC's own guidance (for example, the *Enquiries Manual* at EM1822) which encourages case officers to hold meetings.
5. **Mediation:** Taxpayers may wish to consider whether to apply for the use of HMRC mediation. This is often quicker than litigation, with HMRC aiming to conclude the mediation within four months of the taxpayer's application (as well as being confidential and lower cost). However, mediation is only appropriate in certain cases. When the tax issues at hand boil down to black and white legal issues, mediation would not be helpful and certain types of cases are excluded from the process altogether (such as civil evasion penalties).
6. **Threatening judicial review:** If taxpayers are faced with a difficult case officer and disagree with the way they are handling the investigation, they might consider a formal complaint or ultimately even threatening a judicial review. A letter before claim can help accelerate the decision-making process as it will be reviewed by HMRC's Solicitors Office. Appropriate advice should be sought before considering any judicial review proceedings.
7. **Closure notice applications:** In the context of a self-assessment enquiry that is felt to be dragging out unnecessarily, taxpayers can apply to the First-tier Tribunal (FTT) to compel HMRC to close their enquiry within a specified period (e.g., for corporation tax enquiries, under FA 1998 Sch 18 para 33). This is an important taxpayer safeguard but should be exercised with care; a premature application, if not refused (wasting further time and costs), can risk simply bouncing HMRC into making an unfavourable decision.
8. **Statutory reviews:** When HMRC issue a final decision, taxpayers have the option of statutory review (TMA 1970 s 49A et seq., FA 2003 Sch 10 para 36A et seq. and VATA 1994 s 83A et seq.). Once the review begins, it should be completed within 45 days unless otherwise agreed. The chances of a successful statutory review are typically slim, particular for disputes over points of law or policy, and so that could be 45 days of wasted time and interest accrual. On that basis, it is likely to be more time efficient to proceed straight to notifying its appeal to the FTT. However, this requires the taxpayer to be organised as they will only have 30 days from the date of the final decision to file their appeal. Statutory reviews can create time to get ducks in a row prior to an appeal to the FTT (for example, instructing counsel and agreeing grounds of appeal). This is something advisers will raise with their clients.
9. **Straight to the FTT:** For direct taxes, when a HMRC officer issues an appealable decision, the taxpayer must first give notice of appeal to that officer, who will consider the merits of the appeal before amending or confirming their decision. However, if there is no realistic prospect of the HMRC officer changing their mind, the taxpayer can choose to notify the appeal to the FTT straightaway to avoid further costly delays.
10. **Managing the appeal:** Once in FTT proceedings, good case management is critical. Taxpayers should seek tight deadlines with HMRC and avoid stays or case management applications wherever possible. Gathering relevant evidence and organising witness statements ahead of time may prevent unnecessary delays later on. Of course, late payment interest is not the only reason for wanting tax disputes to be as efficient as possible. Resolving a dispute more quickly will have various other benefits, such as reducing the risk of a live dispute occurring during a transaction/refinancing, releasing provisions in accounts more quickly and quicker enforcement of any related contractual indemnities. ■

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- The increased interest rate on late payments (D Whiscombe, 8.1.25)
- Alternative dispute resolution and mediation (A Craggs & L McKay, 6.1.24)
- Case management before the tribunal (A Craggs & D Williams, 28.8.24)