

HMRC are now charging interest on tax that is not even due

We have recently become aware of what appears to be a change of policy by HMRC in respect of statutory interest on Corporation Tax. HMRC now require the payment of statutory interest at 8% from the commencement of a solvent Members Voluntary Liquidation (MVL) on any Corporation Tax that falls due for payment after the date of the liquidation. This is even if the normal due date for payment of the tax is not due until after the commencement of the liquidation and payment is made before the due date.

HMRC are relying on a court decision in one of the Lehman Brothers cases (Lehman Brothers Int'l Europe Ltd v Burlington Loan Management Ltd) for this change in policy, whereby interest, at what can only be described as a penal rate, must now be paid on tax, at a time when the normal tax rules do not require such tax to be paid!

The case indicated that statutory interest was due on both future debts and contingent debts, and since Corporation Tax payable on a normal due date after the commencement of a liquidation is a future debt then statutory interest falls due. Whilst that judgement related to an Administration, HMRC are arguing that in view of the similarity in wording in the legislation it applies equally to liquidations. The standard letter that they are sending to liquidators with demand for statutory interest says:

"Our understanding of the correct treatment of statutory interest derives from the decision of David Richards J in Re Lehman Brothers International (Europe): Lomas v Burlington Loan Management Limited. In a supplemental decision he restates his conclusion that "interest under Rule 2.88 (statutory interest) is payable on future debts and on the amount admitted to proof in respect of contingent debts from the date on which the administration commenced".

The vast majority of MVL's relate to entrepreneurs releasing their capital, having, as a result of hard work and risk, over many years, grown their company into a profitable enterprise.

This is effectively a hidden tax on entrepreneurs since HMRC are receiving interest that would not be due other than for the decision to cease trading and to allow members to release their capital from the company.

It is likely to require a Court decision in an MVL case for HMRC to change this policy. In the meantime, our advice to directors/shareholders is to consider making a payment on account of corporation tax due prior to the date of liquidation in order to minimise any statutory interest chargeable at 8%.

Please note that should your clients require any confidential advice regarding any insolvency matter they are welcome to contact one of our Partners. Initial advice is provided free of charge and without obligation. Also, if you or any of your colleagues require and clarification regarding insolvency law or procedure, please do not hesitate to contact us.