

2009 No. 2032

REVENUE AND CUSTOMS

**The Taxes and Duties (Interest Rate) (Amendment) Regulations
2009**

Made - - - - - *21st July 2009*
Laid before the House of Commons *22nd July 2009*
Coming into force - - - *12th August 2009*

The Treasury make the following Regulations in exercise of the powers conferred by section 178(1) to (3) of the Finance Act 1989(a) and section 197 of the Finance Act 1996(b).

Citation and commencement

1. These Regulations may be cited as the Taxes and Duties (Interest Rate) (Amendment) Regulations 2009 and shall come into force on 12th August 2009.

Amendment of the Taxes (Interest Rate) Regulations 1989

2. The Taxes (Interest Rate) Regulations 1989(c) are amended as follows.

Amendment of regulation 2

3.—(1) Amend regulation 2 (interpretation)(d) as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (a) of the definition of “operative date” for “eleventh” substitute “twelfth”,

(b) in sub-paragraph (a) of the definition of “reference date” omit “second”.

(3) For paragraph (2) substitute—

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- (a) 1989 c. 26; section 178(2) has been amended by section 17(10) of the Social Security Act 1990 (c. 27), section 118(8) of the Finance Act 1990 (c. 29), section 14(5) of the Ports Act 1991 (c. 52), section 4 of, and paragraph 107 of Schedule 2 to, the Social Security (Consequential Provisions) Act 1992 (c. 6), paragraph 19(4) of Schedule 10 to the Taxation of Chargeable Gains Act 1992 (c. 12), sections 196 and 199 of, and paragraph 44 of Schedule 19 to, the Finance Act 1994 (c. 9), paragraph 30 of Schedule 7, paragraph 13 of Schedule 18 and Part 5(2) and (8) of Schedule 41 to the Finance Act 1996 (c. 8), paragraph 1(3) of Schedule 4 to the Finance Act 1998 (c. 36), paragraph 10(2) of Schedule 2 and paragraph 8(1) of Schedule 4 to the Tax Credits Act 1999 (c. 10), sections 109(2) and (4) and 110(8) and (9) to the Finance Act 1999 (c. 16), Part 2(17) of Schedule 40 to the Finance Act 2000 (c. 17), sections 135 and 136(2) of, and Schedule 13 to, the Land Registration Act 2002 (c. 9), paragraph 8(1) of Schedule 1 to the Employment Act 2002 (c. 22), paragraphs 156 and 162 of Schedule 8 to the Income Tax (Earnings and Pensions) Act 2003 (c. 1), paragraph 4 of Schedule 18 to the Finance Act 2003 (c. 14) and section 105 of the Finance Act 2009 (c. 10).
- (b) 1996 c. 8; section 197 was amended by paragraph 21 of Schedule 5 to the Finance Act 1997 (c. 16), section 130(3) of, and Part 6 of Schedule 5 to, the Finance Act 1999, paragraph 6 of Schedule 7 to the Finance Act 2000, section 49(2) of, and paragraph 18 of Schedule 3 to, the Finance Act 2001 (c. 9) and section 132(2) of the Finance Act 2002 (c. 23).
- (c) S.I. 1989/1297; relevantly amended by S.I. 1991/889, 1993/2212, 1996/3187, 1998/3176, 2008/778 and 2008/3234.
- (d) Regulation 2 was amended by S.I. 1998/3176 and 2008/3234.

“(2) In these Regulations the reference rate found on a reference date is the official bank rate determined by the most recent meeting of the Monetary Policy Committee of the Bank of England.”.

Omission of regulation 2A

4. Omit regulation 2A(a).

Amendment of regulation 3AA

5.—(1) Amend regulation 3AA(b) as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (c) omit “and 16”, and

(b) omit sub-paragraphs (d) and (f).

(3) In paragraph (2) omit the words after “paragraph (3)” to the end.

(4) For paragraph (3) substitute—

“(3) The formula specified in this paragraph is—

$$RR + 2.5,$$

where RR is the reference rate referred to in paragraph (2).”.

Insertion of new regulation 3AAA

6. After regulation 3A insert—

“**3AAA.**—(1) For the purposes of—

(a) paragraph 16 of Schedule 2 to the Oil Taxation Act 1975(c),

(b) paragraph 59 of Schedule 8 to the Development Land Tax Act 1976(d), and

(c) section 825 of, and paragraph 3 of Schedule 19A to, the Income and Corporation Taxes Act 1988(e),

the rate applicable under section 178 shall, subject to paragraph (3), be the percentage per annum found by applying the formula specified in paragraph (2), but if the result is not a multiple of one-quarter the result shall be rounded down to the nearest amount which is such a multiple.

(2) The formula specified for the purposes of paragraph (1) is—

$$\frac{(RR + 2.5) \times 80}{100},$$

where RR is the official bank rate determined at the meeting of the Monetary Policy Committee of the Bank of England which immediately preceded the coming into force of these Regulations.

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- (a) Regulation 2A was inserted by S.I. 2008/3234.
(b) Regulation 3AA was inserted by S.I. 1996/3187.
(c) 1975 c. 22, paragraph 16 was amended by section 2(2) of the Petroleum Revenue Tax Act 1980 (c. 1), sections 179(1)(a)(v) and 180(2) and (3) of the Finance Act 1989 and section 121(2) of the Finance Act 1990 (c. 29).
(d) 1976 c. 24, paragraph 59 of Schedule 8 was amended by sections 179(1)(c)(1) and 180(3) of the Finance Act 1989. The Development Land Tax Act 1976 was repealed by Part 10 of Schedule 27 to the Finance Act 1985 (c. 54).
(e) Section 825 was amended by sections 158(2) and 179(1)(a)(vii) of, and Parts 5 and 8 of Schedule 17 to, the Finance Act 1989 and by paragraph 22 of Schedule 15 to the Finance Act 1991 (c. 31). Schedule 19A was inserted by section 58(4) of the Finance Act 1988 (c. 39) and paragraph 3 was substituted by S.I. 1990/2524. Schedule 19A was repealed by Part 3(12) of Schedule 23 to the Finance Act 1993 (c. 34).

(3) Where on a reference date after the coming into force of these Regulations, the reference rate found on that date differs from the established rate, the rate applicable under section 178 for the purposes of the enactments referred to in paragraph (1) shall, on and after the next operative date, be the higher of—

- (a) 0.5% per annum, and
- (b) the percentage per annum found by applying the formula specified in paragraph (4).

(4) The formula specified in this paragraph is—

$$RR - 1,$$

where RR is the reference rate referred to in paragraph (3).”.

Amendment of regulation 3AB

7.—(1) Amend regulation 3AB(a) as follows.

(2) In paragraph (2) for the words from “percentage” to the end substitute—

“higher of—

- (a) 0.5% per annum, and
- (b) the percentage per annum found by applying the formula specified in paragraph (3).”.

(3) For paragraph (3) substitute—

“(3) The formula specified in this paragraph is—

$$RR - 1,$$

where RR is the reference rate referred to in paragraph (2).”.

Amendment of regulation 3A

8.—(1) Amend regulation 3A(b) as follows.

(2) In paragraph (2) omit the words after “paragraph (3)” to the end.

(3) For paragraph (3) substitute—

“(3) The formula specified in this paragraph is—

$$RR + 2.5,$$

where RR is the reference rate referred to in paragraph (2).”.

Amendment of regulation 3B

9.—(1) Amend regulation 3B(c) as follows.

(2) In paragraph (2) for the words from “percentage” to the end substitute—

“higher of—

- (a) 0.5% per annum, and
- (b) the percentage per annum found by applying the formula specified in paragraph (3).”.

(3) For paragraph (3) substitute—

(a) Regulation 3AB was inserted by S.I. 1996/3187 and relevantly amended by S.I. 2008/778.
(b) Regulation 3A was inserted by S.I. 1993/2212.
(c) Regulation 3B was inserted by S.I. 1993/2212.

“(3) The formula specified in this paragraph is—

$$RR - 1,$$

where RR is the reference rate referred to in paragraph (2).”.

Amendment of regulation 3BA

10.—(1) Amend regulation 3BA(a) as follows.

(2) In paragraph (2) for the words from “percentage” to the end substitute—

“higher of—

(a) 0.5% per annum, and

(b) the percentage per annum found by applying the formula specified in paragraph (4).”.

Amendment of regulation 3BB

11.—(1) Amend regulation 3BB(b) as follows.

(2) In paragraph (2) for the words from “percentage” to the end substitute—

“higher of—

(a) 0.5% per annum, and

(b) the percentage per annum found by applying the formula specified in paragraph (3).”.

Amendment of regulation 4

12.—(1) Amend regulation 4 as follows.

(2) In paragraph (1)—

(a) in sub-paragraph (f) omit “236(3) and (4)”,

(b) after sub-paragraph (f) insert—

“(g) section 236(4) of the Inheritance Tax Act 1984(c) so far as it relates to tax charged by virtue of section 147(4) of that Act(d).”.

(3) In paragraph (2) omit the words after “paragraph (3)” to the end.

(4) For paragraph (3) substitute—

“(3) The formula specified in this paragraph is—

$$RR + 2.5,$$

where RR is the reference rate referred to in paragraph (2).”.

Insertion of new regulation 4A

13. After regulation 4 insert—

“Applicable rate on repayments of inheritance tax, capital transfer tax and estate duty

4A.—(1) For the purposes of—

(a) Regulation 3BA was inserted by S.I. 1998/3176.

(b) Regulation 3BB was inserted by S.I. 1998/3176.

(c) 1984 c. 51, section 236(4) was amended by section 179(3) of the Finance Act 1989 (c. 26).

(d) Section 147(4) was amended by S.I. 2005/3229.

- (a) section 48(1) of the Finance Act 1975(a),
- (b) sections 235(1) of the Inheritance Tax Act 1984(b),
- (c) section 236(3) of the Inheritance Tax Act(c), and
- (d) section 236(4) of the Inheritance Tax Act so far as it relates to tax repayable under section 147(2) of that Act(d),

the rate applicable under section 178 shall, subject to paragraph (3), be the percentage per annum found by applying the formula specified in paragraph (2), but if the result is not a whole number the result shall be rounded down to the nearest such number.

(2) The formula specified for the purposes of paragraph (1) is—

$$\frac{(RR + 2) \times 80}{100} - 1,$$

where RR is the official bank rate determined at the meeting of the Monetary Policy Committee of the Bank of England which immediately preceded the coming into force of these Regulations.

(3) Where on a reference date after the coming into force of these Regulations, the reference rate found on that date differs from the established rate, the rate applicable under section 178 for the purposes of the enactments referred to in paragraph (1) shall, on and after the next operative date, be the higher of—

- (a) 0.5% per annum, and
- (b) the percentage per annum found by applying the formula specified in paragraph (4).

(4) The formula specified in this paragraph is—

$$RR - 1,$$

where RR is the reference rate referred to in paragraph (3).”.

Amendment of regulation 6

14. In regulation 6(e) for “regulation 3(1) or 4(1)” substitute “these Regulations”.

Amendment of the Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998

15. The Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998(f) are amended as follows.

Amendment of regulation 2

16.—(1) Amend regulation 2 (interpretation)(g) as follows.

(2) In paragraph (1)—

- (a) in paragraph (a) of the definition of “operative day” for “eleventh” substitute “twelfth”,
- (b) in paragraph (a) of the definition of “reference day” omit “second”.

(a) 1975 c. 7, section 48(1) was amended by section 180(1) of the Finance Act 1989.
 (b) Section 235(1) was amended by section 180(4) of the Finance Act 1989.
 (c) Section 236(3) was amended by Part 10 of Schedule 23 to the Finance Act 1986 (c. 41) and section 179(1)(e) of the Finance Act 1989.
 (d) Section 147(2) was amended by S.I. 2005/3229.
 (e) Regulation 6 was amended by S.I. 1991/889.
 (f) S.I. 1998/1461; relevantly amended by S.I. 2000/631 and 2008/3234.
 (g) Regulation 2 was amended by S.I. 2000/631 and 2008/3234.

(3) For paragraph (2) substitute—

“(2) In these Regulations the reference rate found on a reference date is the official bank rate determined by the most recent meeting of the Monetary Policy Committee of the Bank of England.”.

Omission of regulation 2A

17. Omit regulation 2A(a).

Amendment of regulation 5

18.—(1) Amend regulation 5(b) as follows.

(2) In paragraph (2) for the words from “percentage” to the end substitute—

“higher of—

(a) 0.5% per annum, and

(b) the percentage per annum found by applying the formula specified in paragraph (3).”.

(3) For paragraph (3) substitute—

“(3) The formula specified in this paragraph is—

RR - 1,

where RR is the reference rate referred to in paragraph (2).”.

Dave Watts

Frank Roy

21st July 2009

Two of the Lords Commissioners of Her Majesty’s Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Taxes (Interest Rate) Regulations 1989 specify rates of interest applicable for the purposes of the enactments specified in section 178(2) of the Finance Act 1989. The Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998 specify rates of interest applicable for the purposes of the enactments specified in section 197(2) of the Finance Act 1996.

These Regulations amend the definitions of “operative date” and “reference date” in regulation 2(1) of the Taxes (Interest Rate) Regulations 1989 and the definitions of “operative day” and “reference day” in regulation 2(1) of the Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998. These amendments do not change the time taken to change interest rates in relation to unpaid or overpaid tax but are consequential to other amendments made in these Regulations.

These Regulations amend the meaning of “reference rate” in regulation 2(2) of the Taxes (Interest Rate) Regulations 1989 and the in the Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998 so that the determination of interest rates under those Regulations is based on the official bank rate determined by the most recent meeting of the Monetary Policy Committee of the Bank of England.

These Regulations omit regulation 2A in the Taxes (Interest Rate) Regulations 1989 and the in the Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998 (which provided that if the result of the calculation of the rate of interest under those Regulations for any purposes is less than zero, the rate shall be treated as zero for those purposes) and amends the

(a) Regulation 2A was inserted by S.I. 2008/3234.

(b) Regulation 5 was substituted by S.I. 2000/631.

provisions in those Regulations dealing with overpayments of tax or duty. These amendments omit a minimum rate in relation to late payments of tax or duty and increase the minimum rate in relation to overpayments from zero to 0.5% per annum.

The formulas to determine the rates of interest provided in the Taxes (Interest Rate) Regulations 1989 and the in the Air Passenger Duty and Other Indirect Taxes (Interest Rate) Regulations 1998 are simplified and harmonised by the amendments made in these Regulation so that (except in relation to large companies where regulation 3ZA or 3BA of the Taxes (Interest Rate) Regulations 1989 apply) the rate in cases of unpaid tax or duty is found by the formula-

reference rate + 2.5,

and the rate in the case of overpaid tax or duty is found by the formula-

reference rate – 1.

These Regulations also insert a new regulation 3AAA and a new regulation 4A in the Taxes (Interest Rate) Regulations 1989. New regulation 3AAA makes provision for interest on overpayments of the taxes which are omitted by these Regulations from regulation 3AA (so that that regulation can apply solely to late payments of tax). New regulation 4A provides for interest on overpayments of estate duty and inheritance tax in line with that for other taxes.

A full Impact Assessment has been produced for this instrument and forms part of the Impact Assessment produced for interest harmonisation in the Finance Bill 2009. It is available on the HMRC website under <http://www.hmrc.gov.uk/budget2009/interest-penalties-2410.pdf>.

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STATUTORY INSTRUMENTS

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The Taxes and Duties (Interest Rate) (Amendment) Regulations
2009

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