

Meaning of 'yearly interest'

(Lecture P1067 – 6.43 minutes)

In *HMRC v Lomas* (2017), the Court of Appeal overturned a decision of the High Court, finding that statutory interest payable under what is now the Insolvency (England and Wales) Rules 2016 (SI 2016/1024) is 'yearly interest' within the meaning of S874 ITA 2007 and is subject to deduction of income tax at source.

This represents a significant win for HMRC, given that there is estimated to be over £5,000,000,000 of interest that is subject to the tax deduction at source scheme. The judgment means that HMRC will be entitled to collect tax from the many overseas-based recipients of such interest who would not otherwise have had any UK liability on such interest. While the High Court was correct to hold that the fact that interest was payable over more than one year was not of itself determinative and that the interest did not have the quality of being recurrent or capable of recurrence and accrued on a day-to-day basis, the Court of Appeal held that the High Court view was inconsistent with a number of decided cases which had previously concluded that interest payable from a judgment date but calculated retrospectively was nevertheless 'yearly interest'. Essentially, only if the interest were charged on what are manifestly short-term liabilities, would it fall outside the meaning of the term.

In this case, there was nothing to prevent the interest payable from being treated as the long-term liability that it was.

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