Judgment 51/2004 **Carpenter v Administrator of Income Tax – Royal Court (Civil action file 728) – 29 October, 2004**

Income Tax (Guernsey) Law, 1975 – plaintiff had successfully appealed to the Royal Court from a decision of the Guernsey Tax Tribunal (see Judgment 65/2003) – plaintiff's application for interest on the tax paid – whether this was pre-judgment interest under the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985 – whether the Royal Court was functus officio – held not to be an appropriate case where a supplemental order for pre-judgment interest should be made.

IN THE ROYAL COURT OF GUERNSEY

The 29th day of October, 2004 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; sitting alone.

In the matter of

JOHN PATRICK CARPENTER

Applicant

and

THE ADMINISTRATOR OF INCOME TAX

Respondent

WHEREAS on 27th September 2004 the Deputy Bailiff considered an application for pre judgment interest and heard thereon Advocates P.T.R. Ferbrache and R. McMahon, Counsel for the Applicant and Respondent respectively;

The Deputy Bailiff this day handed down judgment in the terms attached hereto and REFUSED the application.

S. M. D. ROSS
Her Majesty's Deputy Greffier

Approved Text

IN THE ROYAL COURT OF GUERNSEY

ORDINARY DIVISION

Between **JOHN PATRICK CARPENTER** **Applicant**

and

THE ADMINISTRATOR OF INCOME TAX **Respondent**

Judgment of the Deputy Bailiff Geoffrey Robert Rowland

Advocate P T R Ferbrache for the Applicant,
John Patrick Carpenter

Crown Advocate R McMahon for the Respondent,
The Administrator of Income Tax

Hearing dates: 27th September 2004
Judgment handed down: 29th October 2004

Cases, Legislation and Texts referred to:

Cases:

Caboolture Park Shopping Centre Pty Ltd (In Liquidation) and White Industries (Qld.) Pty Ltd v Flower and Hart (a firm) (1993) 117 ALR 253

Preston Banking Company v William Allsup and Sons [1885] 1 Ch 141

In re Scowby [1879] 1 Ch 741

Legislation and Texts:

Income Tax (Guernsey) Law, 1975 as amended
The Judgments (Interest) (Bailiwick of Guernsey) Law, 1985
The Law Reform (Miscellaneous Provisions) Act 1934

Introduction

1. On 31st December 2003 I handed down a judgment in relation to an appeal brought by John Patrick Carpenter ("Mr Carpenter") in respect of a decision of the Guernsey Tax Tribunal ("The Tribunal") given orally on 26th November 2001. The appeal was by way of a Case Stated under the provisions of Section 80 of the Income Tax (Guernsey) Law, 1975 as amended ("the Tax Law") from the decision of the Tribunal. It related to an assessment to income tax made by the Administrator of Income Tax ("The Administrator") which he

claimed Mr Carpenter owed in respect of the tax year 1999. The Tribunal had found in favour of the Administrator.

2. The Administrator had not demanded payment of the income tax which he claimed was due by Mr Carpenter until the Tribunal had determined Mr Carpenter's appeal. However following that decision in his favour the Administrator had demanded payment in the sum of £112,680.20.

3. It was in February 2002 that the Administrator pressed Mr Carpenter for payment of the sum due. On 12th February 2002 Mr Carpenter's accountants received from the Administrator a notice of the Administrator's intention to initiate Court proceedings for the recovery of the tax due. On 19th February 2002 Mr Carpenter's accountants received a notice under the Tax Law informing them that the Administrator believed there to be grounds for imposing a late payment penalty. That matter was to be considered on 5th March 2002. The accountants would have been aware that a late penalty could have been as high as 1% per calendar month.

4. At the time Mr Carpenter and his accountants were aggrieved. They had still not received from the Clerk to the Tribunal written confirmation of the Tribunal's oral decision given some 12 weeks earlier. On 20th February 2002 Mr Carpenter's accountants had expressed the view to the Administrator that in view of this delay payment of tax ought not to have been demanded by the Administrator until written confirmation from the Tribunal of its decision had been received. The Administrator, of course, had no power to cause the Tribunal to issue a written confirmation expeditiously. It is a body independent of States Income Tax. Nevertheless the accountants faced with the possible invocation of both penalty and also Court proceedings had prudently and sensibly advised Mr Carpenter that he should pay the sum which had been demanded. The Administrator was not obliged to notify Mr Carpenter or his accountants that he had a discretion to stay payment which he could exercise, if invited so to do. Neither Mr Carpenter nor his accountants requested the Administrator to exercise his discretion not to demand payment of the tax which the Administrator was demanding. Perhaps the tenor of the demands made by the Administrator suggested that it would have been an unproductive request. No doubt with some reluctance Mr Carpenter paid the sum of £112,680.20 to the States Income Tax on 25th February 2002. He was not to receive that sum back until 22 months later. In the meanwhile the States of Guernsey had the benefit of use of that money.

5. The Tribunal stated their reasons in writing on 20th May 2002 and these were received by Mr Carpenter's accountants on 21st May 2002. Mr Carpenter was no doubt aggrieved by the delay. Only then was he in a position with knowledge of the Tribunal's reasons to require the Tribunal to produce a Case Stated. His accountants wrote to the Tribunal on 29th May 2002 requesting the preparation of a Case Stated which would set in train the appeal to the Royal Court which Mr Carpenter wished to pursue. Unfortunately the Case Stated was not produced by the Tribunal until 31st January 2003, a delay which was particularly unfortunate. There followed a number of procedural and other matters which had to be dealt with by both Counsel including seeking directions of the Royal Court.

6. Mr Carpenter's appeal was heard by me firstly on 18th June 2003 and thereafter on 2nd October 2003. I handed down my judgment on 31st December 2003.

7. On 31st December 2003 I adjudged that the Tribunal had not been correct in law in concluding, by a majority of 3 : 2 that the purchase, development and the sale by Mr Carpenter of his first, and at that time only, dwelling house in Guernsey was an adventure in the nature of trade. Hence Mr Carpenter was not liable to Guernsey income tax on the profit which he realised on the sale of the dwelling house which he had redeveloped and refurbished between 12th January 1995 and 16th February 1999. I intended the judgment to

be final subject only to the correction of any typographical or paragraph numbering errors. In the event there proved to be none. The Act of Court under the signature of one of Her Majesty's Greffiers was executed that day.

8. In the proceedings before me no claim had been made by Mr Carpenter for pre-judgment interest. The matter had simply not been pleaded, raised nor argued in any way.

9. In that judgment I made clear that the majority of the members of the Tribunal adopted a view of the facts which could not be reasonably entertained. I was satisfied that the Tribunal's determination, which was by the narrowest majority was a determination contradictory of the evidence before them and thus not reasonably open to them. Put another way I was satisfied that on the limited evidence put before the Tribunal this was not one of those rare cases where ownership, redevelopment, refurbishment and sale of a single property could constitute an adventure in the nature of trade. Looking at the full picture I concluded that there was only one true, proper conclusion and that was that Mr Carpenter acquired the dwelling house as a pure investment and he had never changed his intention.

10. The handsome profit which he made on sale of his investment, following redevelopment and refurbishment, was not taxable under the Dwellings Profit Tax legislation because he had lived in it as his only Guernsey residence for a period sufficient to render the sale exempt from that tax. Neither should it have been treated as income liable to income tax.

11. It was also common ground between the parties that there had been many evidential and procedural irregularities in the proceedings before the Tribunal. Neither party had been represented by an Advocate. I also observed in the judgment that as the decision of the Tribunal had been taken by the narrowest majority the Case Stated should have indicated succinctly the reasons why the minority of members came to a conclusion different from that of the majority. I also expressed concerns at the absence of an official transcript of the Tribunal proceedings in a case in which it was foreseeable that the determination of the case would hinge on the evaluation of the agreed facts and contested evidence put before the Tribunal. These problems had no doubt prolonged the preparation of the Case Stated appeal to the Royal Court.

12. No criticism can be made of Mr Carpenter for the delay between the oral decision given by the Tribunal on 26th November 2001 and the Royal Court judgment on 31st December 2003. He and his Counsel pursued the matter as expeditiously as they were able.

13. No doubt Mr Carpenter welcomed the judgment of 31st December 2003 which was conclusively in his favour. However having reflected on it he was not satisfied merely to receive repayment of the £112,680.20 but demanded "pre-judgment" interest to compensate him for the period when he had been deprived of the use of that substantial sum.

14. Correspondence ensued between the office of the Administrator and Mr Ferbrache. The Administrator caused the sum of £112,680.20, less a small sum of income tax due by him to the States, to be repaid promptly to Mr Carpenter on or about the 14th January 2004 but contended that he had no power to voluntarily pay "pre-judgment" interest to Mr Carpenter. As a result Mr Carpenter resolved to institute proceedings to remedy what he perceived to be a grave injustice.

15. Proceedings were instituted on behalf of Mr Carpenter on 27th February 2004. Mr Carpenter's application to the Royal Court was in the following terms:

> *"For an Order that the Respondent pay to the Appellant, pursuant to the provisions of the Judgment (Interest) (Bailiwick of Guernsey) Law 1985 interest on the sum of £112,680.20 from the 25th February 2002 to 31st*

December 2003 or during such other dates as the Court deems appropriate and at such rates as the Court deems appropriate."

He was to contend that he should be entitled to interest computed at a rate equivalent to that which he would have received if he had placed the sum on deposit with a bank in Guernsey for the period that the States of Guernsey had benefited from use of the money.

The Submissions made on behalf of Mr Carpenter

16. The submissions made by Mr Ferbrache on behalf of Mr Carpenter may be summarised as follows:

(1) the Royal Court has had power to award pre-judgment interest since at least the coming into force of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985 ("the 1985 Law").
The 1985 Law was enacted after the Tax Law.

(2) Section 1 (1) of the 1985 Law provides as follows:

"*In any proceedings in the Court for the recovery of any debt or damages the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as the Court thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment……"*

(3) Accordingly "debt" in the 1985 Law should be given a wide meaning such that the Royal Court can order the payment of pre-judgment interest in this case.

17. In response to the claim made by Mr McMahon on behalf of the Administrator that the Royal Court is functus officio and does not have jurisdiction to deal with the application for pre-judgment interest it was contended that the Royal Court judgment was delivered at short notice. Mr Carpenter had been represented by Mr Wessels another Advocate in Mr Ferbrache's firm who had made an application for costs but not for pre-judgment interest. Mr Carpenter has a legal right to interest, which has never been determined by the Court, and so the Court is not precluded from now determining Mr Carpenter's claim for interest. The Court has jurisdiction to make a supplemental order and should, having regard to the circumstances of this case make a supplemental order.

18. It would be inequitable and discriminatory if the legal position under Guernsey law is that a taxpayer should not be entitled to receive interest for a period between the date he had been obliged to pay a sum to the Administrator and the date it was repaid if subsequently it is held that the Administrator was in error in assessing the taxpayer to tax through no fault of the taxpayer. In contrast the Administrator is able to threaten and in some cases will enforce substantial monetary penalties against a taxpayer who does not pay the assessed tax.

19. Common sense and fairness dictate that Mr Carpenter must be entitled to interest for the period from 25th February 2002, when £112,680.20 was paid to the States of Guernsey, to 31st December 2003 when the judgment of the Court was given or such other dates as the Court should deem appropriate.

Submissions made on behalf of the Administrator

20. The submissions made by Mr McMahon on behalf of the Administrator may be summarised as follows:

(1) The Royal Court having issued the Act of Court had concluded the Case Stated appeal proceedings and was thereafter functus officio. If the Royal Court can make supplemental orders after an Act of Court has been issued this is not a case when a supplemental order should be made. There is need for finality in litigation or

(2) The Administrator, as a creature of statute, has not been granted power to pay interest on repayments of over-paid tax. The Tax Law is silent with regard to the payment of interest to a taxpayer. Mr Carpenter was pursuing a statutory appeal route under the provisions of the Tax Law.

It could not be contended that Mr Carpenter had brought a cause of action for recovery of a monetary debt.

Appropriately, given the nature and scope of the proceedings arising from the Tribunal's decision Mr Carpenter had not claimed pre-judgment interest in the Case Stated proceedings. It had not been raised in written submissions, oral argument or when the judgment was handed down on 31st December 2003. Put simply, Mr Carpenter's claim for pre-judgment interest had not featured at all in the Royal Court Case Stated appeal proceedings or

(3) The claim is misconceived as it does not fall within the terms of Section 1 (1) of the 1985 Law. The appeal proceedings were not "*for the recovery of any debt or damages"* and there was *"no sum for which judgment (was) given".* Therefore the Royal Court proceedings could not be brought within the terms of Section 1 (1) of the 1985 Law.

In an income tax appeal by way of Case Stated from a determination of the Tribunal there is no "*cause of action"* for a sum of money, whether liquidated or un-liquidated in amount.

21. My [The Deputy Bailiff in his] judgment of 31st December 2003 had not given judgment for a monetary sum. The judgment had in effect clarified the lawfulness of the Administrator's assessment when answering the Tribunal's questions for the determination of the Royal Court. The determination of the Tribunal had in effect been revised. That inevitably caused the Administrator to revise his assessment on Mr Carpenter by reducing by £600,000 the income of Mr Carpenter which the Administrator claimed to be taxable. Mr Carpenter was entitled to a refund of the £112,680.20 by operation of law with effect only from the 31st December 2003 subject to any set off in respect of monies which he owed to the States of Guernsey at the material time.

22. The provisions of the Tax Law are relevant in putting Mr Carpenter's present application in context.

23. The reference in Section 83 of the Tax Law is to enforcing payment (emphasis supplied)

"*as if the amount due was a civil debt"*

24. The repayment of tax by the Administrator does not of itself create an equal and opposite debt in favour of Mr Carpenter, the taxpayer. The appeal proceedings were not proceedings for the recovery of any "debt".

25. Had the Administrator not repaid the sum to which Mr Carpenter was entitled with effect from the 31st December 2003 in light of the tax re-assessment which the Administrator was bound to make, Mr Carpenter's cause of action would be against the States of Guernsey and not against the Administrator whose duty was to assess the tax payable and cause it to be collected.

26. I shall deal with the key arguments in turn in so far as it is necessary to do so*Functus Officio*

27. No claim was made for interest at any time before judgment was given on 31st December 2003. The intention of the Royal Court on that date had been correctly expressed. There was no clerical mistake in the judgment nor was there any error arising from an accidental slip or omission of the type that could enable the judgment to be corrected on the "slip rule" basis. It was therefore common ground that the so called "slip rule" could not apply in this case. Mr Ferbrache cited Caboolture Park Shopping Centre Pty Ltd. (In Liquidation) and White Industries (Qld) Pty Ltd v Flower and Hart (a firm) (1993) 117 ALR 253 in support of his submission that the Court now had jurisdiction to make a supplemental order.

28. White Industries ("White") had been granted judgment and costs against Caboolture Park Shopping Centre ("Caboolture"). No proceedings had been taken by White to enforce the judgment against Caboolture because Caboolture was in liquidation at the material time. Subsequent to the judgment being entered certain facts came for the first time into the possession of White. Those facts suggested that Flower and Hart, the Solicitors who had acted for Caboolture until just before the conclusion of proceedings, had acted unprofessionally in the conduct of the proceedings to the detriment of White. White made application to the Court for indemnity costs to be paid by Flower and Hart sometime after the judgment had been given. The matter came before the Federal Court of Australia on a Case Stated basis to determine whether the Court which had given judgment had jurisdiction to entertain what was a new and late application for costs against a third party. The Federal Court noted that the common law rule was that once a judgment had been passed and entered, the Court thereafter lacked the power to make an order which would alter or set aside a judgment. The Federal Court considered whether there was jurisdiction to make a supplement order. Reference was made in the Federal Court's judgment to Preston Banking Company v William Allsup and Sons [1885] 1 Ch141. It was noted that the principle in that English Court of Appeal case was stated by Lindley LJ (at pp 143-144) as follows (emphasis supplied):

> *" This is not an application to alter an order on the ground of some slip or oversight. Nor is it a case in which the order has not been drawn up. Here the order has been drawn up, and it expresses the real decision of the Court; and that being so, the Court has no jurisdiction to alter it. If this summons had proceeded on the theory that the order of the 11th July was right, and that circumstances had since occurred which had rendered a supplemental order necessary, the Court might have entertained the application; but this summons proceeds on the theory that the order of the 11th of July is wrong. In my opinion, it is of the utmost importance, in order that there may be some finality in litigation, that when once the order has been completed it should not be liable to review by the Judge who made it."*

The Court of Appeal concluded that it had no jurisdiction to entertain the application. Preston Banking Company is often cited as the authority for Courts in England to make a supplemental order in appropriate cases although that Court did not expand upon the extent

of its jurisdiction to do so but the inference was that it was a narrowly circumscribed jurisdiction.

30. The Federal Court also referred to the judgment of Smith LJ in the English Court of Appeal In re. Scowby [1879] 1 Ch741. In Scowby the lower court had directed trustees to bring certain monies into Court. The trustees had subsequently obtained certain orders for payment out to them of monies for costs awarded in their favour. The lower court had been prepared to make a supplemental order to the effect that there should not be payment of money to the trustees until they had performed their original duty to bring monies into Court. Smith LJ referring to the supplemental order stated as follows (emphasis supplied):

> *"That he had jurisdiction appears to me to be clear from the judgment of the Lord Chancellor in Preston Banking Co. v William Allsup & Sons to which I was a party, and which is to the effect that there is jurisdiction to make a supplemental order upon new facts, although there is not jurisdiction to alter an order when once it has been drawn up and entered."*

Lindley LJ who had also sat with the Lord Chancellor and Smith LJ in Preston Banking Co. stated as follows:

> *"I cannot conceive that there is the slightest difficulty in upholding the jurisdiction."*

31. In Caboolture the judgment of the Federal Court continued as follows (emphasis supplied):

> *"There are many cases where supplemental orders will be made and the jurisdiction, while no doubt requiring caution, is not limited merely, as the respondents say to the making of orders in aid of the enforcement and working out of original orders, although the making of supplemental orders may be appropriate in such cases. Cases such as Ford-Hunt v Raghbir Singh [1973] 1 WLR 738; Universal Homes Limited v Kloet (1976) 1 NZLR 246; Neylon v Dickens (1987) 1 NZLR 402; and Cowan v Cavanagh (1978) VR 665, are all examples of supplemental orders being made in proceedings where an order for specific performance has been initially been made. But it does not follow that the power to make supplemental orders is limited to such a case. That the present case involves the making of a supplemental order is made more apparent when the form of the appropriate order is considered "*

The Federal Court concluded that the lower court had jurisdiction to make a supplemental order to award costs against Flower and Hart even though the application had been made after the lower court had pronounced its judgment.

32. There were of course new facts which had come to light after judgment had been delivered in the lower court in Caboolture. The Federal Court of Australia was indicating obiter that the jurisdiction to make supplemental orders was wider than English case law appears to indicate without giving any guidance as to how extensive that jurisdiction might be in Australia.

33. The Royal Court in the exercise of its inherent powers has jurisdiction to make a supplemental order in an appropriate case. Whether a supplemental order is granted will depend on the particular facts of a case. The Court will do so in the interests of justice but will act cautiously weighing in the balance the need for finality in proceedings. It is unlikely that the Court will see fit to develop a jurisdiction wider than that exercised from time to time by the English Courts.

34. In this case at no stage whatsoever had a claim of any sort been made for pre-judgment interest. Such a claim did not figure in the proceedings. Put simply it was not mentioned until some time after the judgment had been handed down on 31st December 2003. Furthermore it is appropriate to record that a copy of the intended judgment had been delivered to the Law Officers Chambers (acting for the Administrator) and the firm of Ozannes (acting for Mr Carpenter) before lunchtime on 31st December 2003 with a note that the judgment would be formally handed down in Court at 3.45 p.m. that day. At 3.45 p.m. Mr Wessels appeared for Mr Carpenter. He made an application for recoverable costs on the standard basis. That application was granted. He made no other application.

35. I have concluded in the exercise of my discretion that this is not an appropriate case where a supplemental order for pre-judgment interest should be made. Of some importance is the fact that the application did not result from Mr Carpenter learning new facts after the 31st December 2003. Accordingly I cannot entertain Mr Carpenter's application for interest. There is a need for finality in litigation. No doubt Mr Carpenter will consider that my decision on the jurisdiction point results in an injustice. In view of the detailed submissions made to me on the other points I shall deal with them briefly.

The Tax Law

36. The Tax Law is entirely silent with regard to the payment of interest by the Administrator who is a creature of statute. I am satisfied that in the absence of a statutory power the Administrator cannot when repaying overpaid tax pay interest to a taxpayer. If that produces an inequitable consequence in certain cases then that is a matter for the legislature to correct. It is not for the Courts through case law to contrive an equitable solution. It is public knowledge that the possibility of law reform in this area is currently being explored but that will not assist Mr Carpenter.

1985 Law

37. Mr Carpenter had followed the procedure set out in the 1975 Tax Law to cause the Guernsey Tax Tribunal to state a case to the Royal Court. The case was an appeal against the decision of the Tribunal. It is instructive to recall the nature and purpose of the Case Stated. The questions in the Case Stated to which the Tribunal sought answers and the answers contained in the judgment are evident from this extract:
"Was the Tribunal correct in law:

Q1 In concluding on the evidence put before it that the sale of "La Lague" was an adventure in the nature of trade.

A1 No.

Q2 In concluding that someone who has lived in his property as his residence can ever be held to be trading if, due to economic necessity, he later has to sell it?

A2 The question does not readily admit of a yes or no answer and its purpose is not clear.

A person can live in a property as his residence and yet do so by way of an adventure in the nature trade.

A person's intention can change during the course of owner/occupation from an investment purpose to an adventure in the nature of trade.

Economic necessity can influence a sale decision. It is unlikely without something else ever to constitute a catalyst for a change of intent from pure investment to an

adventure in the nature of trade. A decision to trade will have a tax consequence on any profit and would not be a decision lightly taken in the case of a single transaction.

The evidence that economic necessity had caused a change of intent would need to be compelling or result from a decisive admission by the Appellant. If a person acquires a property with a pure investment intention intending to hold it for many years then an intervening factor such as economic necessity which may induce the owner to sell it does not of itself change a pure investment intention to an adventure in the nature of trade.

Q3 In reaching its conclusions from the evidence and the material before it.

A3 No.

In light of my decision and my reasons I did not consider it appropriate to amend the determination or remit it to the Tribunal.

There were some matters which might have been sent back to the Tribunal for amplification or clarification. However, having given the matter anxious and careful consideration I could not satisfy myself that my decision would have been different in light of any amplification or clarification which the Tribunal could have provided.

The appeal succeeds."

38. The questions and answers are indicative not only of the nature of the proceedings but of the fact that Mr Carpenter had not brought a cause of action for recovery of a debt or damages. As the answers contained in the judgment were favourable to Mr Carpenter the inevitable consequence was that on the 31st December 2003 the Administrator was obliged to revise his assessment of tax payable by Mr Carpenter.

39. Mr Ferbrache cited a number of English cases to support his submissions on the applicability of the 1985 Law in this case. With considerable skill and ingenuity he sought to persuade me that those English cases supported his submission that the Royal Court had power under the 1985 Law to order the payment of pre-judgment interest in the proceedings notwithstanding that it was an appeal by way of Case Stated from the decision of the Tribunal. When referring to the cases he stressed the similarity in all material particulars of Section 3 of the Law Reform (Miscellaneous Provisions) Act 1934 and Section 1(i) of the 1985 Law. It is clear from the English case law that the words "any debt or damages" in the 1934 Law have been given a very wide meaning and that the identical words in the 1985 Law should be given an equally wide meaning.

40. Having reviewed the cases which he cited I have concluded that they can be distinguished clearly from a Case Stated appeal under the Tax Law. The difference is clear. I do not consider it appropriate in the circumstances to review those cases nor those cited in response by Mr McMahon. The Royal Court Case Stated proceedings could not be brought within the terms of Section 1(i) of the 1985 Law. It would be artificial to apply Section 1(i) to proceedings which do not result in a money judgment.

<u>Has there been an injustice?</u>

41. Mr Carpenter will no doubt be left with a burning sense of injustice that the Tax Law does not enable interest to be paid to him and that notwithstanding the valiant efforts of Mr Ferbrache on his behalf the Court cannot order pre-judgment interest to be paid in this case.

42. Nevertheless it is an inescapable fact that the States of Guernsey have benefited from the use of a substantial sum of Mr Carpenter's money for 22 months in circumstances where through no fault of his own Mr Carpenter had had to make payment to the Administrator.

43. I have reviewed the factual background to this case at some length and the facts speak for themselves. It may well be that Mr Carpenter will now see fit to pursue an alternative course of action in order to secure what he would contend should be a just, common sense and equitable outcome. I suspect that he will make application to the Treasury and Resources Department for an ex gratia payment equivalent to the interest which he would have received if he had placed the sum on deposit with a Guernsey bank for the 22 month period less the tax he would have had to pay on the deposit interest which would have accrued to him. No doubt that Department will not wish to set a general precedent which could be invoked by all taxpayers. Nevertheless it may consider that there are exceptional circumstances in this case such that Mr Carpenter should be compensated.