UK Tax Bulletin

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Latest Rates of Inflation and Interest

The following are the current rates at October 2016

Current Rates	
Retail Price Index: September 2016	264.9
Inflation Rate: September 2016	2.0%
Indexation factor from March 1982:	
to August 2016	2.328
to September 2016	2.334

Interest on overdue tax

Interest on all unpaid tax is charged at the same rate.

The formula is Bank base rate plus 2.5% which gives a present rate of 2.75% from 23rd August 2016

There is one exception: Quarterly instalments of corporation tax bear interest at only 1.25% from 16th August 2016

Repayment supplement

Interest on all overpaid tax is payable at the same rate.

The formula is Bank base rate minus 1% but with an overriding minimum of 0.5% which applies at the present time.

Official rate of interest

To 6 April 2014: 4%

To 6 April 2015: 3.25%

From 6 April 2015: 3%

Taxpayer Confidentiality

It is difficult to know what to make of the recent decision of the Supreme Court in the Judicial Review Application of Ingenious Media Holdings 2016 UK SC 54 which concerned the scope of the duty of confidentiality owed by HMRC to taxpayers.

HMRC have a statutory duty of confidentiality under the Commissioners for Revenue and Customs Act 2005.

It is a criminal offence for HMRC to disclose information about a taxpayer whose identity is specified or can be deduced from the disclosure, unless they reasonably believe that the disclosure was lawful or that the information was already lawfully in the public domain - or where it is made for the purposes of a function of HMRC.

I thought we all knew that - even though we may not have been able to provide the statutory reference. I may not be the only person who was disappointed to find HMRC arguing that it was OK for them to talk to the newspapers off the record about a taxpayer's affairs. How can that not be a breach?

Anyway, the Supreme Court have told us in no uncertain terms that it was not OK. It was a breach of their statutory duty and of their common law duty of confidentiality. The Supreme Court rejected the suggestion that HMRC have a discretion to decide whether or not to comply with their statutory duties.

The principles involved here are hardly new - I seem to remember that some time ago Sophocles had something to say on the matter:

> *"Nobody has a more sacred obligation to obey the law than those who make the law".*

However, I fear that this principle has got a bit lost recently.

It is interesting to consider what will happen as a result of the judgment of the Supreme Court – and whether it will help anybody. That looks unlikely because, despite the importance of the judgment, I imagine we all thought HMRC maintained strict taxpayer confidentiality anyway.

Offshore Assets

In their quest for further information (and tax) on offshore assets, and to make quite sure that nobody is in any doubt regarding the importance of disclosing all their taxable income, HMRC have now issued some regulations requiring tax advisors to write to their clients

with specific information regarding their obligations under the tax code.

Essentially, HMRC want everybody to know (or at least believe) that they are receiving information about everybody from everywhere about everything – so if you have funds offshore they will know all about it pretty soon. If they get to you before you fess up, the penalties will be eye watering.

I think that I have got the idea – although I would suggest that imposing a statutory duty on us to write to taxpayers about it is a bit much. One might say that this clearly does not pass the double reasonableness test.

Be that as it may, we are now obliged to write to clients before August 2017 setting out some specific information. The notification does not have to go to every client – only to clients to whom we have given relevant tax advice or referred them to overseas advisors regarding offshore tax advice.

There is an exemption if the client was not resident in 2015/16 and 2016/17 or if there is no reasonable expectation of providing advice in the future.

However, it is likely to be much too burdensome (and risky having regard to the penalties involved) to identify those clients who fall into these exemptions and the notification will probably be sent to everybody. After all, you never know whether something will turn up and require notification after the exercise has been completed (and probably forgotten) so I guess most people will play safe.

Yearly Interest

The case of *AV Lomas v HMRC [2016] EWHC 2492* is not a tax case but it may be worth consideration because it dealt with the meaning of Yearly Interest – the significance of which is that income tax must be deducted from Yearly Interest by reason of section 874 Income Tax Act 2007.

The issue related to statutory interest paid to creditors under the Insolvency Rules.

Unfortunately, there is no definition of Yearly Interest, and despite numerous cases on the subject, its meaning remains elusive. The court analysed the position at length and concluded that an obligation to pay interest imposed by statute does not have the qualities that are necessarily associated with Yearly Interest.

HMRC argued that this was Yearly Interest and drew criticism from the court for the confusion which had been caused by the opposite view being published in the HMRC Insolvency Manual and variously confirmed by HMRC as recently as 2015. However, HMRC now take a different view.

This may not be an issue of wide application – but it seems to me that there is something important here. HMRC want people to take their Manuals seriously – sometimes suggesting that failure to consult the relevant Manual is deserving of a penalty – and they tend to work on the basis that the Manuals are right and if you disagree you are clearly wrong. Furthermore, it might reasonably be assumed that what is in the Manuals is the view of HMRC.

A taxpayer might therefore feel justified in taking a more independent view of what is in the Manuals and not assuming they are right, or indeed that HMRC necessarily think they are right either. This could be helpful if the view of HMRC in their Manuals differs from the view of the taxpayer. The next item on Reasonable Excuse reinforces this point.

The case of *AV Lomas* includes a very interesting Appendix which sets out the history of Yearly interest starting with Pitt's Income Tax Act of 1799. (Yes, Yes, I know – this is not VERY interesting. But sometimes it is nice to know where these concepts come from).

Reasonable Excuse I

I had to smile when reading the case of *Tooth v HMRC TC5452*. Sometimes the long hours of reading tax cases are more than usually rewarding.

In this case the taxpayer had filled in his tax return incorrectly by putting figures in the wrong boxes – and HMRC claimed that he did so deliberately in which case they would be entitled to raise discovery assessments going back 20 years.

(I wonder what our legislators would say about this conclusion if they were to do their own tax returns. I would bet the farm that there would be lots of figures in the wrong boxes).

The FTT did not think much of the HMRC argument, describing it as:

> *about as convincing as Eric Morecambe's riposte to Andre Previn about "playing all the notes, but not necessarily in the right order."*

The Tribunal explained that the deliberate conduct necessary to extend the time limit for the issue of a discovery assessment must involve more than the completion of a tax return which is a deliberate act. A person completing a tax return must do so intentionally and can hardly do so accidentally. I would respectfully agree – although HMRC have had some success with this argument; see *Sam Smith v HMRC TC4237*, where they argued that making a claim to VAT input tax in a manner contrary to what is said in the HMRC Manual was deserving of a penalty. (Further details may be found in the Tax Bulletin of January 2015.)

Reasonable Excuse II

This has been a good month for Reasonable Excuse arguments. In another case, *Carrasco v HMRC TC 5460*, Mr and Mrs Carrasco claimed relief from capital gains tax in respect of the disposal of a property on the basis that it was their only or main residence. HMRC denied the relief and sought a penalty on the grounds of carelessness.

Mr and Mrs Carrasco appealed against the penalty saying that they had a reasonable excuse because they had taken and followed professional advice.

This is an argument often raised successfully by taxpayers – and so it was in this case.

HMRC are reluctant to accept this defence and had some success in the case of *Stratton v HMRC TC 2967* – where the court concluded that where there is no reasonable basis for the advice or it was based on a failure to consider the relevant statutory provisions, reliance on such defective advice cannot constitute a reasonable excuse. How on earth the taxpayer was supposed to know whether the advice was defective or whether the adviser considered the relevant statutory provisions, was not explained. I am not sure that this analysis has been, or is likely to be, followed.

However, it is fair to say that the taxpayer usually succeeds on this point and the following passage from the decision in *Carrasco* explains why.

> *In our judgement when a person seeks appropriate professional advice from somebody who is a professed expert in the applicable discipline, it will almost always be reasonable for the person who has sought such advice to rely upon that advice provided only that that person has selected a seemingly competent professional adviser, unless there are factors to the knowledge of the recipient of the advice which indicate to him/her that it ought not to be relied upon. In our judgement, such factors would have to be reasonably obvious rather than subtle or such as might only be picked up by a fellow professional.*

I have a feeling that we might have some legislation to curtail this line of argument before too long.

VAT Invoices

The recent case of *JMK Building Contracts Ltd v HMRC TC 5394* provides some welcome comfort to those who may inadvertently breach the requirements regarding a valid VAT invoice.

Regulation 14(1) of the VAT Regulations SI 1995/2518 sets out the details which must be shown on any invoice for it to be a valid VAT invoice. It does not really matter whether this is onerous or otherwise – those are the rules. An invoice is not a valid VAT invoice if it does not contain the prescribed information.

The importance of this issue in this case was that without a valid VAT invoice, the input tax would not be recoverable. HMRC said that the necessary information was not included on the invoice, it was therefore not a valid VAT invoice and they denied any deduction for the input tax.

However, help was at hand from Regulation 29(2) which enables input tax to be recovered if there is other adequate evidence provided to HMRC regarding the VAT paid.

The Tribunal examined the position fully and all the evidence which had been provided to HMRC. They concluded that although none of the relevant invoices was a valid VAT invoice, it was necessary for the Tribunal to decide whether the refusal by HMRC to allow a deduction of input tax on the basis of this alternative evidence was reasonable; in other words, did HMRC take into account all relevant evidence regarding the matter.

The Tribunal concluded that HMRC did not give the evidence adequate consideration and therefore their refusal to allow input tax was unreasonable.

Unfortunately, that was not the end of the matter because they directed that the question should be re-examined by a different review officer of HMRC in the light of their decision and a fresh decision taken on whether or not to allow input tax deduction on the basis of the alternative evidence.

Not a complete success – but clearly helpful, and one hopes that there is a satisfactory outcome eventually.

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