UK Tax Bulletin

January 2018

FIELD COURT TAX CHAMBERS

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Latest Rates of Inflation and Interest

The following are the current rates at December 2017

Current Rates	
Retail Price Index: December 2017	278.1
Inflation Rate: December 2017	4.1%
Indexation factor from March 1982:	
to December 2017	2.501
to November 2017	2.472

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 3% from 21st November 2017

There is one exception: Quarterly instalments of corporation tax bear interest at only 1.25% - but this was increased to 1.50% from 13th November 2017

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 6th April 2014: 4%

To 6th April 2015: 3.25%

To 6th April 2017: 3%

From 6th April 2017: 2.5%

Discovery Assessments

I am always on the lookout for discovery assessment cases with interesting aspects. Discovery assessments are so prevalent and so important that it is useful to know what arguments you might be faced with from HMRC. The case *Adam Cooke v HMRC TC 6239* is a goodie.

HMRC argued that they were able to raise a discovery assessment in connection with an excessive double taxation relief claim because the taxpayer (or his accountant) had been careless in not noticing the point. OK, he missed it, but what about the tax officer dealing with the matter – or the hypothetical officer. Should not he have noticed it? Oh no, said HMRC. The tax officer could not be expected to have picked the point up!

The FTT were wonderfully restrained (I can think of some tribunal judges who might not have been) and merely said that HRMC had not established that the conditions for a discovery assessment were satisfied.

We can (and should) laugh at this - but it is not right or fair. In this case Mr Cooke had the good fortune to be expertly represented pro bono, but few taxpayers are so fortunate. Other taxpayers have to go to a lot of trouble, expense and anxiety to take such issues to the FTT, and they will not get any reimbursement for their costs unless it is on the Complex Track.

Non Doms: Protected Trusts

HMRC have published a 54 page Guidance Note on the new rules relating to Protected Trusts – that is to say trusts established by individuals who were (and are) not UK domiciled and satisfy a whole load of conditions. The Guidance Note also contains some explanations regarding the rebasing provisions at 5th April 2017.

These trust protections allow the income and gains of a non resident trust, and an underlying company, to remain outside the Settlement provisions of section 624 et seq ITTOIA 2005, the Transfer of Assets Abroad provisions of sections 720 et seq ITA 2007 and section 86 TCGA 1992 – all of which would otherwise apply to the income and gains of a UK resident and domiciled person. They do not (of course) apply to Returning Non Doms.

These protections will be withdrawn if the trust becomes "tainted" by property or income being added to the settlement (or to an underlying company) which includes the continued provision of interest free loans (or those where the interest is less than the official rate). The tests for tainting are similar to those contained in Statement of Practice SP5/92.

It remains to be seen how much of the Guidance Note is consistent with the legislation but in any event, it is a pretty comprehensive exposition of how HMRC interpret the legislation, which is always valuable.

NR CGT Return Penalties

Some clarification would seem to be necessary regarding the obligations for submitting Non Residents Capital Gains Tax returns and the penalties for failing to do so.

It may be remembered that in the case of *Patsy-Anne Saunders v HMRC* TC 6173 (and in *Rachel McGreevy v HMRC* TC 6109) HMRC failed to impose penalties for the late submission of Non Residents CGT returns.

Patsy-Anne Saunders sold a UK residential property at a loss. She was not resident in the UK and although she was aware that capital gains tax can now be charged on non-residents who sell UK residential property at a profit, she did not know that it was necessary to submit a CGT return even if she made a loss. HMRC charged her a penalty of £1300.

The Tribunal said that she had no obligation to submit a Non-Residents CGT return at all – but even if she had, Miss Saunders would have had a reasonable excuse to relieve her from the penalty.

HMRC said had no excuse, because:

- non-resident individuals have an obligation to stay up to date with legislation in the UK.
- Ignorance of the law is no excuse and she should have been aware of the changes effected by section 12ZB TMA 1970.
- The obligation to file a Non Residents CGT return within 30 days of completion of the sale is not obscure or complex law.

The Tribunal rejected all these arguments in extraordinarily strong terms – including the words "claptrap" and "preposterous".

The Tribunal even pointed to the fact that in their published materials on this subject, HMRC explained the requirements incorrectly – which rather supports the proposition that the law must be obscure or complex if HMRC did not get it right themselves.

An appeal would seem to be likely, but in the meantime, there has been a further decision from the FTT - Hesketh v HMRC TC 6266 where the Tribunal upheld a penalty for the non submission of a NRCGT return, taking the view that the cases of *Rachel McGreevy* and *Patsy-Anne Saunders* were wrongly decided. This might be said to be further evidence that the law is obscure or complex if even Tribunal judges get it wrong.

It is difficult to know what the taxpayer (or non-taxpayer) is supposed to do when diligently trying to fulfil their tax obligations, when they are faced with these conflicting decisions. The imposition of penalties in such circumstances does nothing to enhance the public perception of the fairness of the tax system or of those who are responsible for its operation.

Some clarification or a sensible practice statement would clearly be welcome.

Tax Returns: Penalties

Last month I referred to some robust comments I had previously made following the case of *Kaczmarczyk v HMRC TC 5744* when HMRC claimed that they could send tax returns to people who had no UK tax liabilities and impose serious penalties for not submitting them. The Tribunal upheld their view – and the penalties.

Mr Kaczmarczyk was resident in the UK but I am aware from personal experience that HMRC believe they are entitled to send tax returns to non residents with no income chargeable to UK tax and to impose penalties just the same.

I suggested that this was questionable and referred to the recent case of *Jiminez v FTT and HMRC [2017] EWHC 2585 (Admin)* where Charles J held that a Schedule 36 information notice issued to a person resident in Dubai was unlawful because it was issued to a person outside the jurisdiction. His Lordship referred to the presumption that Parliament does not enact statutes to operate on its subjects beyond the territorial limits of the UK.

There seems to be no reason why this analysis should not apply equally to section 8 TMA 1970 in connection with tax returns.

This view has now received a degree of support from the case of *Newton v HMRC TC6269* in which the judge suggested that where the individual was not liable to UK tax at all, it was arguable that he would not be legally obliged to complete a UK tax return issued to him by HMRC.

These are clearly helpful judgments offering some relief for taxpayers pursued by HMRC in their increasing quest for penalties.

QCBs and Foreign Currency

The Court of Appeal have provided important clarification regarding the definition of a Qualifying Corporate Bond – and in particular, one which contains a provision for "*conversion into, or redemption in, a currency other than Sterling*". Such a provision disqualifies a corporate bond from being a QCB (and being exempt from capital gains tax) and turns it into a non-QCB, which is not exempt.

In the case of *Trigg v HMRC [2017] EWCA Civ 17* Mr Trigg was concerned with corporate bonds which contained some precautionary drafting to deal with the position if the UK joins the Euro and Sterling disappears. If there were to be a change in the currency of the UK, then there would be a conversion into the new currency, or at least it would be redeemable in the new (non Sterling) currency.

HMRC said that this meant that the corporate bonds were disqualified from being QCBs.

HMRC looked to have a good argument because it was certainly envisaged that the bond could be redeemed in a currency other than Sterling.

The First Tier Tribunal felt this was too extreme a view and found in favour of Mr Trigg; the Upper Tribunal disagreed and found in favour of HMRC.

However, the Court of Appeal has now held that the bond did not provide for conversion or redemption in another currency. Accordingly, the bonds were qualifying corporate bonds and eligible for the exemption claimed by Mr Trigg.

The Court of Appeal explained that although it could happen that the bond would be redeemed in Euros, this would only occur in the event that the UK joined the Euro going through all the necessary processes. (That would probably be a swift and easy procedure – I cant imagine it would take very long). What this means is that such conversion would occur by operation of law – and not under the terms of issue of the bond – so the bond was therefore not disqualified from being a QCB.

This was the lead case in a number of cases on this issue and I would guess that a further appeal is likely.

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