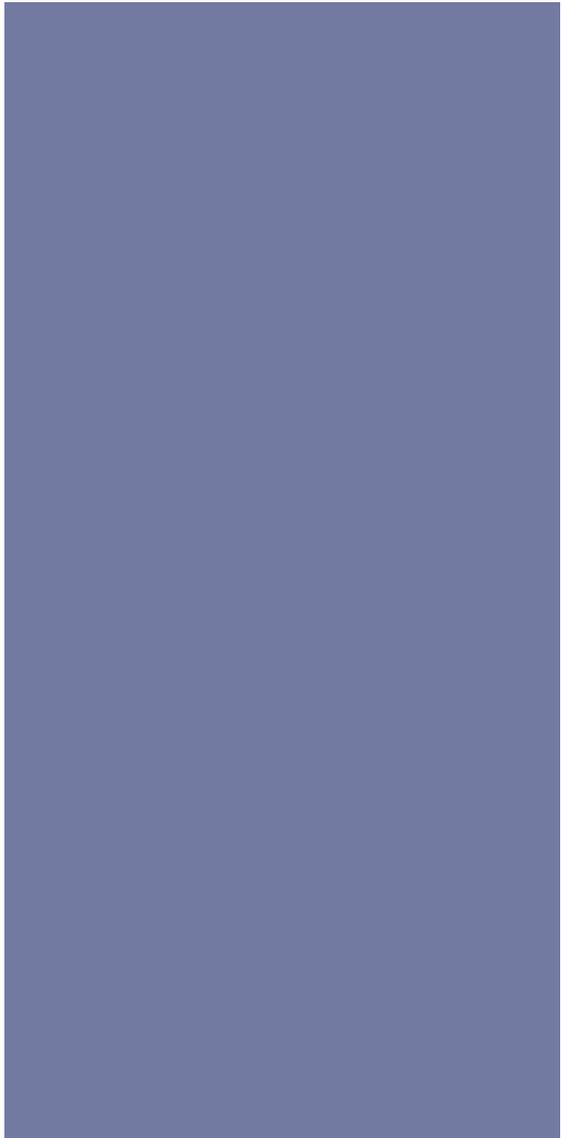




UK Tax Bulletin
November 2016



FIELD COURT TAX CHAMBERS



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Latest Rates of Inflation and Interest

The following are the current rates at November 2016

Current Rates	
Retail Price Index: October 2016	264.9
Inflation Rate: October 2016	2.0%
Indexation factor from March 1982: to October 2016	Not yet published
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%



Autumn Statement

I don't know about anybody else but I thought that Mr Hammond did rather well with his Autumn Statement. He seemed very assured and comfortable in his role - and what's more he looked like he believed what he was saying. (Could that be a first?).

The trouble with Autumn Statements is that they rarely contain anything of substance (and this one was no different) – a sort of *amuse bouche* – although not so much of the amuse. Mr Hammond seems to think so too – which is why he is not going to have any more. After the next Budget, we are going to have a proper Budget in the Autumn and that's it.

Employee Shareholder Shares

The details in the Statement were a bit thin on the ground – and on tax issues he did not say much which has not been announced already. One exception is the removal of reliefs for new Employee Shareholder Shares. It was suggested that this has been abused and must therefore be withdrawn. No details of the abuse were mentioned but the indications are that it is merely that the "wrong" people are getting the benefit.

I must say that I have a bit of a problem with this. A relief is introduced which is used exactly as it says on the tin without any aggression or artificiality - but it becomes an abuse apparently simply because it has been used. Anyway, it is going now.

Foreign Pensions

There are plans to align the treatment of foreign pensions with UK pensions. What this means is that the 10% foreign pensions deduction in section 575 ITEPA 2003 will go. It also looks as if the freedom from tax on lump sums on pension schemes which satisfy section 615 by reference to foreign service, will be for the chop. That is odd because the lump sum tax freedom for foreign service which was provided for ages by Extra Statutory Concession A10 was generally thought to be a good thing – which is why it was an Extra Statutory Concession in the first place – and was enacted into section 395B ITEPA in 2014.

Deterrence and Sanctions

I was a bit disappointed about the proposal that anybody who takes lawful tax advice is to be stripped of his assets and sent to the Tower – and so is his lawyer. (Well, nearly). Shakespeare might approve, but anybody with the slightest appreciation of the rule of law might feel this is not quite the right approach. Let's hope there are some second thoughts.

Offshore Companies

We also have a new idea that non resident companies are going to be taxed on all taxable income they receive from the UK. This could perhaps be worded a little more clearly as the proposition is obviously unarguable – of course they should be taxed on their taxable income – so it would be helpful to have some more details. That may take a while.



Non Doms

There was no indication of any change or variation in the Non Dom proposals due to come into force next April. In fact, they were generally affirmed. However, we have the draft Finance Bill being published next week on 5th December and there will assuredly be something of interest in there. Stay tuned.

Corporate Tax Rates

It has been interesting to read the various (and not always consistent) reports about what is likely to happen to US tax rates under the new President. The idea of a 15% corporate tax rate seems to be on the cards on the grounds that it is necessary to stimulate the economy and create growth. I seem to remember that this was exactly what Mr Osborne was suggesting. This has been taken on board by Mr Hammond (although only down to 17% and only from 2020) and of course a low corporate tax rate is what has caused so much trouble in Ireland. You would have thought that any proposal to stimulate the economy and increase job creation would be welcomed.

A relevant UK example would be Stamp Duty Land Tax. This has been increased to ruinous levels causing a serious slowdown in purchases and sales (and naturally much lower receipts that were predicted). Be careful what you wish for. Nobody mentions all the economic activity which has been lost. When somebody moves house, the first thing they do is to make improvements – maybe a new kitchen, or a new bathroom and the associated redecoration - with all the economic activity (and VAT) that is necessarily entailed. You don't get any of this if you make it unacceptably expensive for people to move house. Nor do you get much SDLT. I think that is called a *Lose- Lose* situation.

I suppose that the economy demands lower taxes and growth whereas politics demands higher taxes on the rich (companies = rich for this purpose) even though that will have the opposite economic effect. I guess that as long as the electorate does not equate higher taxes with lower living standards, that will carry on being the case.

I can just see the headline: *Politics Trumps Trumps Program*. Or maybe they will come to a different conclusion over there.

ATED Penalties

The chances of an ATED penalty are pretty high because of the requirement for an ATED Return to be submitted even if you are not liable to pay the tax because of a relief – for example if the property is commercially let or if the company is engaged in property development. There is a flat rate penalty and a daily penalty which can mount up alarmingly.



However, the case of *Chartridge Developments Ltd v HMRC TC 5493* shows that it is wise to check the relevant penalty notices because you never know what you might find. In this case the notices contained errors which ended up invalidating nearly all the penalties. I say ended up, because errors do not necessarily invalidate anything.

Section 114 TMA 1970 provides that an assessment or determination is not impeached by reason if an error or omission if it:

“is in substance and effect in conformity with or according to the intent and meaning of the Taxes Acts”

The FTT analysed the position at length and concluded that the errors in the penalty notices in this case were too serious to allow them to be saved by section 114. Nearly all the penalties were held to be void – and that meant there could be no time penalties either.

This case is well worth a read to see the scope of section 114 and just how far HMRC are protected when errors are made in their paperwork. The court also examined the question whether the errors provided grounds for the defence of reasonable excuse – or indeed whether a “special reduction” in the penalty could be justified.

Accelerated Payment Notices

Accelerated Payment Notices are tough things to deal with in every way – not least because there is no right of appeal.

The FTT recently considered the position where the taxpayer had received an APN and subsequently had a penalty imposed for non payment: *Kuldeep Delay v HMRC TC 5054*.

Mr Delay appealed against the penalty on the grounds that the APN was flawed – not because it did not satisfy the statutory requirements but because it denied him his basic human rights. These rights did not come from the Human Rights Act 1998 but from the UN Declaration of Human Rights. Er, no. He lost.

The FTT said that they had no jurisdiction to deal with this appeal and that they were obliged to strike out the appeal. However, they gave him some helpful advice about the appeal process.

There does seem to be something inherently wrong in HMRC being able to impose a tax charge on taxpayers without any right of appeal (particularly in circumstances where the substantive tax liability has not even been established) – and to give an apparent right of appeal to the Tribunal in the event of a penalty, only to find that when you do appeal, the Tribunal has inadequate jurisdiction even to consider the matter.

It is useful to know, I suppose.



Sponsorship Expenditure

A notable success was recently achieved by the taxpayer in the case of *Crown and Cushion Hotel (Chipping Norton) Ltd v HMRC TC 5492*.

The taxpayer company spent considerable sums in sponsoring the motor racing activities of Alice Powell, the daughter of the sole shareholder and director of the company, who was clearly a brilliant racing driver. The company claimed a deduction on the basis that the sponsorship represented promotional costs.

HMRC argued that this expenditure was not laid out wholly and exclusively for the purposes of the hotel trade, but was incurred, at least in part (consciously or unconsciously), to support Alice in her motor racing activities.

HMRC had considerable support for their view – the cases of *Interfish* and *Executive Network* spring immediately to mind, quite apart from the catalogue of cases on the wholly and exclusively principle.

Without diving too deeply into the detail, the crucial point was that the Tribunal said they were satisfied that the purpose of the expenditure was not at all to benefit Alice. They were also satisfied that it was incurred solely to promote the hotel business and was therefore allowable.

These are very powerful findings of fact by the Tribunal and in any case of this nature, the facts presented to (and found by) the Tribunal are of the utmost importance.

It just shows what you can do if you have robust, clear and credible witness evidence.

GAAR

There has been no indication of any reference being made to the GAAR Panel by HMRC where they consider that arrangements made by the taxpayer breach the General Anti Abuse Rule – that is to say, because the transactions undertaken by the taxpayer cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions.

However, it may be that the publication this month by HMRC of a Fact Sheet on Provisional Counteraction Notices indicates that such references may not be far away. They certainly seem to be keen to tell us exactly what happens when they do issue such a notice.

HMRC explain that when they issue a Provisional Counteraction Notice and make adjustments to the liability of a taxpayer, he will have to pay the tax unless there is an appeal. No surprises there.



There are loads of different Provisional Counteraction Notices, but you cannot appeal against any of them. You can only appeal against the adjustments which give rise to the additional tax. HMRC go on to explain that having made the appeal, there is nothing you can do to progress your appeal. It seems that you will be in a state of uncertainty (and possibly considerable anxiety) until such time as HMRC decide to do something further.

It will be interesting to see how this plays out because I can see some serious commercial or personal difficulties being created by this uncertainty if such a notice arrived in the middle of (say) a takeover or perhaps in the course of matrimonial proceedings.

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