UK Tax Bulletin

April 2017

Field Court Tax Chambers

Contents April 2017

FIELD COURT TAX CHAMBERS

Latest Rates of Inflation and Interest

The following are the current rates at April 2017

Current Rates	
Retail Price Index: March 2017	269.3
Inflation Rate: March 2017	3.1%
Indexation factor from March 1982:	
to February 2017	2.379
to March 2017	2.390

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 6th April 2014: 4%

To 6th April 2015: 3.25%

To 6th April 2017: 3%

From 6th April 2017: 2.5%

Finance Bill

The General Election on 8th June does not leave a lot of time for Parliament to give consideration to the longest Finance Bill in history – and one which contains such profound changes. In fact, I understand that Parliament will be prorogued on 3 May.

I note that the controversial proposals regarding probate fees have been abandoned. Also, all the stuff about non doms has been removed from the Bill – and a whole lot else has gone. I am not holding my breath because after the election there will assuredly be another Finance Bill and everything will be put back in. I cannot imagine that it will all be forgotten. I suppose it will all be retroactive to 6th April, but it would be good if the changes were deferred for a year. We can hope I suppose.

But it seems to me that whatever they do, there will be some serious issues. What if a foreign resident and foreign domiciled person dies now owning shares in an offshore company containing an UK residential property? Is it liable to IHT? One might say no, because on the law as it stands he is in possession of excluded property. Or can he be taxed after he dies on the basis of a law introduced after he is dead and backdated so as to be operative for a period before he died.

I do hope not. President X in the Democratic Republic of X would just love to say that his laws are the same as ours. No need to imprison people on trumped up charges. Pass a new law saying that it applies for the last 5 years and you can confiscate anybody's assets whilst claiming that it is the will of Parliament.

Penalties

The case of *Kaczmarczyk v HMRC* TC 5744 has some hair-raising implications.

Mr Kaczmarczyk was issued with a tax return but he did not send it back because he had no taxable income or gains for the year. However, HMRC still imposed a penalty of £3500 for failing to submit a zero return. Their grounds derived from section 8 TMA 1970:

> "….he may be required by a notice given to him by an officer of the Board to make and deliver to the officer a return containing such information as may reasonably be required in pursuance of the notice".

The Tribunal held that upon receipt by a person of a notice under section 8, the recipient has an obligation to file a tax return for the year – and failure to do so gives rise to a penalty under Schedule 55 Finance Act 2009. (I wonder if this extends to failing to send a cheque for £0.00).

Such penalties used to be limited to the amount of tax payable; however, that limit was abolished in 2010 and there seems to be no defence to a penalty for not submitting a nil return.

That seems clear enough…but hold on. Can this really be right?

There are a billion people in China, another billion in India (and so on); none of them have any UK income or gains or any UK liability. So HMRC can send them all section 8 tax return notices and fine them £3500 for failing to send them back. The deficit would be gone in an instant.

But that would be silly, wouldn't it? … Well yes. But do they fall within the legislation? On a strict reading, they do. This is so obviously bonkers that one might think another interpretation would be appropriate – you know, like when a literal interpretation gives rise to absurdity.

It is no good saying that because the penalties would be irrecoverable, that is a reason why the section 8 obligations should not fall on them. Unfortunately, we know that this argument does not work from *Agassi v Robinson* [2006] STC 1056 where the House of Lords upheld a withholding tax obligation for a payment outside the UK, by a foreign company with no UK presence, to another foreign company. Their Lordships held that difficulties in collection were no impediment to the proper interpretation of the legislation.

As there are no longer any difficulties in the collection of tax debts in other countries which have signed up to the OECD Convention on Mutual Administration Assistance in Tax Matters (which is most of them), section 8 is clearly a cash machine.

Or maybe there ought to be another interpretation….

Principal Private Residence

The case of Higgins v HMRC TC 5724 provides a new twist on the normal arguments regarding the relief for the only or main residence.

In October 2006, Mr Higgins entered into a contract for the purchase of a leasehold apartment, off plan. Completion was not of course, going to take place until the building had been completed. Completion occurred in January 2010 and Mr Higgins moved in. He subsequently sold the flat and claimed the private residence exemption under section 222 TCGA 1992 on the grounds that it was his only or main residence throughout his period of ownership.

HMRC accepted that the relief applied for the period in which he occupied the property as a residence. However, they said that his period of ownership did not start on completion; it started on exchange of contracts so for a very large chunk of his period of ownership, the property was not his residence.

HMRC drew attention to section 28 TCGA 1992 which provides that for capital gains tax purposes, an asset is acquired at the time the contract is made and not when it is conveyed to him.

Although this sounds straightforward, it was a bit of a problem here because at the date of exchange of contracts, the flat did not exist – it had not yet been built - so it is a bit difficult to say that Mr Higgins was deemed to acquire an asset at a time when it did not exist. However, I suppose that's what you get with deeming provisions.

The Tribunal held that a distinction should be made between the time of acquisition in section 28 and the meaning of "period of ownership" in section 222. Accordingly, they decided that his period of ownership should begin on the day of completion when the he had the right to occupy the property.

(I hereby withdraw my sniffy comments last month when I said that the taxpayer never seems to get the benefit of a purposive interpretation.)

I remember that a similar issue arose in *Campbell Connelly v Barnett* 66 TC 380 in dealing with rollover relief under section 154, and the requirement that the replacement asset was taken into use "on acquisition" (which under section 28 would be on exchange of contracts). The court held that acquisition meant completed acquisitions, not those which still lie in contract.

I always found this conclusion difficult because that seems to be exactly what section 28 was designed for. However, the case of Higgins reinforces that position and it will be interesting to see in what circumstances section 28 can ever apply in future. It will certainly cause a problem in those circumstances where section 28 is being used to ensure that a disposal takes place in a convenient year.

Index Linked Loans

I read in the HMRC Trusts and Estates Newsletter that HMRC are taking a firm view on index linked loans made by trustees. The idea of such arrangements is that the enhanced loan is deductible from the borrower's estate for IHT purposes.

HMRC do not seem to be challenging the deduction but are saying that the uplift represents interest which is chargeable to income tax.

Opinions differ but it seems to me that HMRC are perfectly entitled to take such view and for taxpayers to challenge it if they disagree. We all know where we are and can act accordingly.

Where I think their stance goes a bit awry is that HMRC say they will consider the information provided about the loan (and it would follow, will consider the relevant arguments) only when they have issued a closure notice bringing the uplift into charge to income tax and the matter is under appeal. Not before. How about considering whether the circumstances give rise to taxable income first? Certainly not. Sentence first – Verdict afterwards. The Queen of Hearts would be proud.

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