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Latest Rates of Inflation and Interest

The following are the latest rates:

Current Rates	
Retail Price Index: December 2019	291.9
January 2020	290.6
Inflation Rate: December 2019	2.2%
January 2020	2..7%
Indexation factor from March 1982:	
Frozen at December 2017	2.501

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 3.25% from 21st August 2018

There is one exception: Quarterly instalments of corporation tax bear interest at only 1.75% from 13th August 2018

Repayment supplement

Interest on overpaid tax is payable at the same rate from 21st August 2018

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

Except IHT where the rate is 0.50%

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%

Personal Service Companies

I hesitate even to mention it, but there is yet another case on this subject– the case of *Red, White & Green Limited v HMRC TC/2017/03624.* This case concerned the ITV presenter, Eamon Holmes, whose services were provided to ITV by his personal service company, Red, White & Green Limited. The judgment in this case goes on for 73 pages and although the facts are not (quite) the same as all the other cases, there are so many points of congruence that one might be forgiven for thinking that they are.

As everybody is well aware, under the intermediaries legislation (known as IR35 – which is now just slang, but never mind) it is necessary to disregard the real contract between the company and the client, and to assume a hypothetical contract (with different parties) and then work out what the relationship would have been had those parties entered into such a contract.

Accordingly, the crucial issue is whether, if the services provided by Mr Holmes had been provided to ITV under a contract directly between him and ITV (rather than with his company), would he have been regarded as an employee under this hypothetical contract?

I have mentioned all this so many times before that I will not bother with the analysis again – and anyway, it does not get us anywhere. The judgment goes through everything at great length and concludes that Mr Holmes would have been an employee under the hypothetical contract.

It may or may not be relevant that the only recent case referred to in the judgment was that of Christa Ackroyd where the conclusion was in favour of HMRC. It is a pity that even in such a long judgment, there was no mention of the recent cases involving Lorraine Kelly (TC 7045) , Helen Fospero (TC 7422) and Richard Alcock (TC 7474) all of which contained very similar facts and all of which were decided in favour of the taxpayer. It would have been useful to know why these cases were (presumably) wrongly decided and how they may be distinguished from the case of Mr Holmes.

These cases have very serious consequences for those involved. Some are faced with tax bills of hundreds of thousands of pounds, whereas others, in what would appear to be almost identical circumstances, are not.

Without getting involved the minutiae of this case, it does seem deeply unsatisfactory that the Tribunals come up with directly contradictory conclusions on what would appear to be extremely similar facts. (It does not only happen in IR35 cases). What is the public supposed to do? The FTT is not a court of record whose decisions are binding but they are supposed to be helpful – but if on identical relevant facts different Tribunals come up with contradictory conclusions (and if you lose you can be ruined) it becomes almost a case of Russian roulette.

Nor is it helpful to HMRC. What if they have a case where there are (say) four cases supporting their arguments and four cases supporting the taxpayer's arguments. Do they devote significant resources and public money to a Tribunal case when the matter is so uncertain? This just puts HMRC in difficulty as well.

If the legal analysis is so delicately balanced, with prosperity or ruin depending on such slender threads, it is hardly fair for consequences of this magnitude to be decided virtually on the flick of a coin. The law is supposed to be certain so that people can know where they stand.

Descartes was keen on saying that nobody can ever be certain about anything (although he clearly did not focus much on death and taxes) – but surely we deserve better than this.

It is high time all this was sorted out – and maybe the new IR35 rules coming into force on 6th April will herald a new era of certainty. No, I don't think so either.

Home Loan Schemes

Home loan schemes were very popular around the turn of the century but their benefits were rather undermined by the pre-owned assets charge introduced in 2005 and the introduction of Stamp Duty Land Tax did not help either.

The First Tier Tribunal recently had occasion to consider the effectiveness of such a scheme in the case of *Shelford & Ors (executors of J Herbert deceased) v HMRC TC 7549.*

The arrangements followed a conventional form. Mr Herbert sold his house to a trust at market value with the consideration left outstanding by way of loan. He was a beneficiary of the trust which enabled him to continue to live in the property.

Mr Herbert had a separate asset – the loan representing the outstanding consideration. He gave away this loan to his children by way of potentially exempt transfer. There was no reservation of benefit in the subject matter of that gift so after seven years, it was completely exempt. In this way, the present value of the property was able to be removed from his estate for inheritance tax purposes.

Various arguments have been canvassed inconclusively over the years about home loan schemes – but in the case of *Shelford* the scheme failed on surprising grounds which, as far as I am aware, have never previously been considered.

Essentially, the scheme failed on the basis that the sale of the house to the trust was void. The purported sale was therefore of no legal effect and the taxpayer had done nothing. Accordingly, the value of the house at the date of his death formed part of his estate. It followed that the loan was also void.

The Tribunal's decision was based on the judge's interpretation of Section 2 Law of Property (Miscellaneous Provisions) Act 1989. This provides:

> A contract for the sale or other disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document, or where contracts are exchanged, in each.

In essence, the Tribunal held that the sale agreement did not incorporate all the terms of the contract for the sale of the property. There were some terms which were not included in the document, and therefore the contract was void.

It had been widely understood that the requirement in Section 2 for all the terms of the agreement to be in the written document meant that anything which was not contained in the written document did not form part of the contract and could not be relied on or enforced.

The judge said this was wrong. He said that in in Mr Herbert's sale there were other terms of the contract which had not been included in the written document and this caused it to be void.

This is a really difficult conclusion. What if I sell my house and I forget to mention in the written document that we agreed I would leave all the light bulbs. Or that I had orally agreed with the purchaser to have the carpets cleaned before I left. Neither of this points had been written down so the contract is void. Um.

Unless every single thing that had been discussed and could possibly be thought of as being relevant to the sale had been reduced to writing and included in the contract, you have a problem. You cannot just ignore those oral discussions; the whole contract is void and you haven't sold the house at all. *Really*?

It would be interesting if after the sale there was a fall in the property market and the purchaser claimed that there were some discussions which had not been included in the contract, so the sale was void. Can I have my money back please? Or maybe just refund me £100,000 and I won't pursue the point. The solicitors might also be in trouble for advising the vendor to proceed with a contract which was void.

The more you think about it, the worse it becomes. It will interesting to see whether this interpretation of Section 2 is upheld by the Upper Tribunal (if it goes to appeal) or whether it will be followed in any other case.

This is surely not going to be the end of this argument.

Reasonable Excuse

The recent case of *Comtek Network Systems (UK) Ltd v HMRC TC 7535* involved a claim for reasonable excuse in rather unusual circumstances. This concerned an assessment to Stamp Duty Land Tax, a Follower Notice and a 50% penalty for failure to take corrective action. You don't escape from many of these.

What happened was that a company called Sheibani Llwyn, a private unlimited company, purchased a farm. Immediately after the purchase the company transferred the property to Mr Sheibani and Comtek Network Systems (UK) Ltd as a return of capital. This was "a sub-sale distribution in specie" scheme designed to avoid SDLT.

In due course, HMRC wrote to Comtek explaining that the decision in in *Vardy Properties v HMRC TC 2242* showed that this scheme did not work. And as a result of the case of *Crest Nicholson (Wainscott) v HMRC TC 5628,* HMRC issued a Follower Notice and an Accelerated Payment Notice to Comtek.

Comtek was therefore obliged to take corrective action which involved the submission of a form CADAcc 38 and having failed to do so, it was subject to a penalty.

The judge said that if a taxpayer's failure to do to do something gives rise to a financial penalty then the requirement should be sufficiently clear and unambiguous to leave no doubt in the mind of the reasonable recipient what should be done. Furthermore, when considering whether the taxpayer's behaviour was reasonable, it is necessary to take into account the experience and other relevant attributes of the taxpayer and his particular situation.

In this case the communications from HMRC to the taxpayer were inconsistent and he had a genuine (and reasonable) belief that the matter had been concluded. The approach of the taxpayer was "just about" reasonable and the penalty was set aside. However it was clearly touch and go.

Not many Accelerated Payment Notice penalties end up this way – but at least this case shows that it can happen.

Professional Goodwill

It may be remembered last year that in the case of *Richard Villar v HMRC TC 6893* HMRC rejected a claim of the taxpayer regarding the transfer of the goodwill of his professional practice.

Mr Villar had a successful medical practice which he sold as a going concern to Spire for £1 million. Mr Villar thought that this gave rise to a capital gain but HMRC argued that the payment was subject to income tax.

HMRC said that the payment was mainly a payment attributable to goodwill and that could not be transferred to Spire because the goodwill was personal to him. They said that he had no business to dispose of – it was really a payment in advance for the exploitation of his professional skills for future flow of income. In other words, it was an arrangement for Mr Villar to obtain money in capital form (taxed at 10% having regard to an entrepreneur's relief) and not as income which would have given rise to rather more tax.

This seemed to be an optimistic argument by HMRC because Mr Villar certainly believed he had a business capable of selling – and he sold it. The expert valuers who valued the business thought so too. And Spire obviously thought he had a business capable of sale because they paid £1 million for it.

The Tribunal agreed this was a sale by Mr Villar of his business and the amount received was capital.

Later last year the issue arose again in the case of *Leeds Cricket Football and Athletic Company Limited v HMRC TC 7362* which concerned the sale of Headingly Stadium. The sale contract provided a specific provision that the property and the goodwill of the business were to be sold and the goodwill was assigned pursuant to the contract. HMRC that there was no goodwill capable of being sold so the sale was merely a sale of land.

Again, these arguments were all roundly rejected by the Tribunal. They said that the company clearly carried on business and had sold its goodwill.

I said at the time that HMRC seemed to have some "independent" views regarding goodwill and the sale of businesses. I doubted whether we had heard the last of them and that HMRC would probably keep on trying. And so they have.

In the case of *Neill Dyer v HMRC TC 7567,* Mr Dyer had an accountancy practice and he sold the business including the goodwill to a company. There was some dispute about the facts but never mind about that for the moment. HMRC raised exactly the same arguments as in *Villar*; there was no goodwill and even if there was, the £1.2 .million he received for it was really earnings chargeable to income tax. The Tribunal agreed with HMRC that the payment was earnings and not consideration for the goodwill.

The decision may not be as controversial as it might seem because it could well have been seriously affected by the confusion over the facts. However, it is certainly a decision of significance in connection with such transactions.

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