UK Tax Bulletin

April 2020

Contents April 2020

Current Rates..The latest rates of inflation and interest

Waiving Remuneration ……………......A noble gesture – but watch out for the tax

Personal Residence……......…………………………..... Further day count relaxations

Corporate Residence ………….……..……The rules are relaxed for companies too

Permanent Establishments…………………………....The effect of the virus on PEs

Deeds of Variation: CGT……………….……Disposals of assets before a variation

HMRC Nudge Letter…………………………………..A new nudge letter for VCTs

Latest Rates of Inflation and Interest

The following are the latest rates: April 2020

Current Rates	
Retail Price Index: February 2020 March 2020	292.0 292.6
Inflation Rate: February 2020 March 2020	2.5% 2..6%
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 rate of 2.6% from 9th April 2020.

There is one exception: Quarterly instalments of corporation tax bear interest at only 1.25% from 23rd March 2020

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.

Official rate of interest

To 6th April 2015: 3.25%

To 6th April 2017: 3%

To 6th April 2017: 2.5%

From 6th April 2020 2.25%

Current Note

Having regard to the continuing extraordinary circumstances, it is difficult to find anything happening in the tax world, apart from the Herculean efforts by HMRC to implement the Chancellors proposals to support those who are seriously affected by the virus.

This has caused the suspension of a good deal of HMRC activity relating to investigations and compliance. It would be unduly optimistic to conclude that these issues will just go away. The investigation and compliance enquiries are likely to return with customary vigour in due course.

In the meantime there are a few developments which may be of interest.

I have mixed feelings about the opportunity to defer the current payment of VAT and the second income tax payment on account for the self-employed due on 31st July. I am grateful of course – although it just means that the liability due on 31st January will be so much greater, and that may itself be a source of anxiety. One can always invest the money, but interest on bank deposits is hardly worth the bother – and investing in the market at the moment is not for the faint hearted. Especially because the money does actually need to be there on 31st January 2021.

I make no apology for saying again that those of us are who are able to work from home with varying degrees of efficiency should count ourselves extremely fortunate - and should rejoice daily.

Waiving Remuneration

A number of warm hearted people have generously announced that they will be waiving some or all of their salaries in an effort to assist those who are badly affected by the current crisis – or to provide additional funds to the NHS. Those with a high profile have naturally received a lot of media attention but there are a lot of other people whose generosity is equally praiseworthy.

However, it is an inevitable feature of modern life that anybody wishing to help in this way must be very careful not to expose themselves to some seriously unwelcome tax consequences as a result of their generosity.

The general rule is that if a salary or bonus is waived after entitlement to it has arisen, the donor will still be liable to tax and NIC on the amount waived. The waiver will still be valid but it will be a disposition of a net amount received (or treated by ITEPA 2003 as received), rather than the relinquishment of amounts they were expecting to receive – which is no doubt what was intended.

That is unlikely to go down well with the donor. To avoid such a surprise it is necessary for the employee to execute the waiver before the entitlement to the salary or bonus has arisen. In this way, he will not be chargeable to tax on the amount waived.

It is also of course essential that the documentation has the desired legal effect – and as a waiver is a gratuitous disposition without consideration, it will require a deed to be executed in proper form.

We might expect that HMRC will adopt a flexible approach here as they have done in other areas, but there is a limit to how much they can disregard the legal position – and still less the statutory provisions. Maybe there could be a legislative change which will deal with any such problems – but the Treasury (and Parliament) may have enough on their plate at the moment without having to deal with all this technical stuff.

And what about the position where an employee repays a bonus that he has recently received in order to assist his colleagues who might otherwise be furloughed – or worse. I am sure a lot of that has been going on. No relief at all at the moment – in fact, it is really the same point – and the repayment will have to be made out of post-tax income. Perhaps HMRC will find a way to help – perhaps by allowing the repayment to be treated as negative earnings.

Inheritance tax should not be an issue because there is a specific exemption for waivers of remuneration under section 14 IHTA 1984. This applies if, apart from the waiver, the amount waived would have been employment income. This wording indicates that, for similar reasons, it would be necessary for the waiver to be executed in advance of the entitlement arising.

It is understood that the CIOT are on the case, and are seeking some confirmation from HMRC that they will find a way to protect donors from the severity of these consequences. After all, nobody would want such generosity of spirit (or of cash) to be discouraged by uncertainty over the tax positon.

UK Residence – Disregarded Days

There are further developments on this subject – although of a rather specialised variety.

The Treasury has published a letter by the Chancellor explaining that the Statutory Residence Test is being amended to ensure that any days spent in the UK between 1st March and 1st June 2020 by individuals who are "working on COVID-19 related activities" will not count towards the residence tests.

Quite what is meant by "working on COVID-19 related activities" is unclear but the Chancellor says that this relaxation will be tightly targeted to minimise the risk of abuse. There is also an implication that it might be extended – depending on how the situation develops.

This will be a statutory relaxation, unlike the HMRC announcement last month which was merely their acknowledgement that the meaning of exceptional circumstances in Schedule 45 FA 2013 is wider than they had previously suggested.

Corporate Residence

Last month I mentioned that the lockdown may have a serious impact on company residence.

The general rule is that a company will be resident in the UK if its central management and control is situated in the UK. That is a question of fact and will not be affected by the technical residence of its directors; it will be the place where the key decisions are made. (This does not apply to companies which were incorporated in the UK as they are automatically resident under section 14 CTA 2009.)

So the possibility arises that if the directors are stuck in the UK, they will have to be doing whatever it takes to keep the business running and this could result in the company becoming UK resident.

There is also the possibility that when the lockdown comes to an end and the directors leave, the company would resume its foreign residence. On that occasion, there could be an exit charge under Section 185 TCGA 1992 on all the assets of the

company on the basis of a deemed disposal for capital gains tax purposes.

However, just as with the position for individuals, HMRC has come to the rescue for companies as well. They are "very sympathetic to the disruption that is being endured" and on 9th April they published a statement explaining that they are proposing to look at the matter in a more relaxed fashion. The statement includes the following passage:

> "We do not consider that a company will necessarily become resident in the UK because a few board meetings are held here, or because some decisions are taken in the UK over a short period of time. HMRC guidance makes it clear that we will take a holistic view of the facts and circumstances of each case".

HMRC explain that in their view, the place where the board meetings take place is not determinative and that occasional UK board meetings or participation in such meetings from the UK, does not necessarily result in the central management and control abiding in the UK.

They also mention that where the company is resident in a country where we have a double taxation agreement, the corporate residence tiebreaker provisions may result in the company being treated as non-resident anyway. They will look at the place of effective management on the basis of all the effects and circumstances at the time.

Interestingly, HMRC does not seem to regard all this as a relaxation; they suggest that it merely follows the flexible approach which is already contained in the HMRC guidelines. This statement may raise a few eyebrows, but whether it is right or wrong, the approach set out in this statement is certainly to be welcomed.

Permanent Establishments

The disruptions can also have an effect on the existence or otherwise of a permanent establishment where executives are stuck in an abnormal jurisdiction and necessarily conclude contracts in that jurisdiction.

The OECD has published its own view on the matter:

> "The exceptional and temporary change of the location where employees exercise their employment because of the COVID-19

> crisis, such as working from home, should not create new PEs for the employer. Similarly the temporary conclusion of contracts at the home of employees or agents because of the crisis should not create PEs for the businesses"

This is very comforting although it is not clear whether HMRC accept this analysis.

With regard to both these interpretations, for residence and permanent establishments, it will be necessary to review the position if the disruption continues beyond a comparatively short time – and indeed when the restrictions come to an end.

HMRC Nudge Letters

It may be remembered that last year, HMRC sent out a standard letter where they had received information indicating that a taxpayer had foreign income or gains.

In principle that seems entirely reasonable. HMRC naturally want to check whether there have been any omissions from the individual's tax returns – and indeed, the letter is perhaps a useful reminder in case anything has been overlooked.

However, the letter tells them that they should sign and return a certificate confirming the position. The certificate contains the same serious declaration that was on their tax return – and contains a reference to prosecution - so some taxpayers regarded it as rather sinister that they are being asked to do so again.

Last month, HMRC issued another such letter, this time on the subject of investments in Venture Capital Trusts. Taxpayers were asked to submit a return to HMRC on a specified form if they had sold any VCT shares acquired during the year ended 5 April 2016, which had not previously been notified to HMRC. The letter provides information about their income tax obligations regarding VCTs and the circumstances in which any income tax relief may be withdrawn.

The CIOT has been in discussions with HMRC who have admitted that there is no legal authority for HMRC to require such a certificate or return form. The CIOT says that people should "consider very carefully whether to sign and return the certificate". I think that we all know what that means. Nudge, nudge, wink wink.

HMRC confirm that:

> "We are happy to accept any disclosures or communication in a written form rather than completing the certificate that was issued with our letter."

However irritating the approach may be, a response would clearly be wise. If HMRC have information giving them reason to enquire into a person's tax return they are obviously going to do so. And so they should. It is also obvious that if this nudge is ignored, the next letter from HMRC might be more than merely irritating.

Deeds of Variation: CGT

HMRC have issued a statement regarding a rather technical point relating to capital gains tax following a deed of variation.

It may seem pretty obscure, but it could well have a wider implication.

The point which has arisen concerns what happens when somebody inherits an asset and sells it at a capital gain, but subsequently (within two years of the death) executes a deed of variation whereby the asset is redirected to somebody else. That redirection is regarded as retroactive to the date of death for inheritance tax under Section 142 IHTA 1984 and for capital gains tax under Section 62(6) TCGA 1992.

So the questions is: Can a deed of variation take place in these circumstances – and if it can, who makes the capital gain and pays the tax?

HMRC have confirmed their agreement that a valid deed of variation can be made in respect of an asset which has already been disposed of by the beneficiary.

The donee under the deed of variation is treated as having acquired the asset from the deceased. Accordingly, he must also be the person who disposed of the asset and who is liable for the capital gains tax.

If the original beneficiary and the donee have already filled in their tax returns for the relevant year and paid any relevant tax, they will be able to make an amendment to their tax returns and claim relief for any tax overpaid.

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