UK Tax Bulletin

May 2020

FIELD COURT TAX CHAMBERS

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Latest Rates of Inflation and Interest

The following are the latest rates: May 2020

Current Rates	
Retail Price Index: April 2020	292.6
March 2020	292.6
Inflation Rate: April 2020	1.5%
March 2020	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%

Lockdown

During the lockdown, I have been reading a most interesting book called *Daylight Robbery: How Tax Shaped Our Past and Will Change Our Future*, by Dominic Frisby published by Penguin Business.

It explains the origins of taxes including the Greeks and the Romans – as well as in the UK. Apparently, even in the fourth millennium BC, the Ancient Sumerians had a proverb: *"You can have a god, you can have a king but the man to fear is the tax collector"*.

Mr Frisby argues that tax was the underlying reason for the US Civil war, as well of course the Boston Tea Party and the loss of the American colonies. Not a great move.

In the UK, the Peasants Revolt in 1381 was an uprising against the poll tax and the later window tax famously caused people to block up their windows. This meant that the population of the cities lived in windowless dwellings, and as they had no sanitation it is no surprise that they were ravaged by disease and numerous epidemics. The English Civil War was also a fight over tax, and the restrictions on the ability to levy taxes was a fundamental feature of the Bill of Rights 1689.

Mr Frisby examines at length the challenges we face from the tech revolution (where everybody is trying to claim the right to tax the big tech companies – good luck with that), cyber currencies (which are presently too advanced for taxing authorities} and the gig economy, all of which reduce the tax revenue.

Tax is power. If kings, Emperors or governments lose their taxes they lose their power domestically and internationally. (If you don't have the money, you can't fight a war). When tax revenues go down (like after the Black Death when the population was decimated, with a consequential decline in the Crown's revenue), other ways have to be found to get the money. And the cycle of uprising and possible revolution returns. So it was in Russia where ruinous taxes imposed by the tsar on the peasants let to the Russian revolution. That was not such a great move either.

This book is both an interesting and chilling read. It exposes the real and lasting consequences of ill-considered tax decisions for short term political advantage irrespective of the social and economic damage. It is much more sophisticated now than it was 500 (or even 5000) years ago – but the message is the same.

I think I should send a copy to Mr Sunak. He may find it relevant when the time comes to replenish the coffers.

He will know that tax increases for other people are always popular. However, the recently published statistics that 1p on the basic rate of tax raises about £5 billion whereas 1p on the top rate of tax raises at best £100m – and possibly nothing at all - is something that Mr Sunak might like to examine. A government that robs Peter to pay Paul will always have the support of Paul (as Bernard Shaw famously observed), but robbing Peter and not paying Paul will not be supported by either of them.

Waiving Remuneration

Last month I mentioned the potential tax hazards facing those who want to help their less fortunate colleagues (or their struggling employer) by waiving part or all or their remuneration. Unless they are careful they will still be taxed on it even though they don't get the money.

To avoid these incredibly irritating consequences, the waiver must take place (and be legally effective) before the entitlement to the remuneration takes place.

There is not a lot HMRC can do to help. These are the rules and they cannot just dispense with the rules because they support the idea. Once upon a time they could have issued an Extra Statutory Concession but they are not allowed to do that any more.

However what they have done is to issue a statement making the positon absolutely clear so that there is no misunderstanding and this clarity is certainly to be welcomed.

HMRC also confirm that the same applies to the waiving of dividends. The waiver must be properly executed before the entitlement to the dividend has arisen – that is to say in the case of a final dividend, before it is declared by the shareholders; and in the case of an interim dividend before it is actually paid by the company.

By Reason of the Employment

Last June I suggested that we ought not to get carried away by the generous decision by the FTT decision in the case of *Vermillion Holdings Ltd v HMRC TC 707*.

This case concerned the grant of a share option to an employee and whether it should be taxed as earnings having been made available by reason of his employment.

In very broad terms, the Tribunal found that as a question of fact, the option granted to the employee was an opportunity made available to him by the company. However, the Tribunal also found as a fact, that the option was not granted by reason of his employment.

That is all very well but there is a deeming provision in section 471(3) ITEPA 2003 which says:

> "a right or opportunity to acquire a securities option made available by a person's employer or a person connected with the person's employer, is to be regarded of the purposes of subsection 1 as available by reason of an employment of that person…"

HMRC argued that as this was exactly the case here and section 471 deemed the option to be provided by reason of his employment. End of.

How do you get past that? Well, the Tribunal judge did by saying that because the deemed position conflicted with her finding of the actual position, the deeming provision should not apply.

I would respectfully suggest that this is the whole point of a deeming provision – to override the factual position and to impose a statutory fiction. Indeed, one might say that a deeming provision is completely useless if it has to give way to the facts. If the facts show that this is the case, you do not need a deeming provision.

The Upper Tribunal has now heard the appeal by HMRC and decided that the option *was* granted by reason of his employment and therefore taxable.

That is understandable – but it meant that the Upper Tribunal did not need to consider the deeming provision. That is frustrating for us onlookers who would have welcomed the views of the senior court on the FTT's analysis of the deeming provision. Next time perhaps.

Pension Contributions: Payments

The recent decision of the Upper Tribunal in the case of *Sippchoice Ltd v HMRC [2020] UKUT 030149* is likely to cause a degree of anxiety. The issue was whether a contribution to a SIPP had to be a payment of money or could include the transfer of assets such as shares.

The taxpayer argued that "payment" for the purposes of the pensions code in Chapter 4 FA 2004 included not only money but the transfer of assets. They had some support for this interpretation (which found favour with the FTT) because Section 161(2) FA 2004 specifically provides that "payment includes a transfer of assets".

Furthermore, the Court of Appeal in *Irving v HMRC [2008] EWCA Civ 6* said that *payment* had to bear a wider meaning than payment of money. *"Unless it also embraced the transfer of assets, the result would be absurd".*

Sippchoice also found support from HMRC itself - from the Pensions Tax Manual at PTM 42100 which said:

> "It is possible for a member to agree to pay a monetary contribution and then to give effect to the cash contribution by way of a transfer of assets"

Sippchoice clearly felt they were on good ground. Unfortunately, however, the Upper Tribunal decided otherwise.

They concluded that a transfer of shares did not represent the payment of the contribution for the purposes of Section 188 FA 2004. They said that the definition of *payment* in Section 161 did not apply to Section 188 because Section 161 was in Chapter 3 of Part 4 and Section 188 was in Chapter 4 of Part 4 - although there was no separate definition in Chapter 4

As for the Court of Appeal decision in *Irving*, the Upper Tribunal explained that the reasoning did not apply in this case because the context was different.

The most compelling argument was that Section 195 FA 2004 makes specific provision for the transfers of certain eligible shares to count as contributions. The shares in Sippchoice were not eligible shares. The Upper Tribunal concluded that this was an indication that although non-monetary contributions were permitted in principle, this did not apply to Section 188 because there was a specific code

applicable for the transfer of shares which was restricted to eligible shares.

As far as the Pension Tax Manual was concerned, the Tribunal accepted that it supported the case of Sippchoice – but that was too bad. The Manuals carried no weight and were not influential in the determination of the matter by the Tribunal. (This conclusion was also reached recently by the Court of Appeal in *Aozora GMAC Investment Limited v HMRC [2019] EWCA Civ 1643).*

I would respectfully suggest that this is obviously right but it is regrettable that HMRC should pursue cases which are in direct conflict with their public statements. The clear acknowledgement that taxpayers cannot rely on the unequivocal public statements of HMRC is really serious and should be remedied as a matter of priority.

It cannot be difficult for HMRC to say (maybe as part of their new Taxpayers Charter which is in the course of preparation) that they will honour their published statements and will make it clear when they no longer represent the HMRC view. Otherwise the Manuals are positively misleading as their very existence encourages taxpayers to rely on them - which ought to be a reasonable and proper conclusion.

It will be interesting to see what happens if and when there is an appeal in this case.

Finance Acts

I noticed the following quotation recently cited in an article by Lord Sumption relating to the interpretation of statutes. He referred to a judgment of Lord Hoffmann in 2000 which said:

> "The principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process."

Neither Lord Sumption nor Lord Hoffman was referring to tax statutes – but who can doubt that the full implications of the unqualified meaning of Finance Bills sometimes pass unnoticed in the democratic process.

A good argument for interpretations which are favourable to the taxpayer, perhaps.

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