UK Tax Bulletin

March 2021

FIELD COURT TAX CHAMBERS

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Latest Rates of Inflation and Interest

The following are the latest rates:

Current Rates	
Retail Price Index: February 20201	296.0
January 2021	294.1
Inflation Rate: February 2021	1.4%
January 2021	1.4%
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%

CGT: Main Residence Exemption

It is always interesting to read cases where the arguments are back to front – that is where HMRC is arguing what is normally the taxpayer's arguments and vice versa. This occurred in the recent case of *Hyman, Pensfold and Goodfellow v HMRC [2020] UKUT 0068* which were three separate appeals on the same point of law.

Each case involved the purchase of a residential property and surrounding land of 3.4 acres, 27 acres and 4.5 acres respectively which exceeded the half a hectare limit for the CGT exemption. However this was not a CGT case. It was an SDLT case where the taxpayers claimed that part of the surrounding land was not part of the garden or grounds with the result that the purchase was not "entirely" residential property so that the lower rate of SDLT applied.

HMRC argued that the whole of the land represented the garden or grounds of the house.

As the arguments are usually the other way round (with the taxpayer arguing that the surrounding land is all part of the garden or grounds for the purposes of CGT) I was hoping to find something useful. I was not disappointed. How about these points from the judgment of the First Tier Tribunal:

- *Grounds* is intended to have a wide meaning and includes land available to the owners to use as they wish

- *Grounds* need not be used for any particular purpose and can be allowed to grow wild

- It is irrelevant that the garden and grounds are separated by hedges or fences

- The paddocks form part of the grounds for recreational purposes.

And the following statements:

> "The land surrounding the house is very much essential to its character, to protect its privacy, peace and sense of space and to enable the enjoyment of typical country pursuits such as horse

> riding…. No doubt the presence of the horses helps keep the land in good heart and saves on mowing as well as providing an agreeable view in keeping with the rural scene"

The FTT and the Upper Tribunal both held that the properties in all these cases were entirely residential and the full charge to SDLT applied.

It will be very interesting to see what happens when one or other of the properties is sold at a capital gain. Maybe they will all be wanting to take the opposite view.

HMRC Statements of Practice

There is another aspect to this case which is perhaps of greater importance. The taxpayer argued that the test for SDLT was the same as for CGT even though the SDLT provision in section 116(1) FA 2003 merely refers to land that forms part of the garden or grounds of the house, whereas section 222 TCGA 1992 has an additional condition that the land is required for the reasonable enjoyment of the dwelling as a residence.

No dispute there surely because that is exactly what the HMRC Statement of Practice 1/03 said:

> "The test the Inland Revenue will apply is similar to that applied for the purpose of capital gains tax relief for main residence [in] section 222(3)"

This was expanded by Statement of Practice 1/03 which said that garden or grounds includes:

> "land which is needed for the reasonable enjoyment of the dwelling having regard to the size and nature of the dwelling."

The taxpayers said that part of the surrounding land did not satisfy this test and was not therefore "entirely residential"

HMRC said that this is all very well but their Statements of Practice were completely wrong and they urged the FTT to agree. This is not an honourable positon.

It is true that in 2019 (after the relevant events in these cases) HMRC issued new guidance but that is no reason for them to dishonour their earlier statement. And why should anybody take any notice of the latest statement – why should we assume this one is right – and how long will be before HMRC disown it.

This is particularly troublesome when taxpayers are penalised for being careless if they fail to take account of the position as explained in HMRC published statements.

It is most regrettable, but it is long overdue for the Courts to acknowledge that in the light of decisions such as this (there have been too many), taxpayers cannot reasonably be expected to rely on published statements by HMRC. In other words taxpayers should not afford HMRC Statements any more respect than they do themselves.

It would be so much better if HMRC were to make it clear at the highest level that their official Statements can be relied on by taxpayers. Not only would that be self-evidently right – and benefit the reputation of HMRC - but otherwise they would serve no purpose whatsoever (other than to mislead).

Super Deduction

The Super Deduction announced in the Budget sounded both imaginative and valuable as an incentive to unlock the cash reserves held by many companies and to stimulate investment.

It sounded really Super. The Chancellor said that the effect of this 130% Super Deduction was that an investment of £10 million would reduce a company's tax bill by £13 million. Wowzer. That would have justified his claim that it is the biggest business tax cut in British history.

Unfortunately not. That is certainly what he said – but of course it was a slip and I see that it has been corrected in the Treasury record of the Budget Speech which now says that the Super Deduction is a deduction from "taxable profits". They add a little note:

**Corrected from 'tax bill', which was said in the House.*

This is just an enhanced first-year allowance (for the next two years) and we have been familiar with them for decades – although this one does not apply to all businesses – only to companies, and only to certain businesses, and only to certain types of asset … and so on.

And there are a few tweaks. One of these tweaks is a requirement that on the disposal of the asset the proceeds will represent a balancing charge and not just a credit to the pool – and to be fair, the disposal proceeds will be multiplied by 1.3 to preserve symmetry with the relief. That sounds sensible - but it actually undermines the benefits of the relief for small business who are entitled to the Annual Investment Allowance of 100%. Where the alternative is a credit to the pool on the disposal (and therefore effectively no tax on the disposal proceeds) it could be better to forgo the extra 30% relief in the knowledge that the disposal proceeds will effectively not be chargeable – or at least not for a long time.

This new relief is not obviously not as earth shattering as Mr Sunak tried to make it sound, but all relaxations are gratefully received.

Car Benefits

We all know about car benefits. If you have a car provided for you by your employer then you have to pay tax on the benefit in kind.

To be more precise section 114 ITEPA 2003 says that the taxable benefit applies if in the tax year, the car is made available to the employee by reason of his employment and it is available for the employee's private use.

In the recent case of *Tim Norton Motor Services Ltd v HMRC TC 7973* the relevant car was not used by Mr Norton during the year and the question arose whether it was nevertheless available for his use. If so, he was liable to a benefit charge.

The car was off the road. It was subject to a SORN declaration (a Statutory Off Road Notification) and to drive it would have been a criminal offence. Mr Norton said that the car was not available for his use. The Tribunal judge did not agree. He said that this illegality did not prevent the car being available because the restriction on its use could easily be remedied. Cor. That sounds a bit tough.

A question was raised that this conclusion would mean that the 40 or so cars on the company's forecourt would be equally available and he should be charged a benefit on all of them. Well yes. Mr Norton was a director of the company and had the authority to make all of them available to him. However, the judge said that "such a charge would not arise unless in fact Mr Norton did use the cars for private use".

Can that really be the answer? Mr Norton did not use the other car either but the judge said that a benefit still arose on the grounds of availability; it was available for his use because the lack of availability could easily be remedied.

Admittedly there are some issues which make things a bit difficult. What it if has a puncture and no spare – or has run out of fuel – or has a mechanical breakdown. Does it cease to be available? Or you have lost the keys and it takes 4 weeks to get a new set – or if the keys are with a fellow director who has gone on holiday.

In the end, the point surely is that the test in section 114 is that the car "is "available for his private use. The test is not that the car "is not available but could be made available without much difficulty".

Discovery Assessments

As I write we are awaiting the decision of the Supreme Court in *HMRC v Tooth* where some definitive guidance will be given on the subject of discovery assessments.

In the meantime we have the benefit of the recent case of *Ball Europe Ltd v HMRC TC 8010* which examines in great detail one of the most important issues relating to discovery - that is, the condition in section 29(5) TMA 1970 that:

> "the officer could not have been reasonably expected, on the basis of the information made available to him before [the deadline] to be aware of the situation mentioned in subsection (1) above"

The situation mentioned in subsection (1) above is (broadly) that there was an insufficiency in the amount assessed.

This condition is very difficult to satisfy, not least because of the constraints put on it by subsection 6 that for example, the information must have been provided by the taxpayer himself. And of course there is the difficulty that the officer is not the real officer dealing with the case, but a hypothetical officer. How do you provide real information to a hypothetical officer? I could go on – a lot – but maybe it is better to move on.

The FTT in *Ball Holdings Ltd* considered the following relevant questions:

a) the level of knowledge to be attributed to the hypothetical officer

b) whether the case was too complex for him to be aware of the positon

c) was the information sufficient to make him aware of the actual insufficiency

d) whether it was enough for him to decide whether to raise an assessment

Each of these points were discussed and the FTT concluded that the hypothetical officer did have enough information to understand that there was an insufficiency, and to decide whether to raise an assessment. This is a notable success for the taxpayer and shows that it is possible for the conditions can be satisfied.

The FTT felt it was important to consider what further information could have been provided to HMRC in order to satisfy the test. They said that it was hard to imagine what other information could have been provided which would have made any difference.

A Difficult Dilemma

NHS workers have become national treasures by reason of their selfless work throughout the last year – and have been praised to the rafters by absolutely everybody. And rightly so. We owe them a huge debt of gratitude. Who would be so ungrateful and unfeeling to say, or even think, anything critical having regard to everything they have done.

Well I wonder what HMRC are going to do. It is reported in *The Times* that there is a notable level of use of tax avoidance schemes by health workers involving offshore umbrella companies.

HMRC usually go overboard in condemning anybody who uses such a schemes. I think they will do so at their peril here.

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