UK Tax Bulletin

April 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
March 2021	296.9
Inflation Rate: February 2021	1.4%
March 2021	1.5%
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%

Discovery Assessments

There are endless difficulties with discovery assessments as I have frequently mentioned, but one aspect is particular hot at the moment. That is the question of whether a discovery can become "stale", thereby precluding a discovery assessment under section 29 TMA 1970.

Anybody would be forgiven for taking the view that given the increasing number of authorities on the subject, the point can hardly be in any doubt. Once the discovery has lost its newness and is no longer fresh, it will become stale and a discovery assessment cannot be made.

HMRC steadfastly refuse to accept that the concept of staleness exists and the point is under appeal to the Court of Appeal in *Beagles* and to the Supreme Court in *Tooth*.

The recent case of *Mehrban v HMRC TC 8038* was particularly robust:

> "There has been some doubt case on whether or not staleness as a concept exists. It our view there can be little doubt. The word "discover" connotes an element of newness or freshness. It would be an absurdity to hold otherwise."

This was just a conclusion (one might say the only conclusion which can be drawn) from the existing authorities – but we will have a decisive authority soon from the Supreme Court which should resolve the point for good.

Tax Residence: Stranded Employees

The ICAEW Tax Faculty has done a great job in drawing to the attention of HM Treasury a whole load of tax difficulties faced by people who have been stranded in the UK over the last year. Often this has made them resident with obvious consequences but there are other issues relating to UK income as well.

HMRC have introduced a number of welcome relaxations to the rules over the year in respect of the Statutory Residence Test but the restrictions have gone on and on, so further issues have inevitably arisen.

In their Tax Guide 8/21, the ICAEW publish their correspondence with HMRC on a wide range of issues, together with the HMRC responses to their representations.

The ICAEW explain that under the circumstances of the lockdowns and travel restrictions the 60 day limit on the disregard for exceptional days is inadequate. HMRC confirm that they consider that 60 days is adequate – but even if it is not, there is nothing they can do. It is a statutory limit and they have no power to extend it.

That sounds fair enough – although it would hardly have been a bother in the context of all the other COVID related legislation to fix this too. But actually, when you look at section 9 Commissioners for Revenue and Customs Act 2005 which allows HMRC to

> "do anything which they think necessary or expedient in connection with the exercise of their functions or incidental or conducive to the exercise of their functions"

you would have thought they had the necessary authority.

And how about the problems with the Family Tie – which could make somebody unexpectedly UK resident – which arise because the schools are shut? Too bad – no changes are proposed.

Where a non resident person is stranded here, HMRC helpfully confirm that the UK earnings will be excluded from charge and treated as foreign earnings if they are taxed in their home country.

There is a lot of interesting stuff in this guide – some of it rather frustrating – but it does make a few things clear which is helpful in avoiding misunderstandings.

Capital Allowances and IBAs

I have not been involved with capital allowances issues much in recent years – still less Industrial Buildings Allowances – which used to be such fun. (At least I remember they were fun, but even going to get an injection is fun these days).

Anyway, leaving aside *Inmarsat Global Ltd v HMRC [2020] UKUT 0059* which was concerned with allowances for satellites (never a big part of my practice), the recent cases of *Cheshire Cavity Storage Ltd v HMRC [2021] UTUK 0050* and *Mark Shaw v HMRC [2021] UKUT 0100* caught my eye.

I will not dwell on this trip down memory lane for long, but in case anybody is interested, I would mention, that *Cheshire Cavity Storage* dealt with whether the cost of creating an underground cavity for the storage of gas, was plant.

It is difficult to see any distinction between this and some of the classic cases relating to plant—for example the cost of a silo for the storage of grain – the important bit being the empty space into which the grain can go - or a swimming pool with obvious characteristics – and even a dry dock which is a (rather bigger) empty space which can accommodate a ship.

Bad luck. The FTT held that the cavities for the storage of gas were not plant, but were more in the nature of premises. The Upper Tribunal agreed.

The IBA case was all about periods of temporary disuse and the effect it had on the entitlement to the allowance. Rather historic now having regard to the abolition of Industrial Buildings Allowances 2008 but it might become relevant to the new Structures and Buildings Allowance in due course.

Closure Notices

The whole idea of Closure Notices (and their offspring Partial Closure Notices) has been seriously affected by two recent decisions.

Closure Notices are a central feature of the self assessment system as they are the way in which an HMRC enquiry is brought to an end. When HMRC has concluded their enquiries they issue a Closure Notice, amending the taxpayer's self-assessment to give effect to their conclusions (or not amending it if they conclude that no amendment is required).

If the taxpayer considers that the enquiry should be brought to an end they are entitled to apply to the FTT under section 28A(4) TMA 1970 to direct HMRC to issue a Closure Notice – requiring HMRC to show grounds why the enquiry should be continued.

The Court of Appeal in *Eastern Power Networks Plc v HMRC [2021] EWCA Civ 283* did not think much of all this, saying that:

> "The jurisdiction conferred on the tribunals to direct HMRC to issue a closure notice is not generally a suitable vehicle for deciding points of law in the course of an enquiry"

This right given to the taxpayer to apply to the Tribunal to bring an enquiry to a close was said to be a protection afforded to the taxpayer under the self-assessment regime. If he believes that an enquiry is being inappropriately protracted and pursued by HMRC, he can bring the matter before an independent and specialist tribunal. That is the idea.

It remains to be seen whether the decision of the Court of Appeal represents the effective end to the rights of taxpayers under section 28A or whether the fact that Parliament thought it was a suitable way of concluding enquiries will trump the views of the Court of Appeal. That seems unlikely. When the Court of Appeal says that they "firmly discourage the FTT" from embarking on such hearings, the Tribunals are bound to take notice.

A Partial Closure Notice would presumably be viewed the same way – although Partial Closure Notices have already been narrowly circumscribed by the Upper Tribunal in *Epaminondas Embiricos v HMRC [2020] UKUT 370* which held that a PCN can only be issued if it can result in a quantifiable charge to tax.

As suggested in January, for Partial Closure Notices to be confined to circumstances which give rise to a quantifiable charge to tax deprives them of any utility – at least as far as the taxpayer is concerned.

The protection of the taxpayer by their right to seek Closure Notices or Partial Closure Notices seems to have been removed and I am not sure what use or benefit they are to a taxpayer any more.

Crypto Assets

HMRC has published their Crypto Assets Manual to explain their view of how these assets should be treated for tax purposes.

This is really important because HMRC need to find a way of taxing gains made on cryptoassets and of taxing transactions which are paid in bitcoin, or possibly earnings paid in bitcoin by an employer. (Although strangely, HMRC do not regard cryptoassets as money or currency).

This is a matter crying out for legislation because surely digital currency is the way of the future. It really is not much different in principle from bank notes. They have no intrinsic worth – they are just tokens – and derive their value from the fact that the Central Bank stands behind them. Once the Bank of England stands behind cryptocurrency, and the owner of the account can be identified, it should really take off.

Anyway for the moment we have the HMRC guidance. That helpful as it does include a lot of explanatory detail about how cryptoassets work, but it is of no real value because HMRC keep saying that their guidance has no legal force and they acknowledge in court that they cannot be relied on. I hope the legislation will not be long delayed.

HMRC explain among other things that the location of cryptoassets is the place of residence of the owner for the purposes of CGT and IHT. An interesting conclusion because that is obviously not where they are located – but of course, it is necessary to locate them somewhere The litigation on these issues will be interesting, particularly where the owner is resident in more than one country, although all such arguments may be completely resolved by the eventual legislation.

It will be very interesting to see how this develops.

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Important Note