# UK Tax Bulletin

## August 2022

FIELD COURT TAX CHAMBERS

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# Latest Rates of Inflation and Interest

## The following are the latest rates: August 2022

| Current Rates | |
|---|---|
| Retail Price Index: June 2022 | 334.6 |
| July 2022 | 343.2 |
| Inflation Rate: June 2022 | 11.1% |
| July 2022 | 12.3% |
| 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 4.25% from 23rd August 2022.

There is one exception: Quarterly instalments of corporation tax bear interest at only 2.75% from 15th August 2022.

### Repayment supplement

Interest on overpaid tax is paid at Bank base rate minus 1% which gives a rate of 0.75% from 23rd August 2022.

### Official rate of interest

From 6th April 2020 2.25%

From 6th April 2021 2 %

# ATED Penalties

There have been a number of Tribunal cases about whether HMRC can impose daily penalties where a company fails to comply with its ATED obligations.

One such case was *Heacham Holidays Limited v HMRC TC 7883* where the taxpayer submitted their ATED return late and HMRC imposed penalties. The Tribunal drew attention to section 55(4) Finance Act 2009 which requires HMRC to issue a notice to the taxpayer specifying the date from which the penalty is payable. This places HMRC in a difficult position because they will almost never know that a company has failed to file their first ATED return until they actually do so. HMRC could not then issue a penalty notice for daily penalties because the return has already been submitted.

This decision followed the case of *Advantage Business Finance Limited v HMRC TC 6926* which had held that the daily penalties were invalid for the same reason. The FTT came to the same conclusion in *Jocoguma Properties Ltd v HMRC TC 8007*.

Undeterred, HMRC kept on arguing and the issue became confused by the decision in the case of *Priory London Limited v HMRC TC 8225* where the Tribunal said all the earlier cases were wrong and decided that penalties were valid.

In the September 2021 Bulletin I hoped that somebody would take an appeal to the Upper Tribunal to provide us with a binding authority to resolve this issue. Conflicting decisions by the First Tier Tribunal do not help anybody; they give illusory support to both sides and encourage litigation.

The case of *Priory London Ltd v HMRC [2022] UKUT 225* provides the desired authority. The Upper Tribunal saw no difficulty in interpreting section 55(4) as enabling HMRC to charge penalties (after the ATED return has been submitted) for the period during which the return was outstanding.

This clarity is to be welcomed – but why on earth did there have to be so much litigation to get there; it would surely have been miles easier (and quicker, and cheaper) simply for HMRC to have appealed against the first decision. Or they could have amended the ATED rules.

While they were at it they could usefully have made the penalty for not filing an ATED return, a tax related penalty – or turn it into an exemption. It makes little sense (and people do frequently and innocently misunderstand) that a return is required even if there is no liability on the grounds that the property is fully and commercially let. The imposition of these tiny penalties for not telling HMRC that there is no tax, must create a disproportionate amount of work for those involved and delays for everybody else.

## Double Taxation Treaties

I do not intend to get into this is a big way – but if anybody is concerned with whether their cross border arrangements may be struck down on the grounds that they had a main purpose of taking advantage of a provision in the relevant tax treaty, they should read the case of *Burlington Loans Management Ltd v HMRC TC 8572.*

Not all treaties are the same of course and this case dealt with the UK/Ireland Treaty, but this restriction is common to many treaties. The judge discussed at length the meaning of "take advantage", and also looked at the main purpose test.

He also decided (among other things) that when considering the subjective purposes of a person, the inevitable and inextricable consequences of an action should not be regarded as the sole benchmark.

There were big numbers here, one of the issues being the possible withholding tax on interest of £90 million so we might hear some more about this before too long

## Share Exchanges: CGT

The Upper Tribunal has been busy on main purposes. In another case *HMRC v Euromoney Institutional Investor Plc [2022] UKUT 0205*, the Upper Tribunal was concerned with the bona fide commercial test for the purposes of section 137 TCGA 1992 on a share for share exchange.

The share for share rollover relief will not apply if the transaction forms part of a scheme or arrangement the main purpose, or one of the main purposes, of which is the avoidance of tax.

And again, the Upper Tribunal held that the taxpayer did not have one of his main purposes the avoidance of tax – although the share exchange (giving rise to no liability) was obviously advantageous compared with a disposal for cash. A key element in the conclusion was that this advantage was not considered sufficiently important by the taxpayer to have merited being regarded as a purpose in the context of the transaction as a whole.

## Theatre Tax Relief

No – I did not know about it either. (Unfortunately, it does not apply to regular theatre-goers who could do with a bit of relief from the cost of theatre tickets). Section 1217FA CTA 2009 provides a tax credit for theatre companies who put on dramatic productions including a play, opera, musical or other dramatic piece.

Thursford Enterprises Ltd put on a Christmas Spectacular where the cast performed scenes, readings, dancing and singing which evoke a journey to Christmas. There were 58 singers, 22 dancers, a 30-piece orchestra and so on.

HMRC (rather discourteously, I thought) denied the relief on the grounds that "it did not have the necessary story or narrative" to be a proper dramatic piece. (Cries of "humbug" stage left). A character in a Christmas story comes to mind.

The Tribunal did not see it this way at all, and (taking on the Tiny Tim role perhaps) showed HMRC the error of their ways and allowed the taxpayer the relief. Aaah.

## Pension Scheme Contributions

The Upper Tribunal in *Sippchoice v HMRC [2020] UKUT 149* was thought to have settled the question how contributions to a pension scheme satisfy section 188 FA 2004. The contributions must be "paid" – and that means a monetary amount; contributions in specie are not permitted (except with some specific exceptions such as SAYE option scheme shares).

The position has a been revisited and confirmed by the FTT in *Mattioli Woods Plc v HMRC TC 8504* where it was argued that an IOU represented payment for this purpose. The taxpayer said that the IOU was a debt which became an asset of the pension scheme and therefore a contribution within the terms of section 188.

Not so, said the Tribunal. The assumption of a debt is not payment. An IOU is not a bill of exchange like a cheque. It is a document which acknowledges the existence of a debt.

There was a lot more in this vein, but there can be no reasonable doubt now that section 188 requires pension contributions to be in monetary form.

## Economic Crime (Transparency & Enforcement) Act 2022

The Economic Crime (Transparency and Enforcement) Act 2022 is designed to require foreign owners of UK land to reveal their identity, with a view to combatting economic crime. It also contains the law relating to Unexplained Wealth Orders where HMRC and other agencies can seize assets unless the owner can explain how they acquired them – and where they got the money.

This is not a taxing act – but it is bound to lead to some serious tax enquires and there are some real penalties for failing to register.

The new legislation provides for a register to be established at Companies House with details of the overseas entities which own UK land, together with information regarding the beneficial owners of the overseas entities. It must be updated annually.

An overseas entity means a legal entity governed by the law of a country outside the UK including a body corporate, partnership or other entity that is a legal person under the law by which it is governed.

Where the entity has a number of shareholders, the registrable beneficial owners are those who hold directly or indirectly more than 25% in the shares – or directly or indirectly more than 25% of the voting rights – and include any person who has the right to appoint or remove a majority of the Board or has the right to exercise significant influence or control over the company. We have seen this formulation before. Where a registrable beneficial owner is a trustee, relevant information about the trust must also be provided.

The obligations to register and update (and the corresponding obligations on the company and others) only apply if the overseas entity became the registered owner of the UK land in pursuance of an application made to HM Land Registry on or after 1st January 1999.

There is a six month period allowed for registration but fortunately this does not mean that registration need be made by 14th September. The relevant parts of the Act did not come into force until 1st August so the deadline is 31st January 2023.

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**31st August 2022**

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