UK Tax Bulletin

September 2022

FIELD COURT TAX CHAMBERS

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Latest Rates of Inflation and Interest

The following are the latest rates: September 2022

Current Rates	
Retail Price Index: August 2022	345.2
July 2022	343.2
Inflation Rate: August 2022	12.3%
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 will give a rate of 4.75% from 11th October 2022.

There is one exception: Quarterly instalments of corporation tax bear interest at only 3.25% from 3rd October 2022.

Repayment supplement

Interest on overpaid tax is paid at Bank base rate minus 1% which gives a rate of 1.25% from 11th October 2022.

Official rate of interest

From 6th April 2020 2.25%

From 6th April 2021 2 %

Budget

There was a Budget last week – you probably noticed. It was not well received except by those who feel that the tax cuts and other measures will generate economic growth for the benefit of rich and poor alike.

I felt I should acknowledge that there was Budget, but as all the details have been so widely published, I do not feel the need to set out all the proposals here.

However, I did particularly welcome the abolition of the 45% tax rate, and (knowing that politicians can be relied on to keep their promises) I took an early opportunity to order a 150-metre superyacht to utilise some of my tax saving. I do hope nothing goes wrong.

Nudge Letters

I am generally quite a fan of HMRC's Nudge letters. Generally. (Apart from the letters relating to R&D claims which seem to be extraordinarily aggressive). These letters mainly highlight areas where they have noticed people make errors.

It seems fair enough for HMRC to say to people where they perceive a risk of error, that taxpayers might usefully check to make sure everything is right and that they have not overlooked or misunderstood the rules. Just a reminder – no penalties or anything; That looks pretty helpful to me.

Anybody can get something wrong or miss something important – so what's wrong with a little free reminder.

It went a bit off when they were asking people to certify that everything was in order. That sounded intimidatory to taxpayers who had already made the relevant declaration on their tax return. Nobody had to do it if they didn't want to – although there was a clear implication of TROUBLE if they did not.

The latest idea is that they are writing to taxpayers who have income of over £200,000 and assets of over £2m to invite them to have a "pre-filing discussion" to help prevent errors when they file their return.

This has not been well received either. The newspapers and the professional press are full of warnings not to accede to these requests and "to resist the Siren's call" as one former tax inspector described it.

The announcement put me in mind of a book written by Christopher Ward (a former editor of the Daily Express) in which he had this advice:

> "**Question 1:** Would you engage in conversation a non-English-speaking Swahili nuclear physicist on the subject of thermodynamics?
>
> **Question 2**: So, what makes you think you are qualified to discuss your financial affairs with one of HM's Inspectors of Taxes."

It is of course likely that such taxpayers will be professionally advised so the question arises whether anything can sensibly be expected from a discussion with HMRC – especially when they say that such discussions will not constitute tax advice.

I am sure they meant well.

Entrepreneurs Relief

There are always problems with claims for Entrepreneurs Relief (now known as Business Asset Disposal Relief) and the latest case on the subject is more obscure than usual: *Quentin Skinner Settlements v HMRC [2022] EWCA Civ 1222*

The trustees of these settlements disposed of shares in a company and claimed Entrepreneurs Relief on the grounds that their disposals satisfied the provisions of section 169J(4) TCGA 1992 which reads as follows:

> "In relation to a disposal of settlement business assets within paragraph (a) of subsection (2) the relevant condition is that, throughout a period of 1 year ending not earlier than 3 years before the date of the disposal:
>
> (a) the company is the qualifying beneficiary's personal company and is either a trading company or the holding company of a trading group, and
>
> (b) the qualifying beneficiary is an officer or employee of the company or (if the company is a member of a group of companies) of one or more companies which are members of the trading group."

The beneficiaries were qualifying beneficiaries (that is beneficiaries with a life interest), and the company was the personal company of each of them by reason of their individual shareholdings at the date of disposal – but they had only been qualifying beneficiaries for about four months prior to the sale.

HMRC argued that the beneficiary must have been a qualifying beneficiary throughout a period of 1 year ending not earlier than 3 years before the date of the disposal.

The Court of Appeal has now held that the beneficiary only had to be a qualifying beneficiary at the date of disposal.

Not wishing to look a gift horse in the mouth, I find this conclusion difficult to grasp because one would have thought that the requirement for the company to be the qualifying beneficiary's personal company for the one year period meant that the beneficiary had to be a qualifying beneficiary, and that he company had been his personal company, for the one year period. But no.

Market Value I

There have been two recent cases on the meaning of “market value”, a concept which we might have thought was relatively settled.

In the case of *Close v HMRC TC 8518*, Mr Close (and others) gave some shares in a trading company to a charity and claimed income tax relief under section 587B ICTA 1988 for their market value. The corresponding relief under the present legislation is section 431 ITA 2007.

Shares in the company were listed on AIM and were dealt in at a price of 53p at about the time of the gift. So that price was used by Mr Close in calculating his relief. You would have thought that was pretty conclusive. Unfortunately not.

The expert valuer for HMRC valued the shares at about 8p on conventional valuation bases with all the artificial assumptions required for the valuation of unquoted shares for tax purposes in section 273 TCGA 1992. He could not explain why the AIM figures were so high because such a value could not be justified by the normal analysis of turnover and profits etc. (Well no. Stock market values are often a mystery, but just because you don’t understand them does not mean they are wrong).

The Tribunal broadly agreed with HMRC and held that the market value should be taken at 12.1p per share.

The only odd thing is that this conclusion was reached in the face of a value on AIM of 53p. When looking at the definition in section 273 we have to look at the price at which the shares might reasonably be expected to fetch on a sale in the open market. When the shares are sold on AIM at 53p each it is difficult to see why that is not the relevant price.

The only conclusion which makes sense is that the Court did not trust the AIM price to be sufficiently genuine to override the value which would apply if there were no such AIM transactions.

Market Value II

The second market value case was *Pickles v HMRC [2002] UKUT 253* which was concerned with an entirely different situation – the incorporation of a trading partnership and the sale to the company of the goodwill. This took place in 2011 when Entrepreneurs Relief applied to sales of goodwill to a company in these circumstances. Get ready for your blood to run cold.

The goodwill was valued at £1.2m and sold to the company by the partners for that price. They were paid some of the money, but the balance was credited to their directors' loan account.

Unfortunately, the value of the goodwill was ultimately determined by the FTT to be only £270,000 and the balance was treated by HMRC as a distribution under section 1020 CTA 2010.

Section 1020(1) says that where an asset is transferred to a company by its members the value of the benefit received by the member (which is treated as a distribution) is the amount by which it exceeds the amount of the consideration given by the member.

Section 1020(3) says that the value of the benefit received by the member is determined in accordance with market value.

The taxpayer said that the distribution ought to be limited to the open market value of the debt – that is the amount that the company was able to pay. If the value of the asset was £270,000 and they had other assts of £95,000 the total was £365,000 and the excess was only £95000.

HMRC said oh no; the amount of the benefit was the face value of the asset transferred.

Quite right said the Tribunal. Market value for this purpose did not mean open market value. The market value was the value place on the asset by the member at the date of the transaction. That was £1.2m so that is the figure to be used. [Even though the market value had been determined by the FTT at £270,000?].

The taxpayer resisted valiantly – what if the consideration had been £1billion? Would that have given rise to a distribution of (nearly) £1billion. No, said the Tribunal because there would have been no genuine intention to pay that amount.

Burnt fingers perhaps.

Presumption of Continuity

I know I am always going on about this but every now and again the same point arises, and I am really surprised that the matter is not settled.

The presumption of continuity derives from the case of *Jonas v Bamford 51 TC 1* in which the High Court said:

> "Once the inspector comes to the conclusion that on the facts which he had discovered that Mr Jonas had additional income beyond that which he had so far declared to the inspector, then the usual presumption of continuity will apply. This situation will be presumed to go on until there is some change in the situation, the onus of proof of which is clearly on the taxpayer".

It will be observed that this presumption applies only for the position in the future. Even the HMRC Manuals do not suggest that the presumption of continuity can be used to reopen earlier years. The Tribunals have said that to do so is quite wrong. Nevertheless, HMRC keep on trying to assess earlier years on this basis and in *William Chapman v HMRC TC 1593*, their arguments were again rejected specifically on the basis that the presumption does not apply to earlier years. Undeterred, HMRC carried on and again in *Aero Assistance Logistics Limited v HMRC TC 2628,* the court told them that the argument is wrong.

There is something seriously unsatisfactory about HMRC continuing to advance an argument which the courts keep telling them is wrong.

So, with this background it is disappointing to see that it has popped up again in the case of *Calcutt v HMRC TC 8582.* HMRC said that as they found errors when looking at one year, they could assume the same errors occurred in earlier years on the presumption of continuity. Er No. They cant. But they raised assessments anyway.

Although the Tribunal set out the relevant passage from _Jonas v Bamford_ they simply failed to address (or perhaps failed to notice) the point - and the unrepresented taxpayer could hardly be expected to know. Although Mr Calcutt had been guilty of deliberately hiding his income from HMRC and was therefore deserving of little sympathy and a large penalty – that is not a good reason for the presumption of continuity to be wrongly applied to his circumstances.

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