UK Tax Bulletin

November 2022

FIELD COURT TAX CHAMBERS

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Latest Rates of Inflation and Interest

The following are the latest rates: November 2022

Current Rates	
Retail Price Index: September 2022	347.6
October 2022	356.2
Inflation Rate: September 2022	12.6%
October 2022	14.2%
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 5.5% from 22nd November 2022.

There is one exception: Quarterly instalments of corporation tax bear interest at only 4% from 14th November 2022; interest on overpaid instalments will be paid at 2.75%

Repayment supplement

Interest on overpaid tax is paid at Bank base rate minus 1% which gives a rate of 2% from 22nd November 2022.

Official rate of interest

From 6th April 2020 2.25%

From 6th April 2021 2 %

The Budget

There was another Budget on 17th November – you probably noticed.

Nearly all the proposals have been well ventilated in the press but there were two things which came as a surprise when I delved into the Green Book. (It used to be Red – but I suppose that is for real Budgets and not Autumn Statements, although it is hard to tell the difference).

Anyway, what the Green Book revealed was that the rather useful wheeze of being able to convert UK close company shares into foreign shares by a share exchange under section 135 TCGA 1992 (subject to clearance of course if a capital gain would arise) has come to an end. The shares in the foreign company will now be regarded as a UK asset for CGT purposes, so that any gain ultimately made on the shares can no longer be eligible for the remittance basis if held by a non dom.

It is not all bad because it possible to opt out of these rules by accepting the charge to CGT on the share exchange, so there is still the possibility of an advantage here.

Similarly, dividends from a company deemed to be situated in the UK by the new (proposed) section 138ZB will not be regarded as relevant foreign income under section 830 ITTOIA 2005 and therefore unable to benefit from the remittance basis. (This may be less significant that it seems because the company will in many cases be resident in the UK, despite being incorporated abroad and the dividends would be UK source income anyway: *Bradbury v English Sewing Cotton 8 TC 481)*

Interestingly there is no reference to any similar change being proposed for inheritance tax purposes so the opportunity remains for such an exchange to create excluded property in the hands of a non dom shareholder.

The second point is a bit odd. You will remember the (in)famous 1.25% surcharge on NIC and dividends introduced in April; this meant that dividends became chargeable to three rates: Ordinary 8.75% Upper 33.75% and Additional 39.35%. (And it is the upper rate which is used for the purposes of the charge to tax on loans to participators under section 455(2) CTA 2010).

As a result of the abolition of the surcharge, you would have thought these rates would go back down to their earlier levels. For reasons which are unclear (apart from the obvious) these dividend rates are staying at their higher levels.

Disguised Remuneration: Loan Charge

The ICAEW have published a note in their Tax News explaining that HMRC are now issuing discovery assessments to taxpayers that it believes are liable to tax under the loan charge rules on loans outstanding at 5th April 2019. The ICAEW recommend that anybody receiving such an assessment should seek independent advice.

The proposed letter from HMRC acknowledges that it is too late for them to amend the return so they are relying on the discovery provisions in under section 29 TMA 1970.

The meaning of discovery is very wide– it can encompass a mere change of mind – so that poses no problems for HMRC. However there are other conditions in section 29 which need to be satisfied and this is where some careful attention will no doubt be focused. One area will be section 29(5) which states that:

> "the officer could not have been reasonably expected, on the basis of the information made available to him before [the end of the enquiry period]"

to have been aware of an under-assessment of tax.

Given the attention paid to this subject over the last 15 years, there is a distinct possibility that HMRC was fully aware of the situation by the end of the normal 12 month enquiry period.

However this is not as helpful as it seems because the awareness of HMRC has to be as a result of information provided to them by the taxpayer or by a person on his behalf - or which could reasonably be expected to be inferred by an officer from the information provided. So information well known to HMRC but not provided by the taxpayer himself, will not be enough.

Nevertheless, it must be wise to ensure that the validity of any discovery assessment from HMRC under this new initiative is fully investigated.

Discovery Assessments

The recent case of Wilby v HMRC TC 8589 examined the conditions for the issue of a discovery assessment for SDLT purposes and provides an insight into the position for income tax.

Obviously, in order to make a discovery assessment, HMRC must make a discovery. I have mentioned above that this is a very low bar – a change of mind is enough. Schedule 10(28) FA 2003 says:

> "If the Inland Revenue discover [an under-assessment] they may make an assessment ("a discovery assessment") in the amount or further amount that ought in their opinion to be charged"

Mr Wilby argued that HMRC had to identify the tax officer so that he could be cross examined. The Tribunal said that there was no such obligation. HMRC were able to show that one of three tax officers had made the discovery and that was enough to satisfy the requirements for HMRC to make the assessment.

That is all very well for SDLT but the wording of section 29 TMA 1970 is more specific and this argument would seem to have some legs for income tax purposes.

We know from the Supreme Court in Tooth that an actual HMRC officer must make a discovery; the collective knowledge of HMRC is not enough. It is also relevant that section 29 starts with the words "If an officer of the Board" discovers that the amount on which the taxpayer has been assessed to tax is insufficient.

Having done so, section 29(1) goes on to say that "the officer" may make an assessment to collect what he considers is the correct amount of tax. This must as a matter of ordinary language mean the officer who made the discovery.

So if, as in Wilby, HMRC could not identify the officer who made the discovery that might be a bit awkward for HMRC. Quite apart from the fact that taxpayer would want to cross examine the officer who made the discovery to test whether he had done so properly, how could HMRC discharge their burden of proof that the conditions of section 29(1) were satisfied. They would be unable to prove that the officer who make the discovery was the officer who made the assessment – the specific statutory requirement under section 29.

Although Mr Wilby was unable to succeed in his argument under the SDLT legislation, this case does point the way to a serious argument as far as other taxes are concerned.

IHT Returns and DOTAS

The CIOT has this month published correspondence with HMRC on the application of the DOTAS rules for IHT. Their guidance is welcome but frustratingly vague.

More helpfully, HMRC set out their practice about enquries into IHT returns and the application of the time limits in section 240 IHTA 1984.

The CIOT asked HMRC specifically about the positon where an IHT 100 is submitted but nothing is heard from HMRC. How long do the executors have to wait before they can be sure that there will be no enquiries or challenge to the return? Obviously this is a matter of considerable practical significance.

HMRC's official response is as under:

> In the April 2022 HMRC Trusts and Estates newsletter, HMRC announced a new 12 week timeline for IHT100s for Trust and Lifetime charges, after which customers could assume that HMRC did not have any questions to ask about the information and values returned on form IHT100. The 12 week window only applies where HMRC have advised the customer that we have received the form and provided a date 12 weeks in the future. If we don't contact the customer in this time, they can assume that we have no questions to ask about the information or values they have given in the form IHT100 so the 4 year period (or longer, as appropriate) begins to run at this point. Where HMRC don't write to the customer to confirm receipt of the IHT100 form, the onus will be on the customer to seek clearance.

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