FIELD COURT TAX CHAMBERS

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March 2023

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Latest Rates of Inflation and Interest

The following are the latest rates: March 2023

Current Rates	
Retail Price Index: January 2023	360.3
February 2023	364.5
Inflation Rate: January 2023	13.4%
February 2023	13.8%
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 6.75% which applies from 13th April 2023.

There is one exception: Quarterly instalments of corporation tax bear interest at only 5% from 3rd April 2023; interest on overpaid instalments will be paid at 4%

Repayment supplement

Interest on overpaid tax is paid at Bank base rate minus 1% which gives a rate of 3.25% from 13th April 2023.

Official rate of interest

From 6th April 2021 2%

From 6th April 2023 2.25%

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The Budget

So much has been written about the Budget I will not even try – but there were just a few points which struck me as interesting.

Sovereign Immunity

Jeremy Hunt announced that the Government has decided there will be no change to the current sovereign immunity exemption from UK direct taxation.

So I guess all those Monarchs who were assembling outside my room with their various UK tax anxieties – *the end of the queue is over there, your Majesty* – probably wont be back any time soon.

Capital Allowances

I have been trying to make sense of the "Full Expensing" rules in the Budget. Very welcome I am sure but this seems to be little more than another term for 100% first year allowance with which we are all pretty familiar. It only apples to companies anyway – unincorporated business having their Annual Investment Allowance. (It applies to "expenditure on" plant and machinery – which sounds straightforward, but see further below).

Charities

To qualify as a charity for UK tax purposes, it will now be necessary for it to be subject to the jurisdiction of the UK courts so charities located abroad will no longer qualify for charitable tax reliefs. This will effectively overturn the Supreme Court's decision in *Routier v HMRC [2019] UKSC 43* which confirmed charitable status for a Jersey charity. Charities which are already in existence and on the Register but do not satisfy this condition, will cease to be qualifying charities from April 2024.

Agricultural Property Relief

It is therefore perhaps no surprise to find that from 6th April 2024, Agricultural Property Relief for inheritance tax will no longer be available on property outside the UK. Property in the EEA, the Channel Islands and the Isle of Man will all be excluded from the relief.

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IR35

Gary Lineker has been in the news a bit but he has also been making waves in the Tax Tribunal.

HMRC have been pursuing him under the intermediaries legislation in section 49 ITEPA 2003 on the grounds that his services to the BBC (and BT Sport) were provided by a partnership Gary Lineker Media in which he and his former wife were partners. HMRC said that the intermediaries legislation applied to partnerships as well as companies – and all the usual arguments ensued.

But not for long. The FTT agreed that the intermediaries legislation applies to partnerships – which is perhaps unsurprising because that is exactly what section 49(3) says:

> "a third party includes a partnership"

Nevertheless, these rules did not apply to Gary Lineker. Case dismissed.

This sounds like a great result – but it wasn't really. Section 49(1) provides that the legislation only applies where:

> "The services are provided **not** under a contract directly between the client and the worker but under arrangements involving a third party."

The FTT explained that IR35 did not apply to Gary Lineker because he signed the contracts himself and as a partner he was acting as a principal. He was therefore providing his services under a contract directly between him and the BBC; there was no intermediary, and these rules were specifically excluded. All the other issues which normally arise about control and mutuality etc did not need to be considered at all.

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SDLT: Closure Notices

A worrying point rises from the recent case of *Redmount Trust Company Ltd v HMRC [2023] UKUT 00068* where the Upper Tribunal upheld the decision of the FTT that once an enquiry notice has been opened, there is no time limit within which HMRC must issue a closure notice.

Imagine this. An enquiry is opened and all the relevant information sought by HMRC is provided; no further challenge is made, the tax has all been paid, and there is nothing in dispute. End of story. Nobody notices (or cares perhaps) that HMRC have not formally issued a closure notice. 20 years later, somebody in HMRC decides to make further enquires but all the papers have been destroyed and nobody who knows anything about it is still around. HMRC close the enquiry with a closure notice showing a large amount of tax payable and although an appeal can be made, nobody can now prove otherwise so the amendment must stand.

Surely not? Well surely yes. And in case anybody is thinking that this would never happen, I can assure you that this is real.

In *Redmount Trust Company Ltd v HMRC TC 8327* the FTT set out their detailed reasoning why there is no time limit. For example, they said that the 4 year time limit for raising an assessment in Schedule 10(31) FA 2003 applies only to discovery assessments and not to self assessments or to closure notices.

The Upper Tribunal agreed with them, adding that the protection for the taxpayer is their opportunity to apply to the Tribunal under paragraph 24 to direct HMRC to issue a closure notice.

This is a binding decision of record by the Upper Tribunal (unless there is a further appeal of course) and I am a bit puzzled that neither the FTT or the Upper Tribunal made any reference to paragraph 17 of Schedule 10 which makes specific provision for HMRC amending a self assessment during an enquiry. It says:

> "(1) If at a time when an enquiry is in progress into a land transaction return the Inland Revenue form the opinion—
>
> > (*a*) that the amount stated in the self-assessment contained in the return as the amount of tax payable is insufficient, and

(*b*) that unless the assessment is immediately amended there is likely to be a loss of tax to the Crown

they may by notice in writing to the purchaser amend the assessment to make good the deficiency."

Sub paragraph (b) would seem to be rather important here. HMRC can only amend the assessment when they have formed the opinion that unless the assessment is amended immediately there is likely to be a loss of tax to the Crown.

If there is no time limit for closing the enquiry and amending the self assessment then it can be left open indefinitely without any likelihood of a loss of tax (unless of course HMRC discover that the taxpayer may be leaving the country or otherwise unable to pay the tax).

The legislation must have had some reason to impose the condition of an immediate risk of a loss of tax – and the obvious candidate would be a time limit. The existence and proximity of a time limit would be a good reason for an assessment or self assessment to be made immediately to prevent a loss of tax. And paragraph 31, which is headed "*Time limit for assessment*" provides specifically for a 4 year time limit.

It is right that paragraph 31(3) refers specifically to discovery assessments, but paragraph 31(1) states:

> "The general rule is that no assessment may be made more than four years after the effective date of the transaction to which it relates."

There is no indication that this general rule should not apply generally to Schedule 10 – and particularly to paragraph 17.

It is difficult to understand why paragraph 17 does not provide the answer to the grotesque unfairness which arises from the conclusion that there is no time limit for HMRC making of a closure notice. Maybe it will be made clear in due course.

Capital Allowances

I think anybody can be forgiven for looking at the first page of the 53 page decision of the Court of Appeal in *Urenco Chemplants Ltd v HMRC [2022] EWCA Civ 1587* and deciding to move on …. swiftly. Capital allowances on a facility for the treatment of nuclear waste might not turn your lights on.

(Actually the description of what happens in a deconversion facility including the removing of fluorine from depleted uranium hexafluoride was quite interesting …. well, only a bit perhaps).

But you never know what you might find. In fact, the case contained quite a lot of much more general interest as it was really all about whether the expenditure on the treatment facility was on plant and machinery, or whether it was on the premises. We have been there before loads of times (swimming pools, silos, dry docks, car washes, cavities – to name a few) and the Court of Appeal's discussion of the differences between premises and plant is pretty relevant to less refined circumstances.

They also clarified a more mundane issue being the meaning of "expenditure on the provision of" an item under section 11 CAA 2001. They said quite simply that this means "expenditure on" that item.

Obviously I would not dream of arguing, and in the context I suppose that must be right, but I am not sure that *expenditure on* and *expenditure on the provision of* would mean quite the same in other circumstances.

This reasoning looks like it might be relevant to the new Full Expensing rules in the Budget which apply to *expenditure on* plant and machinery after 1st April 2023. This would presumably now include *expenditure on the provision of* plant and machinery.

Domicile

Issues of domicile continue to cause headlines (and headaches) and not just for us who toil at the professional coal face, but also for the press and politicians (who seem quite determined not to understand it). And I don't suppose that is going to change any time soon.

I have often wondered what the law is going to do about a child who is adopted by a couple of the same sex. What is the child's domicile of origin? We know from Dicey rule 9 that:

> "a legitimate child born during the lifetime of his father has his domicile of origin in the country in which his father was domiciled at the time of his birth."

So if a couple of the same sex (married or in a civil partnership) adopt a child, what is the child's domicile of origin? If they are both female there is no father; if they are both male (and have different domiciles) which one takes priority? There is no answer to this under the law.

(An excellent article in *Taxation* recently looked at this and all the complications where there is a single adoptive parent, as well as a number of other issues. The more you look the worse it gets).

With the increased attention on gender issues, the time must be fast approaching when this is going to create some serious tax issues. For example you can only be a returning non dom and suffer all those awful consequences introduced in 2017 if you had a UK domicile of origin. A child of such a union might not have a UK domicile of origin – or at least not one which can be identified.

And what happens on a death. The rules on deemed domicile on the 15 out of 20 years residence test will not be affected and there will still be arguments about the acquisition of a domicile of choice – but there can be no concept of revival if you cannot determine the domicile of origin.

What an opportunity. Although not so great if you need to know a person's domicile for matters relating to matrimonial proceedings or succession. Clearly a change in the law is required – but that wont be easy either.

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