UK Tax Bulletin

April 2023

FIELD COURT TAX CHAMBERS

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Latest Rates of Inflation and Interest

The following are the latest rates: April 2023

Current Rates	
Retail Price Index: March 2023	367.2
February 2023	364.5
Inflation Rate: March 2023	
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%

IHT: Interest in Possession

The concept of an interest in possession in settled property has been around for a long time, and been considered extensively at the highest level with the House of Lords in *Pearson v IRC [1981] AC 753* providing the authoritative definition: "a present right of present enjoyment".

It is therefore a surprise that there should still be any aspect needing further judicial clarification.

The case of *Hall v HMRC TC 8691* considered the position where a property was left by will to the family of the deceased, but on terms that it should not be sold during the lifetime of Mr Boggia but retained for his occupation. That would clearly give rise to an interest in possession, but the problem was that the estate did not have enough other assets to meet its liabilities. The property would therefore have to be sold to enable the debts to be paid.

As it happened the family paid the liabilities so the house did not need to be sold, but the question was whether the existence of the liabilities precluded an interest in possession.

The Tribunal concluded that it did preclude an interest in possession.

A lot of the judgment was concerned with the duties and obligations of the executors to administer the will - which are essentially to meet the debts from the assets of the estate. They had no alternative but to sell the property to pay the debts and the right of Mr Boggia to live in the house did not override the right of the creditors to enforce payment of the debts. His rights under the will were subject to the proper administration of the estate – and indeed, if the property were to be sold there would be no interest in possession.

In this case, Mr Boggia was able to stay in the house for the rest of this life – so could that have given rise to an interest in possession? No. He did not have an interest in possession under the will, and he gained no such right from the family. His continued occupation was merely as gratuitous licensee.

Garden or Grounds

Everybody knows that the Capital Gains Tax exemption for the only or main residence in section 222 TCGA 1992 includes the garden or grounds which are required for the reasonable enjoyment of the dwelling house having regard to its size and character. There have been lots of arguments (and negotiations) with HMRC about what is required and what is reasonable – but not much by way of judicial authority.

The rule for Stamp Duty Land Tax is similar – but not the same – as exemplified in the recent case of *The How Development 1 Ltd v HMRC [2023] UKUT 00084*

The argument was about the rate of SDLT applicable to the purchase of a large house with 15 acres of land plus a further 2 acres of woodland. The company said this was mixed use property and the non residential rate of SDLT applied. HMRC said that this was entirely residential property because the woodland formed part of the garden or grounds – so SDLT was payable at the (much higher) residential rate.

HMRC would not have been quite so anxious to accept that the woodland formed part of the garden or grounds if this was a CGT appeal – so their arguments here sound as if they might prove rather helpful. Especially as they were accepted as correct by the Tribunal.

The Tribunal acknowledged that the woodland could not be used for any residential purpose and was inaccessible (except with industrial machinery), but nevertheless concluded that it was part of the garden or grounds and the property was therefore entirely residential – and liable to the residential rate of SDLT.

Unfortunately this is not quite as helpful as it seems because for the purposes of SDLT is it not necessary for the land to be required for the reasonable enjoyment of the house as a residence – which is the test for CGT. However, I still reckon that the reasoning of HMRC will be useful in due course when the next CGT problem on this point arises.

IHT: Loans and GROBs

The recent case of *Pride v HMRC TC 8776* examined the deductibility of loans under a double trust scheme established some years ago. Any kind of tax scheme is in danger of being struck down by the courts these days, and even if it works it can be condemned by the GAAR. Things were not the same in 2002 when the events took place in this case.

In very broad terms, Mrs Pride sold a property to a trust in which she had an interest in possession. She obtained some loan notes which she settled on trust for her children. By section 49(1) IHTA 1984 she was treated as beneficially entitled to the property net of liabilities, but she was excluded from benefit from the children's trust. Accordingly, the net value of the property was comprised in her estate.

The case was mainly concerned with the deductibility of the loans – that is to say whether the loan notes could be deducted in determining the value of the property in which Mrs Pride had a life interest.

The Tribunal held that the loans were not deductible – either under section 103 FA 1986 as being property derived from the deceased, or under section 175A IHTA 1984 because the loan was not discharged out of the estate. The analysis was complicated and a bit confusing but the conclusion was clear.

An issue of more general interest was HMRC's argument that Mrs Pride had a reservation of benefit from the loans in the children's trust, despite her exclusion from benefit under the trust. They said that the loans could not be repaid without selling the property and her life interest in the other trust was a benefit by associated operations.

This is really important – not least because this view has been advanced by HMRC for ages (and may be found in the IHT Manual 44104). The idea that a person can have a reservation of benefit in trust assets when they are totally and irrevocably excluded from any benefit is a worrying conclusion.

However, the Tribunal held that the terms of the loan notes (which were not repayable on demand but only after many years) merely enabled the benefit to occur – but they did not themselves provide the benefit.

Another important issue was whether the children's trust enjoyed the loan notes to the entire exclusion of Mrs Pride. The loan notes were not repayable for many years and the Tribunal held that the children trust held and enjoyed the loan notes according to their terms. Mrs Pride's position as a beneficiary of the other trust did not affect their enjoyment in any way. Accordingly there was no reservation of benefit.

Both of these arguments could quite easily go the other way – particularly if the facts were slightly different (for example if the loans were repayable on demand or after a short period) - and there is no assurance that this analysis will be followed in another case.

GAAR Decisions

The GAAR Panel has issued two opinions recently – one on SDLT and another on Inheritance Tax.

The SDLT opinion related to the use by the taxpayer of the sub-sale relief in Schedule 2A FA 2003 and concluded that the arrangements undertaken by the taxpayer were not a reasonable course of action.

That is not the end of the matter because the GAAR Panel only give their opinion and do not make an enforceable judgment. The taxpayer is perfectly entitled to disagree with HMRC (and the GAAR Panel) and take his claim for relief to the Tribunals and beyond.

However, he does so at his peril. If he challenges an opinion of the GAAR Panel and loses, he is liable for a penalty of 60% of the tax.

The SDLT opinion includes a chilling passage where the GAAR Panel explain that the taxpayer had obtained legal advice that the arrangements were legally effective – and that the GAAR Panel did not disagree with that. They just observed that this had nothing to do with it. And anyway, if the arrangements were legally effective then it must have been because of a shortcoming in the legislation. (I promise you I am not making this up.)

I am wondering why I bother with my 7 volumes of yellow and orange books and my 82 volumes of Tax Cases; I could just throw them in the river and see if they float.

Turmeric Shots

Well goodness me. Who ever thought that Turmeric Shots would have engaged the attention of HMRC to the extent displayed by the case of *Innate-Essence Limited (T/A The Turmeric Co) v HMRC TC 8792.*

HMRC claimed that Turmeric Shots are chargeable to VAT being a beverage – that is, a liquid intended to be consumed by being drunk. (Well yes; but so is cough mixture).

I have some experience here. I have consumed one or two. I was told they were good for me – and it is comforting to read the detailed description of the fine properties claimed for this product set out in the judgment of the FTT. I feel better already.

The taxpayer said that the although the shots were liquid and could be regarded as a drink, that did not make them "a beverage," which is excluded from the definition of Food in Group 1 of Schedule 8 VAT Act 1994.

The Tribunal analysed the whole topic at length and concluded that Turmeric Shots should properly be zero-rated as being a food and not a beverage.

I will spare you all the details but next time you have one, remember that you heard it here first. Turmeric Shots are food!

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Important Note