UK Tax Bulletin

June 2023

FIELD COURT TAX CHAMBERS

FIELD COURT TAX CHAMBERS

Contents June 2023

FIELD COURT TAX CHAMBERS

Latest Rates of Inflation and Interest

The following are the latest rates: June 2023

Current Rates	
Retail Price Index: May 2023	375.3
April 2023	372.8
Inflation Rate: May 2023	11.3%
April 2023	11.4%
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 7.5% which applies from 11th July 2023.

There is one exception: Quarterly instalments of corporation tax bear interest at only 6% from 3rd July 2023; interest on overpaid instalments will be paid at 4.7 5%

Repayment supplement

Interest on overpaid tax is paid at Bank base rate minus 1% which gives a rate of 4% from 11th July 2023.

Official rate of interest

From 6th April 2021 2%

From 6th April 2023 2.25%

Penalties

During the periods of lockdown and the upheaval to professional life caused by Covid, there was a general appreciation that many things happened (or couldn't happen) as they should. HMRC were aware of that too – and made allowances, one example being the relaxation of the rules relating to exceptional days in determining a person's residence for tax purposes.

The general advice during that time was that people should keep detailed records and documentary evidence where possible to be able to explain the difficulties. Memories are short, and when the pandemic is over, HMRC might have forgotten the difficulties faced by taxpayers during that time and be unsympathetic to any defaults such as the late submission of returns or information.

The recent case of *Hughes Property Partners Ltd v HMRC TC 8829* shows that this was good advice.

The case concerned the late filing of an ATED return. There was no liability to tax because the company was a property developer, but a return still had to be made. The accountant called HMRC for some guidance (but was told that they were working from home and could not help). The company had purchased a property in August 2020 and the ATED return for the year ended 31st March 2021 was filed in May 2021. Unfortunately the filing date was September 2020 so it was late. A penalty ensued.

The accountant explained that there were special circumstances - the pressures that he and other firms faced during the pandemic, the difficulty in contacting HMRC officers who were not in their offices, and there was no tax due anyway.

No deal said HMRC – there were no special circumstances and no reasonable excuse to relieve them from the penalty. Oh dear.

The Tribunal were no more sympathetic. They took the view that there was no connection between the Covid situation and the failure to file the return.

Short memories indeed.

Pandora Papers

HMRC have started to send out nudge letters to people who were named in the Pandora Papers last year. With obvious justification, HMRC want to check that UK residents who have assets with the various offshore service providers have made a proper disclosure of their income and gains. (I suppose it is possible that there are some people who may have overlooked including such income on their tax returns).

Any such omissions need to be put right sharpish, not least because of the eye-watering penalty of 200% of the tax (plus interest of course). A reasonable excuse can reduce or eliminate the penalty and anybody affected should obviously be thinking seriously about that. In this context, a reasonable excuse is going to be pretty hard to come by – but given the potential consequences, it must clearly be worth a bit of effort.

Some people receiving the letter from HMRC will have disclosed everything quite properly but that does not mean they should ignore the letter from HMRC. A short letter confirming that everything is as it should be, is probably the wisest course.

HMRC do accept that there are some people who submit complete and accurate tax returns but I doubt that this will be their starting point in connection with these enquiries.

SDLT: Residential or Mixed Use

In April I made reference to the Capital Gains Tax private residence exemption and the definition in section 222 TCGA 1992, comparing it with the corresponding meaning for the purposes of Stamp Duty Land Tax.

The exemption for CGT includes an exemption for 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.

The rule for Stamp Duty Land Tax is similar – but not the same – 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. What matters is whether the land represents part of the garden or grounds.

In the case of *The How Development 1 Ltd v HMRC [2023] UKUT 00084* the argument was about whether 2 acres of woodland was part of the garden or grounds and therefore "residential" or whether it was non residential and therefore a mixed use property to which the non residential rate of SDLT applied. The Tribunal held that the property was entirely residential – and liable to the residential rate of SDLT.

This month there is another decision on this point where the Tribunal held that a paddock did not form part of the grounds of the dwelling house; it was therefore a mixed use property to which the non residential rate of SDLT applied: *Mr and Mrs Suterwalla v HMRC TC 8826.*

That is obviously a helpful (and possibly fortunate) decision for the taxpayers but equally interesting is the approach of HMRC who described the property as "an impressive seven bedroom family house with an indoor swimming pool, tennis court, pavilion and paddock". They argued in vain that the paddock formed part of the garden and grounds of the property.

Although such decisions are highly dependent on their own facts, I wonder whether HMRC will take the same view when the taxpayer sells the property (or if another taxpayer sells a similar property) and claims the CGT exemption.

IHT: APR

I have been reading an interesting article by Brodies LLP where they note the risks to Agricultural Property Relief (and Business Property Relief) from the environmental and ecological diversification of farms and agricultural land.

The possibility arises that the growth in renewable energy projects, rewilding, carbon sequestration etc, either by the landowner himself or by leasing the land to commercial operators to undertake the projects, has the effect of taking land out of agricultural use – with the clear risk that the conditions for APR cease to be satisfied and the 100% relief rom inheritance tax is lost.

That could be extremely serious – and much worse if the loss of the relief is not appreciated until it is too late. There is always the alternative of business property relief but that too can obviously be prejudiced.

By recognising the risks, the entitlement to relief can probably be managed by the landowner so that the relief is fully preserved and not lost altogether on the whole business – or at worst to structure the projects so that the main business continues to qualify, even if the environmental projects cannot.

Clearance Applications

Clearances from HMRC regarding a transaction or a course of action are extremely valuable – and some transactions will not proceed without one – so it is a pity that they are not more widely available. Tax is so complex that even the most experienced practitioners live with the anxiety of missing something important; the lay taxpayer really has no chance. A general opportunity to check with HMRC regarding the tax consequences of doing something would be of enormous public benefit – but clearly resources do not allow them to provide such a service any more.

However where a clearance opportunity does exist, it is fundamental that the clearance application contains a full disclosure of the proposed transaction – otherwise the clearance will be worthless.

This issue has recently received a great deal of publicity following the case of *Airline Placement Ltd [2023] EWHC 1191 (Admin)* where the taxpayer applied for Judicial Review on the grounds that HMRC did not honour their clearance about the VAT treatment of the training costs of pilots.

The clearance application was held by the High Court to contain material inaccuracies and this denied the company any legitimate expectation (the touchstone of Judicial Review) that the desired tax treatment would be applied by HMRC. The Court explained that the test of whether an inaccuracy or omission was material is whether it would have made a difference to the clearance being granted. It may be tempting to leave out information or documents which you don't think will make any difference – but it is the view of the Court which is going to matter.

Of course the facts in this case were complicated (they always are) but the principles are constant. To be able to rely on an HMRC clearance there must be full and frank disclosure of all material facts with all the cards face up on the table, and (crucially in this case) if other material is relied on and referred to, it needs to be enclosed.

Peter Vaines
Field Court Tax Chambers
30th June 2023

Contact
Peter Vaines
Field Court Tax Chambers
3 Field Court
Gray's Inn
London WC1R 5EP
Tel: 020 3693 3700
pv@fieldtax.com
www.fieldtax.com

© Peter Vaines All Rights Reserved June 2023

Important Note

This bulletin is prepared for private circulation and no unauthorised reproduction of any part thereof is permitted. The contents of this bulletin are intended to highlight points of current interest for the purposes of discussion only and do not represent a full review of any subject. Furthermore, the law and practice relating to taxation is subject to frequent change and the above commentary can quickly become out of date. Professional advice should always be sought in respect of any matter referred to herein and no liability is accepted by the author for any action which may be taken, or refrained from being taken, on the basis of the contents hereof. The views expressed in this bulletin are those of Peter Vaines alone and are not necessarily shared by any other member of Field Court Tax Chambers.