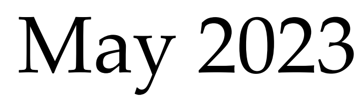

FIELD COURT TAX CHAMBERS

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# Latest Rates of Inflation and Interest

The following are the latest rates: May 2023

| Current Rates | |
|---|---|
| Retail Price Index: March 2023 | 367.2 |
| April 2023 | 372.8 |
| Inflation Rate: March 2023 | 13.5% |
| 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% which applies from 31st May 2023.

There is one exception: Quarterly instalments of corporation tax bear interest at only 5.5% from 22nd May 2023; interest on overpaid instalments will be paid at 4.25%

**Repayment supplement**

Interest on overpaid tax is paid at Bank base rate minus 1% which gives a rate of 3.5% from 31st May 2023.

**Official rate of interest**

From 6th April 2021 2%

From 6th April 2023 2.25%

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# Security for Tax

This may seem to be a subject of limited interest – but like any potential disaster, it is really serious when it hits. The reason why it is so important is because of the almost unbelievable penalties which can arise as a result of security for tax being demanded by HMRC.

I have referred to these issues before – but need to do so again having regard to the recent Upper Tribunal case of *Horder v HMRC UKUT/2020/000398*. But first, a brief recap.

HMRC are entitled to seek security from a taxpayer if they consider that it is necessary for the protection of the public revenue. This power arises under Schedule 11(4) VAT Act 1994 and Regulation 97N of the PAYE Regulations. It is likely to arise where the taxpayer has failed to comply with his tax obligations in the past or there is reason to believe that he might fail to do so in the future.

As far as VAT is concerned, it is a criminal offence to continue to make taxable supplies if you have not provided the security demanded by HMRC. This means that you must cease to trade if you want to avoid committing a criminal offence.

Of course, if a person is unable to pay his current VAT bill, he is hardly going to be able to provide security representing a few months VAT in advance. So to avoid criminal liability he must cease to trade.

However draconian this may seem, it is generous compared with the rules for PAYE and NIC. Regulations 97M – 97X provide that where an officer of HMRC considers it necessary for the protection of the public revenue, he may require the company to provide security for payment of PAYE in the future. The failure to provide the security demanded by HMRC is a strict liability criminal offence.

You don't get out of this penalty by ceasing to trade. Failing to pay the amount of security demanded by HMRC is the offence and carries an *unlimited* fine.

This is very serious indeed for the directors of a company which finds itself in financial difficulty because the demand for security can be made to the directors personally – and they will be criminally liable if they fail to pay up.

Unlike the position for VAT, there is a right of appeal against a security notice for PAYE and NIC. This is provided by Regulation 97G and on appeal, the Tribunal may uphold, set aside, or vary a security notice.

The case of _Horder_ shows how brutal these provisions can be. Mr Horder was an accountant who acted as a director (unpaid) of a company of one of his clients. He accepted that he was a patsy; the client was a shadow director and took all the relevant decisions which unfortunately did not include paying the PAYE in respect of the employees.

In due course, HMRC sought security from Mr Horder, and following various warnings that failure to pay was a criminal offence, the Crown Prosecution Service have commenced criminal proceedings against him in the magistrates court.

(He did appeal to the FTT against the notice to provide the security, but there was a problem with the timing and his permission to appeal was refused.)

Obviously this is catastrophic for Mr Horder as a professional accountant, and obviously one can only hope that some resolution is found.

## Statutory Residence Test

There is an awful lot of anxiety surrounding the rules for residence – which is hardly a surprise as it is the main determinant for liability for UK taxes. And now that being deemed domiciled after 15 years of residence can expose you to worldwide income tax, capital gains tax and inheritance tax, the result of being UK resident inadvertently can be a disaster – (or perhaps a welcome and unexpected addition to the public revenue, depending on your point of view).

Many people assume that if they stay below 90 days in the UK they will be OK – and are pleasantly surprised to find that the day count limit is sometimes 120, e.g. for an arriver who is retired and does not have a UK resident spouse.

They are rather less happy to learn that the limit might actually be 45 days – which would be the position if they are a "leaver" with three UK ties. (Or maybe less than 45 days because the deeming provision would apply in calculating the UK days)

It gets worse because if the Automatic Residence Test applies it could be only 30 days. This applies if:

a) the taxpayer has a home in the UK which is available to him for more than 90 consecutive days and he is present there on at least 30 separate days during the year; and

b) There is a period of 91 consecutive days (and at least one of those days falls within the tax year) throughout which he either had no home overseas or if he had one, he was present there for fewer than 30 separate days during the year.

There is real danger here. If the taxpayer has a home abroad where he spends more than 29 days and a home in the UK where he spends more than 29 days, he will be safe from the application of the automatic residence test on this point. However, a holiday home does not count as a home for this purpose, so if HMRC can argue that the foreign home is only a holiday home, he would only have one home; that home is in the UK - and 30 days will make him resident. End of story. (Unless the automatic non-residence test applies).

Other unexpected results can arise in the event of death. The most detailed plans and the most careful attention to the day count can be completely upset if the taxpayer dies.

When a person dies during the tax year there are some special rules. (That always amuses me; how are you supposed to die other than during the tax year – but never mind). One such rule relates to the reduced day count in the year of death.

Let us assume that the client is an arriver with 2 UK ties and therefore has a limit of 120 days for the year. He carefully plans his days and knows that he will be leaving the UK on 31st January (for the rest of the tax year) and by then he will have had 112 days in the UK. Well within the 120 limit so that's all fine.

Well maybe. He had better look after himself because if he dies during February the day count limit is reduced to 110 (and if he were to die in January it would be only 100 days) – so he would be resident in that year after all.

It is bad enough that he is resident in the year of death and exposed to income tax and capital gains tax – but if he was relying on this year of non residence to avoid being deemed domiciled, this could bring his worldwide assets into charge to inheritance tax. Um. Best cancel the sky diving and base jumping until March perhaps.

# Concession B18

You don't get much commentary on disputes relating to extra statutory concessions for the simple reason that they are concessions. They provide relief from the strict legal position and are made by HMRC supposedly pursuant to their duty of care and management of the tax system. You cannot appeal to the FTT if a concession is not applied to you; the FTT can only apply the law.

Therefore you have to apply for Judicial Review – which is a much more complex and expensive process. The FTT does not have jurisdiction to hear JR applications; you have to go to the Upper Tribunal or beyond.

In the recent case of *Murphy and Linnett v HMRC [2023] EWCA Civ 497* the taxpayers sought a judicial review of HMRC's refusal to apply Concession B18 which enables a UK resident beneficiary of a non resident trust to claim credit for UK tax paid by the trustees on income which was subsequently distributed to the beneficiary. This may all be familiar stuff – and give rise to no problems.

The issue in the case was that HMRC said there was a six year time limit.

The first version of concession B18 issued in 1978 said exactly that. No claim could be made in respect of income more than six years earlier than the year in which the payment was made to the beneficiary. The second version of B18 issued in 1994 confirmed the 1978 position.

However, in 1999 a third version was published which did not contain the six year limit – but HMRC said that it was implied because that was in the previous versions. And there were other parts of the concession (specifically dealing with UK resident trusts) where a six year time limit was mentioned.

Not so, said the Court of Appeal. The concession was clear in its terms and there was no good reason to imply additional terms just because it had been in a previous version. The ordinarily sophisticated taxpayer had a legitimate expectation that the current published concession would apply to him according to its terms. The fact that the six year time limit was specifically mentioned in respect of UK trusts but not in respect of non resident trusts, rather supported the taxpayers view.

I respectfully suggest that this must be right. Otherwise it would mean that the published concessions could never be relied on. The taxpayer would have to find out whether any similar concession had ever been published before, and how many times, and then have to ensure that every term of each version is satisfied. And if there were other concessions which had some tangential relevance then they would have to be taken into account as well. That would be virtually impossible for anybody – let alone the ordinary taxpayer.

## Tax Returns

I read that 77,500 people filed their 2022/23 tax return on 6th April 2023. Wow. How very impressive. You have to be seriously organised to be able to do that, however uncomplicated your tax affairs.

But why would you want to do that anyway – part from the thrill of course. (Whoever thought that line would ever be written?).

Well you might be entitled to a repayment and would like the money sooner rather than later – although with repayment supplement at 3.5% tax free, that is rather better than you might be getting on your money at the bank; like about 3 times as much.

Another good reason would be to accelerate the date when HMRC's enquiry window closes (although always subject to the discovery provisions, of course). The 12 month period during which HMRC can enquire into your tax return is 12 months from the date it was delivered to HMRC: section 9A(2)(a) TMA 1970.

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**31st May 2023**

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