UK Tax Bulletin

March 2024

FIELD COURT TAX CHAMBERS

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Latest Rates of Inflation and Interest

The following are the latest rates: March 2024

Current Rates	
Retail Price Index: January 2024	378.0
February 2024	381.0
Inflation Rate: January 2024	4.9%
February 2024	4.5%
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 7.75% which applies from 22nd August 2023.

There is one exception: Quarterly instalments of corporation tax bear interest at 6.25% from 14th August 2023; interest on overpaid instalments will be paid at 5%.

Repayment supplement

Interest on overpaid tax is paid at Bank base rate minus 1% which gives a rate of 4.25% from 22nd August 2023.

Official rate of interest

From 6th April 2021 2%

From 6th April 2023 2.25%

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Non Doms

Oh dear. The Budget announcement was a bit of a bombshell. And my inbox is a testament to the general anxiety which has been created.

I am sure that many readers will have read the notes published by HMRC on the subject and I will try not to be too boring by repeating what has been said so many times elsewhere.

However, it is very unlikely the proposals will remain in their current form. The draft legislation is going to be published later in the year (for comments), so it is not in the current Finance Bill. It will be in a later one, which makes sense because the rules are set to change in April 2025. There will inevitably be amendments. And of course, before anything happens, there may be an election and a new government, and these proposals will either be accepted (unlikely) or scrapped (unlikely) or changed (most likely) by a new government – or deferred.

Deferral is a real possibility because this is a huge change and there may simply be not enough time to do it – the summer recess is long, then there is the conference season, and when the draft legislation is published, there will be a mountain of arguments – and the run up to the election will take up even more time. But who knows.

There are some serious problems created by these proposals, but there are also some real opportunities. However, we need to be cautious because the problem areas might get worse and the opportunities may disappear – or the other way round. (We can always hope). We should have time to arrange things when we know what the new rules are.

Domicile is not a tax concept – it is a concept of international law – so HMRC cannot just abolish it. What they can do is to remove domicile as a test or determinant of UK tax liabilities. Subject to some transitional provisions this is what is proposed with effect from 6th April 2025. The liability to UK tax will depend on residence and not on domicile.

People who come to the UK having not been UK resident for 10 consecutive years, will be completely free from income tax and capital gains tax on their foreign

income and gains for the following 4 years whether it is remitted or not.

Thereafter they will be liable to tax on their worldwide income and capital gains. They may still get double taxation relief for foreign tax in the normal way – but there will not longer be any remittance basis. That will be abolished with effect from 6th April 2025.

That does not mean that all the unremitted income and gains can then be remitted tax free; they will be taxed when they are remitted. But there will be a transitional relief whereby unremitted income and gains can be remitted in 2025/26 and 2026/27 at a rate of only 12% if the income and gains arose to the individual personally in a year when he was taxed on the remittance basis.

(The references to the income and gains arising "personally" to the individual excludes income and gains which arise to companies or trusts and are treated as the income of the individual for tax purposes).

The stockpiled gains and foreign income of an offshore trust will therefore be fully taxed if distributed after 5th April 2025 and the traditional segregation of capital from income and gains will therefore continue to be important in those cases. So we will have both the old rules and the new rules in play for a very long time.

Protected trusts will lose their protection from 6th April 2025. This is very serious. Protected trusts were introduced in 2017 so that people who had created such trusts and later became deemed domiciled were not automatically taxable on all the trust income and gains. They were protected (subject to some safeguards) until the income or gains were distributed. Not any more.

It is not all bad. The freedom from tax on the foreign income and gains for the first four years of residence – following 10 consecutive years of non residence - will be extremely welcome, especially as it extends to distributions from offshore trusts which can be remitted entirely tax free, for those years.

And individuals who move from the remittance basis to the arising basis on 6th April 2025 (and cannot benefit from the 4 year rule) will pay tax on 50% of their foreign income (not capital gains) for the year 2025/26 only.

There will be an opportunity for CGT rebasing of all assets to 5th April 2019 for those who are non doms and are subject to the remittance basis for 2024/25.

The IHT changes will make you feel even better. Same idea – it will not be based on domicile but on residence. IHT will be charged on worldwide assets after an individual, has been resident here for 10 years – and they will stay within the scope of IHT for 10 years after they cease to be resident. In essence, foreign assets will be treated as excluded property until the individual has been resident for 10 years.

Even better - any trusts which presently contain excluded property (being foreign assets settled by a person who was not UK domiciled when they became comprised in the settlement) will continue to be excluded from IHT even after the new rules come into force.

And what is more – so will any trust established before 6th April 2025 by a foreign domiciled individual will also be permanently excluded. (It is difficult to understand why they should be so harsh on protected trusts and so (comparatively) generous for excluded property trusts.)

There is a tantalising statement that the IHT treatment of returning non doms (formerly domiciled residents who are so harshly treated under the present rules), "will be subject to consultation". That must be good news because, frankly, they could hardly be treated any worse than at present.

This ten-year residence rule for IHT will provide a greater degree of certainty than the present position based on domicile, about which there is enormous scope for argument. There will be a large number of people who have been non resident for more than 10 years but whose domicile is uncertain and are therefore at risk of IHT. They will be mightily pleased with these proposals.

Whether these new rules will increase the tax revenues is difficult to know. Maybe, but maybe not. Some people will just grin and bear it (well maybe not so much grinning) but it cannot be doubted that a number of rich people will leave, and a number of overseas rich people will not come here, with an inevitable effect on jobs and business. Not all of them of course but the effect will inevitably be only one way. These changes will obviously not encourage anybody of wealth to

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stay here, or to come here. It is a political judgment. George Bernard Shaw was rather more perceptive when he said that *"A government that robs Peter to pay Paul can always depend on the support of Paul".*

Transfers of Assets Abroad

The landmark decision of the Supreme Court in *Fisher v HMRC UKSC 44* did not last long. It is frequently said by HMRC that there is no Parliamentary time when they are pressed to correct anomalies or injustices to the taxpayer – but they seem to manage to find some pretty quickly when they don't like something.

In November the Supreme Court in *Fisher* decided (among other things) that only an individual can be a transferor for the purposes of section 720 ITA 2007 - so transfers by a company were not within its scope.

In a (comparative) flash, a new rule has been drafted which will be effective from 6th April 2024, so that a transfer by a closely-held company will be treated as being made by an individual with a "qualifying interest". All the other relevant bits of sections 714 to 730 will be similarly amended.

I wonder what a "closely-held" company is. Obviously not a close company, because that is already defined – and we all know what that is – so it must be something different.

And what about a "qualifying interest"? Not a clue. It could mean almost anything. We will find out in due course.

So, not for the first time, a new law will apply to taxpayers from 6th April 2024 without them knowing anything much about it until maybe the autumn. Let's hope that those elements of the legislature who regard the rule of law as important will make their voices heard.

It is interesting (and disquieting) that in *Fisher,* HMRC suggested that uncertain legislation was a good thing as it discouraged citizens from doing things that HMRC did not like. It was better "if taxpayers are unable to know whether they would be caught or not."

The Supreme Court did not like that one bit. Lady Rose said rather witheringly:

"That is, in my judgment, an improper argument for HMRC to run. It has a flavour of the same unconstitutional approach to the enforcement of these provisions that was so strongly deprecated in *Vestey*….The law cannot be left in some unclear state "just to scare people".

Expenses of an Employment

The FTT has recently has to consider whether the payment of fees to his agent were a deductible expense for a professional footballer – that is to say, whether the expenditure was incurred wholly, exclusively and necessarily in the performance of the duties of the employment.

More precisely, section 336 ITEPA 2003 provides that to be eligible for a deduction for an item of expenditure:

(a) the employee is obliged to incur and pay it as holder of the employment, and

(b) the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment

I have referred many times to the acute difficulty, if not impossibility, of an expense falling within these words, and I wont bang on any more about it – only to say that the claim was clearly hopeless and rejected roundly by the Tribunal: *Niasse v HMRC TC 9093.*

There was an interesting suggestion that footballers are "theatrical artists" to which some special rules apply. The Tribunal did not think so - to my great surprise. After all, anybody who has ever watched a football match knows that is obviously the case. The rolling on the ground clutching a random (and entirely irrelevant) part of their body, is just one example of a pure theatrical performance.

The taxpayer had some interesting and ingenious arguments but there was no getting away from the crucial fact that his duties of his employment were to play football. I don't remember there being any part of a football match where the players hand money (or otherwise incur expenditure) to their agent while they are running up and down the pitch.

That may sound a silly thing to say, but I would refer anybody who thinks so to

my earlier Tax Bulletins (July 2023 and October 2021 among others) from which it would be clear that (absurd or not), that is exactly the relevant test.

Coincidentally, the case of *Investment and Securities Trust Ltd v HMRC TC 9109* was published a few days ago and examined the meaning of "exclusively". This was not for section 336 purposes but for the purposes of ATED under section 138 FA 2013 where there is a relief if the property is held exclusively for a property development trade.

The Tribunal's analysis is detailed and compelling and just serves to emphasise how difficult it is to satisfy the wholly and exclusively (let alone *necessarily*) test.

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