# UK Tax Bulletin

April 2024

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# Latest Rates of Inflation and Interest

The following are the latest rates: April 2024

| Current Rates | |
|---|---|
| Retail Price Index: March 2024 | 383.0 |
| February 2024 | 381.0 |
| Inflation Rate: March 2024 | 4.3% |
| 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%

# More Non Doms

Oh dear. Again. The Budget announcement may have been a bit of a bombshell, but the Shadow Chancellor has got some better plans – or worse plans depending on your point of view. And as she is likely to be the one introducing them, they need to be taken seriously … once we know what they are.

And even when we do, it is absolutely certain that they will not be the same as has been suggested. Her statement is very dispiriting (especially about IHT) but it is really difficult to make any judgment about precautionary action. You could guess (and if you are right, you would be heralded as wise and perceptive); but you might guess wrong (and be heralded as something else). The only sensible course of action is to wait and see – and get ready.

I don't want to be complacent because this is all going to cause serious damage to some people (a vanishingly small number– literally – who might have grounds for claiming they are being discriminated against.

However, I cannot help thinking about Mike Tyson's words of wisdom:

> "Everyone has a plan until they get punched in the face."

For politicians I think the same principle applies. They all have great plans – until they are faced with the reality of implementation.

# CGT: Main Residence Exemption

For some reason, this well-known tax exemption is being widely discussed - and unfortunately widely misunderstood. I thought it might be of interest to anybody with two homes (or perhaps two properties they like to call home) for me to provide a summary of the rules.

A person is entitled to exemption from Capital Gains Tax on their only or main residence: section 222(1) TCGA 1992.

If a person has two properties which could qualify as a *residence*, then within two

years from the acquisition of the second property, they may elect which of the properties should be the main residence: section 222(5).

If no election is made within the time limit, the matter is determined on the facts.

A married couple are only entitled to an exemption on one property. They are not entitled to an exemption each: section 222(6).

Whether a property does in fact represent a *residence* for the purpose of section 222 is an entirely separate (and extremely difficult) question – and one which I have written about many times before. According to Lord Widgery in *Fox v Stirk [1970] 3 All ER* it must be all of these things:

- The place where you are based or continue to live;
- Where you sleep, shelter and have your home;
- Something other than temporary accommodation;
- There is an expectation of continuity with a degree of permanence.

But all this is largely (if not completely) irrelevant. Even if the taxpayer can show that both houses could be regarded as a "residence" and could each therefore potentially qualify for the exemption, that does not get them home (so to speak). If the election has not been made it is necessary to demonstrate to the satisfaction of HMRC, which of the houses is in fact the main residence.

But that won't get you anywhere either, if the exemption has been claimed on the other house.

## CGT Loss Relief: Loans

The recent case of *Bunting v HMRC TC 9121* highlights a serious trap when it comes to claiming loss relief where money lent to a trading company becomes irrecoverable. Sadly, not an unusual situation.

Mr Bunting had lent £2m to his trading company and it had become irrecoverable.

Section 253(3) TCGA 1992 provides that an allowable loss arises for CGT purposes when:

> "a person who has made a qualifying loan makes a claim and at that time … any outstanding amount of the principal of the loan has become irrecoverable"

That sounds fine – except that Mr Bunting had decided to convert the loan into shares; he received some shares in the company in satisfaction of the loan (no doubt for good commercial reasons).

HMRC refused his claim for relief on the basis that the loan was discharged by the issue of shares, so at the date of his claim there was no "amount outstanding" as required by section 253(3). HMRC acknowledged that he could have made a claim before he subscribed for the shares – but he didn't, so bad luck.

HMRC also observed that he had received property (ie the shares) in satisfaction of the debt and (the confusingly similar) section 251(3) therefore disqualified the loan from relief.

This looks like serious trouble.

Fortunately, the FTT came to his rescue. In their view, the statutory requirement that at the time of the claim "any outstanding amount of the principal of the loan has become irrecoverable" merely means that the debt must be unpaid (whether or not there was any continuing right of enforcement). The debt had not been paid so the test of irrecoverability was satisfied.

On the satisfaction point the FTT were equally sympathetic. They said that because the shares received in satisfaction of the debt were worthless, there was no valuable consideration, so the relief was not excluded.

I call that a lucky escape - or good advocacy – or both.

# Yearly Interest

Where interest is paid on a loan, the general rule is that tax at the basic rate must be deducted at the time of payment and the amount deducted paid over to HMRC. This obligation does not apply to "short interest" which is the phrase usually used to describe interest which is not "yearly interest" within section 874 ITA 2007.

In *Hargreaves v HMRC [2024] EWCA Civ 365* the Court of Appeal considered this issue and highlighted a decision of the Supreme Court in which Lord Briggs described the following summary in *IRC v Hay 1924 SC 521* as "the best convenient summary of the jurisprudence about the meaning of yearly interest":

1. That interest payable in respect of a short loan is not yearly interest;
2. The loan must have a measure of permanence;
3. The loan must be of the nature of an investment;
4. The loan must not be repayable on demand;
5. The loan must have a tract of future time.

The Court of Appeal and the Tribunals before them considered that the loans were long term funding. They were regarded by the lenders as an investment and had a permanence that belied their short term nature. On a business-like assessment the loans could not be viewed in isolation as short term advances.

However, if we examine the tests set out in *Hay* the position seems less clear:

1. Each loan was for a short period of less than a year – i.e a short loan.

2. It is difficult to say that the loan had a measure of permanence because it was repayable on demand. That is almost the definition of impermanence. They were replaced on request by the same lender - but again that highlighted the fact that they did not have any permanence.

3. It is difficult to see how the loans could be regarded as investments in a business-like context. A business-like investment involves

being able to realise the investment, possibly at a profit. These loans could not ordinarily be sold in any business-like context.

4. The loans were repayable on demand.

5. It is not clear what is meant by the loan having a tract of time. This would seem to be a condition combining the requirements for permanence and not being repayable on demand.

Accordingly, on the basis of the *Hay* tests is strongly arguable that the interest paid was not yearly interest; it barely satisfied any of the tests (if at all) and certainly did not satisfy some of them.

One can of course understand that because the loans were replaced routinely, the company did have the benefit of loans for a longer period - and could be said to have been in the same position as if they had a long term loan. But that is not the case – nor is it the right test.

A man who works in a shop for 3 hours and earns £50 is in exactly the same financial position as a man who spends 3 hours in a betting shop and ends up with winnings of £50. That does not mean that what they have done should be treated as the same thing or that the tax consequences should be the same.

During the period of the loans, repayment could have been demanded at any time; and the interest rate could have been changed at any time. These are important issues, seriously affecting the nature of the relationship between lender and borrower, wholly different from the position with a long term loan.

We are all familiar with the need (sometimes) for legislation to be interpreted "purposively" but this is not to interpret the legislation purposively – it is to interpret the facts purposively, to make them fit the legislation.

Of course, it is possible to say that the facts, properly understood, did meet the *Hay* tests referred to authoritatively by the Supreme Court - for example, by saying that the short term loans were in fact long term loans, and the impermanent loans were in fact permanent. However, you cannot get away from the fact that the specific test in *Hay* that the loan MUST NOT BE repayable on demand, was not satisfied.

However, it could be said that you cannot expect to avoid yearly interest just by

recycling the same loans every few months. The Court seemed to take the view that (irrespective of the *Hay* tests) this was long term indebtedness by a series (pre-ordained perhaps) of short-term loans – although that does call into question why they placed such emphasis on the *Hay* tests and why they needed to be examined at all.

## Constructive Trusts

Every now and again, when something has gone a bit wrong - like an asset is in the wrong hands for the purpose of claiming a tax relief or something - it will be suggested that the person who has the asset is really holding it on trust for the other person who would have qualified for the relief.

Well, yes. Er, Maybe. Evidence? Where property is in the legal ownership of Mr A, and Mr B claims to be the beneficial owner, the onus of proof is on Mr B to prove that this is the case. Naturally that needs cogent evidence - and self-serving statements will not be enough, particularly if they are made ex post facto.

This whole subject was examined in the recent case of *Raveendran v HMRC TC 9119* where the issue was a little unusual. Mr Raveendran sold a property and appealed against an assessment to capital gains tax on the grounds that he was not the beneficial owner. The beneficial owner was Mr Indraraj. HMRC were not impressed. Mr Raveendran and Mr Indraraj produced quite a lot of evidence and explanations but to no avail.

The FTT analysed in detail the requirements for resulting or constructive trusts (which in the case of land are excluded from the requirement to be in writing, by section 53(2) Law of Property Act 1925). They concluded that (on the balance of probabilities) Mr Raveendran was indeed holding the property on trust for Mr Indraraj and the appeal against the assessment was allowed.

An interesting read – if you are interested in reading that kind of thing.

**Peter Vaines**
**Field Court Tax Chambers**
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## 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

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