Field Court Tax Chambers

FIELD COURT TAX CHAMBERS

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Latest Rates of Inflation and Interest

The following are the latest rates: June 2024

Current Rates		
Retail Price Index:	May 2024	386.4
	April 2024	385.0
Inflation Rate:	May 2024	3%
	April 2024	3.3%
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%

IHT and Trusts

We will not have to wait very long to find out how the new government intends to approach the various non dom issues. They are all so uncertain that further comment is unnecessary - and perhaps unwise.

However, one issue which is causing serious anxiety is IHT. The uncertainty is not helped by the announcement by Labour that:

> "We will end the use of offshore trusts to avoid inheritance tax."

Somebody ought to tell them that offshore trusts do not avoid IHT – the rules are quite different - but I expect they will find out soon enough.

For anybody interested in this subject, the CIOT submitted a paper to HMRC and the Treasury on 18th June with their comments on the IHT proposals. This not only explains the implications of what has been mentioned so far – but it highlights lots of issues which need to be seriously addressed. It is very impressive and well worth a read, even though the whole subject is up in the air.

It can be found at the attached link:

Budget 2024 inheritance tax and domicile proposals

Remittances

Despite the non dom proposals and the suggested abolition of the remittance basis, it is going to be a long time before the remittance rules cease to be relevant. Unremitted income and gains will still be taxable when remitted – although some might benefit from the 12% repatriation relief. Maybe.

One perennial issue relates to payments or transfers from a foreign bank account containing foreign income or gains. If I bring the money to the UK for my own use, or for the benefit of a relevant person, we all know that this is a remittance by reason of section 809L(2)(a) ITA 2007:

> "money or other property is brought to, or received or used in, the UK by or for the benefit of a relevant person".

However, what about a payment to a non relevant person in the UK, like an adult child or possibly a payment to a UK charity?

HMRC are very clear about this in their Residence, Domicile and Remittances Manual where they say at paragraph 36120:

> "To the extent that a taxpayer has foreign income and gains in an overseas bank account, a transfer of funds from that overseas account to an account in the UK should be treated as a taxable remittance. This includes not only a transfer to an account of the taxpayer him or herself but also any credit of money to any other UK bank account either as a gift by the taxpayer or in payment of a debt."

This passage relates to the position before the comprehensive changes in the remittance rules in 2008 but this remains their view under the current law. In paragraph 33050, they say specifically that a remittance includes a "transfer of some of your foreign income to the UK account of a registered charity".

There is a parallel (or maybe an oblique resonance) with the inheritance tax position. If I make a gift to somebody in the UK and transfer money from my foreign bank account to their UK account, is that a transfer of excluded property? Or because the gift is not completed until the money is credited to the UK account, is it a UK transfer within IHT?

There is no doubt that this is a transfer of excluded property because the diminution of the transferor's estate is the reduction in the balance of the foreign account. There is no UK property which has been diminished.

So, what is the difference here. We have to go back to section 809L because for income tax purposes a remittance includes:

> "money … brought to the UK …by a relevant person. "

The definition of a relevant person in section 809M includes the individual himself so if the money is "brought to the UK" by him it is brought by a relevant person and it therefore a remittance. It does not matter whether he used or benefited from the money in the UK.

This whole issue was examined at length by the FTT in *Alimahomed v HMRC TC 9178.* Mr Alimahomed argued that nothing was "brought to the UK" (and he certainly did not receive it or use it in the UK) because the nature of a bank account is a debt (which is extinguished by the transfer) and the creation of a new asset belonging to the donee in the UK. Even if one ignores the technical analysis, Mr Alimahomed did not bring the money to the UK - he sent it to the UK.

The FTT rejected these arguments on the grounds that Parliament must have intended that by making a transfer from a foreign bank to a UK bank the money was brought to the UK:

> "In conclusion, therefore, we hold that the bank transfers initiated by the Appellant gave rise to taxable remittances and it is of no consequence that the Appellant did not have access to the money which formed the subject of those transfers, or that he did not personally benefit from those remittances. The fact of the matter is that the remittances were initiated by the Appellant. All that is required to be established is that he initiated those transfers from his offshore bank account."

This conclusion was immediately preceded by a passage where the FTT explained that the aim of section 809L is to tax the individual where he has use of enjoyment of the money in the UK – which is a bit odd, because everybody including the FTT agreed that he did not do so. So Parliament must have intended the legislation to apply to people to whom the legislation was not aimed. I am not very clear about that.

The FTT also spent a long time discussing the need for a purposive interpretation which seems to be rather in conflict with their view that the statute "clearly defines when a remittance is made". (Nope; nor me)

This is a matter of some importance, and it will be interesting to see if any further guidance is received on the subject.

Reliance on Agreements with HMRC

The recent decision in *MWL International Lt and Maywal Ltd v HMRC TC 9169* was all about whether various cars were pool cars. This is an important issue because a pool car does not give rise to a benefit in kind on the users, or NIC.

The tests in section 167 ITEPA 2003 for qualifying as a pool car are pretty tough (as you would expect, having regard to their advantages):

> "a) the car was made available to, and actually used by, more than one of those employees,
>
> (b) the car was made available, in the case of each of those employees, by reason of the employee's employment,
>
> (c) the car was not ordinarily used by one of those employees to the exclusion of the others,
>
> (d) in the case of each of those employees, any private use of the car made by the employee was merely incidental to the employee's other use of the car in that year, and
>
> (e) the car was not normally kept overnight on or in the vicinity of any residential premises where any of the employees was residing, except while being kept overnight on premises occupied by the person making the car available to them."

The facts did not really support the taxpayer's claim for the various cars to be pool cars – but there was a much more important issue.

In 1993 HMRC agreed with the taxpayer that no mileage records were necessary, but they later changed their mind and imposed Class 1A NIC for some earlier years. The taxpayer appealed on the basis that HMRC were estopped from raising these assessments by their earlier agreement, and that the taxpayer had a legitimate expectation based on the agreement.

There was no dispute about the existence of the agreement, but the FTT said that the law was clear and the assessments could not be challenged on the basis of a prior agreement with HMRC. Among other similar things the FTT said:

> "The inspector had no power to enter into a future agreement to that effect…. A void and illegal agreement cannot form that basis for an estoppel."

I do not challenge the legal analysis but if this decision stands it will create enormous difficulties in the administration of taxes. The taxpayer ought to be able to rely on agreements made with HMRC (based on full disclosure) – otherwise what are they to do. Taxpayers are asked by HMRC to agree to things all the time. And what are HMRC going to do when they want to agree something with the taxpayer who says:

I would love to agree with you but how do I know that what you are doing is not void for some reason that I cannot begin to know or understand. Surely you as HMRC would not ask me to agree to something which is illegal or void. I am sorry, but of course I cannot agree.

Of course, HMRC can change their mind and say that we do not agree with this or that point from now on – but it cannot be right for them then to impose tax retrospectively for earlier years.

Maybe there is a solution. The FTT said that this was a matter of legitimate expectation where they do not have jurisdiction. So maybe the Upper Tribunal (who do have jurisdiction) will take a different view.

SDLT: Residential or Not

There have been numerous cases on what constitute residential or non-residential property for SDLT – which is hardly a surprise given the huge disparity in rates which apply to these two classes of property; that is to say 5% for non-residential and 12% or 15% or 17% for residential property.

Taxpayers have not had much success with their various arguments on mixed use by reason of pasture, rights of way, annexes etc, but they keep trying. And in the case of Mrs Anne-Marie Hurst, she was successful: *Anne-Marie Hurst v HMRC TC 9210.*

Mrs Hurst purchased a property which everybody accepted was suitable as a dwelling and claimed that the property was a "hotel, inn or similar

establishment", and is therefore excluded from the definition of residential property.

The arguments advanced by Mrs Hurst were similar to the familiar arguments in connection with claims for 100% IHT business property relief – where the taxpayer has also been depressingly unsuccessful.

The Tribunal examined at length all the evidence about the services provided, and concluded that:

> "The critical question is: was the scale of the activities associated with the provision of accommodation to paying guests enough to have reached the threshold necessary to represent commercial use with sufficient permanence and continuity to qualify as having used the property as an HISE [hotel, inn or similar establishment] and not simply as a dwelling?
>
> On balance, and by the finest of margins, we have decided that it was."

Mrs Hurst represented herself, and fine margins or not, she deserves to be very proud of herself.

And would you believe it, in the same week there was another success for the taxpayer on the same subject: *Marie Guerlain-Desai v HMRC TC 9203*.

Marie Guerlain-Desai purchased a dwelling house and claimed the non-residential rate of SDLT on the grounds that the property was mixed use because it included 12 acres of woodland (which were used by the public) which were not part of the garden or grounds of the dwelling house. The FTT agreed that the woodland performed no function in relation to the dwelling and could not be said to form a part of the grounds of the dwelling within section 116(1)(b) FA 2003.

So there is hope after all.

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