UK Tax Bulletin

July 2024

FIELD COURT TAX CHAMBERS

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Latest Rates of Inflation and Interest

The following are the latest rates: July 2024

Current Rates	
Retail Price Index: May 2024 June 2024	386.4 387.3
Inflation Rate: May 2024 June 2024	3% 2.9%
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%

The Budget

Budget Day will be 30th October when it is hoped that much will be revealed. There are so many predictions I have lost count.

The eternal question: will she - won't she? Whoever thought I would write that in a Tax Bulletin of all places.

I don't think she is going to do us out of a job any time soon.

They are definitely abolishing the Furnished Holiday Accommodation regime. There are some transitional rules, but they don't amount to much.

VAT on school fees is going to start in January. Goodness me – light the blue touch paper. They have published the draft legislation. Payments in advance will not work – and anybody who thought that the schools might reduce their fees to (say) £1000 a term and invite parents to make a voluntary donation (charitable of course) to the school to help its finances generally, will be a bit disappointed. They seem to have thought of that one.

The Transfer of Assets Abroad legislation and the Settlements legislation is being reviewed and modernised to remove ambiguity and uncertainty, and to make the rules simpler to apply. I would bet the farm that the result will be more ambiguity and more uncertainty – and as for "simpler"….. they must be kidding.

Non Dom changes

There is a lot of interest about what the new government will do about the suggested non dom changes which I have covered in detail in earlier Bulletins. As luck would have it, the Treasury published a Policy Paper on 29th July explaining what they plan to do about non doms following the previous government's announcement in the March Budget.

It looks like they are embracing nearly all of it. To avoid misunderstandings and to provide as much accuracy as possible I set out precisely what they have said. I don't usually do this – I mean, to say just read it for yourself – but people will be interpreting the statement in different ways so I thought it would be important to see exactly what the Treasury *say* they are going to do.

> "The government will remove preferential tax treatment based on domicile status for all new foreign income and gains (FIG) that arise from 6 April 2025. To replace the remittance basis of tax, the government will introduce an internationally competitive residence-based regime, providing 100% relief on FIG for new arrivals to the UK in their first four years of tax residence, provided they have not been UK tax resident in any of the 10 consecutive years prior to their arrival."
>
> *[Nothing new here. We might have hoped for a longer than 4 years – but no.]*
>
> "From 6 April 2025, the protection from tax on income and gains arising within settlor-interested trust structures will no longer be available for non-domiciled and deemed domiciled individuals who do not qualify for the 4-year FIG regime."
>
> *[Nothing here to rescue protected trusts I am afraid – but the rebasing might help]*
>
> "A form of Overseas Workday Relief (OWR) will be retained. Officials will engage with stakeholders on the design principles for this tax relief and further details will be confirmed at the Budget."
>
> *[So we have to wait and see whether there are any changes to be made here]*

As far as the transitional arrangements are concerned:

> "The policy announced by the previous government, providing a 50% reduction in foreign income subject to tax for individuals who lose access to the remittance basis in the first year of the new regime, will not be introduced."
>
> *[So this relief has been scrapped]*
>
> "UK resident individuals who are ineligible for the 4-year FIG regime (or who choose not to make a claim for a tax year) will be subject to Capital Gains Tax (CGT) on foreign gains in the normal way. Transitionally, for CGT purposes, current and past remittance basis users will be able to rebase foreign capital assets they hold to their value at the rebasing date when they dispose of them. The government is considering the appropriate rebasing date and will set this out at the Budget."

[The rebasing for CGT was proposed to be April 2019 – so that is clearly going to change; we might get a much better rebasing]

"Any FIG that arose before 6 April 2025, while an individual was taxed under the remittance basis, will continue to be taxed when remitted to the UK, as is the case under the current rules. This includes remittances of pre-6 April 2025 FIG for those who are eligible for the new 4-year FIG regime."

[Nothing new here]

"A new Temporary Repatriation Facility (TRF) will be available for individuals who have been taxed on the remittance basis. Individuals that have previously claimed the remittance basis will be able to remit FIG that arose prior to 6 April 2025 and pay a reduced tax rate on the remittance for a limited time period after the remittance basis has ended. The rate and the length of time that the TRF will be available will be set to make use as attractive as possible."

[This was going to be 12% for 2025/26 and 2026/27 but maybe it is going to be rather better.]

"The government is also exploring ways to expand the scope of the TRF, including to stockpiled income and gains within overseas structures, and will confirm further details at the Budget."

[This is even more promising – and very welcome - but we will have to wait for the Budget to find out more.]

IHT : Non Dom changes

The Policy Paper also explained what they plan to do about IHT and non doms next year. It does not say much and, again, to avoid any misunderstanding (or misguided hope) I set out precisely what they have said on this subject:

"Inheritance tax is currently a domicile-based system. The government intends to replace this with a new residence-based system from 6 April 2025. This will affect the scope of property brought into UK IHT for individuals and trusts.

> The government envisages that the basic test for whether non-UK assets are in scope for IHT from 6 April 2025 will be whether a person has been resident in the UK for 10 years prior to the tax year in which the chargeable event (including death) arises, with provision to keep a person in scope for 10 years after leaving the UK. The government will engage further with stakeholders on the operation of the new test, so that any refinements can be considered fully. IHT charges arising on deaths occurring before 6 April 2025 will be unaffected by these changes and will be charged according to the existing rules."

[So nothing new here – but maybe there will be "refinements" later. No clue yet about whether the 10 years have to be consecutive]

> "The government will end the use of Excluded Property Trusts to keep assets out of the scope of IHT. The government intends to change the way IHT is charged on non-UK assets which are held in such trusts, so that everyone who is in scope of UK IHT pays their taxes here. The government recognises that trusts will already have been established and structured to reflect the current rules, so is considering how these changes can be introduced in a manner that allows for appropriate adjustment of existing trust arrangements, while ensuring that the treatment of all long-term residents of the UK is the same for IHT purposes. Confirmation of these new rules and their detailed application, including transitional arrangements for affected settlors, will be published at Budget, following external engagement."

[Nothing new here either – but some hope that there may be some grandfathering of existing trusts. Maybe. We have to wait for the Budget]

Penalties: Suspension

Where a person has become liable to a penalty for a careless inaccuracy in connection with their tax affairs, Schedule 24 FA 2007 allows HMRC to suspend all or part of the penalty, subject to certain conditions. If the conditions are complied with the penalty is cancelled. This can be very helpful.

HMRC use the **SMART** criteria in deciding whether to suspend a penalty: **S**pecific: **M**easurable: **A**chievable: **R**ealistic: **T**ime Limited.

This is a matter of administrative discretion by HMRC so you can't complain about it too much – although their discretion has to be exercised reasonably on *Wednesbury* principles.

The recent FTT case of <u>*Cox v HMRC TC 9198*</u> casts some doubt on the application of these rules – although it must be said that their conclusion was reached by rejecting the reasoning in a number of other cases on the subject.

For example, In <u>*Eastman v HMRC TC 5276*</u> the Tribunal had said that:

> "It does not matter that the disposal or that Mr Eastman no longer has business assets. Nor would it necessarily be a bar to a suspension condition if he had no other chargeable assets, so long as he had a continuing requirement to make self-assessment returns and thus a risk of a penalty for careless inaccuracy."

But the FTT in <u>*Cox*</u> held that this was wrong; they said it could not have been the intention of Parliament.

They went on to say that the suspension of a penalty by reference to the SMART criteria did not apply when the conditions for the suspension were nothing more than the taxpayer promising that their tax returns would be free from careless inaccuracies in the future.

Why on earth not? That is exactly what a suspended penalty does – and is supposed to do. It is the same for suspended penalties or sentences in other walks of life. If you offend again in the next [12] months the penalty becomes payable. But not if you don't. As it says in schedule 14 FA 2007:

> "If, during the period of suspension … [the taxpayer] becomes liable for another penalty … the suspended penalty becomes payable".

What else is the taxpayer supposed to do than undertake not to offend again – providing his promise is credible. And what is the problem anyway. HMRC say that the suspended penalty is intended as a punishment and a deterrent for carelessness. If it works, and there is no further default, the suspension is a conspicuous success. What's not to like?

I would suggest that HMRC need more of this – rather than seek to curtail it.

Purposive Interpretations

The recent Court of Appeal case of *HMRC v Altrad Services Ltd v [2024] EWCA Civ 720* rather caught my eye. It was concerned with a claim to capital allowances and the correct interpretation of section 61 CAA 2001. It was a tax avoidance case which was shot down in flames by the Court of Appeal (although the Upper Tribunal had thought it was OK) and the *Ramsay* principle was an important part of the reasoning for the decision.

Nothing special so far – so why am I bothering with this. Seems like the same old story. However, …

The Court of Appeal emphasised that the *Ramsay* doctrine (and its various apostles) is a principle of statutory interpretation applicable to all legislation and not just tax:

> "it is not in its essential particular to tax, being based upon the modern purposive approach to the interpretation of all legislation."

However, its application in this case was rather curious. The Court of Appeal accepted that section 61 would have applied if the transactions had been undertaken for good commercial reasons. We are all very familiar with targeted anti-avoidance rules which apply to a number of tax provisions – for example, the particular relief will only apply if:

> *"The transaction is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose or one of the main purposes is the avoidance of liability to [the relevant] tax".*

But section 61 CAA 2001 does not contain such a restriction.

However, the Court of Appeal held that although section 61 would have applied if the transactions had been undertaken for good commercial reasons, where the transaction was undertaken for exclusively tax avoidance purposes the section must be purposively construed and given an interpretation which meant that it does not apply. In other words, the legal interpretation of the section depends upon the purpose for which it is invoked.

This seems to be going a bit far – not least because if it is right, then all the targeted anti-avoidance provisions are redundant.

Whatever the words say, however clear and unambiguous they are, you just say that Parliament could not have intended that – so they don't apply.

I wonder what Parliament would say about all this. They might say: we know what we meant and if we wanted to exclude tax motivated transactions we would have said so, like we often do …. when that is our intention.

It strike me that this reasoning could prove rather useful when arguments are being advance which are obviously not what could have been intended whatever the words actually say (*Lobler* obviously springs to mind as well as the infamous Goose v Gander principle.

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