UK Tax Bulletin

August 2024

FIELD COURT TAX CHAMBERS

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Latest Rates of Inflation and Interest

The following are the latest rates at August 2024

Current Rates	
Retail Price Index: July 2024	387.5
June 2024	387.3
Inflation Rate: July 2024	3.6%
June 2024	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 7.5% which applies from 20th August 2024.

There is one exception: Quarterly instalments of corporation tax bear interest at 6% from 12th August 2024; interest on overpaid instalments will be paid at 4.75%.

Repayment supplement

Interest on overpaid tax is paid at Bank base rate minus 1% which gives a rate of 4% from 20th August 2024.

Official rate of interest

From 6th April 2021 2%

From 6th April 2023 2.25%

The Budget: 30th October

There are daily predictions and forecasts of increasing doom about tax increases – but everybody who actually knows anything is completely tight lipped.

So just in case anybody is wondering, I don't have a clue.

One thing I do know. Nobody concerned with tax is going to get much time off in November or December.

Statutory Residence Test

My attention has been drawn to a subtle (or maybe not so subtle) change in the HMRC guidance on the Statutory Residence Test about what constitutes "a home".

This is really difficult at the best of times, because there is no definition of a home. There is only Schedule 45(25) FA 2013 which says that it depends on all the circumstances. (Well, yes; it always depends on the circumstances). We are also told that:

- It could be a building or part of a building, or a vehicle, vessel or structure of any kind
- It may count as a home even if you have no estate of interest in it
- A holiday home or temporary retreat is Not a home.

We also have the HMRC guidance in the RDR Manual, which sets out the HMRC view – but we know from the FTT and Upper Tribunal in *A Taxpayer* that their guidance is not always an accurate summary of the law.

In the 105 page Guidance Note on the SRT issued by HMRC in August 2016, there is Annex A which is all about what constitutes a home.

At A15 on page 89 it says:

> "Your home starts to be your home as soon as it is capable of being used ass your home, for example if you have taken ownership of it, even it is temporarily unavailable because of renovation."

And they give an example:

> "Example A7: Aneta moved from Poland to the UK and completed the purchase of her new house on 1 June. Whilst it was empty she stayed with friends, until her belongings arrived. These were moved in by the removal firm on 15 June.
>
> Aneta stayed in her new home overnight that night. However, as she had arranged to have some extensive refurbishment done to her bathrooms and kitchen, she stayed in a local hotel and with colleagues while the main works were carried out. She moved into her home on a permanent basis on 15 July.
>
> For SRT purposes we would consider that the house became Aneta's home from 15 June".

OK – that is how HMRC see the position.

Or maybe not. The latest version of the HMRC Guidance says something different.

The last paragraph now says:

> "For SRT purposes HMRC would consider that the house became Aneta's home from **15 July**".

That changes everything. There is a month where Aneta either had, or did not have, a home in the UK, and that can make all the difference between being resident or not for the automatic residence tests, split year treatment and much else.

Which of these dates is right is an interesting question (and will no doubt depend on all the circumstances), but it is important to know that HMRC have changed their published view without telling anybody.

Or maybe it was just a typo…….

SDLT: Multiple Dwellings

Having regard to the huge disparity in the rates of SDLT for residential property it is no surprise that claims are frequently made for Multiple Dwellings Relief.

To satisfy the test for MDR under Schedule 6B FA 2003 the subject matter of the land transaction must consist of at least two dwellings which must be suitable for residential accommodation. That is the key issue in all the MDR cases.

The taxpayer has not had a lot of success on this point but has recently triumphed in the case of *Winfield v HMRC TC 9259.* This is satisfying because it indicates (as much as an FTT decision can do so) that the unsatisfactory reasoning in the earlier case of *Dower v HMRC TC 8497* was wrong.

In that case, Mr and Mrs Dower claimed that their annex, being a flat above the separate garage, was a separate dwelling. It was self-contained with a secure entrance, a bedroom, a sitting room and bathroom but it did not have a separate kitchen. They cooked their meals with a microwave and a slow cooker. They lived there for 4 months while the main house was undergoing renovation.

Under the circumstances it looked a bit difficult to say that the annex was not suitable for residential accommodation as the taxpayers lived there for 4 months and had all the necessary facilities in their separate dwelling.

However, the judge said that it could not be a separate dwelling because they did not have "proper kitchen facilities". (I mean, you can't possibly have a ***proper*** meal cooked in a *microwave*…. obviously). Furthermore:

- There was no separate council tax or postal address;

- The occupation for 4 months was temporary because they were only living there while the main house was being renovated;

- It would have been inconvenient for Mr and Mrs Dower to have had unrelated persons living there.

It was difficult to see how these tests could impact on whether the annex was suitable for residential accommodation. Indeed, such tests would disqualify almost any separate dwelling from MDR.

This conclusion was even more surprising having regard to decision of the House of Lords in *Uratemp Ventures v Collins 2001 UKHL 43* where their Lordships held that "a dwelling" does not require there to be cooking facilities. Admittedly this was a decision under the Housing Act 1988, but their Lordships made it clear that "a dwelling "is not a term with a special legal meaning but an ordinary term in the English language. More specifically:

> "It has never been a legislative requirement that cooking facilities must be available for a premises to qualify as a dwelling".

We do not need to dwell further on this aspect because fortunately, the Tribunal in *Winfield* has reviewed the conditions for a separate dwelling and rejected the application of the *Dower* tests advanced (naturally enough) by HMRC. In many ways, Mr Winfield had a weaker case than in *Dower*, such as internal doors, shared utilities, less privacy, and the whole property was marketed as a single dwelling. However, the judge found that there was a "sufficient degree of privacy and self-sufficiency" for it to be regarded as a separate dwelling.

Statutory Records

This may seem to be an odd subject to burst into print about – but having regard to the propensity of HMRC to issue information notices under Scheule 36 FA 2008, it can be rather important.

If the client gets a Schedule 36 information notice they have to comply with it or face a penalty. He can appeal of course on the grounds that the notice seeks information which is not reasonably required for the purposes of checking the taxpayers tax position (or fails to satisfy other conditions). He does not have to comply with the notice unless and until the Tribunal agrees that the information is reasonably required – and the onus is on HMRC to prove that it is.

However, you cannot appeal against a request for "statutory records": paragraph 29(2) specifically excludes any right of appeal. It is not unusual for an information notice to include a request for statutory records – and it is important to not overlook the fact that you will normally only have 30 days to provide them. It is also rather important to be able to identify what is (and what is not) a statutory record.

Statutory records are defined in paragraph 62 of Schedule 36 as being:

> "information or a document which the person is required to keep and preserve under or by virtue of (a) the Taxes Acts or (b) any other enactment relating to tax"

However, they cease to be statutory records when the period for which they are required to be kept has expired – which is normally six years.

I mention all this because the meaning of *statutory records* featured heavily in recent case of *Furlong Services Ltd v HMRC TC 9252.*

The FTT confirmed that the definition of statutory records in Schedule 36 is exhaustive and there is no additional limitation - such as whether the records have to be relevant to the HMRC enquiry. There is no necessary link between the HMRC enquiry and the obligation to keep the records – so you have to provide them even if they have nothing to do with the enquiry.

The FTT also confirmed that statutory records incudes "information which is not set down in writing". No explanation is given for this rather bizarre conclusion. How can you have a record of something if there is no record of it. It might mean information which is preserved in the cloud, or on your phone – but if that was the thinking (by the legislature or by the FTT) you would have thought some mention might have been made of it.

It was also confirmed that the definition of statutory records is not confined to documents that are already in existence. There is "authority" in the shape of earlier FTT decisions in support of this proposition, but I find it difficult to grasp how there can be an obligation to preserve records which do not exist.

You will see what I mean that there is more to statutory records than might have been expected – and the absence of any right of appeal when requested by HMRC to deliver records which do not exist, makes it even more difficult.

Partnerships

A question which frequently arises is whether a partnership exists. This can be important in many tax contexts – sometimes determining whether an activity is a trading or business activity or merely an investment.

It is important for income tax, CGT, IHT and SDLT– and for a number of non-tax contexts, such as joint and several liability which can be a source of anxiety, to say the least.

The tax rules struggle to deal with the concept of partnership – sometimes a partnership is treated as transparent, sometimes it is not. The rules can be really complicated such as sections 846 to 863L ITTOIA 2005 and the fiendish SDLT rules in Schedule 15 FA 2003 concerning "the sum of the lower proportions". (No: you really don't want to know about that – unless you have to). There is also the complication of LLPs where the tax treatment varies depending on what the partnership is doing.

It is therefore helpful to have some guidance from the Court of Appeal on the factors which give rise to a partnership - in the case of *Hamilton v Barrow and Welsh [2024] EWCA Civ 888.*

Everybody will be familiar with the definition in section 1(1) of the Partnership Act 1890 that a partnership exists where:

> "two or more persons carry on business in common with a view of profit".

The question in every case is whether, as a question of fact, this test is satisfied. The Court of Appeal set out some important characteristics of an ordinary partnership:

- Each partner can bind every other partner to contractual arrangements.
- Each partner has unlimited liability for the debts of the partnership
- Each partner owes duties to the others including of "utmost good faith."

A partnership will exist if the facts show that the conditions are satisfied even if the parties declare otherwise.

The question in *Hamilton v Barrow and Welsh* was whether investments which were managed by separate managers under separate investor pools were separate businesses or a partnership. This was not a tax issue, but whether the managers of all the pools were really in a partnership and therefore liable for the obligations of the other managers – which in this case was a substantial loss.

The Court of Appeal held that the arrangements were a partnership for the following reasons:

a) The managers were all conducting exactly the same kind of business in concert. All relevant documentation was virtually identical.

b) The managers met daily and took decisions by majority vote.

c) The managers had mutual trust and confidence and would not have been able to hand over their roles to a third party.

d) The arrangements for the division into separate funds were "to make the fund more manageable" and was largely administrative rather than to split up the business.

e) It was a joint enterprise in which the managers success and failure was inextricably linked.

It was a matter of fact of course (and there were some serious deficiencies in the evidence which probably made a difference) and it could of course have gone the other way. But the Court of Appeal shows us the right approach – which will assist anybody who wishes to establish a partnership, and anybody who wants to make sure that they do not.

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Important Note