UK Tax Bulletin

October 2024

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Latest Rates of Inflation and Interest

The following are the latest rates at October 2024

Current Rates	
Retail Price Index: September 2024 August 2024	388.6 389.9
Inflation Rate: August 2024 September 2024	3.5% 2.7%
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%.

It is proposed that from April 2025 the rate will be increased to 4% over bank base rate.

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 2023: **2.25%**

The Budget

Well, goodness me. After all the endless leaks and speculation we now know what the Budget contained. I will leave all the economic implications (and complaints) to others and concentrate on what the Chancellor actually proposes – whether it is good, bad, wise or foolish. My comments are short as I am sure that everybody has been inundated with detailed briefing from multiple sources.

Capital Gains Tax

Despite various predictions, all that happened here is the rate went up to 24% (the same as the rate for UK residential properties) from today, and there will be a corresponding increase in the rate on gains qualifying for Business Assets Disposal Relief – up to 14% on 6th April 2025 and 18% the following year. (The rate applicable to carried interest is going up from 28% to 32% from 6th April 2025).

Inheritance Tax

The main changes here relate to agricultural property relief and business property relief. From 2026 the 100% relief will only apply to the first £1m (in total) and thereafter the relief will be at 50%. For AIM shares the rate of relief will be a flat 50%.

Pension death benefits will become liable for IHT from 2027 – but for many people this will not be an issue it if it is paid to the surviving spouse.

SDLT

Apart from reductions in the lower thresholds the only change here is the increase to 5% in the surcharge for purchase of second homes bringing the rate at the top end to 17%. And if you are a non resident purchaser there is a further 2% taking you to 19%. Wowzer!

Employers NIC

On 6th April 2025 the employers NIC goes up to 15% and the threshold is lowered to £5000.

Non Doms

The previously announced changes in the relationship between tax and domicile have been affirmed in the Budget with a few tweaks.

Domicile is not a tax concept, it is a concept of international law, so HMRC cannot just abolish it. What they propose is to remove domicile as a determinant of UK tax liabilities and replace it with a test based on residence. (However, the concept of domicile will still apply in a number of circumstances, making it of continuing relevance for years to come.)

With effect from 6th April 2025, people who come to the UK having not been UK resident for 10 consecutive tax years, will be completely free from income tax and capital gains tax on their foreign income and capital gains for the following 4 years whether 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 no longer be any remittance basis.

That does not mean that all the earlier unremitted income and gains can then be remitted tax free; they will be taxed when they are remitted. But there will be a Temporary Repatriation Facility whereby such unremitted income and gains can be remitted in 2025/26 and 2026/27 at a rate of only 12% (and 15% for 2028/29) if the income and gains arose in a year when the individual was taxed on the remittance basis.

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. Clearly some remedial action is called for before next April.

There will be an opportunity for CGT rebasing of foreign assets to 5th April 2017 for those who were not domiciled or deemed domiciled for any year prior to 2025/26 and had made a claim for the remittance basis for any of the years 2017/18 to 2024/25.

Liability to IHT will generally not be based on domicile but on residence. IHT will

be charged on worldwide assets after an individual has been resident here for 10 out of the last 20 years – and they will stay within the scope of IHT for a number of years (on a sliding scale from 3 to 10 years) after they cease to be resident.

These 10 year tests look the same – but they are not. Somebody who comes to the UK having been non resident for just the previous 10 years will be entitled to the income tax and CGT freedoms – but he will fall within the IHT net because he will have been non resident for 10 years out of the last 20 years. For IHT he will need another year of non residence.

Residence for this purpose will be found from the Statutory Residence Test (and the effect of double taxation agreements will be disregarded). For years prior to 2013 an individual's residence will be determined by reference to the old law and not the SRT. That will be fun for everybody.

The IHT position with excluded property trusts is troublesome. After 5th April 2025 the rule for excluded property will depend on whether the settlor is a long term resident (that is, resident for more than 10 out of the last 20 years) in the year of the occasion of charge. The existing rule based on domicile will continue until April 2025 – allowing time for reorganisation perhaps – but thereafter the full rigour of IHT will apply to the settled property if the settlor is a long term resident.

Interestingly, the IHT exemption for gilts held by non residents remains unchanged.

There is good news for returning non doms (formerly domiciled residents) because the ten (or eleven) year non 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. Those who have been non resident for more than 10 years but whose domicile is uncertain will no longer be at risk of IHT. They may be the only people who will derive any pleasure or advantage from these proposals.

IHT: Business Property Relief

This issue may have diminished in significance having regard to the changes proposed in the Budget, but the case of *Pearce v HMRC TC 9288* illustrates how difficult it is to obtain BPR when the business has anything to do with land.

Section 105(3) IHTA 1984 disqualifies the business from relief if it:

> "consists wholly or mainly of one or more of the following, that is to say, dealing in securities, stocks or shares, land or buildings or making or holding investments".

It is never easy to obtain business property relief where the business includes exploitation of a property. HMRC have consistently taken the view that being paid for something which includes the use of a property, is a business which consists wholly or mainly of making or holding investments, no matter how extensive the services which are provided.

In *Pearce* the business involved a fishery business and there were extensive service provided – there was somebody working 7 days a week in the business which made a modest profit. Bad luck – it was land and the FTT drew attention to a number of activities which were consistent with looking after the land as an investment – although they seemed to be equally consistent with the provision of services for a business.

The FTT said:

> "The starting point is that the owing and holding of land in order to obtain an income from it is generally to be characterizes as an investment activity. This is not a presumption"

We have seen this form of words before which have been criticised as starting from a presumption that a business which holds land is an investment business. (It does not stop being a presumption just by saying that it is not).

It has been (rightly) suggested that the proper starting point is to make no assumption either way but to establish the facts and determine whether the business is, or is not, wholly or mainly one of making or holding investments. And we know from the Court of Appeal that:

> "There is no presumption that requires to be rebutted as a business which consists of the exploitation of land for profit is an investment business. Of course, it must be looked at in the round".

The FTT made refence to a number of cases referring to the extent of the services provided where the Tribunals had concluded that the services were inadequate. Sadly, those cases where the services *were* adequate to qualify the business for BPR were not considered on the grounds that it would not be "useful" to examine them, despite the fact that decisions of the Upper Tribunal have precedential authority.

There is a bit of a problem here with hotels. Obviously, a commercial property investment would be denied relief because it would be "the making or holding" of an investment, but a hotel is said clearly to be eligible for relief. But why? It is because of the services provided. That suggestion deserves some examination because in my experience many hotels provide a room which is (usually) cleaned daily but they do not "provide" anything else. You have to pay for nearly everything else - calls, internet, food and even water in some cases. The services provided in some of the unsuccessful BPR cases are a good deal more than in some hotels.

It would be consistent with a number of FTT decisions to conclude that a hotel is a business which mainly consists of holding an investment and disqualified from BPR. Clearly that would be wrong, but it would be interesting to identify the reasons why.

Trade or Business

Whether somebody is carrying on a trade or business is a question which frequently arises; these words will be extremely familiar as they appear so often in the legislation. They are not synonymous. There is masses of authority on the meaning of a trade, which is necessary because the statutory definition is hopelessly circular – a trade being "any trade …"

There is less authority about the meaning of a business and HMRC are keen not to dignify any kind of investment activity as a business. That argument is a bit problematic for them when it comes to IHT because business property relief can

be denied if the business consists wholly or mainly in making or holding investments: section 105(3) IHTA 1984. If there can be no *business* of making or holding investments, then there can be no denial of BPR.

The recent case of *Hutchings and others v HMRC TC 9318* was concerned about whether an LLP was carrying on a trade or business, and the FTT examined in great detail the meaning of "business" in the context of an extensive investment activity and concluded that the LLP was indeed carrying on a business.

HMRC argued that the legislation associates the word *trade* with the word *business*, it indicates that *business* should be interpreted in a narrow way - but this was firmly rejected by the FTT.

I cannot begin to summarise the numerous pages analysing the concept of a business, but I would suggest that it is essential reasoning for anybody faced with a challenge in this point.

Redomiciliation

It may be remembered that in 2021 some proposals were floated for the UK to introduces some redomiciliation rules so that foreign companies can change their place of incorporation to the UK, and with it the governing law of the company.

This would be very welcome, and would correspond to the rules in many other countries. However, anybody hoping to take advantage of this change better not hold their breath because it is certainly not going to happen any time soon.

The government is now considering a two-way corporate redomiciliation regime, following a report by an independent expert panel. The idea would be to allow all corporate forms incorporated in overseas jurisdictions to transfer to the UK at the same time as retaining the same continuous legal personality.

This is substantially more complicated than the original proposal and will require a whole load of regulatory and tax changes. There will be further consultation in due course on how the proposed new regime will be designed.

The purpose of this change is "to strengthen the UK's position as a global business

hub". Really? I think that it will need a bit more than this to have any positive effect at all. After considering the issue for 3 years, to say that the government are now going to consult on it …. "in due course" is unlikely to impress anybody involved in a real global business.

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