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UK Tax Bulletin

January 2012

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Introduction

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Latest Rates of Inflation and Interest

The following are the current rates from January 2012

Current Rates	January 2012
Retail Price Index: December 2011	239.4
Inflation Rate: December 2011	4.8%
Indexation factor from March 1982: to April 1998 to November 2011 to December 2011	 1.047 2.002 (not yet published)

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 present rate of 3%.

There is one exception: Quarterly instalments of corporation tax bear interest at only 1.5%.

Repayment supplement

Interest on all overpaid tax is payable at the same rate.

The formula is Bank base rate minus 1% but with an overriding minimum of 0.5% which applies at the present time.

Official rate of interest

From 6 April 2010: 4%

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Budget 2012

The Chancellor will deliver his Budget Statement on 21 March 2012 and the Finance Bill will be published on 29 March.

Contractual Disclosure Facility

Yet another facility has been published by HMRC in their continuing quest to bring tax defaulters into the tax net with the minimum fuss and bother. It comes into force today.

Whilst everything about that is obviously good, I just wonder whether there is a risk that the target audience is now so confused that they do not know whether it is better to fess up now or wait in case a better opportunity will come along soon.

This new one is different. It is not a case of putting matters right and suffering a reduced penalty. This is REALLY SERIOUS. It is an opportunity to make a full disclosure to HMRC specifically to avoid criminal prosecution - or the risk of possible prosecution.

The new facility follows Code of Practice 9. HMRC will write to the taxpayer and he needs to respond within 60 days with all the relevant details including an admission of fraudulent conduct if he is to obtain full protection from prosecution.

If he does not want to admit to fraud, the taxpayer can ignore the letter or submit a "denial" letter - leaving HMRC to take their chances. This could be a difficult judgment for a taxpayer who has not acted fraudulently but is concerned that HMRC might claim that he has done so. Unfortunately, nothing in the present guidance gives the taxpayer any comfort but maybe something will be forthcoming soon.

No professional person will be aware of any existing clients who are faced with these issues - such awareness would have triggered obligations ages ago. However, existing (and prospective) clients may be encouraged to make revelations as a result of this announcement and to have everything settled on the basis of a financial penalty. That is all very well but this could also have the effect of placing burdens on the adviser under the Money Laundering Regulations.

Small Companies Rate: Associated Companies

The recent case of *Seascope Insurance Services Limited v HMRC TC 1664* was concerned with a claim to small companies relief for corporation tax. (I know it's now called the small profits rate under section 3 CTA 2010, but that is what it was called at the time.)

The issue was all to do with associated companies because the profit thresholds for the relief have to be shared between all associated companies. Companies are associated if one company controls the other or both companies are under the control of the same person or persons.

In the case of Seascope, the company was 67.59% controlled by Gulfstream Investments Limited, a

company resident in Liberia. That was obviously an associated company and HMRC wondered whether there were any more. The company obtained evidence that Seascope did not control any other companies and neither did Gulfstream.

That was not enough to satisfy HMRC who quite rightly recognised that if the controlling shareholders of Gulfstream controlled another company that would be associated with Seascope as well.

Seascope could not get that information but asked HMRC to accept that there were not any other associated companies anyway.

HMRC took the view that the small companies rate is a statutory relief and it is up to the taxpayer to demonstrate that he satisfies the conditions before HMRC can allow the relief.

That must surely be right. Although Seascope could not themselves provide the information, it was certainly in the interests of Gulfstream and those who controlled Gulfstream to provide the necessary information to confirm that the conditions for the small companies relief were available; otherwise a company they controlled would be paying significantly too much tax.

However, that is not an easy matter. To determine the question would require an analysis of all the holdings of shares (and loans) which the shareholders and their associates had in all other companies worldwide. That would be a bit difficult although it must have been possible for the shareholders of Gulfstream to confirm that there were no other associated companies within the meaning of section 13 Taxes Act 1988 (presumably having taken the appropriate professional advice) and that would probably have concluded the matter.

HMRC were clearly deeply suspicious that Gulfstream was resident in Liberia. They said that it would have been possible to evidence the absence of associated companies by sending them copies of Gulfstream's accounts and a full list of shareholdings. Absolute nonsense : it would not have confirmed anything. The accounts would have disclosed nothing relevant to the question of associated companies, nor would a detailed list of its shareholders. This was just a rather unsubtle attempt at a fishing expedition.

Anyway, the Tribunal did not think much of HMRC's arguments and concluded that they had sufficient evidence to conclude that on the balance of probabilities there were no other associated companies.

To my mind this is a very generous conclusion. It may be that information was not in the possession or power of Seascope who had done everything they could to provide the information - but what has that got to do with it. All it really meant was, in answer to the question: "Are there any more associated companies?" all that Seascope could say is: "We don't know" which is hardly good grounds for saying they are entitled to the relief. The controlling shareholder of Gulfstream was prepared to confirm in writing about his holding of Seascope and he might reasonably have been able to add that he and his associates did not control any other companies. However, clearly this was unnecessary because the Tribunal found that Seascope had done enough - but I think this is a very fortunate decision for the taxpayer.

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Football Clubs

HMRC is paying increasing attention to football clubs and has dusted off its questionnaire to be used as a first step in enquiries into how they deal with employment issues. The questionnaire goes on for 16 pages and contains 190 questions ranging from payroll and PAYE issues, benefits, share schemes, relocation and testimonial policy - and pretty much everything you can think of.

This is a rich seam for HMRC to mine and it is useful to see the questions before they are actually posed, because they are able to highlight areas of potential sensitivity. A copy of the questionnaire is available on request.

IHT : Business Property Relief

The case of *Pawson (Deceased) v HMRC TC1748* published last week provides an interesting analysis of the business property relief rules as they apply to letting a holiday cottage.

The arguments will be familiar – that this is an investment, however it may be treated for income tax purposes, and the taxpayer did nothing more by way of services than would be consistent with the protection of their investment.

There was nothing particularly outstanding about the facts – but the Tribunal considered that the letting of a holiday cottage to holidaymakers was a serious undertaking earnestly pursued and represented a business for the purposes of the relief. The test propounded by the Tribunal was that an intelligent businessman would not regard the ownership of a holiday letting property as an investment but as a business. The need constantly to find new occupants and to provide services above those needed for the bare upkeep of the property would cause it to be regarded as a business asset to be exploited.

This is certainly a movement away from the more traditional view of the Tribunals on this subject and is therefore extremely welcome.

Reasonable Excuse

It may be idle for me to say so but I cannot resist an observation about the recent Tribunal decision in *Gavin Alexander Partnership TC1673*. The taxpayer appealed against a penalty and the Tribunal allowed his appeal on the grounds that HMRC had behaved with conspicuous unfairness.

The Tribunal said that a fair minded objective observer would conclude that HMRC deliberately failed to comply with the obvious intention of Parliament so that penalties were unfairly increased.

Very similar comments were made in the case of *Brian Purveur TC1684* – and the list of analogous cases is distressingly long.

Surely somebody in HMRC must understand the damage this causes to their reputation - and to the country. Behaving with conspicuous unfairness promotes nothing but ill will. It is an affront to

taxpayers – but HMRC do not seem to understand, or perhaps do not care.

Who wants to live in a country where the inspectors of taxes bully taxpayers into paying money without good reason, just because they can. We laugh with contempt at countries where the tax authorities are used as an instrument of oppression. We could be laughing on the other side of our faces soon.

Settlor Interested Trusts

An old chestnut has at last been heard by the Tax Tribunal; *Rogge v HMRC TC 1747*.

Ignoring all the complications, the essential feature in this case was that the settlor of a trust paid rent to the trustees for his occupation of a trust property. The settlor was able to benefit from the trust and therefore Section 660A (now Section 624 ITTOIA 2006) caused the income arising under the settlement to be treated as his income for all the purposes of the Income Tax Acts. The settlor said that there is a long established principle that a person cannot make a profit out of himself; he paid the rents to the trust so how can those rents be taxable on him.

The Tribunal had sympathy with the taxpayer but felt the legal analysis was clear. The rents paid to the trustees were properly treated as income in their hands being income arising under the settlement. The rents did not cease to be income of the trustees just because they were paid by the settlor.

It was not a question of the settlor being the payer and the payee of the rents. The trustees were the payee and it is only the statutory fiction provided by Section 660A that the income arising under the settlement is treated as the income of the settlor which created the apparent coincidence of payment and receipt.

Accordingly the rents paid by the settlor to the trustees were treated as his income for tax purposes and fully taxable on him.

Devolution of Corporation Tax

It is not yet April but there has been a suggestion that Northern Ireland might be allowed its own lower rate of corporation tax. The idea is that this would improve economic performance.

That's odd. We are trying to improve economic performance over here to generate more jobs and increase tax revenue. We do it by increasing tax rates. Um.

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