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UK Tax Bulletin

April 2012

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Latest Rates of Inflation and Interest

The following are the current rates from April 2012

Current Rates	April 2012
Retail Price Index: March 2012	240.8
Inflation Rate: March 2012	3.6%
Indexation factor from March 1982:	
to April 1998	1.047
to February 2012	2.02
to March 2012	(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%

Swiss Co-operation Agreement

It may be remembered from earlier Tax Bulletins that the UK and Switzerland have signed a co-operation agreement whereby UK residents who have funds in Switzerland will suffer a substantial one off charge on their funds of up to 34% and a withholding tax on all future income and capital gains. This would naturally be of concern to those who are hiding money in Switzerland, but for those who make a full disclosure of all their income and gains to HMRC (to the extent that they need to – they may not if they are not UK domiciled) these swingeing deductions will not apply.

Concern had been raised whether such an agreement was in compliance with the EC Treaty – but some changes were proposed in the Budget to deal with these issues and on 17 April the European Commission issued a statement confirming that the agreement is in full compliance with EU law.

So the Swiss Cooperation Agreement is all systems go. It does not come into operation yet – not until January 2013 but it seems unlikely that anything will interfere with it now.

It may be remembered that the one off payment was calculated by the most unbelievable formula – it was so unbelievable it looked like a joke. However the joke is wearing a bit thin because they have decided to increase the maximum amount of the one off payment from 34% to 41% and have revised the formula. Trust me. You do not want to know.

I think that the Liechtenstein Disclosure Facility is still the best bet.

Car Benefit

This is not perhaps a subject of wide interest but the arguments in *G R Solutions Limited v HMRC TC1928* raise some interesting points of a wider nature.

A company director purchased a car and sold a 90% share in the car to the company. HMRC said that the company had to pay Class 1A contributions on the basis that the company had made the car available to the director by reason of his employment.

The director said the car had not been made available to him. He was a joint owner and his enjoyment of the car derived from his joint interest and not his employment. The car was already available to him by reason of his ownership rights so it could not be regarded as having been made available to him by the company which had only subsequently acquired a partial interest.

HMRC did not agree. They said that the company had made it available to him. They kept repeating that – but they did not say why. The thrust of their argument seemed to be that the director had 100% use of the car, despite owning only 10% and that it had been made available. (That sounds like an assertion of fact – not an argument – but never mind. In any event, it cannot possibly be right. The director did not have 100% use of the car – self evidently he only drove it part of the time).

The Tribunal took the view that the car was an indivisible asset and if both the employer and the employee want to use the car at the same time, it is not possible for part of the car to go to one destination and part of the car to go to another. Therefore when the employee uses the car for private purposes, the employer's share of the car is being made available to the employee at that time.

This really does not work. That is doing nothing more than to describe the nature of an indivisible asset. The joint owners are perfectly capable of using the asset at different times. Just because I want to use the bathroom in my house (thereby precluding the other joint owner of using that part of the house at exactly the same time), this does not invalidate the joint ownership. The whole essence of joint ownership is that the use of the asset is subject to the concurrent use by the joint owner.

I appreciate that the taxpayers argument may drive a coach and horses through the car benefits legislation, but it might have been better to amend the rules rather than to adopt such an interpretation.

Agricultural Property Relief

The Tribunal recently considered an interesting feature of agricultural relief for inheritance tax purposes and concluded that the prevailing HMRC practice was wrong. Hanson v HMRC TC1791.

Agricultural relief is given in respect of agricultural property which is defined by section 115 IHTA 1984 as being agricultural land and any building which is occupied with the agricultural land. This includes farmhouses and other buildings together with the land occupied with them, if they are of a character appropriate to the property.

The issue of principle was whether the relief was available on a farmhouse which was owned and occupied by the taxpayer but where the agricultural land (the farm which was operated from the farmhouse) was in different ownership, being owned by another member of his family.

HMRC said that no relief was available because to qualify for agricultural relief the farmhouse and the land had not only to be occupied by the taxpayer for agricultural purposes, they both had to be owned by the taxpayer.

Why should they say this? There is nothing in section 115 or section 116 (which provides the relief) containing any requirement for the agricultural land to be owned by the taxpayer. HMRC argued that this condition should be inferred to make it consistent with other parts of the IHTA 1984. (This was not completely off the wall; they had some support for this view from an earlier decision of the Special Commissioners – Rosser v IRC in 2003).

However the Tribunal disagreed with the decision in *Rosser* (which they were free to do because decisions of the Special Commissioners were not binding) and decided that such an ownership condition should not be inferred; it was not a necessary condition for the relief to be available nor was there anything In the consistency point. The nexus between the land and the farmhouse was simply one of occupation not of ownership.

Interestingly there is a reference to ownership in section 117 for agricultural relief but that applies specifically to the alternative test for the relief – where the land is owned by the taxpayer for seven years and used by him (or somebody else) for the purposes of agriculture throughout that period.

It remains to be seen what HMRC do about this decision – whether they appeal, or accept the position and change their practice on the subject. Or they may do nothing. As it stands, things are rather unsatisfactory because the decision in *Hanson* does not overrule *Rosser*. Anybody else making a similar claim may be met with the same response from HMRC. Each side could claim they have a Tribunal (or Special Commissioners') decision supporting their view.

Loans to Participators

I have been reading a very interesting article by Laurent Sykes on loans to participators. The issue he addresses is the age old question of whether the charge on the company under section 455 CTA 2010 (still better known perhaps as section 419) in respect of a loan to a participator, applies in circumstances where there is an amount owed by a participator to the company and also an amount owed by the company to the participator. Can the amounts be netted off - or indeed is there just one amount owing being the net amount.

The view of HMRC has always been clear and is always argued vigorously. (Mind you, they argue everything with equal vigour these days whether the arguments are good or bad). They say that whether there is an advance to a participator is a question of fact and it is unaffected by the existence of any indebtedness in the other direction. Unless there is any contractual or statutory right of set off, the amounts cannot be set off and the company is liable to the section 455 charge.

This can easily arise where there is undrawn remuneration - and it can be affected by the accounting treatment. The accounting treatment is not conclusive because accounts do not create the facts, they merely reflect the facts, but they generally indicate what everybody thought the facts to be, and that may be evidentially decisive.

Laurent Sykes analyses the position regarding set off in these circumstances and argues persuasively that the view of HMRC is open to serious challenge.

15% Charge on UK Properties

HMRC has issued some guidance on the special 15% Stamp Duty Land Tax charge which was announced in the Budget in respect of UK residential properties acquired by "non - natural persons" costing more than £2 million. The guidance does not really add much to the information previously published although it does make it clear that the charge will not apply to acquisitions by trustees - even corporate trustees.

There are some anti avoidance rules of course, such as linked transactions and other techniques which might be used to circumvent the new rules but they do not give us much clue about the other charge which expected shortly - the annual charge on the holders of such property. Those details cannot be far away.

The uncertainty about the transitional provisions was clarified last week by a press release from HMRC in which they confirmed that the higher rate charge applies to all transactions where the contract is entered into on or after 21 March 2012. It will not be necessary for the transaction to have been completed before Budget day to be protected under these provisions.

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Penalties

In a robust decision in the case of *Partito Media Services Limited v HMRC TC1949* the Tribunal examined the validity of various penalty notices issued to the taxpayer.

These penalty cases are rarely of any general interest because they are specific to their facts, but in this case it is interesting that HMRC were seeking to impose a penalty on the company for failing to file a corporation tax return following the issue of a notice to file. However, the company had changed its registered office and HMRC had sent the notice to the old address and it had not been received by the company.

HMRC claimed that a penalty was due because the company had not informed HMRC of the change to their registered office. However, on their website HMRC clearly say that if a company changes its registered office:

> "*As soon as Companies House have updated their records they will advise HMRC about the change automatically. You don't need to tell HMRC separately.*"

It is therefore rather surprising that HMRC raised a series of penalties on the company on the grounds that the company had not advised HMRC of a change in their registered office.

For the notice to be validly served, it had to be sent to the last known registered office and as the notice was issued almost 5 months after the new address was logged onto the Companies House records, HMRC could not regard it as the latest known registered office, even if they had not adequately updated their records.

The only surprise here is how the penalty even came to be issued in the first place. It is virtually impossible to think of a fair or reasonable explanation for issuing a penalty on the grounds that a taxpayer had not notified HMRC of the change of their registered office when their public guidance specifically says it was unnecessary.

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30 April 2012

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