UK Tax Bulletin

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Latest Rates of Inflation and Interest

The following are the current rates at December 2013

Current Rates	December 2013
Retail Price Index: November 2013	252.1
Inflation Rate: November 2013	2.6%
Indexation factor from March 1982:	
to April 1998	1.047
to October 2013	2.171
to November 2013	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

Since 6 April 2010: 4%

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Autumn Statement

The Chancellor said a few things in his December Statement - mainly that the sun was shining and he was fixing the roof. This was only possible because of his amazingly successful economic policies. Er, yes.

There was not much of immediate significance but there are a few things on the horizon. The widely predicted extension of capital gains tax to non-residents is clearly on the cards - but it looks like it will only apply from 2015 in respect of residential properties - but that is just about all we know. Whether it will apply to individuals, companies or trusts (and others); whether it will be rebased, whether there will be a value threshold or whether it will include any of the reliefs applicable to the Enveloped Dwelling tax and SDLT, will all be revealed next month.

That well known "loophole" whereby you have 36 months in which to sell your main residence after you move out without losing your capital gains exemption is being curtailed. The period is being reduced to 18 months for disposals after 6 April 2014. (I must say this gives me a really warm feeling. If this is near the top of Mr Osborne's scale of priorities then everything must really be OK).

There were some other things of course. There was some pretty heavy stuff on those who promote or participate in tax schemes and there must be a serious danger that ordinary and innocent transactions will get caught up as collateral damage. I fear that nobody will care much about that (except those who think the Rule of Law is a good thing).

It looks like dual contracts are for the chop. When a UK resident works partly in the UK and partly abroad, the whole of his earnings are taxable. However, if he is not UK domiciled any earnings from a contract with a foreign employer where the duties are performed wholly abroad are taxable on the remittance basis. If this is not genuine, or if the amounts attributed to the foreign contract are excessive, HMRC have plenty of powers to unravel the arrangements. Not enough it seems. Where the foreign contract is with an employer in a low tax jurisdiction, the remittance basis will not apply and the whole lot will be taxable in the UK.

There is going to be some nervousness over the proposals regarding LLPs because partners receiving a fixed share of profits are likely to be recategorised as employees with disadvantages all round. A member of an LLP will be treated as an employee for this purpose where 80% of their earnings are "disguised salary". This will apply unless they have a significant influence or the business or have a capital contribution of 25% of the "disguised salary". It is really interesting that these new rules apply only to LLPs. Partnerships under the Partnership Act 1890 escape from these proposals - presumably on the basis that unlimited liability trumps everything.

Discovery Assessments

I never like to miss a case on discovery assessments as the rules are being refined all the time. In fact, the arguments on this subject have now become so refined that the whole purpose of the legislation is in danger of being lost. The latest such case is *Boyle v HMRC TC 3103* which concerned a tax scheme involving loans in foreign currencies notably Uzbekistani Soums. (No, I didn't either).

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The idea was that the employee was lent money in the foreign currency which he immediately converted to Sterling. However, he did not have to repay it until later when the Uzbekistani Soums had fallen in value. So he borrowed the equivalent of £100 today and could repay it next year in the foreign currency by which time it would be worth only £40. Nice idea - and there are some really good reasons why this difference is not taxable. (I seem to remember this being a popular idea about 25 years ago when the Turkish Lire went into decline. It got a lot less popular when the Turkish Lire recovered). Anyway there were various aspects of Mr Boyle's arrangements which caused the Tribunal to find that it was taxable as earnings.

The interesting issue was whether HMRC could raise a discovery assessment - and as usual it came down to the information Mr Boyle had provided. The Tribunal drew attention to the fact that there was no information contained on Mr Boyle's tax returns regarding the various loans and they had little hesitation in declaring the discovery assessment valid. However, the reasoning looks a little extreme not least because it relies on passages from Langham v Veltema without any of the modifications which have been placed on that decision by the courts in subsequent cases.

The taxpayer must provide the necessary information to HMRC so that a hypothetical tax officer will have sufficient awareness of the position. But the Tribunal said that information provided by the taxpayer or on his behalf is only within section 29(6) if it is provided for the purposes of an enquiry into the return and not if it is provided for some other purposes. Furthermore, there is no obligation on the hypothetical tax officer to see what information has been provided to the actual officer who has been dealing with the matter. We already know that information provided by others to HMRC does not count either.

This is getting silly. The taxpayer may have provided absolutely comprehensive information about the arrangements and HMRC may be wholly aware of every relevant fact and implication - but HMRC are apparently entitled to disregard all of this unless he sends it all to them again.

If that is not bad enough - who does he send it to? Obviously he cannot send it to the hypothetical officer because he does not exist but if he sends it to the real officer, the hypothetical officer is under no obligation to find out about it.

It is time this aburdity was sorted out to restore some common sense - and to provide the proper protection for both HMRC and the taxpayer for which the legislation was intended.

SDLT - De-Enveloping

When the Annual Tax on Enveloped Dwellings was introduced in April, some people who were holding UK residential property in a company decided to remove the property from the company by winding the company up and distributing the property to the shareholders.

Such a transfer would not give rise to any capital gains tax in the hands of an offshore company because the new capital gains tax charge on the company only applies to increases in value since 1 April 2013. However, that is not the end of the story. If the company's shares are owned by a UK resident a charge to capital gains tax is likely because Section 13 TCGA 1992 would attribute the gain directly to the UK resident shareholder. A non dom shareholder would be in no better position because the remittance basis would not apply; the property is a UK asset – and not a foreign asset.

One solution for the non dom shareholder could be to ensure that the company's shares are held by an

offshore trust because then the gain would become a trust gain and not automatically taxed on the individual settlor or beneficiary. The charge to capital gains tax would arise only under section 87 in respect of the benefits from the trust received in the UK by a UK resident beneficiary.

Another issue is Stamp Duty Land Tax. Clearly there would be no SDLT on a distribution in a liquidation. There would be no consideration for the distribution and no SDLT would arise.

However, a concern arose whether this would still be the case if the property was subject to a mortgage. Where the debt is owed solely to the shareholder, HMRC confirmed in August 2007 that they would not seek to argue that a distribution would be chargeable to SDLT.

Unfortunately, this is not the case where there is a third party loan secured on the property. In those circumstances, the transfer of the property to the shareholder and their assumption of the debt would give rise to a charge to SDLT. In the light of this possibility, the shareholder might decide to replace the third party debt so that on the distribution, they would fall within the HMRC statement of August 2007.

However, on 23 December HMRC issued a statement saying that they consider the anti-avoidance provisions in Section 75A Finance Act 2003 would apply if the discharge of the debt by the shareholder was one of a number of transactions involved in connection with the disposal and acquisition of the property. They regard involvement as denoting some form of participation with the disposal or acquisition of the property.

It is a matter of considerable uncertainty whether the discharge of such a debt would be a transaction "involved in connection with the disposal and acquisition of the property" but this statement sets out clearly how HMRC views the position.

The shareholder might instead subscribe for additional shares to provide funds for the mortgage to be repaid. The company would then have only a single asset being an unencumbered property and a simple liquidation of the company would clearly not give rise to any SDLT. However, HMRC seem to be putting down a marker that SDLT could be applied in these circumstances too.

This may be a purely commercial transaction because the lender might not allow a transfer of the property to take place without the loan first being paid off – but HMRC say that this would not make any difference because of *Project Blue v HMRC (TC 2777)*, which suggests the anti-avoidance provisions in section 75A do not require there to have any tax avoidance motive..

There is something instinctively wrong in the suggestion that an anti-avoidance provision applies in the absence of any avoidance. HMRC seem to be working on the premise that if you do something and no tax arises, but you could have got to the same result in another way that would have been taxable – then you should be liable for the tax. (I feel another reference coming on to my trip to Paris on Eurostar rather than by air, to avoid the Airline Passenger Tax). I think we will hear more about all this before very long.

Negligible Value

Two cases have recently been heard by the Tribunal on this subject: *Dyer v HMRC TC 3073 and Robert Brown v HMRC TC 3118*.

In each case the taxpayer claimed that shares in the company in which he had invested had become of

negligible value - and each Tribunal applied the same tests which are whether the shares were worth "next to nothing" (although not necessarily nil) or whether the shares had a market value. If they had a market value they are not of negligible value - even if that value is negligible compared with the taxpayer's acquisition value.

In Dyer, the claim by HMRC was not that the shares were worthless; it was that they were worthless when the taxpayer acquired them so they had not become of negligible value and eligible for a loss claim under Section 24(2) TCGA 1992. Interestingly, one of the reasons why HMRC took the view that the shares had no value was that the driving force behind the company, Miss Dyer, was not tied to the company by any enforceable contract. The value of the company was dependent upon her continuing presence so any purchaser would be at severe risk that at any moment, all the business could walk out the door. Accordingly, the shares could only be worth what they would yield on a liquidation - which was absolutely nothing.

It was suggested by the Tribunal that any purchaser would insist upon the continuity of her services and a number of other conditions. (That is clearly the case in the real world but a valuation for fiscal purposes cannot take that into account. The valuation must be made on the basis of the facts as they actually existed, not what they might have been if the company had other assets or rights which it did not possess at the date of the valuation).

In the case of Brown, the taxpayer invested significant sums in a company when it had some real value but by the time of the valuation, there was no possibility of any dividends (because of the substantial accumulated losses) and there was a deficiency of assets. Accordingly, Mr Brown claimed the shares were worthless. This sounds pretty good - except there was another shareholder who kept putting in money in the hope everything would come good in the end. For this reason the company was not about to cease trading and the possibility existed that it might at some time become profitable. These are reasons that HMRC always like to put forward to suggest that shares have not become of negligible value. However the Tribunal decided that it is not necessary for the company to have ceased to trade or to be put into liquidation for it to be of negligible value. The fact that the shares had no market value was enough for Mr Brown to qualify for the relief.

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