UK Tax Bulletin

March 2015

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Introduction

Latest Rates of Inflation and Interest

The following are the current rates at March 2015

Current Rates	March 2015
Retail Price Index: February 2015	256.7
Inflation Rate: February 2015	1%
Indexation factor from March 1982: to January 2015 to February 2015	 2.215 2.231

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

To 6 April 2014: 4%

To 6 April 2015: 3.25%

From 6 April 2015: 3%

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Finance Act 2015

The Finance Act 2015 came into force on 26 March. It had been published on 24 March and ran to 340 pages. It contained quite a lot of stuff – including the whole of the Diverted Profits Tax and the new capital gains tax on non residents which is to apply to residential property in the UK.

It is too much to expect that Parliament considered all of it – indeed it seems almost certain that no Member of Parliament even read a single page. However, it is now the law, and in due course we will no doubt be told what Parliament intended when they enacted all these words. This is a pity because it just brings the whole process into disrepute.

(I remember an occasion when an important person in a foreign government arranged for a clause to be inserted in some enactment providing him with complete indemnity from liability for just about anything – but somebody noticed, just in time. I bet they would not have noticed last week.)

The **Diverted Profits Tax** is going to be really important to larger companies with overseas operations. The idea is that if HMRC think that profits have been diverted from the UK to another country, they will impose a 25% tax on those profits. The absence of double taxation relief is likely to be a problem – although it is now confirmed that credit will be given for foreign tax paid on the same profits. A worrying feature is that the liability has to be self assessed by the company. They have to determine whether they fall foul of these new rules – and there are penalties if they decide wrongly. However, the self assessment requirement will not apply if it is reasonable for the company to assume that a charge to the tax will not arise. There is such a lot to argue about here; - it will keep us busy for ages.

The new **Non Residents Capital Gains Tax** is surprisingly complicated but not a matter of immediate concern because it only applies to increases in value from 6 April 2015. However, it seems already to have created a rather disproportionate amount of anxiety.

One curious point arises (recently highlighted by Chris Whitehouse) which is that the proposed changes to the rules on **Multiple Trusts** or pilot trusts, did not find its way into the Finance Act at all. It was somehow left out. It is always possible that these provisions might be introduced later and applied retrospectively to the date of the Autumn Statement in December 2014 - but that sounds like a bit of a stretch now that Parliament has been dissolved.

The Government are still thinking about whether the non dom taxpayer claiming the remittance basis will be required to pay the non dom charge for 3 years, rather than being able to claim it on a year by year basis. We shall hear more about that in due course, I expect.

Entrepreneurs' Relief

It will be remembered that in the Autumn Statement, the Chancellor announced that Entrepreneurs' Relief would no longer be available on the disposal of goodwill on a transfer to a company with which the transferor is connected. (This went hand in hand with a denial of a tax deduction in the company for the value of the goodwill).

As originally proposed, a retiring partner selling his goodwill to a totally unconnected company from which he would never be entitled to benefit could still be denied relief by reason of his relationship with the other partners.

The Finance Act 2015 contains a specific relaxation for a retiring partner to allow him relief providing he is not a participator in the transferee company and cannot become one – and that he would only be a related party because he is an associate of the other participators who are partners in the business being transferred to the company.

This is a helpful relaxation to eliminate unfairness and is clearly to be welcomed. The retired partner may still perform services for the business as a consultant – although he clearly needs to be careful because HMRC could still deny entrepreneurs' relief if the individual is involved in "avoidance arrangements".

Tax on Partial Surrenders

A little while ago Mr Lobler had a bit of a problem on the partial surrender of a number of life policies. The tax rules worked in such a capricious way that although he made no profit on these policies, the tax liability was so large that it exhausted his life savings and was going to bankrupt him. The Tribunal said this was an outrageously unfair result and it was repugnant to common fairness for HMRC to seek to extract tax in Mr Lobler's circumstances - but there was nothing they could do about it.

Mr Lobler appealed to the Upper Tribunal where HMRC maintained their position.

Fortunately, Mrs Justice Proudman took a more sympathetic view. She said that when Mr Lobler asked to withdraw some of his funds, the way it was done gave rise to devastating tax consequences whereas he could have chosen an alternative option which would not have had this effect. Her Ladyship said that it is only common sense that nobody would willingly chose the option giving rise to an amount of tax which would bankrupt him (particularly when he had made no profit) if there was a clear choice not to do so.

Mr Lobler sought an order for rectification so that the withdrawal could be regarded as having been undertaken in the alternative manner. The Supreme Court decision in *Pitt v Holt* (recently followed by the case of *Wright v Nat West Bank*) now makes it clear that rectification is an equitable remedy which can only be granted where the mistake is so grave that it would be unconscionable for the court to refuse relief. Her Ladyship considered that the error by Mr Lobler in choosing the partial surrender option was indeed so grave that it would be unconscionable for the Court to leave the mistake uncorrected.

The First Tier Tribunal did not have power to order rectification, but the Upper Tribunal did - and did so.

Mr Lobler was just an ordinary taxpayer who invested some money and later withdrew some of it. He was not some arch tax avoider and did not deserve to lose his life savings and be made bankrupt. HMRC are very keen on explaining their duties of care and management of the tax system and many would think that preventing outrageous unfairness and not conducting themselves in a manner which the Courts consider is repugnant ought to be high on their list of priorities when they are exercising their duty.

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Trading Losses

The recent case of *Leekes Limited v HMRC TC 4298* was concerned with the carrying forward of losses where one company ceases to carry on a trade and another company begins to carry it on.

The general rule is clear enough. A company can carry a trading loss forward to be set off against future profits of the same trade. Where one company ceases to carry on a trade and another company begins to carry it on then the losses are not necessarily lost but can be carried forward and relieved against the profits of the successor company.

That Is all very well if the transferee company carries on the previous trade as identifiable part of its business but what if the transferee company has an existing trade to which the previous trade is combined so that it loses its identity.

HMRC said that is not right - the whole idea is to preserve losses against the profits of the same trade even where the trade has been switched between two connected companies - but not to allow relief against a different trade carried on by the transferee. You can see their point.

However the Tribunal was concerned that the view of HMRC depended upon the survival of the earlier trade and could only operate where the trade remains separate - not if it is subsumed into the trade of the successor.

The Tribunal recognised that as a matter of commercial reality such a transfer will often mean a loss of identity for the acquired trade and the legislation needs to be able to provide a sensible answer. It would not be reasonable to say that the losses are only available against the profits of a notional trade carried on after the succession. Accordingly the Tribunal concluded that all the losses of the predecessors trade which has been subsumed with the successors trade are available for relief against the combined profit of the successor company.

Although one can see the force of the arguments by HMRC which indeed put the transferee company in a much more favourable position than the transferor company, the practical difficulty in giving effect to their interpretation would seem to have been the overwhelming factor.

Group Relief : Artificial Scheme

The recent case of *Gemsupa v HMRC TC 4302* involved a disposal of assets to a third party in such a way as to avoid triggering tax on the capital gain. In essence, the idea was that a transfer of the asset was made to another group company so that the transfer was treated as having taken place at no gain no loss under Section 171 TCGA 1992.

The crucial part of the arrangements required the vendor and the purchaser to be regarded as part of the same group within the complex definitions but without there being any real economic unity. There seemed to be no doubt that the terms of the legislation were satisfied so HMRC argued that the purchaser should not be regarded as part of the group either by applying the Ramsay doctrine or by a purposive interpretation of the legislation.

This is not everyday stuff so I will not dwell on it - I only mention it because an important principle is involved. That seems to be (and this has clearly been developing for some time) that where the legislation is precise and prescriptive, the scope for a purposive interpretation is severely limited. This is perhaps confirmed by the case of *Lobler* because he did not succeed on the basis of an alternative interpretation of the offensive provisions, but on the basis of rectification, The Judge explained that the argument of HMRC was essentially that the satisfaction of the statutory tests by the company should be ignored because the motive was tax avoidance and there was no commercial or economic unity in the structure. In other words, there was a further condition to be satisfied for group relief beyond those set out in the statute. There had to be some form of commercial or economic unity before the group can exist. The Tribunal was not prepared to go that far. Nor was it prepared to accept that one of the specific conditions required by the statute (and satisfied by the company) should be disregarded to achieve the result preferred by HMRC.

It is perhaps mildly ironic that just as we may be reaching the limits of the Ramsay doctrine and purposive interpretations in tax matters, we are moving into an area where the GAAR will apply possibly to take the anti avoidance theme to a different level.

I expect this would be exactly the type of arrangement which would engage the attention of the GAAR Advisory Panel. However, that may not prevent HMRC seeking to appeal - or indeed seeking an amendment to the legislation to make it still more prescriptive (and paradoxically making their approach even more difficult).

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