



## UNITED KINGDOM TAX BULLETIN

Squire, Sanders & Dempsey

September 2010

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### CURRENT RATES

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#### Indexation

Retail price index: August 2010	224.5
Inflation rate: August 2010	4.7%

#### Indexation factor from March 1982:

to April 1998	1.047
to August 2010	not available

#### 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%

## Pre-Budget Report

The Pre-Budget is no more. I can't say I'm sorry. It had become effectively a second Budget – and one Budget a year is enough for anybody. It apparently cost a lot of money, and it is to be replaced with a brief autumn statement by the chancellor in which he will publish his forecasts.

## Finance Bill

The third Finance Bill of the year has been published (although it is designated Finance [No.2] Bill) and contains most of the provisions which were left out of the earlier Finance Act because of the pressure of time immediately before the summer.

Actually, this Finance Bill contains items of very limited interest (such as capital gains tax [CGT] relief for carers, capital allowances on zero-emission vehicles and a number of largely technical changes), but full details and explanatory notes are available for those who would like further information.

## Gift Aid

The recent case of *Harris v HMRC* TC667 is troublesome. It concerned the meaning of a qualifying donation for the purposes of Gift Aid.

Briefly, two sisters redirected part of their inheritance from their mother to a charity by way of a deed of variation. The question was whether this gave rise to a qualifying donation for Gift Aid purposes or whether it was disqualified because it was an exempt gift for inheritance tax. This sounds a bit odd – I shall explain.

A gift to a charity is disqualified from income tax relief under Gift Aid if the donor or any person connected with him or her receives a benefit in consequence of making the gift. HMRC argued that because the gift qualified as an exempt transfer for inheritance tax, the donors received the benefit of an inheritance tax reduction. That disqualified the gift from the Gift Aid relief.

The argument is not a new one, and the reasoning is not difficult to follow, but it is still a bit tough. Of course it cannot be denied that the sisters did receive a benefit, because by making the gift the inheritance tax payable on their mother's estate was reduced. But can this really be a benefit contemplated by the exclusion from Gift Aid relief? Indeed, it might be argued that such an interpretation means that Gift Aid relief is impossible to claim because any qualifying donation

would by definition be exempt from inheritance tax and the existence of that exemption must disqualify any such gift from income tax relief.

Indeed, one could take the point further (which is not any more absurd) and say that the obtaining of the Gift Aid relief itself gives rise to an income tax deduction which is obviously a benefit. This must necessarily disqualify the gift from Gift Aid relief. This ends up as a circular argument because if the gift is disqualified from relief on the grounds that income tax relief is given, that very disqualification means that it must be eligible for relief because there is no such benefit. And round you go again.

The Tax Tribunal did not feel that these possibilities were an impediment to the operation of the relief. They decided that there was a benefit obtained by the sisters – the reduction in inheritance tax on their mother’s estate by reason of the deed of variation – and that this benefit was sufficient to disqualify the donations from Gift Aid.

HMRC have had success with the argument before in *St Dunstons v Major* [1997] SCD 212. The Tribunal said that they were not bound by the earlier decision and would decide this case on the arguments.

One might have hoped that the Tribunal would have taken the view that Gift Aid rules were drafted in the knowledge of the Inheritance Tax (IHT) rules and that it was not perhaps the intention to cause existing IHT relief to deny relief for Gift Aid donations.

### **EU: Tax Repayments**

How very interesting. A press release has been issued by the EU Commission in Brussels formally requesting the UK to change the Finance Act 2007 because it has the effect of preventing the exercise of rights conferred by EU law.

Under EU law, if taxes have been paid in violation of EU rules, they should be reimbursed – and reimbursements should not be made impossible or excessively difficult. The Finance Act 2007 limits reimbursement to six years – and with the length of time these things take, that can easily have the effect of eliminating any entitlement to recovery at all.

The EU say that a formal “request” is part of the infringement procedure and the next step is that the UK may be referred to the EU Court of Justice. This sounds like EU speak for being sued.

I think I have this clear. UK taxpayers were made to pay tax (I think we can assume that this was not a voluntary act on the part of the taxpayers) in violation of EU law. When the court held that the charge was unlawful, they asked for their money back. HMRC refused to refund their money on the grounds that they had passed another law saying that you can only go back six years – and oh dear, the six-year period seems to have expired.

Surely the UK government does not have to be hauled up before the EU Court of Justice before they understand that trying to keep something that does not belong to you is wrong. Or is it somehow OK if the government does it?

### Liechtenstein Disclosure Facility

It will be well known that the Liechtenstein Disclosure Facility (LDF) allows those with undeclared income and gains with an appropriate connection to Liechtenstein to make a disclosure under the LDF and to pay tax, interest and a penalty of 10% in respect of the 10 years since 1999. This is a very generous opportunity to regularise things for those who have failed to deal with their tax affairs properly – particularly as the alternative is for HMRC to go back 20 years and charge a penalty of eye-watering proportions. This is quite apart from the inevitable investigation which HMRC say will be “intrusive and thorough”. One can hardly blame HMRC for going overboard when they find somebody who has concealed income and has rejected the numerous opportunities to come clean under the two previous UK disclosure plans and now the LDF.

The reason for mentioning this now is that the LDF is not available if the taxpayer has been formally notified by HMRC that an investigation has commenced involving serious tax fraud. So once you get the letter, it is too late. Having regard to the substantial publicity which is being given to the enquiries by HMRC into offshore accounts, as well as the information which they are now able to obtain from Liechtenstein and from the details stolen by rogue employees, the chances of HMRC finding out about undeclared income and gains is increasing all the time.

I think that missing this particular boat is likely to prove expensive.

### HMRC Toolkits

Three more toolkits have been published by HMRC. They are on Inheritance Tax, Expenses from Employment and VAT Input Tax.

These toolkits follow the same pattern as the earlier ones. They contain a checklist and an explanation of the various points in the checklists, highlighting areas where HMRC say errors are often made.

Using the toolkit (providing you can prove you did so) is regarded by HMRC as taking reasonable care, thereby protecting the client and the adviser from allegations of negligence if anything turns out wrong.

These toolkits look helpful to me. I did not notice anything particularly noteworthy in these three, but never mind. It is always useful to have a checklist (even if you do not necessarily agree with all of it) as an *aide-mémoire* in completing the relevant forms.

**Peter Vaines**

Squire, Sanders & Dempsey  
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### Articles and Publications – September 2010

Peter Vaines: *New Law Journal*

TAXline

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