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UNITED KINGDOM TAX BULLETIN

Squire Sanders Hammonds

May 2011

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CURRENT RATES — May 2011

Indexation

Retail price index: April 2011	234.4
Inflation rate: April 2011	5.2%

Indexation factor from March 1982:

to April 1998	1.047
to March 2011	1.927
to April 2011	(not yet announced)

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%

QROPS

I am aware that the case of *Equity Trust (Singapore) Limited v HMRC* has been a subject of considerable interest. The matter was heard by the High Court on 20 May.

Equity Trust established a Qualifying Recognised Overseas Pension Scheme (QROPS), having received approval from HMRC in 2006. The QROPS approval was withdrawn retrospectively by HMRC in 2008 on the grounds that the pension scheme was not open to Singapore residents, and that it was not approved, recognised or registered with Singapore tax authorities.

Equity Trust pointed to the Trust Deed which expressly provided that the pension scheme was open to Singapore residents; they also obtained expert advice in Singapore that it was open to Singapore residents. As a matter of fact, the scheme had members who were Singapore residents. Equity Trust felt that on balance you could probably say that it was open to Singapore residents.

Definitely not, said HMRC – it was not really open to Singapore residents. One of their reasons was that the trustees had wide discretionary powers. Those powers could be exercised to exclude Singapore residents. They had not been exercised but they could be. The Judge agreed.

I dare say there are lots of QROPS which have wide discretionary powers which could be used in this way (in fact I expect they all have) and I guess there will be some urgent examination of trust deeds.

The second argument was that the scheme was not approved, recognised or registered as a pension scheme with the Singapore tax authorities. This was Condition A in the QROPS regulations. Quite right – it wasn't. The system in Singapore does not cover personal pension schemes, so it could not possibly do so. However, that is what Condition B is for. Condition B applies where there is no system for approving, recognising or registering such schemes, in which case there are some conventional conditions, all of which were satisfied. Not good enough, said HMRC. Singapore did recognise some occupational pension schemes which meant that Equity Trust were stuck. They could not get recognition for their scheme because Singapore does not recognise personal pension schemes, but they were precluded from Condition B because there was a system for recognising something – no matter how irrelevant.

The court found for HMRC, but in giving permission to Equity Trust to appeal, the Judge explained that he was not sufficiently confident in the correctness of his judgment so that an appeal had a real prospect of success. Never seen that before – and we will see what the Court of Appeal have to say about it.

Residence: HMRC6

It may be remembered that a revised version of HMRC6 was published on 31 December 2010. I mentioned some of the changes in the January *Tax Bulletin*. One of those changes related to the long-standing practice whereby a person becomes resident in the UK if they come here for an average of more than 90 days each year over four years. In that case they become resident at the beginning of the fifth year.

(There is exception to this rule if it is clear when you arrive, or during this four-year period, that you are going to be in the UK for more than 90 days on average for the four-year period. In that case you become resident immediately.)

The new HMRC6 seemed to reduce this four-year period to three years. Para 7.5 includes the passage:

> *"You may not know how long you will continue to visit when you first arrive in the UK. If, after 3 complete tax years, a pattern has emerged that these visits total more than 91 days on average and your visits continue, then you will become resident and ordinarily resident in the UK from the start of the next tax year".*

That looked pretty clear and people have therefore been advised to be aware that the old rule has gone and to ensure they do not breach the new three-year rule.

However, the Tax Faculty have obtained confirmation from HMRC that their practice has not changed and that the four-year rule still applies. A person will only be regarded as resident at the start of the fifth tax year where the visits average more than 90 days over the previous four years.

This is very welcome clarification and I dare say HMRC6 will be amended in due course to avoid any misunderstanding from the above passage.

Overseas Pensions

Provisions are to be introduced to the Finance (No. 3) Bill on the subject of overseas pensions to prevent foreign pensions received by UK residents being protected by a double taxation agreement. The idea is not to undermine the double taxation network but to prevent UK residents deliberately transferring their pension funds into a pension scheme in a country which has a favourable double taxation agreement with the UK providing for exemption from tax in the UK on their pension.

It will be interesting to see how this develops. The intention is clear enough, but I thought that double tax agreements generally prevailed over the domestic legislation (and in any event, you surely cannot go round amending the terms of a treaty unilaterally) so I wonder how this is going to be brought into effect.

Controlled Foreign Companies

The European Commission has been busy requesting the UK to change its tax legislation as it presently conflicts with the EU rulings on freedom of establishment. I mentioned this in February in connection with the EC's formal request in respect of the Transfers of Assets Abroad legislation and the rules for the taxation of capital gains of non-resident companies.

The EC has made a further formal request in respect of the Controlled Foreign Companies legislation. HMRC have recently changed the rules – but not enough to satisfy the Commission. Further relaxations have now been announced to provide a temporary exemption from the rules (a sort of "grace period") where a UK multinational acquires a foreign subsidiary. In addition, shareholdings of less than 10% of a CFC will be ignored. I think we will be hearing more about all this soon.

Agricultural Property Relief

News reaches me of a tribunal case concerning agricultural property relief for a farmhouse. The taxpayer was elderly and had a smallholding on which he grew vegetables and sold eggs. The profits were low and HMRC suggested that the limited financial viability of the smallholding meant that the farmhouse was not of an appropriate character.

The Tribunal apparently took the view that in considering this relief it was necessary to have regard to the age of the taxpayer, and as he was elderly, one could not expect his activities to be extensive. They found that the history of the smallholding and the nature of the taxpayer's activities meant that the house qualified for agricultural property relief.

More details of this helpful and interesting case will be available soon.

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31 May 2011

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