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UK Tax Bulletin

June 2013

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Introduction

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Latest Rates of Inflation and Interest

The following are the current rates at June 2013

Current Rates	June 2013
Retail Price Index: May 2013	250.0
Inflation Rate: May 2013	3.1%
Indexation factor from March 1982:	
to April 1998	1.047
to April 2013	2.141
to May 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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IHT : Deduction of Debts

One of the more far reaching measures announced in the Budget was a restriction on the deduction of debts for inheritance tax purposes.

The idea is that where somebody borrows money to invest in business or agricultural property qualifying for 100% relief, a deduction will no longer be allowed for such borrowings against other assets which do not qualify for the relief. The borrowings will only be deductible from the assets which were acquired with the borrowings - which will effectively eliminate any relief for the borrowings. The restriction on such loans will also apply to liabilities which have been incurred to acquire excluded property which is outside the charge to inheritance tax.

So anybody borrowing money against their UK property, therefore reducing its value for IHT purposes, and investing that money in assets which are treated favourably for IHT will have to think again.

This is playing havoc with plans for reorganising expensive property in the light of the Annual Tax on Enveloped Dwellings, and similarly in connection with the 10 year charge on settled property.

Those who removed expensive UK property from companies and put them in a trust, thereby getting out of the ATED and the extended CGT charge, expecting to eliminate the possible IHT charge by such a loan, now find that a loan will no longer be effective in solving this problem.

We clearly have some work to do here, but fortunately a Government amendment has been announced to the effect that these new rules for the deduction of liabilities will only apply to loans taken out after 5 April 2013. (It was also said that the rules will not apply to genuine commercial arrangements - so there may be more to come.)

It remains to be seen what happens if an existing loan is replaced by another (perhaps when it reaches the end of its term) and no doubt this will become clear soon.

QROPS: ROSIIP

I am able to confirm that the Judicial Review proceedings against HMRC, challenging the unauthorised payments charges made by HMRC on contributors to the ROSIIP QROPS (or rather non QROPS) concluded in the High Court last week when HMRC offered to withdraw all the assessments and pay all the costs. I think this is called A Result.

Some very serious criticisms regarding the conduct of HMRC in this case were made by the High Court and these will be made public fairly soon.

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Available Assets on Divorce

The recent judgment of the Supreme Court in *Prest v Petrodel Resources Ltd [2013] UKSC 34* recently considered what assets were available for sharing out in a matrimonial dispute. This is not a subject which one would immediately expect to have significance much beyond the family courts - but the clue to its importance is in the panel of 7 Supreme Court Justices who were convened to hear the case.

In essence, the question was whether properties held by various companies controlled by the husband could be used to satisfy the claims of the wife. An important aspect of the lengthy judgment concerned the ability of the Court to pierce the corporate veil. The Supreme Court decided that it could not do so in this case and set out in detail the circumstances in which it may be possible for the Court to do so.

If you want to know all about piercing the corporate veil - read this judgment.

Their Lordships also confirmed that the Matrimonial Causes Act 1973 does not confer any special power to pierce the corporate veil in matrimonial cases. This may make it more difficult for the family court to make financial awards from company assets even if one spouse controls the company.

However, although the wife could not get anywhere under family law or company law principles, trust law and property law came to her aid.

The Supreme Court concluded that on general trust law principles the properties did not belong to the companies but were beneficially owned by the husband. There is a long standing (like since 1788) presumption that where property is vested in a purchaser, a resulting trust will exist in favour of the person who provided the purchase money. In this case the husband provided the money for the purchase of the various properties and although they were conveyed into the names of the companies, they were held on resulting trust for the husband. Accordingly, there was no need to pierce the corporate veil because he already owned the relevant properties and they were available to satisfy the claims of the wife.

There is something in this judgment for everybody ... except perhaps Mr Prest.

Professional Negligence

It is clear from the acres of press coverage which has been devoted to people avoiding taxes by arrangements of varying complexity, that anybody who advises on such things should be cast into the outer wilderness or the fires beneath.

Under these circumstances it is rather odd to read the case of *Mehjoo v Harben Barker* [*2013] EWHC 1500 (QB)*. Prepare yourself.

Mr Mehjoo sold shares in his company and made a substantial capital gain which after taper relief gave rise to 10% capital gains tax. However, he sued his accountants on the grounds that he was a non dom and he should have been advised to undertake a bearer warrants scheme. This would have turned his shares into foreign property so that on the sale he would have realised a foreign gain which would have been subject to tax only on the remittance basis. Opinions differed about the effectiveness

or applicability of the scheme but the High Court found that the accountants were negligent in failing to provide such advice.

This is not completely off the wall. In *Slattery v Moore Stephens (2003)* the accountants were sued successfully for not advising him to divert part of his earnings to the Channel Islands when he came to work in the UK. The court held that the accountants were in breach of their duty by failing to advise their client in this way. There are a number of other similar cases which reinforce this point.

This would seem to place solicitors in a rather difficult position because the Solicitors Regulation Authority have warned that solicitors could be censured and fined if they are involved in implementing schemes to reduce their clients liability to Stamp Duty Land Tax. However, if they heed this warning, it is clear that they risk being sued successfully for professional negligence.

Answers on a postcard please.

Penalties: Postal Delays

Not again. We have yet another case before the Tribunal (*CED Limited TC 2633*) in which HMRC have imposed a penalty because payments of PAYE were not made on time because of postal delays. The taxpayer said that he always sent his cheque for the tax on the 18th of each month so that it would reach HMRC in the ordinary course of post by the 19th which was the due date. Where the 19th fell at a weekend, he made the payment so it would arrive on the Friday.

We have been here before and know that this procedure is OK not least because of the Interpretation Act 1978 and the recent cases of *Browns CTP Ltd* and *Trustees of de Britton Settlement*. There is also the published HMRC Statement which confirms the position for VAT payments. However, HMRC still pursued this penalty to the Tribunal. Their argument was that the taxpayer must be "mistaken" because HMRC did not process the cheques until after the due date so obviously they could not have been received by the due date. The Tribunal did not think much of this argument and set aside the penalty.

HMRC acknowledged that the onus was on them to prove that the taxpayer had not sent the cheques as he claimed and under the circumstances, it is extraordinary that the matter ever got to the Tribunal.

The only explanation can be that they did not believe the taxpayer and wanted his evidence tested under oath. But I thought the Taxpayers Charter required HMRC to treat the taxpayer as honest (unless they had some reason to believe otherwise). There was clearly no reason to believe that the taxpayer was not telling the truth - but even if they did entertain some doubts, they could have asked him to submit an affidavit confirming his evidence. That would have been a bit rude - but it surely would have been conclusive and could have saved the enormous waste of time and money which was inevitably involved with the Tribunal hearing.

Given the rather unnecessarily aggressive approach of HMRC to postal delays, it would seem to be a sensible precaution to obtain a certificate of posting (or to send the payment by recorded delivery). That is a bit tedious, but it would put the matter beyond doubt and possibly avoid a whole load of aggravation with HMRC.

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Foreign Currency Assets

HMRC have published a Guidance Note on the Finance Bill changes to the taxation of foreign currency assets of companies (specifically ships, aircrafts and shares) which have a functional currency other than Sterling.

A designated currency election under these provisions will considerably simplify matters because the gains will be calculated simply by using the relevant foreign currency and then translated into Sterling at the disposal date.

This is extremely welcome, but having regard to the enormous complexity which can arise with these calculations, it is a pity that this simplification is not applicable to a wider class of assets - and to individuals as well. However, I suppose we should be grateful for any simplification we can get.

Remittance Basis: Special Mixed Fund

HMRC have published details of the rules on Special Mixed Funds which are essentially a new version of their practice statement SP1/09 for individuals not ordinarily resident in the UK.

As we no longer have the concept of ordinary residence, we need something to replace the earlier practice which does the same thing. (Yes, I wonder too, but never mind).

The idea is that an individual who qualifies for the Overseas Workday Relief and who is taxed on the remittance basis and performs the duties of his employment both in the UK and overseas, can have a Special Mixed Fund abroad. They must pay their earnings from this employment into a separate nominated account and remittances from this account will not be subject to the normal mixed fund rules. They will have a simpler system where they can add up all remittances during the year and treat it as a single remittance at the end of the year - rather than treat each remittance separately.

Is this a big deal? Not really, but it does make life easier so it is to be welcomed.

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