



## UNITED KINGDOM TAX BULLETIN

Squire, Sanders & Dempsey

November 2009

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### CURRENT RATES

November 2009

#### Indexation

Retail price index: October 2009	216
Inflation rate: October 2009	(0.8%)

#### Indexation factor from March 1982:

to April 1998	1.047
to October 2009	1.719

### Interest on Overdue Tax

Interest on all unpaid tax is now charged at the same rate with effect from 29 September.

The formula is Bank base rate plus 2.5% which gives a present rate of 3%.

There is one exemption: Quarterly instalments of corporation tax bear interest at only 1.5%.

### Repayment Supplement

Interest on all overpaid tax is now 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 1 March 2009 4.75%

## Pre-Budget Report

The Chancellor will deliver the Pre-Budget Report at 12.30 on 9 December. Goodness knows what he will say – or whether it will be of any significance having regard to the election. Depending upon what he says, I might issue a special *Bulletin* – but not if it is too depressing.

## Residence

The Judicial Review proceedings in the case of *Robert Gaines-Cooper v HMRC* were heard earlier in November in the Court of Appeal and a decision is eagerly awaited.

The original issue giving rise to the Judicial Review was whether a taxpayer was entitled to rely on booklet IR20 (or any other Statement of Practice) issued by HMRC. Mr Gaines-Cooper insisted that he should be entitled to rely on the terms of a published and long established HMRC practice. HMRC said that IR20 was not binding on them, insisting taxpayers could not have any legitimate expectation to rely on the terms of IR20. The booklet merely set out how HMRC might approach the taxpayers' position. The taxpayers' residence status had to be determined by reference to the law, and the terms of IR20 were completely irrelevant. No matter how carefully Mr Gaines-Cooper may have counted his days to stay below the 91-day limit, this was not enshrined in the law so it did not mean anything.

Not surprisingly, this point of view was vigorously challenged and in November, in new submissions before the Court of Appeal, HMRC abandoned this argument completely. They acknowledged that HMRC are bound by the terms of IR20 – provided of course that the taxpayers' circumstances fit within the terms of IR20. Nobody could have any objection to that. How can you claim the benefit of a practice if your circumstances do not correspond to that practice?

Unfortunately, this is not the end of the matter. People who thought they fell within its terms now find that they do not because HMRC say that IR20 does not mean what we all thought it meant for 35 years. It means something different. Therefore you do not satisfy the terms – therefore it cannot apply to you.

So the argument now is whether the interpretation placed on IR20 by HMRC is new, and whether there has been an unannounced change in their practice to the taxpayers' disadvantage which would be unfair.

## Taxpayers Charter

HMRC have now published the new Taxpayers Charter. This is intended to explain what taxpayers can expect from HMRC and what HMRC can expect from taxpayers. In my view this is seriously good news – and extremely welcome.

HMRC say that they want to give a service that is even-handed, accurate and based on mutual trust and respect. They also say they want to make it as easy as they can for taxpayers to get things right.

Although the new Charter is rather abbreviated, it is almost identical in substance to the Charter which was published in 1986. The 1986 version was a little more expansive, but it meant exactly the same thing and I am quite surprised that they ever abandoned it.

It sets out what taxpayers can expect from HMRC. We can expect them:

- 1) To respect us
- 2) To help and support us to get things right
- 3) To treat us as honest
- 4) To treat us even-handedly
- 5) To be professional and act with integrity
- 6) To tackle people who deliberately break the rules and challenge those who bend the rules
- 7) To protect our information and respect our privacy
- 8) To accept that someone else can represent us
- 9) To do all they can to keep the cost of dealing with HMRC as low as possible

In return, they expect that we will:

- 1) Be honest
- 2) Respect their staff
- 3) Take care to get things right

I cannot imagine how this could reasonably be improved and I am really pleased that we have got this Charter back. There is no reason to believe that they do not mean exactly what they say, and if HMRC adhere to this Charter (and if their attention is drawn to any occasion when they do not) most taxpayers will be greatly advantaged.

In case you are thinking that this is just a lot of hot air, there are some good reasons why it can be very important. For example, we can expect HMRC to help us to get things right. Imagine the case of an unrepresented taxpayer who has got into trouble and seeks advice. Tax is so complex that the lay taxpayer cannot hope to know and understand all the obligations. If he fails to do something and a penalty arises he can reasonably claim that he was entitled to receive help in understanding the obligations and that the necessary help was not forthcoming. Therefore penalties should not be imposed. The variations on this theme are endless.

And what about the presumption of honesty? This hardly needs to be said but it is very helpful that it is written down so clearly. There may be occasions (in fact, there are many occasions) when HMRC make enquiries which imply dishonesty on the part of the taxpayer. If we can expect them to treat us as honest, this means we are entitled to expect them to believe what we say unless there is reason to believe otherwise. Enquiries which put the honesty of the taxpayer in doubt will need to be justified on reasonable grounds and we are quite entitled to ask what they are. This can be a really good defence to a fishing expedition.

Each one of the headings provides taxpayers with some real protections (although not if they are trying to get away with something) but certainly for the ordinary taxpayer who has just got caught up and been disadvantaged by the system.

### **Inheritance Tax: Disabled Persons**

Since 6 April 2008 any new interest in possession trust now falls within the discretionary trust regime and the settled property no longer forms part of the estate of the life tenant.

There is an exception to this rule which is if the life tenant is a disabled person or a person who becomes disabled; in those circumstances the old rule applies and the settled property is treated as forming part of their estate. This sounds as if it is not of general application – but the definition of disabled for this purpose means a person in receipt of attendance allowance or certain disability living allowances. As entitlement to attendance allowance is fairly common amongst elderly

people, this could have unexpected consequences in respect of trusts established for inheritance tax (IHT) savings under the new regime.

Whilst this is clearly a trap for people who are establishing trusts now, it does also provide an opportunity. The ability to set up a trust without creating an immediate lifetime charge can be really helpful because all the old techniques (which we thought had been binned) can continue to apply.

### Capital Gains Tax Losses: Foreign Domiciliaries

One of the (very few) disadvantages of foreign domiciled status prior to 6 April 2008 was that there was no relief for losses realised on the disposal of foreign assets. This was hardly cause for complaint because gains on the disposal of foreign assets were not liable to capital gains tax provided they were not remitted.

The rules relating to loss relief were significantly changed on 6 April 2008 as part of the recasting of the remittance basis with effect from 6 April 2008, and there is now an opportunity to elect for relief in respect of foreign losses. However, it is so complicated that the unrepresented taxpayer has no chance whatsoever of understanding the implications of such an election – and those of us who advise on these things will be hard pushed to come to the right conclusion as well.

In broad terms, somebody who claims the remittance basis will lose relief for his foreign losses forever – even if in subsequent years he does not claim the remittance basis.

However, an election can be made for foreign losses to be allowed, but this will affect the treatment of all losses, both UK and foreign, which will be pooled and allocated primarily to foreign gains.

This is going to be a very difficult choice and will depend upon a good deal of guesswork about the likelihood of future gains and losses both in the UK and abroad. The application to offshore trusts and offshore companies adds an extra dimension to the complications. A detailed note of the various implications has been prepared by Squire Sanders Tax Consultant Malcolm Gunn and a copy is available on request. Please send your request to [amaitland@ssd.com](mailto:amaitland@ssd.com).

## Tax Legislation

The recent case of *I K Bell TC216* provides an interesting diversion. Mr Bell was charged a penalty for failure to submit tax returns, and he put forward a number of reasons why a penalty should not arise. A few of these reasons give the flavour of his submissions:

- All humans are created equal – legislation requires the consent of the governed.
- The UK has ceded its sovereignty to the EU. This was dishonest and an abuse of law negating its legitimacy. Laws promulgated by Parliament no longer have the consent of the governed and are no longer binding.
- Parliament is no longer responsible for the governance of the UK, and tax imposed by HMRC is the coercive seizure of property and cannot be justified.
- The transfer of sovereignty to the EU was without the consent of the people, and citizens therefore have a right to refuse to file income tax returns.
- The subordination of the UK's legal system to that of the EU effectively dissolves the UK which no longer exists as a separate legal entity.
- The EU constitution is that of a totalitarian state.

You get the idea.

The Special Commissioner (with commendable patience) explained that EU laws had effect in the UK only as a consequence of an Act of Parliament which can be repealed by Parliament. A UK Court has the duty to enforce its national law providing it is not in conflict with directly enforceable EU laws, and there is nothing to suggest that the Taxes Management Act 1970 is in conflict with any rule of EU law.

I think it may have escaped Mr Bell that if his arguments were right he would be in rather more jeopardy than merely subject to a penalty for failure to submit tax returns. If I were to pop round to his house and take away his car claiming that the laws protecting his property were all void, he might take a different view. I think he was lucky to get away without an immediate order for costs.

## New Disclosure Opportunity

It will be remembered that 30 November was the deadline for registration under the New Disclosure Opportunity – for those wishing to come clean about offshore income which has been concealed from HMRC, and take advantage of the 10% penalty (or 20% if you ignored the previous amnesty).

However, the deadline has been extended to 4 January 2010 and whilst this sounds like it completely undermines the recent statements (this is your last chance; there will be no more opportunities; you will be shown no mercy; the heavens will fall; etc.) it does seem to make sense. It has been urged on HMRC that if they want to make it work (and collect the tax) they need to get all the letters out and the banks need to contact their customers; there are a lot of them and a bit of a backlog. For the sake of a few weeks they will probably Hoover up quite a lot more defaulters – and obviously they will not get any more responses after the deadline.

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30 November 2009



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### Articles and Publications – November 2009

Peter Vaines: *New Law Journal*: Article on Tax Matters  
*New Law Journal*: Article on Queen's Speech

Malcolm Gunn: Speaking at Tax Conference – 25 November 2009

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Squire Sanders & Dempsey publishes on a number of other topics. To see a list of options and to sign up for a mailing, or to correct or update information, visit [www.ssd.com/subscribe](http://www.ssd.com/subscribe).

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