UK Tax Bulletin

May 2025

FIELD COURT TAX CHAMBERS

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Latest Rates of Inflation and Interest

The following are the latest rates at April 2025

Current Rates	
Retail Price Index: March 2025	395.3
April 2025	402.2
Inflation Rate: April 2025	4.5%
March 2025	3.1%
Indexation factor from March 1982: Frozen at December 2017	2.501

Interest on overdue tax

Interest on all unpaid tax is charged at the same rate.

The formula is Bank base rate plus 4% which gives a rate of 8.25% which applies from 28th May 2025.

There is one exception: Quarterly instalments of corporation tax bear interest at 6.75% from 19th May 2025; interest on overpaid instalments is now 4.00%.

Repayment supplement

Interest on overpaid tax is paid at Bank base rate minus 1% which gives a rate of 3.25% from 28th May 2025. .

Official rate of interest: From 6th April 2025: 3.75%

Divorce: Lump Sums

This is all a bit odd.

Last month (on 30th April) I wrote that HMRC have changed their views about the taxation of lump sums on divorce.

The CGT Manual paragraph 65334 updated to 25th April 2025 referred to the situation where the Court orders a wife to be paid a cash sum out of the proceeds of the sale of an asset wholly owned by the husband. It said that:

> "Mrs D is chargeable to capital gains tax on the £53,000 she has received. Although it represents financial provision for her ordered by the court it is also a capital sum derived from an asset (which in this case is the right to 1/3 of the proceeds of sale)"

I questioned whether this could really be right as it was contrary to the long standing and established view which was based on good authority. I suggested that this new view would give rise to anxiety and litigation in equal measure.

In response to an enquiry, I looked at paragraph 65334 again and found that the above passage was not there – it had gone! I discovered that, a few days later (on 7th May), paragraph 65334 had been further updated and the above passage had been replaced with the following:

> "**No chargeable gain** accrues to Mrs D on the sale of the house or on receipt of the amount of £53,000 payable to her".

This will be a relief to a number of people. I don't know how or why this has happened, but I am not about to complain; I merely rejoice.

CGT: Main Residence Exemption

I recently said I would not comment on any further decisions regarding the CGT main residence exemption as the decisions of the Tribunals on the subject are so numerous and so inconsistent that it is quite impossible even to guess the result on any given set of facts. Accordingly, they are more likely to mislead than to inform.

However, the recent case of *Eyre v HMRC TC 9498* had features of particular interest.

We will all be familiar with clients (and others) who buy a house, live in it, do it up and sell it, moving on to the next one to repeat the process…. and so on, claiming the PPR exemption each time. We tax nerds get a bit nervous at this because this looks suspiciously like a trade. But the point never seems to be raised by HMRC.

It was therefore interesting to read the case of *Eyre v HMRC TC 9498* in which HMRC did run the argument. The facts were not extreme. Mr and Mrs Eyre lived in House A; they bought House B, demolished it and built a new House B to be their replacement main residence, but for various reasons moved out after about 9 months.

The trading argument was conventional – did they buy House B with the intention of selling it at a profit? No. How did the Badges of Trade fit into their circumstances and so on. They didn't. So the trading argument failed.

But what about capital gains tax?

Even if it is not a trade, section 224(3) TCGA can bring such a profit into charge to CGT because it says that the PPR exemption does not apply:

> "to a gain if the acquisition of, or of the interest in, the dwelling-house or the part of a dwelling-house was made wholly or partly for the purpose of realising a gain from the disposal of it".

And again, although this seems so wide as to catch almost everybody who buys a house, it is rarely invoked. And for some reason it was not argued by HMRC in this case either. HMRC confined their challenge to the exemption by arguing that

House B was not their main residence.

However, the FTT held that it was. They said that the "nature, quality, length and circumstances" of Mr and Mrs Eyre's occupation of House B involved "some assumption of permanence, some degree of continuity, some expectation of continuity" and they were entitled to the exemption when it was sold.

I see some wind blowing here.

IHT: Excluded Property Settlements

A controversial issue on this subject has recently been considered by the Tribunal in the case of *Accuro Trust (Switzerland) SA v HMRC TC 9501.*

It is well known that before July 2020 settled property was excluded property if it was situated outside the UK and the settlor was not UK domiciled "at the time the settlement was made": section 48(3) IHTA 19084. A question has arisen for many years about the position if the settlor adds property to an existing settlement after he has become UK domiciled (or deemed domiciled).

HMRC took the view that the adding of new property was the making of a new settlement and if the addition took place after the settlor had become UK domiciled, the property could not qualify as excluded property.

Wrong, said (nearly) everybody else. The added property did not represent a new settlement; the settlement had already been made. And the HMRC interpretation makes a nonsense of a whole host of other provisions. And anyway, the Court of Appeal had rejected the HMRC view in *Barclays Wealth Trustees (Jersey) Ltd v HMRC [2017] EWCA Civ 1512.*

The issue was sort of resolved by a change in the law. Section 73 FA 2020 revised section 48(3) to provide that the foreign property will only be excluded property if the settlor was not UK domiciled "at the time the property *became comprised in the settlement*".

However, the issue continues to arise in respect of many existing trusts, but having regard to the Court of Appeal decision in *Barclays Wealth* you may wonder why the point has was raised again, in the case of the *Accuro Trust.*

It is because the case was about a repayment of tax which had been made on the basis of the HMRC incorrect interpretation of section 48(3). HMRC claimed that their view was generally received or adopted in practice. If that was the case the repayment sought by the taxpayer would be denied by section 255 IHTA 1984 which provides:

> "Where any payment has been made and accepted in satisfaction of any liability for tax and on a view of the law then generally received or adopted in practice, any question whether too little or too much has been paid or what was the right amount of tax payable shall be determined on the same view, notwithstanding that it appears from a subsequent legal decision or otherwise that the view was or may have been wrong."

Books, publications and other evidence from a long list of highly distinguished tax lawyers demonstrated that the HMRC view was widely rejected and the FTT found that section 255 did not apply. All very interesting reading.

This (possibly obscure) provision is not new; it has been around for decades, and similar provisions apply for discovery assessments in section 29(2) TMA 1970 – and in Schedule 18(45) FA 1998 for companies, as well as for PAYE.

This approach, that it does not matter that the view was wrong if that is what everybody thought at the time, does rather stand in contrast with the modern approach to taxation which is much more concerned by "the right amount of tax".

This perhaps exemplified by the words of the Court of Appeal in *Aozora GMAC Investment Ltd v HMRC [2019] EWCA Civ 1643*

> "… it is necessary for [the taxpayer] to show a high degree of unfairness arising in its particular circumstances in order to override the public interest in HMRC collecting taxes in accordance with a correct interpretation of the law".

In the current environment, it will always be possible to say that the public interest in collecting the right amount of tax according to the law must trump the

interests of an individual taxpayer who has been disadvantaged.

This places HMRC in a win/win position. If their view is right, they win. And if they are in the wrong, they can still win. Although interestingly not in this particular case.

CGT: Substantial

One of the many uncertainties with Business Asset Disposal Relief (the relief formerly known as something else) is the definition of a trading company in 165A(3) TCGA 1992 as:

> "a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities".

Section 165A(4) goes on to explain what trading activities mean, but there is no further assistance about what is meant by "to a substantial extent".

The view of HMRC is set out in the CGT Manual at paragraph 64090 where they say:

> "substantial in this context means more than 20%".

There is no authority for this 20% figure and views range from it meaning "mainly, down to something just above insubstantial. No assistance can be derived from tax legislation either. For the Substantial Shareholding Exemption it means 10%; for Social Enterprise Relief it means 30%; for SDLT substantial performance it is "most". (I could go on).

The HMRC guidance refers to various indicators such as the income from non-trading activities; the company's assets, and the expenses or time spent by employees in the different activities. HMRC say that on the basis of the decision in *Farmer v HMRC SPC 216*, it is necessary to weigh up the relevance of each indicator in the context of the individual case and judge the matter in the round.

That sounds sensible, but it is difficult to see how *Farmer* can really be any kind of

authority. It was an inheritance tax case about a completely different relief in a completely different statute. So we are a bit on our own in determining the extent to which non-trading activities are substantial.

We had some help from the Upper Tribunal in the case of *Allam v HMRC [2021] UKUT 0291* where they explained that we can pretty much forget the suggestion of 20%. They said: "it is not appropriate to apply any sort of numerical threshold as suggested by HMRC's guidance".

That is very welcome because the matter can now be dealt with on its merits and not on the basis of an arbitrary HMRC's threshold.

The Upper Tribunal mentioned that the FTT did not refer to *Farmer* in terms and thought they were right not to do so. They said it is not helpful to put a gloss on the words of the statute, explaining the position as follows:

> "What is substantial in the context of trading and non-trading activities should be given its ordinary and natural meaning. Application of the test involves identifying the trading and non-trading activities and then considering how best to measure the non-trading activities to see whether they are substantial in the context of the company's activities as a whole."

Unfortunately, they did not say what was substantial. Clearly the 20% test does not apply – but what does? We have lots of guidance about the things that we might consider, but not the weight that we might give to any of them.

With this background, another BADR case, *Tamzin Eyre v HMRC TC 9530* published last week gives us some more to think about. (A bit confusing having regard to the other case I mentioned earlier).

In *Tamzin Eyre* the company was concerned with a property transaction which HMRC argued was an investment activity and not a trade. The FTT decided the company was trading and the issue therefore came down to whether it had substantial non-trading activities.

The FTT noted that 100% of the company's income was rental income and there were non trade loans of significant amounts. The only specific figure mentioned was that 22% of the development of the property was earmarked for commercial

letting. This figure was not of particular significance in the context of the 20% issue but the FTT, "standing back and looking at the company's activities as a whole" considered that the non trading activities were "meaningful". This is an odd thing to say when the test is "substantial". The terms are not synonymous.

So now we have two tests for the purposes of BADR – *substantial* and *meaningful* – and we don't know what either of them means. The only thing we know is that substantial/meaningful is not 20%; it could be more, or it could be less. I am not sure that many people will regard this as helpful.

Transfers of Assets Abroad

Cases and other developments on this seriously complex anti-avoidance code occur only occasionally but they always deserve close attention. The issue in *Moran v HMRC TC 9521* related to an offshore trust set up by the taxpayer's husband as a result of which she was able to occupy a residential property held within the trust structure.

The question arose whether her occupation was a benefit within the meaning of section 731 ITA 2007 enabling income of the trust to be attributed to her for tax purposes under section 732. She argued that the property was not provided out of assets available for the purpose. The FTT said they had no doubt that there was income available for all relevant years to be matched with the accommodation benefit.

This is an interesting conclusion because the test in section 732 is not whether there was income available, but whether the benefit was provided out of assets available for the purpose. It may not make any difference because the result is likely to be the same; maybe it was just shorthand.

The second issue was whether the motive test in section 737 applied to exclude the arrangements from the TOAA code and thereby remove any charge to tax on Mrs Moran. This would apply if she could prove that:

> " it would not be reasonable to draw the conclusion, from all the circumstances of the case, that any one or more of those transactions were more than incidentally designed for the purpose of avoiding liability to taxation".

Mrs Moran argued that the trust and the associated arrangements were not set up for the purpose of avoiding tax, but for asset protection purposes, i.e. to protect the family in the event of an insolvency.

The FTT felt this was fanciful as there was no evidence of any risk of insolvency. Furthermore, the asset protection referred to included "asset protection from the UK Inland Revenue" which, combined with correspondence with the professional advisors, indicated that tax was a primary motivation.

There seems to have been little hope for Mrs Moran with these arguments, but it is instructive to see how and why her arguments failed.

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