UK Tax Bulletin

June 2025

FIELD COURT TAX CHAMBERS

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Latest Rates of Inflation and Interest

The following are the latest rates at 30th June 2025

Current Rates	
Retail Price Index: May 2025	402.9
April 2025	402.2
Inflation Rate: April 2025	4.5%
May 2025	4.3%
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%

Discovery Assessments I: Agents

The recent case of *Lucas v HMRC TC 9550* is a cautionary tale which is likely to have some serious repercussions.

Mr Lucas was a driver for a courier company. An accounting firm offered to obtain tax repayments for him by claiming cleaning and subsistence expenses; their fees would be 20% of the tax refunds. They had acted for a number of his colleagues who had obtained significant tax repayments.

The accountants did everything and sent various calculations for him to approve, which were then submitted to HMRC without his further knowledge or consent. A repayment was duly received by Mr Lucas.

As it turned out, there was no substance to the claims. When HMRC found out, they issued discovery assessments (which would have been out of time) to reclaim the tax on the basis on the basis of careless or deliberate behaviour.

The Tribunal said that Mr Lucas has been mislead by the accountants (Apostle Accounting Ltd) into authorising claims that they knew were not legitimate.

Mr Lucas thought that HMRC's allegation of careless or deliberate behaviour was a bit harsh because he relied on the accountants to do things correctly and had been in regular communication with them. He had no reason to believe that anything was wrong. You can see his point.

Unfortunately, the test for discovery assessments in section 36(1B) TMA 1970 refers not only to the taxpayer but includes a loss of tax brought about by another person acting on his behalf.

The Tribunal said that Mr Lucas did not see the tax returns, he did not confirm their accuracy, he did not give any authority for their submission, and he had been mislead into authorising the accountant to claim the refunds. Nevertheless, they concluded that Apostle were acting on his behalf and therefore the assessments were valid.

This places all taxpayers in an impossible position. Tax is so complicated that the lay taxpayer has no real hope of knowing whether there is anything wrong with his tax return which has been prepared by his accountant. I wonder whether any

MP would accept that he is responsible under the tax code for the actions of his accountant and unable to rely on anything they say because if they are misleading him, he will be to blame. He can sue his accountant or lawyer of course – but good luck with that.

I would have thought that any MP faced with this would say that the law must be changed. I suggest they get on with it.

One can only hope this case will go further and the legislation will be found not to be as harsh as suggested by the FTT. Or better still, HMRC could issue a statement saying they will accept that where an adviser deliberately misleads the taxpayer, the taxpayer will not be regarded as responsible for the advisers deliberate and wrongful conduct.

Discovery Assessments II: Officer's Awareness

One of the key conditions for the issue by HMRC of a discovery assessment is that the officer of HMRC:

> "could not have been reasonably expected, on the basis of the information made available to him [before the expiry of the time limit] to be aware [that an assessment to tax is or had become insufficient]".

This is the condition which applies for income tax in section 29(5) TMA 1970 and in Schedule 18(44) FA 1998 for corporation tax.

There are all sorts of problems with these rules because we are not concerned with a real tax officer but a hypothetical officer, so the issue becomes a notional, abstract (and almost philosophical) matter. Indeed, if we are to consider the quality of the information provided to the officer this gives rise to a bit of a problem. How can you make available real information to a person who is hypothetical.

It also gives rise to the difficulty that the relevant information may have been provided to and considered by the real officer, but that has to be ignored because the real officer is not the hypothetical officer, and the information actually

provided does not count. Nor can you take into account any other information in the possession of HMRC unless it has been made available by the taxpayer: section 29(6).

I could go on (for quite a bit) about the impossible juggling between the real and the hypothetical but I want to get back to the awareness requirement. It is necessary to determine whether the information made available to the officer would have been enough to enable him to be aware that there was an insufficiency.

HMRC have been pretty successful in a number of cases, claiming that they did not really know enough about the circumstances to discover the existence of the insufficiency. The arguments advanced in the recent case of *RealBuzz Group Ltd v HMRC TC 9502* illustrate their approach.

The company had made a claim for R&D relief which did not meet the relevant conditions, so they were not entitled to the relief. HMRC issued a discovery assessment but it was challenged by the company as being out of time.

HMRC claimed that to satisfy the awareness criterion the officer must be able to quantify the insufficiency. Sorry, No. The Tribunal explained that there is no requirement for the insufficiency to be quantified. (Didn't we already know that?)

HMRC also claimed that the complexity of the law and all the circumstances of the claim are relevant to the degree of awareness of the hypothetical officer. No. The Tribunal explained that the complexity of the law is what mattered and the law in this case was relatively straightforward. (Didn't we already know that too?)

HMRC also claimed that the officer needed to be aware that none of the projects qualified for relief. No – again. The Tribunal explained that if the officer was aware that parts of the claim were excessive, that would be enough for him to be aware of an insufficiency.

And so it went on – the result of which was that the Tribunal concluded that the hypothetical officer would have been aware of an insufficiency at the relevant time (that is when the time limit expired) and HMRC were not able to raise the discovery assessment.

There are many other reasons why the relevant degree of awareness might not be satisfied but it is interesting and helpful that these protections for the taxpayer have been confirmed.

SDLT: Multiple Dwellings Relief

I know said I would not comment on any further decisions regarding the SDLT Multiple Dwellings Relief. In case that sounded a bit peevish, the latest decision on this subject, *Smith v HMRC TC 9559,* shows why.

Mr and Mrs Smith bought a house which had another building called Cart Lodge; it was accessed from the main drive and attached to a sheltered car port. It had not been (and was not) occupied separately but they claimed that it was a separate dwelling and entitled them to Multiple Dwellings Relief.

Cart Lodge had its own water supply but got its hot water from a boiler in the main house. It had a kitchen and bathroom, but the access consisted of a ladder. Furthermore, the access was via the car port, so an occupier had no access to the property without the consent of the owner.

HMRC argued that these factors, together with the fact that it had no fire certificate, no separate postal address, no separate land registry number or council tax indicated that it was not suitable for occupation as a separate dwelling.

The Tribunal did not agree and allowed the relief. They did not consider any of these things prevented Cart Lodge from being a separate dwelling. It met the needs of an occupant generally with an appropriate degree of privacy, self sufficiency and security.

Good news for Mr and Mrs Smith.

But compare this with the case of *Dower v HMRC TC 8497* where the taxpayers claimed that their annex, being a flat above the separate garage, was a separate dwelling. It was self-contained with a secure entrance, a bedroom, a sitting room and bathroom but it did not have a separate kitchen. They cooked their meals in a microwave and a slow cooker. They lived there for 4 months while the main house was undergoing renovation and obviously had all the necessary facilities in their separate dwelling.

However, the judge said that it could not be a separate dwelling because they did not have "proper kitchen facilities"; there was no separate council tax or postal address; the occupation for 4 months was temporary because they were only living there while the main house was being renovated; and it would have been inconvenient for Mr and Mrs Dower to have had unrelated persons living there.

What is a taxpayer to do? He reads *Smith* and sees that he is entitled to relief. But HMRC will argue the opposite because of *Dower*. Of course – and they must. They have a decision in their favour which they can hardly be expected to ignore.

So inevitably, more litigation – an expensive business for both sides with no award of costs to the successful party.

I would suggest that any reasonably taxpayer will say: Surely we are entitled to better than this.

IHT: Employee Benefit Trusts

The subject of Employee Benefit Trust is a hugely controversial issue not least because of the problems which have arising with the loan charge. That is the subject of a specific independent review which may assist in bringing the whole matter to a conclusion. Maybe.

An allied issue relates to IHT because HMRC have regularly argued that a transfer by the employer to the EBT is a transfer of value for the purpose of IHT and where the employer is a close company, the transfer of value is treated by section 94 IHTA 1984 as having been made by the shareholders and represents a chargeable transfer by them for IHT.

This issue has now been considered by the FTT in the case of *Tonkin v HMRC TC 9557* where Annette Tonkin had entered into an EBT scheme and ended up paying income tax on the contribution by her company to the EBT. She was not happy with the suggestion by HMRC that she was also liable to IHT.

There were a number of arguments, but the key issue was whether she was protected by section 94(2)(a) because the amount apportioned to her had been:

> "taken into account in computing that person's profits or gains or losses for the purposes of income tax".

This sounds good but HMRC argued that the transfer of value had not been made to her – it had been made to the trustees of the EBT - and therefore the relief did not apply.

One cannot help feeling that this rather unattractive argument, that a payment to an EBT for the benefit of an employee can be charged to income tax, NIC and IHT (not much left after all that) derives from their lack of sympathy for anybody involved with EBTs.

Anyway, the Tribunal did not think much of it either and concluded that IHT was not applicable. There were other arguments, the most important of which was the possible application of section 12 IHTA 1984 (exemption in respect of tax deductible expenditure) but that was not needed, so that will have to wait for another day.

Strawberry Sandwiches

No, I don't know what they are either, but they seem to be on track to be the subject of the major tax case of the 21st Century. Are strawberry sandwiches food or are they confectionery?

Some things are really important and deserve the full attention of the government and the courts – and the legal costs (being the most important factor, of course).

This is not one of them. The third element of the Separation of Powers - that is to say Parliament - ought also to get involved, and do something to stop all this nonsense. It almost makes you want to cry.

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Important Note