

AAT Tax update 26 November 2013

Contents

1. HMRC right to deny loss relief claim created by tax avoidance scheme.	1
2. Institute of Fiscal Studies (IFS) paper on Fiscal Consequences of Scottish Independence	2
3. Autumn statement will be on 5 December.....	2
4. Luxembourg faces EU challenge to its reduced rate for e-books	2
5. Agent authorisation process times (64-8).....	3

1. HMRC right to deny loss relief claim created by tax avoidance scheme

The Supreme Court has decided in favour of HMRC in the test case of **Cotter v Revenue & Customs [2013] UKSC 69**. Approximately 200 taxpayers have used the tax scheme which Mr Cotter has used.

HMRC produced a tax calculation based on Mr Cotter's return for 2007/08. It showed income and capital gains tax due of £211,927.77.

On 29 January 2009 Mr Cotter's accountants wrote to the Revenue and enclosed a "provisional 2007/08 loss relief claim" and amendments to his 2007/08 tax return. The amendments added various entries to boxes in the tax return intimating that Mr Cotter had sustained an employment-related loss of £710,000 in the tax year 2008/09 for which he claimed relief under sections 128 and 130 of the **Income Tax Act 2007** (ITA). In particular, the claim for relief was made in:

- (i) the main tax return in box 19 on page TR6 under "Any other information".
- (ii) the capital gains summary in box 14 on page CG1 in which the figure of £314,583 was inserted, and under "Any other information" in box 35 on page CG2.
- (iii) the "Additional Information" pages.

In the "Additional Information" pages, Mr Cotter inserted "£395,417" in Box 3 on page Ai3 ("Relief now for 2008-09 trading, or certain capital, losses") and "2007-08" in box 4 on that page ("and the tax year for which you are claiming relief"). On page Ai4, box 17 ("Additional Information") he explained, as he had done on box 19 on page TR6 and in box 35 on page CG2, that his claim was made under sections 128 and 130 of ITA for an employment-related loss which he had sustained in the tax year 2008/09.

Lord Hodge gave the leading judgement. The figures in box 14 on page CG1 and in box 3 on page Ai3 were supplemented by the explanations which Mr Cotter gave of his claim in the boxes requesting "any other information" and "additional information" in the tax return. Those explanations alerted the Revenue to the nature of the claim for relief. HMRC concluded, correctly, that the claim under section 128 of ITA in respect of losses incurred in 2008/09 did not alter the tax chargeable or payable in relation to 2007/08. The Revenue was accordingly entitled and indeed obliged to use Schedule 1A of **Taxes Management Act 1970** (TMA) as the vehicle for its enquiry into the claim (section 42(11)(a)). Mr Cotter had been arguing that he amended his return and so the HMRC could and should have opened an enquiry using s9A TMA 1970/ - Mr Cotter lost that argument.

Lord Hodge stated at paragraph 31: "The tax return form for 2007/08 did not show a loss claim which reduced Mr Cotter's liability to tax in respect of that tax year. As the Revenue lawfully commenced an enquiry under Schedule 1A of TMA and elected (under paragraph 4(3)(a) of that Schedule) not to give effect to the claim until the end of the enquiry, there was no postponement of payment of the tax due on 31 January 2009 by giving effect to the claim in the interim. The taxpayer was obliged to pay the amount of tax which had been assessed

less any payment to account (section 59B of TMA) and the Revenue was entitled to raise collection proceedings in the county court (section 66 of TMA). I agree with that position.”

2. Institute of Fiscal Studies (IFS) paper on Fiscal Consequences of Scottish Independence

On 18 November 2013, the IFS published a **69 page report on Fiscal sustainability of an independent Scotland**. It is an interesting read although it contains few surprises for those familiar with tax and demographics.

Scotland has a land mass similar to that of England but a population that is 8.4% that of the UK. Spending per person is higher in Scotland, at £12,629 per person in 2011–12, compared with £11,381 in the UK as a whole. This is largely due to differences in spending on public services. Education, policing, refuse collection, sanitation, transport, health and economic development all cost more to provide for a less densely populated region. Analysing these figures further, spending on education and training is only 0.4% higher per person, while health spending is 8.9% higher. Where Scottish spending differs most substantially is on other public services, including: transport (56.5% higher per person), housing (97.3% higher per person) and economic development (which was more than three times the UK average level per person).

All developed countries face either tax increases or cuts in public expenditure but the IFS paper suggests that Scotland may face either higher taxes or steeper cuts than the rest of the UK if it gains independence.

The current Scottish government (SNP) will not like this paper and will be quick to criticize its assumptions. Whenever economic models are used to predict the future, the assumptions are critical. North Sea oil could make an enormous difference especially if new processes like fracking increase the accessible reserves.

Scotland enjoys a temperate climate and has ample fresh water (unlike other parts of the UK where water shortages are an issue). Many would argue that Scotland is a nice place to live and might accept that paying higher taxes for public services is a reasonable outcome.

The main conclusion of the report's analysis is that a significant further fiscal tightening would be required in Scotland, on top of that already announced by the UK government, in order to put Scotland's long-term public finances onto a sustainable footing.

This report by the IFS is helpful information for September 2014 and the vote by the Scottish people.

3. Autumn statement will be on 5 December

It had been previously announced that the Chancellor would deliver the Autumn statement on Wednesday 4 December but a new announcement confirms that date has changed to Thursday 5 December. So please clear your diaries to listen to what he has to say. We can expect a lot of change and new draft clauses to be brought forward in Finance Bill 2014.

4. Luxembourg faces EU challenge to its reduced rate for e-books

There can be little doubt that there are anomalies in VAT and that multinational businesses can plan to make the best advantage of such anomalies. Amazon located to Luxembourg and no one will be surprised to learn that Luxembourg offers a reduced rate of 3% for electronically deliverable e-books. This was available from 1 January 2012 and the European Commission's infringement action against Luxembourg is now the subject of applications to the CJEU seeking declarations that the domestic law is incompatible with the EU's Principal VAT Directive. Luxembourg faces an additional challenge based on the fact that Luxembourg's 'super-reduced' 3% - VAT rate also contravenes the EU law requirement that

reduced rates may not be less than 5%. [The case was brought on 18 September and you can read more here.](#)

France faces a similar challenge. In France, the supply of electronic books to a super-reduced rate of 7% from 1 January 2012, then of 5.5% from 1 January 2013, the national legislation is not compatible with the VAT directive.

5. Agent authorisation process times (64-8)

If you need an agent authorisation for Self-Assessment to be effective before 31 January 2014, HMRC suggests that you apply for agent authorisation online by 15 January or post form 64-8 by 23 December. Applications for Self-Assessment registration should be posted by 20 December.

There is a helpful table and more information about the Central Agent Authorisation Team turnaround times [on the HMRC website.](#)

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The views expressed in these podcasts are Derek Allen's personal views and do not necessarily represent AAT policy or strategy.