

## AAT Tax Update - 23 September 2013

In this week's edition of the tax update we look at:

- 1 Revised form P85 on leaving UK
- 2 Consultation on Tax Free Childcare
- 3 What the government is doing to improve compliance
- 4 Whether legal costs of defending a criminal charge were allowable

### 1. Revised form P85 - Leaving the UK - getting your tax right

The form has been further revised to take account of changes in residence rules effective from 6 April 2013 and found in Schedule 45, FA 2013.

The new rules defining statutory residence need to be interpreted using a day count and remembering that it is difficult to shed UK residence for tax purposes. I found the [attached link and the flow chart](#) it contains useful information.

### 2. Consultation on Tax Free Childcare

As a grandparent, I have no axe to grind on this issue. I am concerned that the tax incentives to encourage parents to return to work keep changing and are complex and discriminatory. In August the Government published a consultation document inviting comments by 16 October 2013. At 68 pages, [the consultation document](#) is worth a read.

It seems the policy decision has been taken and the current employer supported nursery care schemes will be phased out and the new scheme will be phased in starting in Autumn 2015. The proposal is that parents will register with a voucher provider and register online. Subject to a limit of £1,200 of top up payments, the government will contribute 20p for every 80p of contribution. At the start it will cover all children aged up to 5 and all disabled children up to 17 and will then expand later to include children up to age 12.

### 3. What the government is doing to improve tax compliance

The debate on tax avoidance tends to be emotive and poorly informed. However, tax is the price that we all pay for those necessary services that our government provides and it is right that we should all pay our fair share. Few people enjoy paying tax and it is based on a respect for the rule of law and a complex legal system.

Two wrongs do not make a right and the sad reality is that politicians have failed to enact clear tax laws. In reality, the UK tax law is complex, voluminous and most people would agree is not suitable for a self assessment tax regime. HMRC does a difficult job and generally does it well applying the tax law and challenging avoidance as well as tackling evasion.

I was interested to find on the net this diagram which attempts to show how avoidance and evasion is being tackled. The Treasury have published this ["easy on the eye"](#) interactive graphic.

Simply hover over any aspect that interests you and a black dot giving you more details will appear.

HMRC have announced **Business Brief 28/13** that it is their policy to deny interim or temporary 'cash flow' benefits from engaging in avoidance, particularly where a scheme claims to give rise to a tax repayment or some other form of personal tax relief. HMRC will do this by withholding income tax repayments where the claims which produce them constitute (in HMRC's opinion) tax avoidance, and where HMRC are challenging or considering challenging those claims by enquiry.

#### **4. Whether legal costs of defending a criminal charge were allowable**

In *Paul Duckmanton v HMRC* [2013] UKUT 0305 the upper tribunal considered whether legal costs incurred by Appellant in defending criminal charges were incurred wholly and exclusively for the purposes of his trade – 'purpose' and 'effect' of incurring expenditure distinguished – s74 ICTA 1988 and s 34 ITTOIA 2005.

In 2002, one of Mr. Duckmanton's trucks was involved in a fatal accident killing a pedestrian. The truck was driven by an employee but maintenance defects in the vehicle led to a criminal charge of gross negligence manslaughter and two trials in 2003 and 2004 for which Mr. Duckmanton incurred considerable legal costs

Mr Duckmanton was at the material time the owner of an unincorporated car transport business called "Car Trans". The firm's business included the transport of vehicles from Solihull to the docks at Southampton and he had a fleet of 18 transporters.

The fatal accident was primarily caused by driver error but the vehicles brakes were defective and Mr. Duckmanton pled guilty to perverting the course of justice and falsifying maintenance documents for the vehicle.

The legal costs total £268,672, and were claimed as deductions in the accounts of the business for the accounting periods ending 31 August 2003 (£48,752), 2004 (£55,929) and 2005 (£163,991) respectively. The First tier tribunal (FTT) disallowed the expenditure because the legal fees are incurred with the object of firstly defending criminal charges, secondly preserving a business reputation and thirdly avoiding the possibility of a substantial damages claim so the expenditure cannot satisfy the wholly and exclusively test.

Mr Justice Henderson found that the FTT was entitled to conclude on the facts as it did. The expense was not allowable for tax purposes because there were **personal benefits** to be obtained when the expense was considered.

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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.