

AAT Tax Update 3 December 2013

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

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1. New advisory fuel rates apply from 1 December 2013

PAYE for employers: Advisory fuel rate updates – on 27 November HMRC published revised advisory fuel rates to operate from 1 December 2013. A newsletter might be apt telling clients and/or employers of the change. The rates have reduced which is something many employers may welcome but about which employees might not be too pleased. For example diesel cars have changed from 12/15/18p a mile to 12/14/17p a mile. Similarly, petrol cars have moved from 15/18/26p a mile to 14/16/24p a mile. Now I must admit to being cynical about these fuel rates which are supposed to be a deregulatory relaxation to help employers. My cynicism arises because in June 2012 the rates were 12/14/18p a mile and the price of diesel in my local garage was exactly the same as it is now (£1.379) but it can be 10p a litre dearer on motorways and at remote garages.

Living in Scotland, I know that when the temperature drops, my fuel economy drops by over 20%. That means that if I were driving a company car, I'd be out of pocket by several pence each mile if my employer reimburses me business miles using the advisory rate. When HMRC have reduced that rate by 1p a mile at a time of year when the cold weather adversely affects engine performance, the change seems to me like a recipe for raising extra tax or creating an unhappy workforce.

2. HMRC publish VAT Note 4 on 26 November 2013

VAT Notes 4 2013 contain a summary of all recent changes to the VAT rules and announce future changes. The two pages PDF file it is worth a quick read even if only to preview the place of supply of services rule changes which will apply from 1 January 2015.

3. HMRC publishes framework for VAT recovery by NHS trusts

This 14 page guidance framework (PDF 55KB) is not mandatory and does not replace the content of VAT Notice 706 (Partial Exemption), but adopting its principles will enable HMRC more readily to give approval for a VAT recovery method for which a Statutory Declaration has been made.

In addition to making taxable supplies like catering, the principal activity of NHS Trusts is the provision of healthcare for no consideration carried out under statutory regulation. This is a non-business activity. Normally the VAT on expenditure used exclusively for non-business activity is irrecoverable. However, s41 of the **VAT Act 1994** provides a special refund scheme for NHS Trusts whereby the VAT incurred on certain Contracted Out Services used for non-business activity may be reclaimed.

If you have a client or employer affected, this guidance will be helpful.

4. Misinterpreting complex tax law could still lead to penalties

I was a member of the HMRC Powers Consultative Committee which considered the draft legislation and consultation prior to the enactment of the penalty provisions to be found in **Schedule 24 of the Finance Act 2007**. What was known was that the incidence of penalties were going to increase but there were to be

safeguards including the right of appeal and an encouragement to make a voluntary disclosure if a mistake was discovered.

It is often possible to read between the lines in tax cases. It was understood that HMRC would be more tolerant of mistakes when made by the poorly educated and if the amounts were modest. The taxpayer's safeguard was the right of appeal to argue that it was a mistake or that the taxpayer had a reasonable excuse for the error which produced insufficient tax liability. It was reassuring to know that an elderly taxpayer struggling to do his best would not be treated as severely as a young professional man who made the same mistake but who would be expected to have a higher standard of knowledge.

In **Timothy Harding v HMRC [2013] UKUT 575**, the taxpayer has received a termination payment on leaving his employment with KPMG of £109,793. He completed his short tax return but omitted any mention of the termination payment. This was wrong and he was due to pay tax on the excess over £30,000.

This appeal was about the penalty of £2778.18 for careless inaccuracy within a self-assessment return leading to understatement of liability to tax imposed by HMRC and confirmed by the First Tier Tribunal (FTT). Mr. Harding felt that he had researched the position and believed the termination payment was not taxable and he produced an extract from an article to justify his position. The extract did confirm that termination payments might be exempt from taxation but reading the whole article it was clear that only the first £30,000 was exempt and any excess was taxable.

In essence, Mr Harding was saying that he took reasonable care and researched the position but made a mistake. There was no doubt that he had made a mistake so the issue the upper tribunal was considering was whether he had taken reasonable care and acted as a prudent taxpayer would have done.

The sums involved are relevant. If the termination payment had been small, it just might have been acceptable to do what Mr. Harding had done. But the receipt was for £109,793 and the bigger the sum the more it is appropriate to check and obtain certainty about the tax treatment.

According to HMRC, Mr. Harding had used a short tax return when the instructions are clear that such a return should not be used by a taxpayer in receipt of a lump sum termination payment. This was careless and further the extract on which he had relied was not an authoritative statement of the law and his interpretation was flawed as the full article made it clear that any excess over £30,000 was taxable. The compromise agreement which Mr. Harding had signed had also made it clear that the excess over £30,000 was taxable.

The Upper Tribunal did not accept that the Appellant, who admits that he considered that the "severance payment" was possibly liable to tax in October 2008, could, by August 2009, reasonably have reached the conclusion that it was definitely not liable to tax. The Appellant is an intelligent person, and held a senior position (such as made him eligible to participate in his employer's profit share and bonus plans reserved for directors) in a company which forms part of a leading accountancy practice. The case he put to the FTT, and to the Upper tribunal, is not credible.

What is clear in practice is that HMRC often challenge the tax treatment of lump sum termination payments and anyone working for a firm of accountants had better take care to get it right. The court ruled that the penalty of 15% of the tax due was correct and that Mr. Harding had failed to take reasonable care when submitting his return.

5. HMRC publishes employee shares bulletin

The eleventh **Employment-Related Shares and Securities Bulletin** (PDF 30KB) was published on 27 November 2013. The document is three pages long with useful links and provides information and updates on developments relating to employment-related securities, including the tax-advantaged employee share schemes.

6. Reminder that the Autumn Statement is this Thursday (5 December)

Juts a quick note to remind you that the Autumn Statement is on Thursday 5 December. Next week's podcast (10 December 2013) will cover this.

Derek Allen
3 December 2013

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