

## AAT Tax Update - 7 October 2013

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### 1. Introduction and Objectives

Busy professionals are bombarded with information. Keeping up to date can be hard work but these podcasts are designed to keep you up to date by listening to each podcast for 5 minutes each week when it is issued each Tuesday. Please make it a regular diary entry to spend 5 minutes listening to new developments in tax.

Each podcast will be accompanied by more detailed notes which also contain links to web pages if more research is necessary. Each week the podcast will cover different aspects of taxation so there should be something of interest for everyone.

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### 2. Morrisons lose VAT challenge on portable BBQs

In [W M Morrison Supermarkets PLC v HMRC \[2013\] UKUT 247](#), the issue was whether there was a single standard rated (20%) supply of a disposable BBQ kit or whether the charcoal fuel element could be separately charged at its reduced rate of 5%. It might be tempting to think the difference is trivial but to the large supermarket chain the VAT difference was £192,934.51. If Morrisons could charge separately for the charcoal, it could reduce the price and make it more marketable, possibly gaining a competitive advantage in the marketplace. Asda and Tesco had similar appeals on the same issue.

On 19 October 2006, HMRC issued Business Brief 17/06 clarifying that, according to HMRC, the correct treatment of sales of disposable barbecues was as a single standard rated supply. Factually these disposable BBQs comprised at least 50% of the value as fuel which could be sold separately and benefited from charcoal being subject to the reduced rate of VAT pursuant to Group 1 of Schedule 7A to the Value Added Tax Act 1994 ("VATA 1994").

The First Tier Tribunal (FTT) upheld HMRC's contention that a disposable BBQ was a single supply that fell to be standard rated. The judgement contains an interesting review of decisions on composite supplies and is worth a read at:

### 3. Draft guidance on the DOTAS Finance Act 2013 changes was published on 1 October

Draft guidance on the changes to Disclosure of Tax Avoidance Schemes (DOTAS) for Finance Act 2013 is published for information and comment by 23 October. At 12 pages but with links to the more voluminous guidance material, this is worth a read for anyone thinking of legitimately avoiding tax.

Any comments on this guidance should be made by 21 October 2013 and sent to Lesley Hamilton of HMRC.

### 4. HMRC publish update note on valuation of business assets

#### Practice Note: Apportioning the Price Paid for a Business Transferred as a Going Concern

Following a discussion process with the Chartered Institute of Taxation (CIOT), the HM Revenue & Customs (HMRC)/Valuation Office Agency (VOA) Practice Note 'Apportioning the Price Paid for a Business Transferred as a Going Concern', has been updated. Discussions with the CIOT were constructive and helpful although differences of view on some issues still remain.

### 5. HMRC announce a new phone number for dealing with deceased persons' tax

#### New number for Probate, Inheritance Tax, Trust and Deceased Helplines

HM Revenue & Customs (HMRC) introduce more 0300 telephone numbers for Probate, Inheritance Tax, Trust and Deceased Helplines and changes to other helpline numbers. For most people the new numbers will reduce the cost of calling these helplines

Fortunately death is a rare event. Even then, only a small fraction of estates are liable to inheritance tax. For most practitioners it is a rare area of practice and making contact with HMRC can be slow and time consuming unless you know who and where to contact.

You can read more about this and other new contact phone numbers by following the link above but the new numbers are in the table below should you need them.

You will still be able to use the 0845 numbers for about the next 18 months. You can also make electronic contact using the link below which takes you to the HMRC website.

#### Contact HMRC

Line	Old Number	New Number
Trusts and Deceased Estates Helpline	0845 604 6455	0300 123 1072
Probate and Inheritance Helpline	0845 302 0900	0300 123 1072
Charities and Sports Clubs (CASCs)	0845 302 0203	0300 123 1073

Line	Old Number	New Number
Employer Stationery and Forms Ordering	0845 764 6646	0300 123 1074
Excise Movement Control System Helpline	0845 600 5022	0300 123 1075
Help and Support for Businesses	0845 603 2691	0300 123 1083
Shares and Assets Valuation Helpline	0845 601 5693	0300 123 1082

## 6. HMRC denied a penalty because the employer had a reasonable excuse

With HMRC adopting a risk based assessment process, taxpayers need to look after their reputation. A failure to comply with one aspect of tax has implication for all the areas of tax that the person has to file and pay. Consequently, although the commercially sensible decision when faced with a late filing penalty would be to pay it, an appeal to the tribunal may be justified.

In *Gordon West t/a Dishforth Nursery Gardens v Revenue & Customs* [2013] UKFTT 485 [Link to: <http://www.bailii.org/uk/cases/UKFTT/TC/2013/TC02868.html>], an elderly man running a small business was given a £400 penalty for the late filing of the employer's end of year return. HMRC's track record on judging whether or not there is a reasonable excuse is not good and this case illustrates yet again that HMRC's internal review process does not work as well as it should.

Mr West's argument supporting his contention that he had a reasonable excuse for filing the return late was that his wife took steps to file the return online on 27 April 2011, within the applicable deadline, and that she and he reasonably believed that the return had been successfully submitted on that day. In particular, they received a confirmation e-mail from HMRC on that date, stating "Thank you for sending the PAYE End of Year submission online", and that "The submission for reference 406/H8098 was successfully received on 27-04-2011". In fact she had made a test submission.

HMRC's argument was that as soon as Mr. West received the £400 penalty notice in September, he should have remedied the error but he failed to correct the mistake and lodge the return until the following January and that delay was unacceptable and he had no reasonable excuse or if he had a reasonable excuse the excuse ceased when he received the penalty notice and he then took too long to file the return.

Mr. West and his wife are pensioners running a rural plant nursery, and employ one person for 18 hours a week for some 4 months of the year, and 10 hours a week for another 4 month period of the year. They are not computer literate. Mrs. West had to download the necessary software to achieve electronic filing from the internet. They encountered difficulties doing so, possibly due to the slow internet speeds in the rural area where they live. On 26 April 2011, they spent 4 hours trying to do so. On the morning of 27 April 2011, they spent 28 minutes on the telephone with the HMRC helpline. Work commitments prevented any further time being spent on it that morning. In the evening, the return was submitted and the confirmation e-mail was received.

Time and time again, HMRC lose cases at tribunal because the HMRC interpretation of what is a reasonable excuse is overly restrictive. There is a reasonable excuse to escape a penalty arising under s98A TMA 1970 if the actions are similar to that of a prudent employer exercising reasonable foresight

and due diligence having proper regard for its responsibilities under the Taxes Acts. It should be judged at the failure date, and it is necessary that the reasonable excuse be rectified without unreasonable delay once the reasonable excuse ceases.

HMRC argue that the Appellant would have been aware from a penalty determination dated 26 September 2011 and an HMRC letter dated 16 November 2011 that the return had not yet been submitted. In fact, the Appellant would have been aware from these that HMRC considered that the return had not yet been submitted. The Tribunal accepts that this position of itself might initially have caused the Appellant confusion in such circumstances.

Mr. West's evidence is that once he became aware of HMRC's position he tried contacting the HMRC office in Newcastle, and then contacted HMRC by post. HMRC are not the easiest organisation with which to establish communication. He says that he received the 16 November 2011 letter from HMRC, but that this did not advise him that he still needed to file the return he promptly filed the return on 9 January 2012 after speaking to the HMRC helpline on 6 January 2012. Right up to that helpline phone conversation Mr West believed that the return had been filed and as soon as he realised it had not been filed he sorted it

In all of the circumstances of the present case, the Tribunal was persuaded that the reasonable excuse continued until the return was finally filed.

I think HMRC should hang its head in shame that this case came to tribunal. The penalty notice should have been vacated as soon as it became clear that an elderly couple had tried to file and reasonably believed that they had filed the return electronically. HMRC designed a poor system and they should not penalise persons who do their best to comply but fail.

Derek Allen  
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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.