

AAT Tax Update 17 December 2013

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

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1. HMRC consult on paperless self-assessment

When I first started using e-mail some 20 years ago it was relatively rare and internet access was very slow. Technology evolved rapidly and users multiplied. However, there remain those who lack confidence in the internet and some who refuse to use it. Social media has expanded similarly and its popularity has grown.

HMRC are well behind the curve with respect to digital communication. On 27th November they launched a consultation which closes on 27 December. The cynic within me wonders why such a short time period especially at a time of year when people are busy.

At 21 pages in length, the consultation document is verbose. It boils down to HMRC allowing the taxpayer to opt into self-assessment products, for example: statutory notices, reminders and statements being available to view in their online HMRC account.

For those that want to communicate electronically, this development is long overdue. The security of the postal system has never been great but HMRC has been paranoid about losing data after the mistakes it has made historically (lost discs, leaked information). At present the legal basis of assessment and notification is based on the postal system and so moving to a secure digital mail box would require changes in the law.

Personally, I am in favour of digital communication and I am confident that it is the way forward. I lack confidence in HMRC's ability to design something that is useable and sensible. In my view, no one in their right mind would have the online self-assessment designed as it now. If the Danes have been able to prepopulate their tax returns since the 1980s why do we in the UK have to deal with the massive and unfriendly form that is currently required? The answer to that question is complex but it boils down to the policy makers in HMRC having little interest in keeping real compliance cost as low as possible. The alternative explanation is that the designers are stupid but I doubt that.

The proposal is for a secure digital mail inbox to communicate with HMRC and receive statutory notices including:

- penalty notices
- reminders to pay tax due
- reminders to file a return
- notice of opening an enquiry into a return
- notice of the determination of tax by HMRC where no return has been delivered.

All this makes good sense if designed and implemented properly. There are four questions posed in the consultation document. For members in practice they should consider how the proposals will affect them in their role as agent of the taxpayer.

Subject to the legislation being in place HMRC proposes to start trialling the new service early next tax year (which starts in April 2014).

2. Whether the sale of part of the garden was exempt from Capital Gains Tax (CGT)

The difference between the agricultural value of land and land with planning permission granted is enormous. The latter could be 100 times more valuable than the former. In [Anne Dickinson v Revenue & Customs \[2013\] UKFTT 653](#), part of a garden was sold to a connected development company and HMRC decided that the only or main residence (OMR) exemption from CGT (s222TCGA1992 et seq) was not available making the considerable gain chargeable to CGT.

Mrs Dickinson lived and owned land and property at Holly Lodge, High Street, Swineshead Lincolnshire which had large garden grounds including a tennis court. In 2007 she sold part of the tennis court, comprising 0.16 hectares, to Ilex Developments Limited, a company of which she was a director, for the sum of £300,000. The land was sold for the development of four dwelling houses, payment of the consideration being deferred and payable by four equal instalments of £75,000 on completion of the sale of each dwelling house.

Planning permission had been obtained in 1989 and Mrs Dickinson had renewed the outline permission on her garden/tennis court every three years to keep it current. She decided to design and build the houses herself. So, with her husband and two friends who had knowledge of the building trade, she formed a company, "Ilex Developments Limited" to manage the project.

Mrs Dickinson's 2007-08 tax return was submitted on 14 November 2008. The return did not disclose the land sale. On the basis that Private Residence Relief was applicable under s222 Taxation of Chargeable Gains Act (TCGA) 1992, no Capital Gain was declared. HMRC selected the case for enquiry and if Mrs Dickinson is not entitled to private residence relief the tax is £48,314.20 plus interest.

There had been difficulty in getting the local authority to adopt the access road and this led to delay before the development started. HMRC argued that this meant that the land had ceased to be part of the garden at the time it was actually sold as it was sold as earmarked for development.

There was a natural demarcation line formed by a hedge between the tennis court and the retained property. The conclusion is that Ilex entering onto the land and starting the works did not constitute a disposal of the land. The land therefore retained its character as "garden or grounds" within the meaning of s 222(1)(b) until the time of its disposal on 27 July 2007 when contracts were exchanged. Accordingly, the land was exempt from CGT and within the only or main residence conditions.

3. Draft clauses for Finance Bill (FB) 2014 published

On 10th December 2013, the government published a considerable number of draft clauses for consideration and inclusion in FB 2014. There are two options to access the publications and you can choose the overview and draft clauses combined (849 pages) or the segmented one below.

Finding the relevant draft clause can be difficult. For example, I was interested to review the anti-avoidance measure limiting the extension period for OMR relief from CGT. However, this is not in the anti-avoidance section. The anti-avoidance section concentrates on compensating adjustments, employment intermediaries, Venture Capital Trusts and partnerships (totalling 153 pages).

You find the change in OMR at section 5 below. Where a person owns one or more properties that have been their main residence they are entitled to relief on the final period if they dispose of a property in which they are not currently living. The measure will reduce the period of ownership for which this relief, found at s223TCGA1992, is available from 36 months to 18 months. It takes 6 pages of explanation in part because they have introduced a new section to deal with people in residential care homes.

A new section 225E provides for a new relief on disposal of a private residence for an individual who is a disabled person or living in a care home at the time of the disposal; enabling them to retain a final period exemption of 36 months. In order to qualify the individual must not have any other residential property on which they can claim private residence relief.

The change will add nearly 2 pages to the legislation but it could have been achieved by:

- In section 223 (relief on disposal of private residence: amount of relief).

- (a) in subsections (1) and (2)(a), for “36 months” substitute “18 months or such longer time as an officer may allow”.
- HMRC then publishing their policy.

The choice of presentation means the reader can download shorter sections and concentrate on the parts of the draft clauses which interest them. Personally, I should have preferred if everything was to be found in the one place in one volume but it was split and can be found at:

- [Implementation of a tax exemption for employer expenditure on health-related interventions recommended by the new health and work assessment and advisory service](#)
 - Part of a collection: [Finance Bill 2014](#)
- [Consultation on social investment tax relief](#)
- [Harnessing the potential of the UK’s natural resources: a fiscal regime for shale gas](#)
- [Finance Bill 2014: draft legislation overview documents](#)
- [Finance Bill 2014: personal tax](#)
- [Finance Bill 2014: corporation tax](#)
- [Finance Bill 2014: indirect tax](#)
- [Finance Bill 2014: anti-avoidance](#)
- [Finance Bill 2014: tax administration](#)
- [Finance Bill 2014: secondary legislation](#)
- [Venture Capital Trusts share buy-backs](#)
- [Supporting the employee-ownership sector](#)
- [Finance Bill 2014 New Guidance Notes](#)

In each of these links there is a great deal of reading to be done. The overview of the draft legislation runs to 176 pages and the draft clauses and explanatory notes another 673 pages.

4. Whether dental payment services were exempt or standard rated

If you have dentists clients who use payment plan services, this is a must read.

In [DPAS Ltd v Revenue & Customs \[2013\] UKFTT 676](#), the issue was whether the change in contractual arrangements meant that the services provided direct to the customers of dentists were now exempt. As dentists themselves are exempt for most of what they do, the imposition of VAT at 20% would have serious implications to the cost base of dentists using the service.

HMRC also argued that the change in the contractual arrangements were an abuse of law and that the Halifax principle applied.

From 1 January 2012, in addition to a standard rated supply of services to dentists, DPAS also made a separate supply of services to their patients which was an exempt supply of “payment services” within Item 1 of Group 5, Schedule 9 to the Value Added Tax Act 1994 (VATA) and Article 135(1)(d) of Directive 2006/112/EC (the PVD) and not a *Halifax* type abusive practice.

There are two broad categories of dental plans available to dental patients. These are described in the literature produced by DPAS as “Capitation” and “Maintenance” plans.

A Capitation plan includes dental services designed to prevent oral health deterioration, e.g. examinations, hygienist appointments, and small X-rays, but extending to include certain restorative dental treatment procedures such as fillings, root canal treatment and in some cases crowns and bridgework. The monthly fee paid by a patient will depend on the range of services to be provided under the plan and the oral health of the patient at the time of enrolment. This would involve an in-depth examination by the dentist, who would assess the amount of time and treatment required, before a patient was accepted for a Capitation plan.

In contrast a Maintenance plan includes only those services designed to prevent oral health deterioration and excludes restorative dental treatment. Consequently the monthly fees for such plans are lower than those for Capitation plans and an examination is not necessary for a patient to be accepted on a Maintenance plan.

Although the agreement to obtain dental services under a plan is made between a dentist and patient with the price, including dental plan charges, being agreed between them, the role of DPAS is to manage the administration, finance and insurance aspects of these plans. It also provides advice to the dentist and his or her practice staff in respect of setting up the plan and produces marketing materials such as brochures, leaflets and posters, registration forms, correspondence/headed note-paper and plan membership cards branded in the dentist's name.

In addition DPAS gives dentists administrative and marketing training and support through its business development manager, practice consultants and customer service advisers.

The "standard pricing" adopted by DPAS for the overwhelming majority of its clients is calculated by a combination of a monthly standing charge of £366.66 and what is described as a "per-patient charge" both of which are paid together on a monthly basis by direct debit.

On 28 October 2010, the ECJ gave judgment in [Case C-175/09 Revenue and Customs Commissioners v Axa UK plc \("Axa"\) \[2010\] STC 2825](#). This ruled that the services provided by Denplan were standard rated being debt collection services for the dentist. DPAS therefore restructured its underlying contractual arrangements with the intention that, in addition to its supplies to dentists, it would also make supplies directly to patients.

The letter and Acceptance Forms were sent to approximately 340,000 patients and over 80,000, approximately 30%, of these were returned to DPAS. DPAS also received over 3,000 telephone calls to a helpline established to deal with issues raised by the letters with 90% of these calls sought confirmation that the amount they were paying for the dental plan would not be increasing.

The First Tier Tribunal (FTT) decided that by continuing with payment the 70% of customers who did not expressly confirm their agreement to the new contract terms, did in fact agree to them.

Unlike the Denplan contract, as the contract was directly with the dentist's customer (and therefore a service to the debtor before a debt was created, and not to the creditor) the FTT concluded DPAS' services were exempt supplies. As there was no policy prohibiting the offering of dental plan services to individual customers, the FTT could see no argument for applying the European Law 'abuse of rights' principles to the arrangements adopted.

Paragraph 87 concludes: "that DPAS does, as a matter of economic and commercial reality, make a supply of services to the patient for consideration". Paragraph 106 concludes: "the service supplied "as a matter of principle" constitutes a transaction concerning payments which is exempt under Article 135(1)(d) of the PVD and Item 1 of Group 5 Schedule 9 VATA."

In tax there is a common truism that "It ain't what you do but the way that you do it." This decision illustrates that truism and if you have dentist clients a newsletter informing them of this decision might ensure that the dentists arrange a patient health care plan in the most tax efficient way. Saving VAT at 20% can make a considerable difference.

5. HMRC publish new toolkit and guidance on Business income

[The Business Income Manual \(BIM\) has been updated](#). This update covers legislative changes, including the Tax Law Rewrite, and introduces new chapters on the Simpler Income Tax rules. It also covers accountancy changes introduced by new UK Generally Accepted Accounting Practice.

HMRC has [reviewed and republished the toolkits](#) affected by the recent update of the HMRC BIM.

Derek Allen
17 December 2013

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