

## AAT Tax Update 30 November 2014

In this edition of the tax update which is now on a monthly basis we look at:

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### 1. Possible Finance Bill Timetable

Taxation seems to be changing constantly and predicting the future is uncertain. We know that there will be an election in May 2015 and so Parliament's consideration of the Bill is likely to be shortened because Parliament will close at the end of March 2015.

A draft bill will be published on 10 December along with explanatory notes, responses to policy consultations and lots of other documents. Listening to the Autumn Statement to be delivered on 3 December should give some idea of the Government's policy intentions but who knows what Government might be in place after the election.

The draft clauses in the draft bill will be open for consultation until 4 February 2015.

On 5 November, David Gauke delivered a speech on his view of the UK tax system and you can read what he said at <https://www.gov.uk/government/speeches/david-gaukes-speech-at-hmrca-2014-autumn-stakeholder-conference>

I was impressed by his rhetoric when he said: "My rule of thumb is that a simpler system is a better system. So, as Tax Minister, I have made it my priority to create a modern, efficient, competitive, user-friendly tax system in the UK."

I think that our tax system is a mess. It is overly complex, subject to far too much change and the administration can be a nightmare of inefficiency. Mr Gauke invited taxpayers to help him reform the system. He said: "So if something is not working, or could be made to work better, tell me about it."

I think that a good start would be to reduce the number of budgets; Autumn Statements and Finance Bills, by trying to set a budget for the five year term of a Parliament. The reduction in volume, complexity and uncertainty combined with the increase in stability would help business and reduce costs. Of course such a change would deny certain MPs the oxygen of publicity which they crave so it is unlikely to happen.

If you have suggestions to improve the UK tax system, please email David Gauke MP who can be contacted by e-mail at: [david@davidgauke.com](mailto:david@davidgauke.com)

Mr Gauke announced 10 things a tax avoidance scheme promoter will not tell you and you can read about this at: <https://www.gov.uk/government/news/ten-things-you-need-to-know-about-tax-avoidance>

## **2. HMRC announce 2/3 of large businesses are under enquiry**

Over the last four years HMRC claim to have recovered an extra £31bn of tax from their enquiry activities in large business. Large business accounts for 60% of the tax yield. Extrapolating these figures would suggest that HMRC enquiry activity is closing their estimate of the tax gap by over 33%. I have some scepticism about HMRC's statistics.

Jennie Granger announced at the HMRC stakeholder conference on 5 November that: "We are enquiring into two out of three of the largest corporations operating in the UK – many of which are multinationals.

"That is not to say that most large businesses are on the make. But it does highlight both the complexity of the international tax system in which they operate and our need to actively scrutinise how they negotiate their way through that system."

<https://www.gov.uk/government/news/hmrc-announces-scale-of-inquiries-into-big-business>

## **3. A tax efficient gift to clients?**

Approaching the end of the year, some of my readers may wish to maintain goodwill by giving clients a small gift for the festive period. Historically, the classic gift was a diary bearing your firm's name and logo or a calendar. This may remain a good idea but many people rely on their smart phone or computer for their diary function these days.

The key to tax efficiency is the gift must cost less than £50 (that limit is the cumulative total in any single tax year) and carry a conspicuous advertisement for the trader, such as a branded diary, calendar, drinking mug, mouse mat, computer mouse or pen. Food, drink or tobacco are prohibited.

## **4. HMRC update the Inheritance Tax Manual**

Inheritance Tax (IHT) is an area of professional practice that is encountered infrequently but with everything exceeding the nil rate band taxed at 40%, most practitioners need to keep reviewing any potential IHT liabilities and keep up to date.

On 10 November, HMRC updated its manual and you can read the detail of the changes at:

<http://www.hmrc.gov.uk/manuals/ihmanual/updates/ihmupdate101114.htm>

The updates at IHTM04240 and IHTM12111 reflect changes in the rules of intestacy from 1 October 2014 onwards.

The manual dealing with lifetime transfers has been rewritten between IHTM 14001 and IHTM14900. The main categories of lifetime transfers that you might encounter are:

- potentially exempt transfers ([IHTM04057](#))
- deemed transfers ([IHTM04025](#))
- gifts with reservation ([IHTM04071](#))
- immediately chargeable transfers ([IHTM04067](#)).

## **5. HMRC fail to get costs (and should be ashamed to have asked for costs)**

I have been concerned for many years that there is unfairness within the appeal system. Many taxpayers cannot afford to pursue an appeal because of the potential costs involved. It is an important safeguard that ordinary taxpayers can ask for an internal review at no cost and can appeal to the first tier tribunal seeking an assurance that whatever the outcome costs will not be sought.

Mr Patel had wanted to recover input VAT of £8,444 under s35 VATA 1994 and a condition is that the claim must be lodged within 3 months. He encountered planning difficulties. HMRC, refused to meet his claim because the planning permission he had obtained did not relate to the works undertaken. Mr Patel had intended to extend an existing dwelling, and obtained planning permission for that project, but after the work had begun it was realised that it would be necessary to demolish and replace the dwelling. The planning authority did not object to that change, but Mr Patel did not obtain a new planning permission.

At the appeal heard before the First Tier Tribunal (FTT), Mr Patel was granted a postponement in order that Mr Patel could secure retrospective planning permission, in accordance with s 73A of the Town and Country Planning Act 1990, which Mr Patel duly did. The FTT decided that the retrospective permission was sufficient, and allowed Mr Patel's appeal.

Technically, the time limit of three months had expired. The decision of the FTT was fair and a form a natural justice because if Mr Patel had obtained the right planning permission at the right time he would have been entitled to recover the input tax of £8,444. But we know that fairness and equity has little to do with tax and the HMRC appealed to the Upper tribunal on the grounds that Mr Patel had failed the time limit.

Reading the decision, I felt sorry for Mr Patel. Technically, the appeal by HMRC had to succeed. HMRC applied the strict interpretation of the law, ignoring its spirit and ignoring what might have been fair and just. I can accept that HMRC were applying the law correctly.

What concerns me is that HMRC wanted costs. It is morally reprehensible for HMRC to seek costs in a case like this where their appeal has been won on a technicality because Mr Patel missed a time limit but did everything else correctly.

It is an important safeguard for appeals to the FTT that there is a right for which rule 10(1)(c) provides, to "opt out" of the costs-shifting regime. No provision of the

Upper Tribunal rules makes such immunity from a costs regime available to a litigant, whether appellant or respondent, in this tribunal. A taxpayer in Mr Patel's position, successful before the FTT, has only limited means of protecting himself from an adverse costs direction if HMRC secure permission to appeal, that is by seeking a direction, as soon as the appeal is notified to him, that whatever the outcome of the appeal no direction for costs should be made.

At the appeal before the UT, Mr Patel did not attend but lodged a written submission whereas HMRC used a lawyer and counsel. There was no equality at arms. Over the course of the appeal to the FTT and then to the Upper tribunal HMRC have changed the basis of their refusal to meet Mr Patel's claim, by first relying on the fact that the planning permission produced did not relate to the works as they were undertaken, then (albeit with the agreement, and possibly the encouragement, of the FTT) allowing Mr Patel the time to secure retrospective permission, plainly in the expectation that it would assist him, only to argue once he had obtained it that retrospective permission was insufficient and, in this tribunal, that it had been produced after expiry of the time limit and for that reason too could not assist him.

The process of appealing an HMRC decision should never be undertaken without considering the risks. One such risk is that the FTT will rule wrongly on a point of law and then HMRC successfully appeal to the Upper Tribunal and beyond where the loser may have to pay the HMRC costs.

HMRC should really be ashamed to have sought costs in this case. Fortunately for Mr Patel, the Upper Tribunal decided that this appeal was exceptional and that it would be unfair to compel Mr Patel to pay, or contribute to, HMRC's costs of an appeal which, even if only in part, HMRC's changing case has made necessary and the judge declined to make the requested direction. HMRC were not entitled to costs.

## **6. Smith Commission recommends more devolved powers to Scotland**

Being British and Scottish, I should declare a potential conflict of interest. On 27 November 2014, the Smith Commission published its 28 page report with recommendations that Scotland be given greater power to control income tax. at the report can be read here:

[http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/28\\_11\\_14\\_smithcommission.pdf](http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/28_11_14_smithcommission.pdf)

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Set your diaries for the next edition of the general tax update which will be published around 31 December 2014

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