

## AAT Tax Update 31 December 2014

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### 1. Best wishes for the Festive season

For many practitioners, this is a hectic time of year as the pressure rises to meet the self-assessment deadline for individual tax return filing. I hope that my readers have had a relaxing festive break and I wish you a happy new year.

2015 looks like being an interesting and busy year. Consultation on the draft clauses ends on 4 February 2015 and it is likely that we'll have to deal with a curtailed Finance Bill before the General Election in May and then another Finance Bill and Act when the new Government sets out its fiscal policy decisions.

### 2. CGT entrepreneur's relief restricted on connected incorporation

From 3 December 2014, entrepreneur's relief will no longer be available in relation to disposals of goodwill to a close company, where the individual remains a related party. These gains will therefore be taxable potentially at the standard capital gains tax rates. However the gain on incorporation may still be deferred by electing for holdover on gifts or on incorporation relief if the consideration is wholly or mainly for shares,

For transactions or contracts concluded on or after 3 December 2014, where the asset is acquired from a related party to the extent the related party did not incur third party expenditure on it (for example self-generated goodwill), there will be a restriction on any intangible asset regime deduction for:

- intangible assets relating to customer relationships
- unregistered trademarks
- and goodwill.

### 3. Solicitors' tax campaign: disclosure of errors

On 8 December 2014, HMRC announced a new campaign to encourage solicitors who may have made an error in their tax returns to take advantage of an opportunity to make a disclosure.

The Solicitors' Tax Campaign voluntary disclosure opportunity runs from 8 December 2014 to 9 June 2015. It will be of interest to your solicitor clients if they work within the legal profession as a solicitor and you want to bring their tax affairs up to date. For example if the solicitor has not told HM Revenue and Customs (HMRC) about all the solicitor's past income, gains and undisclosed liabilities.

The client may be a solicitor working:

- for them self in their own business
- within a partnership or limited liability partnership
- within or as a company

The HMRC prosecution policy has included special category taxpayers like judges, accountants, lawyers, barristers, former Inspectors and the like. If a special category taxpayer made a material and culpable error in their tax return, criminal prosecution was on the cards. But this campaign is offering a fixed penalty regime for a full voluntary disclosure provided the behavior was not criminal (like MTIC fraud or money laundering).

## Penalties for making an inaccurate return

<b>Circumstance</b>	<b>Tax years up to year ending 5 April 2008 or accounting period ending on or before 31 March 2008</b>	<b>Tax years ending 5 April 2009 and later years or accounting period beginning on or after 1 April 2008</b>
You sent HMRC a return showing less tax payable than the correct amount because you had been careless.	No penalty.	No penalty.
You sent HMRC a return knowing it showed less tax payable than the correct amount (you may have to pay penalties of up to 100% of the tax due if you tried to conceal the inaccuracy).	20% of the tax due.	20% of the tax due.

Historically, I have seen solicitors' incorrect returns with errors which include:

- seriously understated work in progress
- overstated provisions
- incorrect claims for allowable interest
- incorrect entertaining
- incorrect private use motoring adjustments
- omitted interest receipts
- omitted gains
- omitted other income

This list is in no particular order and is not exhaustive.

An important element of this campaign is the HMRC assurance that provided the errant taxpayer tells, helps, and gives appropriate access; they will not be named and shamed. That could be crucial to a solicitor being able to continue their business.

<https://www.gov.uk/government/publications/solicitors-tax-campaign-your-guide-to-making-a-disclosure/solicitors-tax-campaign-your-guide-to-making-a-disclosure>

The Solicitors' Tax Campaign provides an opportunity for individuals who work within the legal profession as a solicitor to bring their affairs up to date in a simple, straightforward way and take advantage of the best possible terms. The critical dates are notifying the intention to disclose by 9 March 2015 and making the disclosure and payment by 9 June 2015.

On 17 December 2014 HMRC published an update on the yield from previous campaigns which is nearly £989 million.

<https://www.gov.uk/government/policies/reducing-tax-evasion-and-avoidance/supporting-pages/hmrc-campaigns>

#### **4. Private medical fee exemption up to £500 starts 01/01/2015**

A new exemption is available which is set out in FA2014, s12 and covers specific medical treatment up to £500 provided to an employee but funded by an employer. The treatment should be recommended through occupational health services, for the purpose of assisting an employee return to work after an injury or a period of ill health. The exemption starts on 01/01/2015.

[http://www.legislation.gov.uk/ukxi/2014/3226/pdfs/ukxi\\_20143226\\_en.pdf](http://www.legislation.gov.uk/ukxi/2014/3226/pdfs/ukxi_20143226_en.pdf)

#### **5. Consultation on temporary workers travel expenses**

On 16 December 2014 the government announced a consultation document seeking views on temporary workers travel expenses.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/387335/Employment\\_Intermediaries\\_-\\_Temporary\\_workers\\_relief\\_for\\_travel\\_and\\_subsistence\\_expenses.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/387335/Employment_Intermediaries_-_Temporary_workers_relief_for_travel_and_subsistence_expenses.pdf)

Temporary labour plays an important role in the UK's dynamic labour market, and helps provide flexibility to both employees and employers. At present, 1.7m people are temporary employees, around 6.5% of all employees – the same as the 20 year average share of employment.

However, there is evidence that some businesses in this part of the labour market are seeking to avoid paying employment taxes, including National Insurance, for their workers. There has been an increase in the use of overarching contracts by umbrella companies and employment agencies who seek to use such contracts to exploit the tax rules for travel and subsistence for temporary workers. This is estimated to be costing the exchequer at least £400m a year.

This 26 page consultation may affect some of your clients, especially if they are doing agency type work and the conduct may deserve a read.

## **6. Does a profession continue and permit loss carry forward in different circumstances?**

The rules on loss carry forward are very clear and specific at s83 ITA 2007. A loss incurred may only be carried forward and set against future profits of the same trade or profession. In *Harold Leslie Amah v Revenue & Customs* [2014] UKFTT 1084, Mr Amah sought to claim loss relief which he had incurred in a franchise business conducted under the name of Dolland & Aitchison in High Road, Wembley, London. He traded as an optician for 10 years but ceased on 3 April 2009 with unrelieved losses of £15,838 which Mr Amah wished to carry forward and set against his profits from self-employment as a locum dispensing optician from his home premises in Maldon, Essex, undertaking work on contracts for services direct with established opticians introduced to him by an agency.

The franchise business that had been carried on by Mr Amah at High Road, Wembley had continued after Mr Amah's involvement with it had ceased.

Mr Amah argued that the essence of the matter was the exercise of his profession as a dispensing optician, which was the basis for his franchise operation as it was the basis for his work as a locum. He argued that the identity of the profession meant that the loss could carry forward.

In denying Mr Amah's claim for loss relief, HMRC argued that Mr Amah's customer base with Dolland & Aitchison was wholly different from his customer base when working as a locum, and that the places where the customers were found were quite different: the old customers had been the persons who needed spectacles, while the new customers were the opticians for whose firms Mr Amah worked.

The change of location, or more properly the change of locations, was part and parcel of the change of activity from one which was principally commercial to one that was essentially professional. The facts very clearly indicate the cessation of one business activity and the commencement of another. The loss incurred in the trade could not be carried forward and could not be relieved against Mr Amah's professional activity as an optician.

Derek Allen

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Set your diaries for the next edition of the general tax update which will be published around 1 February 2015.

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