AAT Tax Update - 31 August 2014

In this edition of the tax update which now on a monthly basis we look at:
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3 Parliamentary briefing paper on changes to pensions published
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1. Employee travel and subsistence consultation

The Office of Tax Simplification (OTS) made a range of recommendations for changes to the current rules on employee benefits and expenses in its January 2014 report. The OTS proposed that the whole system of travel expenses be reviewed against changing working patterns.

This has the potential to affect 25 million employees and the cumulative effect is potentially substantial. Responses have been invited by 23 October 2014 and you can read more about this at:
https://www.gov.uk/government/consultations/travel-and-subsistence-review/travel-and-subsistence-review. AAT are preparing a response to this consultation so if you have any comments please email: consultation@aat.org.uk.

Fundamental change is needed as the current regulations do not reflect modern, more mobile working practices. The Government is gathering information at this stage with a view to outlining its strategy in the Autumn Statement and proposing new legislation for next year's Budget and Finance Bill.

This OTS report also recommends exempting basic accommodation provision from a tax charge, using open market rental value to quantify accommodation benefits. This would involve changes to the exemption available for representative occupation.

In recent years HMRC has challenged the availability of the £30,000 exemption by taking appeals to the tribunals and HMRC has lost a number of these. The OTS report has recommended that all termination payments should be added together with deductions for a multiple of the statutory redundancy element and other specific exemptions, rather than the £30,000 exemption.

2. Agent Update 43 for August published

At 15 pages and containing appropriate links for further research and reading, this is a good read for agents wishing to keep up to date with developments in tax.
http://www.hmrc.gov.uk/agents/update43.pdf

3. Parliamentary briefing paper on changes to pensions published

The tax incentives to encourage pension savings are significant. The 2014 Budget announced the government's intention to promote a pensions bill which would allow greater flexibility for savers in defined contributions schemes.

HMRC have published draft legislation and supporting documentation for the changes to the pension tax rules announced in the 2014 Budget. The briefing paper is a useful and readable introduction.

http://www.parliament.uk/briefing-papers/sn06891/flexibility-for-dc-pension-savers-from-april-2015

With a defined contribution arrangement the individual will be able to take as little or as much as they want (known as crystallisation) once they have reached normal minimum pension age (currently normally age 55). There will be the choice of taking funds as an income for life, for example by purchasing a lifetime annuity, or accessing as much of the funds when wanted, or both.

If you want to read the draft legislation which has been published by HMRC:
www.gov.uk/government/publications/draft-legislation-the-taxation-of-pensions-bill

4. Procedural rules at tax tribunals clarified

In Leeds City Council v Revenue & Customs [2014] UKUT 350 [link to: http://www.bailii.org/uk/cases/UKUT/TCC/2014/350.html], the President of the Tribunals ruled that time limits should be respected but a short delay, quickly corrected should not prevent a late application for costs awarded to the successful appellant being granted.

The underlying principle seemed to be that the decision would favour what was just and fair. In his decision in the *Kumon Educational UK company and Anor* [link to: http://www.bailii.org/uk/cases/UKFTT/TC/2014/TC03890.html] case, the President of the Tax Chamber of the First-tier Tribunal (Colin Bishopp) has given further confirmation that the rules should not operate 'as a tripwire leading to a windfall gain for the opposing party.' The case law seems to suggest that, although breaches of time limits, etc., are to be discouraged, minor, inadvertent breaches that are speedily remedied and lead to no significant prejudice should not be penalised.

5. Tribunal confirms that a cost sharing arrangement can be trading

The Upper Tribunal was asked to consider whether a cost sharing arrangement between 3 NHS Trusts could be a trading activity. In HMRC v David Thomson, a syndicate was claiming the 100% capital allowance which is available if a building is used in the Lanarkshire Enterprise Zone for a trading purpose.

Students of tax will be familiar with the famous and well known cases which show that even an isolated transaction can be trading if there was a profit seeking motive and there are many cases which have clarified the badges of trade. This case was about a laundry facility and a cost sharing arrangement which was commercially advantageous because it reduced costs but there was no intention to make a profit.

Lord Tyre delivered his judgement on 13 August 2014 but the underlying argument was whether the First Tier Tribunal were entitled to find as a fact that Lanarkshire Health Trust was trading when it entered into a cost sharing agreement with two other local health authorities for laundry facilities.

All the arrangements were at arm's length. The aim of defraying overheads and expenses (the cost sharing arrangement) was the equivalent of a profit in this context. Lanarkshire Health Trust were charging money for the provision of a service and this was the essence of trading even though the health authority was not trying to make a profit. The Upper Tribunal observed that most of the arguments put to it on behalf of HMRC came down, in essence, to the absence of a profit motive or to the fact that the laundry activity was carried on by three Health Boards, all of whose costs come out of the public purse. Neither precluded a finding that a trade was being carried on. The First-tier Tribunal had not erred in law in finding that the laundry building was used for the purposes of a trade. Consequently the building containing a laundry facility within the Lanarkshire Enterprise Zone qualified as a 'commercial building' for the purposes of Capital Allowances Act 2001 s 271, and thus for industrial building allowances at a 100% rate.

Lord Tyre ruled that:
"Contrary to HMRC's submission, it is clear that Lanarkshire did provide [the Health Boards] with services for a reward and that it would not be correct to assert that there was no characteristic of trading in anything which Lanarkshire did."

The Industrial Buildings Allowance was due. The taxpayer has finally achieved a degree of certainty but it has taken nearly 11 years since the laundry was opened. Tax disputes are best avoided because a dispute can take a very long time to settle.

http://www.tribunals.gov.uk/financeandtax/Documents/HMRC-v-Thomson.pdf

6. Lifetime Pension cap: HMRC make protection claim form available online

The following is not any form of financial advice or commentary. With annuity rates at the current very low levels, wealthy individuals may have surprisingly large pension savings. Such individuals may need to protect their funds and tax position if their aggregate pension savings exceed £1.25 million as at 5 April 2014 but do not hold primary protection. Individual protection secures a higher lifetime allowance equal to the 5 April 2014 value, subject to an overriding cap of £1.5 million.

Individual protection is not lost if further pension savings are made. HMRC have produced guidance on individual protection. To apply for individual protection 2014 for your or your clients' lifetime allowance use the HM Revenue and Customs (HMRC) online form. Applying online is quick and secure, and you'll get a receipt confirming your application immediately. HMRC can't accept printed applications.
You must apply for individual protection 2014 by 5 April 2017 and the online form can be accessed at:
https://online.hmrc.gov.uk/shortforms/form/IP2014?dept-name=&sub-dept-name=&location=36&origin=http://www.hmrc.gov.uk

Help and guidance is available from HMRC at:
http://www.hmrc.gov.uk/pensionschemes/ip14online.htm

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Set your diaries for the next edition of the general tax update which will be published around 30 September 2014

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