

AAT tax update 30 June 2015

In this edition of the tax update we look at:

1. a summer of change
2. an actor denied accommodation expenses for living away from home
3. forfeited deposit on property not relieviable as a loss for CGT
4. HMRC approach to PAYE and late filing penalties

1. A summer of change

On 28 May 2015, the Government brought forward a **Scotland Bill** which was debated on 15 June.

The Scotland Bill contains significant financial powers, including over income tax and VAT, the devolution of substantial elements of the welfare system and a range of other powers. These include constitutional powers and powers in areas such as oil and gas and transport. You can read the bill and its explanatory notes [here](#).

We will also have to deal with a raft of new tax legislation when the Chancellor delivers his budget on 8 July. Politicians require the oxygen of publicity so we can expect more complexity and a lot more voluminous legislation.

Back in the 1980's, ICAS led an initiative to persuade Government that there was an urgent need to simplify tax legislation and to restructure it sensibly. Government did not listen and the consolidated tax act emerged in 1988. For the next several decades all of the major professional bodies urged successive Governments to simplify the UK tax legislation but to no avail. I can only hope that the **recommendations of the Office for Tax Simplification (OTS)** succeed.

The OTS has published some tentative conclusions it has reached in the course of its work over the last five years. Sensible people acknowledge that some complexity may be justified, as a more complex system allows for better design and targeting of provisions and reliefs. In my view, the current tax legislation in the UK is simply not fit for the purpose of setting out the legislative framework for a self assessment regime. The OTS has suggested that there are four key principles to help ensure that new tax measures are as simple as possible.

1. ensure the proposed tax measure meets the policy aims
2. focus the measure carefully
3. design the measure to meet the aim
4. maintain the measure properly.

2. Actor denied accommodation expenses for living away from home

It was a surprise (to me) when the First Tier Tribunal (FTT) found in favour of Tim Healy that the accommodation expenses of £32,503 (representing the rent payable under a tenancy agreement for a period of nine months whilst Mr Healy was appearing in stage production of Billy Elliot in London) were incurred wholly and exclusively by Mr Healy for the purposes of his profession. The FTT allowed the expense under section 34(1)(a) of the Income Tax (Trading and Other Income) Act 2005 ("ITTOIA").

Mr Healy was based in Cheshire and was engaged to appear in the musical Billy Elliott from December 2004 until 17 September 2005. He needed to find accommodation in London near the Victoria Palace Theatre, where the musical was running. All practitioners should be familiar with the series of tax cases which demonstrated that any duality of purpose would be fatal to a claim for a tax deduction.

The Upper Tribunal (UT) held that the FTT had made an error of law in that it did not consider the question as to whether the shelter and warmth that inevitably follows from arranging accommodation was more than incidental to the business purpose. However, the UT rejected HMRC's argument that the fact that the flat was rented for nine months meant that the

taxpayer must have had a dual purpose. So the UT decision is to remit the case back to the FTT which needs to consider whether the duality of purpose will disallow the claim.

The FTT has given its second decision and has now found that there was duality of purpose. The fact that the taxpayer admitted that he rented a larger flat so that he could entertain family and friends appears to have been a decisive factor. This decision comes as no surprise. If you have clients who need to stay away from home a lot, it might be better to advise them to stay in hotels, or if they rent accommodation warn them to expect further challenges (even if the accommodation is modest in size and expense).

The **FTT ruled** that in accepting a contract which had at least 6 months to run, Mr Healy was not an itinerant worker. In his own evidence he had stated that “when asked why he had taken a 3 bedroom flat, he said that he knew how massive the show would be and that people would want to come and visit, so that he knew that he would need space for visiting family and friends. Family and friends did in fact come to visit. It was cheaper to host family and friends in a flat than in a hotel.” That duality of purpose was fatal to claiming a deduction for the expense.

3. Forfeited deposit on property is not relievable as a loss for CGT

I enjoy reading a good horror story but in **Hardy v R&C 2015 FTT 0250** I felt sorry for the unrepresented taxpayer who lost £128,000 because he forfeited deposits he had paid towards the purchase of two properties. He claimed relief for the forfeited deposits against other capital gains which he had realised that year but his claim for the loss was denied by HMRC. The extra tax due as a result of refusing his claim was £23,040.

There were two properties, in the prospective purchase of which the taxpayer was concerned, where contracts were exchanged on 30 April and 7 May 2008. The first was plot 185 Roehampton Lane, London, the buyer being stated to be one Mieczyslaw Rudski (Mr Rudski), who was the natural father of Mr Hardy's stepson Jakub Alexander Rudzki. The second was plot 187 Roehampton Lane, the buyers being stated to be Mr Hardy and his wife Grazyna Chont-Rudska.

In each case, the purchase contracts were with developers, who contracted not only to sell the land but to construct houses on it. In that sense the contracts were regarded as conditional upon the construction being undertaken and architects' certificates of practical completion being issued. When those certificates were issued, as they were in April 2009, a timetable was set in motion for the completion of the purchase contracts by the buyers. On exchange of contracts, 10% deposits of the purchase price were paid to the seller's solicitors as agent for the sellers. The deposits were £56,000 and £72,000 respectively.

The deposits were funded by Mr and Mrs Hardy in so far as their own purchase was concerned, and by a gift of the money to Mr Rudski by Mr Hardy. Alarm bells should be ringing at this stage as an irrecoverable loan to an individual is never going to create an allowable capital loss to the lender or gifter. But that identifies that the UK tax system can be very unfair and there are lots of things which can create “nothings” as far as tax is concerned.

On 12 June 2009, the sellers rescinded both contracts and retained the deposits paid by the buyers, the sellers refusing to wait while the buyers raised the necessary funds to complete. Mr Hardy had lost £128,000.

Mr Hardy raised complex arguments about beneficial ownership. Remembering that he was representing himself, that was a remarkably brave (or foolish) thing to attempt. His arguments were doomed to fail. A decision of the FTT is not legal precedent but it can be a persuasive authority. HMRC might welcome this decision as authority that a forfeited deposit does not create an allowable capital loss, but it would be wrong to suggest this decision establishes that principle.

Mr Hardy's contention was that the deposits had been for the purchase of land, but in fact there had not been a purchase or a disposal of an asset for CGT purposes

4. HMRC change approach to PAYE and late filing penalties

HMRC have announced that it is moving away from automatic fixed penalties for late filing by employers and instead will concentrate on employers who do not have a reasonable excuse. This is in addition to the three day period of grace announced in February 2015.

The lack of symmetry in our tax system is (I think) unacceptable. HMRC fail to meet their standards for answering telephones and are often responsible for considerable delays and yet there is no effective sanction for such delays and failures. However, if a taxpayer delays, a penalty regime starts. This relaxation is to be welcomed.

Derek Allen

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Set your diaries for the next edition of the general tax update which will be published at the end of July 2015

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