

## **AAT Tax Update 31 March 2015**

In this month's edition of the Tax update we look at:

1. OTS publishes recommendations on Employment status
2. Company cars: new advisory fuel rates
3. Labour Policy on pensions and reduced thresholds
4. Budget 2015 and the Finance Bill 2015
5. Joost Lobler is allowed to remedy his serious mistake at the UT

### **1. OTS publishes recommendations on Employment Status**

At present, employment status is a very difficult area because the well advised can arrange by contract to be whatever status they wish. The problems are considerable because human beings do not always follow the strict letter of the contract and in practice a person's employment status can be very uncertain. The present uncertainty is unfair and unsatisfactory.

The Office of Tax Simplification (OTS) has published a 188 page report but it does not have a solution to such a difficult and complex problem. If there had been a quick win it would have happened years ago. The obvious problem is that different people may wish different status results for so many different reasons. An individual may want the rights and protection which accompanies employment but the other person may not wish that burden. Taxation, especially the employer's National Insurance contribution, has such a differential impact that it is an economic driver to direct the parties towards a contract for service and self-employment.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/408608/OTS\\_Employment\\_Status\\_report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/408608/OTS_Employment_Status_report.pdf)

You need to read this against a background of the current open consultation on the taxation treatment of employee expenses and also that there will be a general election in May 2015. Status disputes with HMRC can take eight to ten years to be resolved by the tribunal which indicates that establishing the facts and evidence are difficult.

### **2. Company cars: new advisory fuel rates**

From 1 March 2015, new advisory fuel rates apply for company cars although there is a discretion that allows the continuing use of the old rate for a further month. Not surprisingly, the reduced price of oil has led to lower prices at the pumps and most cars will see a reduction of 2p a mile. For example, an over 2000cc diesel has fallen from 16p to 14p. You can read the detail at: <https://www.gov.uk/government/publications/advisory-fuel-rates/current-rates>

### **3. Labour policy on pensions and reduced thresholds**

I was shocked to read that the average student now emerges from graduation with a student debt of £44,000. The Labour party leader announced his intention to reduce fees to a maximum of £6,000 a year and this would be paid for by further restrictions to the tax relief on Pensions. Mr Milliband, if I may paraphrase him, said: 'Those with incomes over £150,000 currently get pensions tax relief at more than twice the rate of basic rate taxpayers. So Labour today confirms their previously announced policy that people with incomes over £150,000 will get tax relief at 20 per cent: the same rate as basic rate taxpayers. Labour says that they will continue this government's policy of reducing the annual allowance and lifetime limit that caps the amount people can put into their pensions tax free.

"We will reduce the lifetime allowance for tax-free savings to £1million: still 25 times higher than the average defined contribution pension. And we will reduce the annual allowance for what you can save tax free in your pension to £30,000: still nearly ten times higher than the average pension contribution." Labour promises.

We are all living longer but according to Mr Milliband the average pension pot is £40,000 and he argues that this justifies his reduction of the lifetime cap. It seems to me to be a bad policy which restricts further the encouragement to make sensible pension provision but this is a timely reminder that if clients have had a good year it might be a good idea to remind them that higher rate tax relief is still available on pension contributions this year.

#### **4. Budget 2015 and the Finance Bill 2015**

Given the volume of draft clauses published last December, it was hardly surprising that many items were deferred until after the election. A New government may drop all or some of these draft clauses when it introduces its own budget after the election.

There were a few surprises in the budget speech on 18 March and the Finance Bill published on 24 March 2015 about which you can read the detail at:  
<https://www.gov.uk/government/publications/finance-bill-2015-overview-documents-at-budget-2015>

This budget was about politics and trying to appeal to the electorate. There are tweaks here and there along with political rhetoric about tackling avoidance promises for the future.

The theatre of budgets gives politicians the oxygen of publicity which they crave. In my view it would be better if the annual round of budgets and finance bills ceased and an incoming government planned for a more stable fiscal background and treated any need to have subsequent changes as an admission of failure, recognising that they had got it wrong.

Our personal and business tax system is a mess. It is overly complex and inappropriate for a self-assessment regime. It needs to be simplified and politicians need to be honest about the statistics which they use because in my experience the statistics are abused. Take the claim that the abolition of annual tax returns will reduce the time spent dealing with HMRC from 40 minutes down to a more acceptable time. I spent 25 minutes on the phone before I could speak to a human being to correct a mistake that HMRC had made. Suggesting that the individual burden for the annual tax return is just 40 minutes seems like a joke except it is not funny.

What is clear is that the future is going to hold a lot more change. Practitioners need to consider how they can add value to a client because it seems that ordinary routine compliance work may become simpler and more efficient. At the time of writing, the detail is sparse on how HMRC propose to abolish the need for an annual tax return by 2020 but countries like Denmark have been able to issue prepopulated tax returns since 1985 and it seems welcome to me if our system can be made more efficient and the data more reliable. HMRC make too many mistakes at present and their track record of introducing electronic systems has not been good.

Practising members will need to watch developments with interest. Our tax system is complex and it will be necessary to check that clients claim the reliefs to which they are entitled as well as reporting the income when it arises.

#### **5. Joost Lobler is allowed to remedy his serious mistake at the UT**

Form filling can be a nightmare and many forms are unnecessarily long and complex. Just look at the UK annual tax return which is a nightmare for most taxpayers. Political rhetoric at present is criticising tax avoidance as being an abusive practice that fails to recognise the spirit of the law but there are numerous instances of HMRC applying the letter of the law and failing to take any notice of the spirit of the law.

One such case was that of Joost Lobler. He ticked the wrong box when encashing part of an investment bond and he faced a tax bill on notional income as a result. In the Spring of 2013, I read the judgement of the First tier tribunal with sorrow that the UK tax system could be so unfair. Fairness and equity have no place in our tax system. I have respected that principle since I read Finlay's J. judgement in *Kliman v Winkworth* 17TC 569.

Joost Lobler invested \$1.4 million (£930,000) in an Isle of Man based investment bond with Zurich Life, the insurer. Half of this money was his life savings boosted by the sale of his home in Holland, with the rest made up with a loan from HSBC Private Bank, which arranged the investment.

As is often the case, the investment bond was made up of a series of single-life insurance policies. The tax rules permit an encashment of up to 5% (£46,500) tax free each year. However, if the investor makes a 'partial withdrawal' from the policies without encashing, or 'surrendering', any of them they are liable to pay income tax on the full amount of money withdrawn. No adviser would make a mistake like this but Mr Jobler did not take advice and when presented with his four options he ticked the wrong box.

He withdrew funds in this way twice, taking \$746,485 in February 2007 to repay the HSBC loan and \$690,171 in February 2008 to pay for the house which he had bought in the UK and its renovation.

If the whole policy had been cashed in only the gain of \$70,000 would have been taxed. HMRC were seeking to tax Mr Lobler on \$560,000 which is the letter of the law but such an outcome is abusive enforcement of a result which is unacceptably unfair. You can read the decision at: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKFTT/TC/2013/TC02539.html&query=Joost+and+Lobler&method=boolean>

In 2013 the Supreme Court decision in Futter introduced a limitation on the Hastings - Bass principle which allows rectification of a document: <http://www.bailii.org/cgi-bin/markup.cgi?doc=/uk/cases/UKSC/2013/26.html&query=rectification&method=boolean>

In my view, HMRC deserve serious criticism for failing to exercise discretion which they have under the care and management provisions and pursuing a tax demand that was so outrageously unfair. Like Pontius Pilot, HMRC may claim that it was powerless and its discretion did not permit it to accept a lower amount of tax. HMRC should be hanging its head in shame for pursuing this appeal but the good news is that the upper tribunal (Mrs Justice Proudman DBE) has ruled that the mistake in the document can be rectified. This means that the partial withdrawal is converted into a full withdrawal and Mr Lobler, who is Dutch, need only pay tax on the investment gain of \$70,000. That seems to me to be a just and fair result and I hope that HMRC accept the decision.

Mr Lobler took his appeal by himself to the First tier tribunal but I understand that he was supported by many Counsel including the CioT at the Upper Tribunal and that there were many additional arguments promoted including arguments that these tax rules were a violation of his Human rights. Having succeeded in the argument that the document should be rectified, the other arguments were discarded.

Derek Allen  
31 March 2015

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

There will be another general tax podcast updating AAT members on recent developments and decisions available on the website on 30 April. For those interested in VAT, there should be an update available on 14 April.