

# Tax update – 31 October 2015

In this edition of the tax update we look at:

1. Employment related securities bulletin
2. Pension schemes newsletter (72)
3. Carrier bags - is it a tax?
4. Business Record Check activity discontinues
5. Draft Finance Bill 2016 clauses
6. Glyn case referred back to FTT

## 1. HMRC publish employment related securities bulletin

I cannot criticise HMRC for trying to help taxpayers and their advisers. HMRC have published bulletin 21 which sets out HMRC's views on:

1. **Taxation of Restricted Stock Units (RSUs) and other securities options**
2. **Employment-related Securities (ERS) online service update**

It appears that due to a technical fault, the data from some submitted 2014 and 2015 returns has not been captured. Some employers may receive a request for re-submission.

## 2. Pension schemes newsletter (72) published

In tax, there should be certainty but pensions keep changing. With annuity rates as low as they are, the proposed reduction in the lifetime allowance from £1.25 million to £1 million is worrying.

The perceived wisdom is that prudent people should aim to have a secure income when retired of around 2/3 of their income when working. So if your income was £80,000 a year, the target would be a pension income of around £54,000.

A male aged 65 and spouse aged 60 would be lucky to receive a joint life pension annuity of £50,000 per annum, so how will that person plan to augment their pension? For even higher earners, they need to plan to create an additional source of income for their retirement.

Some people will already have pension pots exceeding the new lifetime allowance (LTA) and they can elect to protect these savings. However, it seems that the detail is not yet available before the new cap applies from April 2016. This pension publication is worth a read of you have clients who will be affected by the reduction in the LTA

1. **Relief at source - annual returns of individual information for 2014 to 2015**
2. **Relief at source - Scottish Rate of Income Tax**
3. **Reminders for pension scheme returns, penalty reminders and payment reminders**
4. **2014 to 2015 annual allowance messages**
5. **Lifetime allowance reduction and transitional protection**
6. **Removal of form APSS161**
7. **Finalised regulations**
8. **Qualifying Recognised Overseas Pension Schemes**
9. **Pension flexibility**

## 3. Carrier bags - is it a tax?

I have recommended for over 30 years that the UK tax system should be simplified. As a matter of principle, I believe that taxation should raise money for the government but it should not be used for social engineering or to influence people's behaviour.

In Scotland we have been living with the mandatory extra charge for bags for some time. Speaking personally, it has had an enormous effect on my shopping behaviour because I refuse to pay for bags to carry any shopping I buy. A visit to the supermarket either requires planning beforehand to have my

own selection of re-useable shopping bags or I take the trolley to the car and transfer everything into the boot when I have forgotten to bring my own shopping bags.

In other countries, this 'tax' on shopping bags has applied for some time. I suspect that the government would deny this is a tax because the charge may just augment the shops' profits but I think it is a tax on the final consumer and I am determined not to pay this tax. The tax therefore has had a considerable effect on my behaviour and reluctantly, I have to admit that I approve because the environment benefits.

#### **4. HMRC discontinue Business Record Check activity**

I read with interest the CloT announcement that HMRC was discontinuing **Business Record Check** visits. When HMRC first introduced this compliance check, I had asked ICAS members to inform me of their clients' experiences. It emerged that HMRC were operating a traffic light policy and not surprisingly the clients of accountants were earning green light assessments. The visits confirmed, quickly and efficiently, that the records were adequate. So the business record check visits were not apparently doing much to improve record keeping because the obvious flaw was that the visits were badly targeted.

Good business records are essential and some business proprietors would be helped by some guidance on what records to maintain. I think HMRC are to be commended for recognising that the business records check programme was an inefficient way of trying to improve compliance.

#### **5. Draft Finance Bill 2016 clauses to be published on 9 December**

The Financial Secretary to the Treasury, David Gauke MP, announced that draft clauses will be included in Finance Bill 2016, which will be published on Wednesday 9 December 2015. That day will also see the publication of responses to policy consultations, explanatory notes, tax information and impact notes and other accompanying documents. The consultation on the draft legislation will be open until Wednesday 3 February 2016.

#### **6. Glyn case referred back to FTT to find facts on residence**

In *Revenue & Customs v Glyn* [2015] UKUT 551, the issue was whether James Glyn had lost his UK residence status for tax. He paid himself a dividend in 2005/06 of £24.59 million. If he was not a resident he was not liable to tax but if he had retained UK residence the tax was approximately £5.5 million.

Mr Glyn is a British citizen who was born in 1949. He has been married for many years to his wife Sarah and they have two children, a son who was aged 29 in early 2005 and a daughter who was then aged 24. Both children had by then left home, each living in a house or flat provided by Mr Glyn. It was the practice of Mr and Mrs Glyn and their children to have dinner together on Friday evenings, normally at the family home in St John's Wood.

After taking advice from his accountants for the best way to extract his money from his property development business and retire, Mr Glyn decided that for the tax year 2005/2006 and for the indefinite future, meaning at least five years, he would cease to be resident in the UK.

Mr and Mrs Glyn moved to Monaco and rented an apartment there. Mr and Mrs Glyn retained their house in St John's Wood (the London house). Mr Glyn made 22 visits to London in the year 2005/2006. Seven of these visits appear to have been made primarily to attend particular functions, such as weddings, a funeral, charity events and special parties. Other visits in 2005/06 and the later years included the birthdays of his two children, his own birthday and the three most significant Jewish festivals. On each visit he stayed at the London house, and on 15 visits there was the traditional Friday evening family dinner with his wife and their children which, the First-tier Tribunal (FTT) found, almost always took place at the London house. Mr Glyn was careful never to exceed the 90 day test of habitual residence. In 2010, Mr Glyn returned to the UK permanently and has since lived at the London house.

All practitioners advising in this area are familiar with Supreme Court in R (on the application of Gaines-Cooper) v Revenue and Customs Commissioners [2011] UKSC 47, 81 TC134. The effect of that decision was that:

“... in order to demonstrate that a UK resident person has ceased to be UK resident, it is virtually critical to demonstrate a “complete break”, and that this requires it to be shown that the person has not necessarily severed family, social and business ties with the UK, but that at least there has been a “substantial loosening” of such ties.”

In plain English, it is difficult to lose UK tax residence status and to do so require a substantial loosening of the ties with the UK. The facts which I have summarised above leave me the reader with a degree of uncertainty that Mr Glyn had done enough to cut the ties with the UK. The FTT concluded that there was a substantial loosening of Mr Glyn’s ties in relation to his business, family and social life.

The Upper Tribunal (UT) has remitted the case back to the FTT to find the facts. In doing so the UT has given guidance on factors which are relevant to determining the residence status of Mr Glyn. They ruled that the earlier decision of the FTT cannot stand because the FTT took into account irrelevant factors and they failed to have regard, or sufficient regard, to certain relevant factors. The FTT itself considered this to be a “borderline” case (see the Reasons for refusing permission to appeal at [10]).

The Hon Mr Justice David Richards stated:

“In such a case, the errors of law which I have identified mean that the Decision cannot stand. This is not a suitable case in which the Upper Tribunal can reach its own decision on the issue of residence or non-residence, nor did either party suggest that it could do so. In those circumstances, I shall remit the case for re-hearing by a differently constituted First-tier Tribunal.”

Derek Allen

31 October 2015

Set your diaries for the next edition of the general tax update which will be published on 30 November 2015.

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