

Tax update December 2015

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

1. Scottish rate of income tax –no different
2. tackling tax avoidance
3. tax free subsistence for meals when employees work away
4. making tax digital – an outline of the future
5. Agent Update 51
6. golden handshake introduction payment taxed as income

1. Scottish rate of income tax – no different

HMRC started sending letters to potential Scottish taxpayers at the beginning of December as part of the next stage of preparations for the introduction of the Scottish Rate of Income Tax. The letters are intended to confirm the accuracy of HMRC's records of taxpayers who live in Scotland and will pay the new rate which was announced in the Scottish Government's Draft Budget on 16 December 2015 as being the same as the rest of the UK. The Scottish rate comes into effect on 6 April 2016.

2. Tackling tax avoidance

I think it is worthwhile reviewing the watershed between sensible tax planning and aggressive tax avoidance. In my view, that watershed is impossible to define and in practice the attitude to tax planning is hardening. Even when companies and individuals respect the law but use it to their advantage, there is a possibility of a public backlash. In times when there are cutbacks in public spending and welfare, many people think that big businesses should pay even more in tax to lessen the austerity programme.

High street shops have seen protesters outside their door trying to shame the business into paying more tax. The phenomenon is not confined to the UK alone, multinational companies are encountering widespread criticism and challenges from governments. For example, the fast food chain McDonalds has been criticised for not paying enough tax in the countries in which it operates. The European Commission has announced that it has opened a formal investigation into Luxembourg and tax rulings granted to McDonald's, following information requests in summer 2014. The Commission noted that the multinational Luxembourg company had a US branch, to which royalties were allocated.

Starbucks encountered considerable adverse publicity about its arrangements and structures which helped the company to reduce tax in the UK. From memory, the company bought a lot of its coffee through a Swiss company. Although the arrangement was strictly legal, protesters thought that they were entitled to picket outside shops and try to deter customers.

I was interested to read that the European Commission had also challenged the rulings arrangement given by the Netherlands government to Starbucks. The Netherlands government has announced that it is appealing against the decision of the European Commission that the Netherlands granted state aid to Starbucks.

The Netherlands government have stated: 'The Dutch government greatly values its practice of offering certainty in advance. The Dutch practice is lawful and compliant with the international system of the OECD. However the European Commission's verdict in the Starbucks case deviates from national law and the OECD's system. In the end this will cause a lot of uncertainty about how to enforce regulations. In order to get certainty and case law on the application of certainty in advance by way of rulings, the government appeals the Commission decision in the Starbucks case. The government is of the opinion that the Commission does not convincingly demonstrate that the Tax Authority deviated from the statutory provisions. It follows that there is no State aid involved'

I anticipate that Finance Bill 2016 will contain legislation to challenge tax avoidance and some of the things which have already been announced include:

- a new criminal offence for tax evasion which will remove the need to prove intent for the most serious cases of failing to declare offshore income and gains

- new tax geared civil penalties for offshore tax evaders and those who help them. Naming and shaming evaders and their enablers is on the cards
- a new criminal offence for corporates failing to prevent tax evasion or facilitating tax evasion
- new measures for serial avoiders (i.e. those who persistently enter into tax avoidance schemes that are defeated by HMRC). Including restrictions on accessing certain tax reliefs
- a new penalty (of 60%) for cases successfully tackled by the General Anti-Abuse Rule (GAAR) which will be amended so that it targets abusive avoidance better
- new rules to address arrangements designed to convert income into capital. Changes will be made to the Transactions in Securities rules and there will be a new targeted anti-avoidance rule (TAAR)
- legislation to implement the OECD rules for addressing hybrid mismatch arrangements. The legislation will apply with effect from 1 January 2017

The above list is not exhaustive but it illustrates that those who plan for tax will need to understand where the watershed lies between acceptable tax planning and egregious avoidance.

Draft legislation and an overview of the policy has been published and it provides a taster for Finance Bill 2016. There are 32 announcements relating just to income tax but for practitioners it should be required reading as we plan for 2016 and onwards.

3. Tax free subsistence for meals when employees work away

At least from 6 April 2016, employers will have certainty in knowing that they can give an employee a meal allowance to cover the cost of meals taken by that employee when working at a venue which is away from the employee's normal place of work. The employer can pay one meal allowance per day paid in respect of one instance of qualifying travel, the amount of which does not exceed:

- a) £5 where the duration of the qualifying travel in that day is 5 hours or more;
- b) £10 where the duration of the qualifying travel in that day is 10 hours or more; or
- c) £25 where the duration of the qualifying travel in that day is 15 hours or more and is ongoing at 8pm.

SI 2015/1948 sets out the approved method of calculating a meal allowance for costs incurred **during 'qualifying travel'**, so that it is **not** a taxable benefit for an employee for the 2016/17 tax year and subsequently.

4. Making tax digital – an outline of the future

I read recently that the government and HMRC are committed to reducing the cost to taxpayers by £400 million. If there are 30 million taxpayers, that means a saving of £13 per person. Tax is complex, often time consuming and at this time of year as the individual tax filing deadline approaches, it can be stressful.

Tax should have been simplified years ago. I remember campaigning in the mid-1980s for simplification and to use the consolidation exercise that produced ICTA 1988 as an opportunity to restructure and simplify UK tax law. No one listened and looking at the draft clauses this year tax continues to become ever more complex.

Everyone should support HMRC in trying to help taxpayers meet their fiscal obligations but the gap between what HMRC says and what it does is enormous. HMRC service standards are appalling.

Historically, HMRC does see ways of improving things and providing a more efficient service but it appears to mismanage the process of reaching its objective by, for example, cutting staff numbers in anticipation of the new service being in place. Back in the 1970s I remember that there were 685 tax offices in the UK and any taxpayer could walk in off the street and be helped by well trained and helpful Inland Revenue staff. Those days are long gone. Now you can use the telephone and if you have the patience you can wait a long time before your call is answered mostly by someone who reads a script but is neither well trained nor helpful. Sometimes (rarely) the call is answered by someone who is helpful, knowledgeable and efficient.

Communication methods have changed beyond all recognition and HMRC are moving into the digital age. They intend to provide taxpayer accounts that would enable the self-employed and landlords to make quarterly returns and to record their business activity more easily. The plan is that businesses will use software that compiles their tax data as part of their ordinary day-to-day activity, with the submission process being less burdensome.

If you are digitally enabled and happy with digital communication you will welcome the proposals. There are **three papers** one of which is a case study of 4 pages, one a discussion paper of 3 pages on making payment easier and a 13 page document setting out the vision for a digital future.

5. Agent Update 51 published

Agent Update is an interesting read and it gives a good overview of the tax environment for agents

6. Golden handshake introduction payment taxed as income

The Upper Tribunal(UT) has overturned the decision of the First tier tribunal, finding in favour of HMRC that the payment made to new employees who brought with them clients from their previous employment was taxable as income and therefore liable to tax and NIC.

In **R&C v Smith and Williamson Corporate Services and Patrick Smiley**, the issue was whether money paid by Smith and Williamson Corporate Services (SWCS) to Mr. Smiley was income from the employment. Mr Smiley and other members of his team agreed to deliver his client relationships for what has been described as a “Goodwill Payment”. Mr Smiley had declared the sum received as a capital gain and paid tax as such but HMRC challenged his treatment of the receipt arguing that it was income derived from his new employment.

There were two contracts relating to this payment made for the asset of the client relationship and Mr Smiley’s share was £957,295.92. He had a normal contract of employment with his employer and then there was a separate contract with another company in the group relating to the goodwill payment. The other group company capitalised the payment in its accounts as expenditure on goodwill

Crucial to understanding the Judge’s reasoning, he observed that Mr Smiley and his team did not have an asset over which they had any right to sell and he also took the view that the separate contracts were an artificial arrangement that failed in its purpose to separate the payment for the client relationship from being a reward from the employment. At paragraph 142 (page 58) the judge states:

The reality is that both contracts reflect the single overarching agreement (whether or not contractually binding in all respects) found in the Covering Letter; there was a single “package” with the details to be determined later, and in fact determined through a process of separate negotiation of the 2006 Contract.

At Paragraph 164 he goes on to conclude:

In my judgment, the evidence establishes that the Payment was a reward to the Team for introducing the Butterfield clients to SWIM and procuring, or assisting in procuring, the transfer of those clients to SWIM. In other words, as Ms Wilson puts it, the Team provided a service. I do not consider that it is right to describe what the Team did as “the transfer of rights to exploit client connections.

Derek Allen
31 December 2015

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

Thank you for joining me in these podcasts which have covered 2015, a year in which there have been many developments. May I wish all my readers all the good things they seek for 2016.

There will be another general tax podcast updating AAT members on recent developments and decisions available on the website on 31 January 2016. For those interested in VAT, there should be an update available on 14 January 2016.