# Tax update – May 2016

In this Month's edition of the Tax update we look at:
1 Parking Fines are not allowed for tax purposes
2 HMRC Guidance on employment intermediaries travel and subsistence
3 Consultation on Corporate Interest Expense
4 Queen's Speech and New Bills announced on 18 May 2016
5 OECD Forum on Tax Administration announcement

## 1. Parking Fines are not allowed for tax purposes

In the computation of profits, only sums which are expended wholly and exclusively for the purposes of the trade may be deducted. I would have thought that the watershed between what might be allowed and what must be disallowed had been clarified many years ago. But business and tax does not stand still and a security firm argued that it was essential to minimise the risk to employees and security that its vehicles minimise the distance between parking and the delivery point. That might be common sense. It might be expedient. But we all know that in tax the strict letter of the law must be respected.

In G4S Cash Solutions (UK) Ltd v Revenue and Customs [2016] UKFTT 239 , the First Tier Tribunal (FTT) had to decide whether parking fines were allowable after HMRC raised discovery assessments and closed its enquiry disallowing the parking fines and seeking additional tax of approximately £580,000 for the four years, plus interest on the unpaid tax.

HMRC argued Parking Fines (PCNs) are not deductible in calculating the appellant's profit for the purpose of corporation tax, because PCNs are statutory fines imposed on the appellant for a breach of the law by the drivers and not for actions "in the course of the appellant's trade".

The appellant is a secure cash transportation company providing cash delivery and collection services. The principal business activity comprises the secure delivery and collection of cash to and from customers' premises (cash in transit ("CIT")) and replenishment of ATMs, together with related activities (collectively CViT, activities). The tribunal found that it is obvious and wholly uncontroversial that the risk of an attack in relation to a Cash in Transit ("CIT")/ATM service increases as the time taken to complete that service increases. The proximity (or otherwise) of the parking location of the security van used to carry out the relevant service will have a significant influence over the duration of that service. The FTT had no hesitation in finding that minimising the walking distance of the ATP phase of any CIT or ATM service, from the parking location to the customer's premises, reduces the risk to employees' safety and public safety and further cash losses can be reduced.

I sympathise with G4S but in a very lengthy decision the tribunal concluded that (paragraph238): "Is the PCN paid for the purpose of the trade? No. It is paid because the appellant has a statutory liability to pay it. The underlying factors relate to the trade, not the PCN; the appellant could possibly have rescheduled the delivery, gone around the block, as suggested by Mr Sewell, or contacted the customer to negotiate alternative arrangements. If the potential issue had been addressed sooner with a parking site survey and a dispensation sought the problem might not even have arisen."
And at Paragraph 241:" In our view, the cost of a PCN is paid in connection with the trade, obviously, but the crucial words are: "*wholly and exclusively for … the trade"*. The rule is only satisfied if the taxpayer's **sole** purpose for incurring the expense is for the purpose of the trade. If there is a non-trade purpose then the expenditure is not allowable even if there are also one or more business benefits in making the expenditure. The trade is not that of breaking the law. The breach of the law is a deliberate activity, which is undoubtedly for commercial gain and comes about as a result of activity in the course of the trade, but it is no

more a part of the appellant's trade than that of e.g. Virgin one of the other case studies for TfL. The payment was at least in part to meet the legal obligations."

Tax nothings exist and this decision confirms that a penalty is intended as a deterrent and will not be allowed for tax purposes. http://www.bailii.org/uk/cases/UKFTT/TC/2016/TC05015.html

## 2. HMRC Guidance on employment intermediaries travel and subsistence

Unlike many of our European neighbours, the UK tax regime does not allow a tax deduction for the cost of commuting to work. This creates another tax nothing as well as a very uneven playing field because some individuals can obtain a deduction (temporary workplace employees) but the majority cannot. This year's Finance Bill attempted to tighten the tax treatment even further by restricting a tax deduction for agency workers and individuals using employment intermediaries.

On 27 April 2016, HMRC published new guidance on the tax treatment of travel and subsistence which can be found at :
https://www.gov.uk/government/publications/employment-intermediaries-travel-expense-guidance

From 6 April 2016, section 339A has been introduced into ITEPA. This sets out new tax provisions for the treatment of travel and subsistence expenses for workers who personally provide services through 'employment intermediaries'. Changes have also been made to the NICs disregard so that it mirrors the tax position where payments of, or contributions towards, such expenses are made.

This HMRC guidance applies from 6 April 2016 and reflects the legislation as currently laid before Parliament in the Finance Bill 2016. However, this legislation contains a technical error about where the supervision, direction or control test applies. This will be corrected at the earliest opportunity. Once the legislation has been corrected, the guidance will be updated. There will be a corresponding amendment made to the Social Security (Contributions) Regulations 2001 (SI2001/1004) for national insurance contributions purposes.

For practical purposes, HM Revenue and Customs doesn't consider that this correction will alter the ultimate result for the vast majority of workers currently engaged through employment intermediaries, including umbrella companies. Those who are working under supervision, direction or control will, in most instances, be akin to those who are an employee.

Where a worker is engaged through what is commonly known as a personal service company (PSC) (including a managed service company (MSC)), then the rules will remain unchanged.

https://www.gov.uk/government/publications/employment-intermediaries-travel-expense-guidance/travel-and-subsistence-expenses-for-workers-engaged-through-employment-intermediaries-from-6-april-2016

Personally, I think that it is disgraceful that defective legislation should be enacted especially when there is still time to correct the defect before the Bill gets Royal Assent. The problem is that employment status resolution is a difficult ara and the test of whether someone is subject to supervision, direction or control can be difficult to establish the facts. Disputes on status can take many years to resolve but it seems to me that with the defect, some people might still be able to claim a tax deduction for travel and subsistence when the spirit of the law intends to deny them that deduction. I believe that there should be horizontal equity as well as clarity and certainty in our tax system. This is maladministration by the government and I'd be very cautious about offering advice in this area because a correction of the defect might be retrospective and the change brought in from 6 April 2016.

## 3. Consultation on corporate Interest expense

The government has published an 85 page consultation document which asks 46 specific questions (page 63 onwards). The deadline for responses is 4 August 2016. This was announced at the March budget in 2016 and the new rules aim to limit the tax relief for the interest expense that can be claimed by large multinationals. The new rules aim to follow the OECD/G20's recommendations under Action 4 of the BEPS project and will apply from 1 April 2017.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/525923/tax_deductibility_second_consultation_v2.pdf

### 4. Queen's speech and new Bills announced on 18 May 2016

Politicians crave the oxygen of publicity and so it is inevitable that they keep generating changes and promote new Bills. At 83 pages, I cannot recommend the speech as a riveting good read. I worry that the list does not detail Finance Bill changes which just confirms that there is even more change and new legislation in the pipeline.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524040/Queen_s_Speech_2016_background_notes_.pdf

### 5. OECD Forum on Tax Administration

On 13 May the Forum published a note following its discussions held in China. Item 3 above illustrates that this is not merely a talking shop and that many countries are now co-operating to tackle tax avoidance and to share information.

150 delegates representing 44 nations concluded on three interlocking themes:

☐ effective implementation of the G20/OECD international tax agenda requiring co-ordinated action from us, as tax commissioners;
☐ building modern tax administrations that effectively respond to the challenges and opportunities of an increasingly digital world and integrating it into the way we work; and
☐ helping build capacity in tax administration so that all countries, and in particular developing countries, can benefit from the changes in the international tax landscape and better mobilise the resources they need.

http://www.oecd.org/tax/administration/fta-communique-2016.pdf

Derek Allen
31 May 2016



There will be a general tax podcast updating AAT members on recent developments and decisions available on the website on 30 June 2016.