

## AAT Tax Update 31 August 2016

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

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### 1. CGT Entrepreneurs' relief denied on part disposal of premises

In my view CGT is a seriously flawed tax and is in urgent need for simplification. It is wrong in principle that individuals should be taxed on inflationary gains but it is also wrong that there should be so many complex reliefs. The spirit of the legislation is ignored by HMRC who will deny reliefs on technicalities.

In last month's podcast I had highlighted that HMRC are now seeking penalties when it is obvious a mistake occurred and in *Amin v Revenue and Customs* [2016] UKFTT 515 an accountant not only was denied his claim for Entrepreneurs' Relief but he had a penalty (27% ) imposed because he wrongly claimed the relief.

Mr Amin conducts an accountancy practice trading as Amin, Patel & Shah operating from business premises at 334-336 Goswell Road, London, EC1V 7RP. The premises were acquired in 1983 and since 1988 Mr Amin has been a sole practitioner and the sole owner of the premises.

In three separate transactions Mr Amin purported to sell 50% of his beneficial interest in the premises as follows:

- 1 By deed dated 4 April 2008 Mr Amin sold 22.7% of his beneficial interest in the premises for a consideration of £249,700.00
- 2 By deed dated 25 June 2008 Mr Amin sold 22.7% of his beneficial interest in the premises for a consideration of £249,700.00
- 3 By deed dated 23 April 2010 Mr Amin sold 4.6% of his beneficial interest in the premises for a consideration of £43,700.00

The purchasers in all three transactions were Mr Amin, his wife and his son, as Trustees of the Mini Pension Scheme. The transactions were therefore between connected persons.

HMRC refuted the claim for Entrepreneurs' relief in a letter dated 11 March 2011 by stating that 'you have sold a building that the business used and so ...have not sold a part of your business'. In order to claim this relief Mr Amin had to show that he had sold a separate, distinct and identifiable part of his business. According to HMRC Mr Amin had produced no evidence of the sale of goodwill and there was no evidence that the audit work was a distinct part of the rest of Mr Amin's practice.

Now if I pause here and make my own observations which include:

- Mr N S Amin gave verbal evidence that he took over the audit practice
- I have seen cases of serious fraud get penalty loading of less than 27%

- Mr D Amin may have claimed Entrepreneurs' relief wrongly but the technicalities are complex. He made a mistake but this should not be penalised.
- 8 years have elapsed since the first part disposal and such delays are unacceptable. Mr Amin was an accountant and I suspect that more stringent tests of what is reasonable care have been applied

If Mr Amin had sold distinct office space in the premises such as the second floor on the basis that he no longer needed this office space as a result of no longer carrying out audit work he might have been entitled to the relief; but the First Tier Tribunal agreed with HMRC that the sale of the premises and of the goodwill of the audit practice have to be seen as wholly unconnected transactions.

According to the FTT Mr Amin's responses to any request for information and his conduct of these proceedings has been dilatory and matters have been raised at the last moment without any justification.

The Tribunal dismissed the appeal and confirmed the amended closure notice in the sum of £3,531.78 and the amended penalty notice in the sum of £953.53. If there is a lesson to be learnt, it is that HMRC expect claims to be correct especially if the claim is from a professional adviser. I feel sorry for Mr Amin because he has been treated harshly but he might have exacerbated the penalty position by delaying and arguing.

<http://www.bailii.org/uk/cases/UKFTT/TC/2016/TC05265.html>

## **2. Activity as investment not trade so loss relief denied**

In *Anderson v Revenue and Customs* [2016] UKFTT 565, Mr Anderson claimed losses of £3,002,772 in his personal income tax return for the 2008-9 tax year on the basis that those losses arose from trading activities, described as football development.

Mr Anderson is a well known football agent. He has worked as a football agent for thirty years and represented some well known players. His work as a football agent is carried out through his company, Jerome Anderson Management Limited. Bafana had been set up as a training scheme in South Africa to nurture young footballing talent and to promote their prospects in the lucrative European footballing leagues and make money by the successful transfer of talented players. In his personal capacity Mr Anderson put £2,943,000 into Bafana in January 2009 and picked 3 players in July 2009 from the Bafana academy; Ayanda Patosi, Devon Saal and Armien Campbell, from a list of twenty players provided by Bafana.

Mr Anderson's tax return for the 2008-9 tax year, filed on 28 January 2010 included a claim for £3,002,772 of losses described as in relation to "Bafana Soccer" and a business of football development, which commenced on 6 January 2009. Bafana went into administration in 2011. Mr Anderson did not make any significant profits from the Bafana Scheme.

The First Tier tribunal ruled that even on the basis that all HMRC knew in early May 2012 was that the Bafana Scheme existed, that it was an orchestrated scheme, that its participants included Mr Anderson and that the scheme had implementation issues, that was sufficient to form the basis of a "reasonable belief" that there had been an under-assessment. It was a reasonable and logical conclusion on the basis of what HMRC knew about the Bafana Scheme and Mr Anderson's participation in it, that Mr Anderson had claimed losses derived from the scheme to which he was not entitled. HMRC were entitled to issue a discovery assessment.

Mr Anderson's claim for loss relief was denied. He was not trading. The FTT concluded that Mr Anderson did not have substantial active day-to-day involvement in the activities of Bafana. His activities were analogous to those of an investor.

<http://www.bailii.org/uk/cases/UKFTT/TC/2016/TC05314.html>

### **3. Free bus pass was a taxable benefit in kind**

In Nottingham City Council & Anor v Revenue and Customs [2016] UKFTT 520, the issue was whether a free bus pass given by the employer to Mr T Straw was exempt. HMRC argued that it was a benefit in kind and the financial support given by the Council did not satisfy the conditions of s243 ITEPA 2003.

After bus services were privatised, the Council now gives various subsidies to bus operators including NCT. In 2006-07 financial support of approximately £6.5m was provided.

On 6 April 2012, the Council implemented a new salary sacrifice arrangement for a single employee, Mr Straw, under which he entered into a salary sacrifice arrangement and was provided with a zonal bus pass (an Easyrider Nottingham City Card) which the Council purchased from NCT. The bus pass was valid for all routes within the Nottingham City boundary, which included Mr Straw's journeys to and from work. Mr Straw was able to use the bus pass at other times, such as when he was on holiday, and also for other journeys within Nottingham.

Mr Straw's bus pass cost the Council £420, the price paid by a member of the public. It was valid until 11 April 2013. In 2012-13, the Council paid £6,267,000 to NCT to cover the cost of concessionary fares for the elderly, disabled and others, and a further £1,452,890 for "tendered contracts". The main issue in dispute was whether Mr Straw's bus pass was exempt from tax under ITEPA s 243 because its provision constituted "financial or other support for a public transport road service".

This is an interesting case for students interested in statutory interpretation. Ann Redston's judgement is a good read in that respect and it will be difficult to see how her decision could be overturned. Had the Council given support to NCT to fund the public bus system used by its employees, a zonal bus pass given free to employees would not have been subject to income tax. However, on the facts of this case, there is no evidence of any such support: neither the purchase of Mr Straw's bus pass, nor the other payments, come within s 243.

Mr Straw was a test case and he will be taxed on the benefit he enjoyed as will the Council suffer Class 1A NIC.

<http://www.bailii.org/uk/cases/UKFTT/TC/2016/TC05269.html>

### **4. HMRC Customer Survey Report**

I dislike the use of the word "customer" because it implies that persons have a choice. HMRC aims to be impartial and increasingly effective and efficient in their administration of the tax system. They aim to help the honest majority to get their tax right and make it hard for the dishonest minority to cheat the system.

You can interact with HMRC online, by telephone or by searching the webpages. Individuals did not rate HMRC as highly on ease of dealing with tax issues as fairness. Six in ten (58%) felt it was easy to deal with tax issues and 54% rated them positively on minimising the cost, time and effort of dealing with their tax affairs; these were closely linked with experiences of HMRC getting the tax transaction right and acceptability of the time taken to reach the end result. About half of Individuals agreed that HMRC services were personalised to them (49%).

Perceptions are not necessarily reality but just over a third felt HMRC were efficient (35%), while about four in ten felt they were fair (38%) or effective (41%). Tax is complex and HMRC do a difficult job well but such assessments that the majority felt HMRC are inefficient, unfair and ineffective are a cause for public concern. Individuals were more positive about HMRC ensuring customer data and personal information is treated confidentially (68%).

This 87 Page document is an interesting read especially the chapter on what agents think of HMRC. 72% of agents think that HMRC are not doing enough to reduce administrative burdens. I agree. Nobody likes to pay tax and HMRC could do a lot more to help honest taxpayers pay the right tax at the right time.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/544417/413 -  
\\_Individuals\\_small\\_business\\_and\\_agents\\_customer\\_survey\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/544417/413_-_Individuals_small_business_and_agents_customer_survey_2015.pdf)

## **5. HMRC Interest rates change**

Following the 4 August cut in Bank of England base rate to 0.25%, HMRC will lower its late payment interest rate charge with effect from 23 August 2016 from 3% to 2.75%. The interest rate on tax repayments remains at 0.5%.

[www.gov.uk/government/publications/rates-and-allowances-hmrc-interest-rates-for-late-and-earlypayments/rates-and-allowances-hmrc-interest-rates](http://www.gov.uk/government/publications/rates-and-allowances-hmrc-interest-rates-for-late-and-earlypayments/rates-and-allowances-hmrc-interest-rates)

## **6. Consultation on penalty sanctions for those who practice tax avoidance**

Tax avoidance is legal and in many cases sensible tax planning is just a matter of claiming the reliefs to which the taxpayer is entitled. The consultation (32 pages) ends on 12 October 2016 and it is about proposals for sanctions for those who design, market or facilitate the use of tax avoidance arrangements which are defeated by HMRC and to change the way the existing penalty regime works for those whose tax returns are found to be inaccurate as a result of using such arrangements.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/546589/Strengthening  
Tax\\_Avoidance\\_Sanctions\\_and\\_Deterrents-discussion\\_document.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/546589/Strengthening_Tax_Avoidance_Sanctions_and_Deterrents-discussion_document.pdf)

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

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