

Tax update – 30 September 2016

AAT Tax Update 30 September 2016

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1. New advisory fuel rates from 1 September 2016

You may recollect that in the June podcast I advised that new advisory fuel rates had been introduced and as a result of falling fuel prices the rates had decreased. Since June fuel prices have increased and the advisory fuel rates have risen by one penny for small petrol cars and over 1601cc diesel cars further the new rates apply from 1 September 2016 in pence per mile that can be used by employee company car drivers as noted in the table below:

		Petrol	LPG	Diesel
From 1 September 2016	1400 cc or less	11	7 1600 cc or less	9
	1401 – 2000 cc	13	9 1601 – 2000 cc	11
	2001 + cc	20	13	13
1 June to 31 August 2016	1400 cc or less	10	7 1600 cc or less	9
	1401 – 2000 cc	13	9 1601 – 2000 c	10
	2001 + cc	20	13	12

HMRC has continued to confirm that people can use the previous rates for up to 1 month from the date the new rates apply VAT element of mileage allowances.

The original intention of advisory fuel rates was to give certainty to employers and employees about what expenses could be reimbursed. It was a deregulatory measure. But changing the rates every three months is a recipe for error. These days HMRC seek penalties if they discover an error has been made.

2. Finance Act 2016 gets Royal Assent

Royal Assent was granted on 15 September enacting the 662 pages of new legislation which can be read at http://www.legislation.gov.uk/ukpga/2016/24/pdfs/ukpga_20160024_en.pdf

3. Warden's caravan was not plant for capital allowances claim

As a student of tax in the 1970s I was interested in the development of the law relating to capital allowances. A successful claim for capital allowances relied on the equipment functioning as a tool of the trade. In contrast, the rule was that no allowances were available for expenditure on the setting unless the setting had a function like the Greenock dry dock in Barclay Curle.

The issue arising in the appeal made by Mr Paul Telfer was whether the expenditure incurred by Mr Telfer on acquiring a caravan qualifies for capital allowances under Part 2 of the Capital Allowances Act 2001 ("CAA") – plant and machinery allowances. <http://financeandtax.decisions.tribunals.gov.uk/judgmentfiles/j9328/TC05350.pdf>

Mr and Mrs Telfer were assistant wardens at the Club's Grange-over-Sands site under contracts which ran from 21 March to 9 November 2009. On 4 March 2010 he purchased a Lunar Delta caravan from Catterick Caravans, Catterick at a cost of £21,840. On 30 November 2011, Mr Telfer purchased a Bailey Unicorn Barcelona caravan from Chichester Caravans, Bromsgrove at a cost of

£19,800. He part exchanged the Lunar Delta caravan, which had a number of defects which had arisen as a result of heavy usage.

The Caravan Club recruits from its 'membership base' – that is, from caravan users – it is a requirement that someone wishing to become an Assistant Warden must have been a member of the Caravan Club for at least one year and to have used the Club's 'Site Network' during this time. The role requires the warden to live on site in their own outfit although there are a few sites where accommodation is provided. On the majority of sites, the warden will have the use of a private bathroom and shared laundry facilities with other site employees.

In all cases a warden or assistant warden is on call 24 hours a day. Although the office hours (when the site office is open) are generally 8:30 a.m. to 6:00 p.m., there is a doorbell which can be rung by site users for out-of-office-hours contact with the warden or assistant warden. This doorbell can be used up to 8:00 p.m. for enquiries and after that time for emergencies – such as the need to call an ambulance. On bigger sites warden or assistant warden couples take turns in being on call out of office hours. Every warden or assistant warden couple is obliged to be on call out of office hours at some time – in smaller sites where there is only one such couple, the duty to be on call out of office hours applies all the time.

A caravan is therefore needed by wardens and an assistant warden to fulfil the duties of their employment with the Caravan Club. The caravan is sited on a gravelled area in the site, where there is a power point. During office hours, the duties of an assistant warden include meeting and greeting customers arriving at the site, dealing with telephone and internet enquiries and administrative matters, including those involving health and safety. The assistant warden is the first point of contact for making enquiries. Usually one member of the assistant warden couple is in the office during office hours, and the other member is outside, dealing with ground maintenance, hedging, collecting rubbish and other maintenance.

The 'Flying Squad' is made up of wardens and assistant wardens who are prepared to move at very short notice to sites where they are required – taking their caravans with them. In this case there is no guarantee of continuous work. Mr and Mrs Telfer have been in the 'Flying Squad', though after the years 2010/11 and 2011/12, with which this appeal is concerned. The requirement for the caravan to be necessarily provided for use in the duties of Mr Telfer's employment was a 'rigorous test', which was not met if the facts were only that the Caravan Club (Mr Telfer's employer) required Mr Telfer to provide a caravan for the purposes of his employment. It was necessary that the duties of the employment themselves required the provision of the caravan. (s36 (1)(b) CAA),

HMRC argued that the caravans were excluded from being 'plant or machinery' because they were not assets by means of which the duties of Mr Telfer's employments were carried out, but played no part in the carrying out of those duties, being only the place within which they were carried out. He cited *Benson v Yard Arm Club Ltd* (1975-81) 53 TC 67 in support of this submission.

The First Tier Tribunal ruled at paragraph 40 that "... the caravans were not something by means of which those duties were in part carried on, but were instead structures which played no part in the carrying on of those duties, but were merely the place within which they were carried on. Thus, with some regret, we have concluded that the caravans do not pass the functional test and cannot therefore be regarded as plant for relevant purposes."

4. All change at HMRC but will it be better?

I read that HMRC are reorganising their Directorates into three new groups from October. They are:

- a new Strategy and Tax Design group, which brings together their taxpayer strategy, tax policy, process design and tax assurance teams, led by Jim Harra;
- an expanded Customer Service group, which includes all of their big operational teams, led by Ruth Owen;

- a Customer Compliance group, which will tackle non-compliance and enforcement for all taxpayer groups, including large businesses, led by Jennie Granger.

In May 2016, HMRC published their organisation

chart. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524709/HMRC_organisation_chart_May_2016.pdf. To me, this suggested that HMRC is a very complex organisation which has responsibility for many diverse business activities. The HMRC charter makes an interesting read.

<https://www.gov.uk/government/publications/your-charter-annual-report-2015-to-2016/your-charter-annual-report-april-2015-to-march-2016>

There can be little doubt that HMRC is changing rapidly and that its aspirations to provide a good service are laudable. My concern is that all too often HMRC have a very selfish attitude to change and a clear aim to cut HMRC's costs without regard to whether that adds costs to taxpayers.

I started to read the consultations on "Making Tax Digital" beginning with the 38 page document which contains a link to the other five consultative documents and is found

at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/546001/Making_Tax_Digital-Tax_administration-consultation.pdf

This is serious. There are a few small items of good news like the proposal to prepopulate part of the return. For individuals, it was inevitable that the deadline for filing the annual return would shorten (to 9 months from the current 10 to 21 months depending on accounting date) but quarterly reporting for everyone seems to me to be a step too far. It is all going to become possible with the evolution of wonderful software and computer technology assuming that everyone invests in the technology. But it will not just be an investment in technology (which rapidly becomes obsolete), there will be training costs. Underlying the HMRC objective is a design flaw that one size will fit all.

Responses are required by 7th November. I am concerned that these proposals are very close to if not an actual violation of Article 4 of the European Convention on Human Rights which states:

ARTICLE 4

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. For the purpose of this article the term forced or compulsory labour' shall not include:
 - (a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;
 - (b) any service of a military character or, in case of conscientious objectors in countries where they are recognized, service exacted instead of compulsory military service;
 - (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) Any work or service which forms part of normal civic obligations.

HMRC will argue that this is part of normal civic obligations. I think that it is huge burden being transferred onto ordinary taxpayers and that this boundary of "normal civic obligations" needs to be defined and understood before the MTD proposals develop further

5. HMRC Publish statistics on R&D and Patent Box Claims

R&D tax credits are a tax relief designed to encourage greater R&D spending, leading in turn to greater investment in innovation. They work by reducing a company's tax bill by an amount equal to a percentage of the company's allowable R&D expenditure. A company can only claim R&D tax credits if it is liable for Corporation Tax.

There are three schemes for claiming relief: The Small or Medium-sized Enterprise (SME) Scheme; The Large Company Scheme; and Research and Development Expenditure Credits.

A SME may claim a higher rate of relief than a large company. Also, a SME which has no tax bill to reduce may claim a cash payment instead. Between 2000-01, when the R&D tax credit schemes were launched, and 2014-15, over 141,000 claims have been made and almost £14.0 billion in tax relief claimed.

<https://www.gov.uk/government/statistics/corporate-tax-research-and-development-tax-credit>

HMRC have also published statistics on Patent box Claims at <https://www.gov.uk/government/statistics/patent-box-reliefs-statistics>

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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 31 October 2016.