AAT tax update podcast - 28 February 2014

In this edition of the tax update which is now on a monthly basis we look at:

1.	HMRC announce that 93% of self assessment returns were made by the deadline	1
2.	Capital Gains Tax (CGT): enhancement expenditure clarified on cost of shares sold	1
3.	Dividend waivers held to be a settlement	2
4.	HMRC publishes it employers bulleting on 19 February	2
5.	HMRC names and shames 15 more deliberate defaulters	3
6.	Update from HMRC relationship with tax agents	3

1. HMRC announce that 93% of self assessment returns were made by the deadline

HMRC reported a record-breaking self assessment season in 2014, with more than 93% of filers meeting both the online and paper deadlines. More than 10.03 million returns were received by midnight on 31 January 2014 and it seems that more returns are now filed electronically.

The client return filing profile is important to professional tax advisers. If you have too many clients who file late (and/or who pay late) this may adversely affect your rating with HMRC and may limit your access to HMRC back office support in the future when HMRC improves its services for agents.

After the hiatus of the filing deadline, it might be worthwhile looking at any clients who were dilatory in letting you have information and considering whether now might be a good time to tell some dilatory clients to seek a new tax adviser. Your reputation is important not just to you but also to your other clients and having too many dilatory clients who file (and pay) late will not be a good thing.

2. Capital Gains Tax (CGT): enhancement expenditure clarified on cost of shares sold

Nearly 50 years after CGT was introduced, I'd have expected that all the issues on the qualifying cost which can be deducted from the consideration received would have been solved. But in **Mr Julian Blackwell v Revenue & Customs [2014] UKFTT 103** this was the issue because HMRC sought to increase, by £2,662,510.80, a liability to CGT declared by Mr Blackwell. HMRC decided that that expenditure of £17.5m claimed by Mr Blackwell as a deduction from the consideration received on the disposal of shares was not allowable under section 38(1)(b) of **The Taxation of Chargeable Gains Act 1992** (TCGA). HMRC argued that this money was paid to release Mr Blackwell from a personal obligation and did not affect the shares.

Mr Blackwell owned shares in classes A, B and C in what had been a family business, Blackwell Publishing (Holdings) Limited (BP Holdings), and he held two subscriber shares. His holding in the A shares was over 25% of the total and so his vote was necessary to secure any special resolution of the company. In an agreement dated 28 April 2003 with Taylor and Francis (a firm which wanted to buy BP holdings), Mr Blackwell undertook to do or not to do certain things connected with his A shares in return for a payment of £1m.

In 2006 Mr Blackwell was given information about an approach from a US firm, John Wiley & Sons Inc (Wiley), offering to take over BP Holdings for a very much higher sum than had been considered but rejected from Taylor and Francis in 2003. Mr Blackwell obtained permission from BP Holdings to give Taylor and Francis limited information about the new bid and Taylor and Francis offered to release him from their agreement in return for a payment of £25m which would then enable him to vote in favour of the necessary resolutions to enable the new bid to go ahead. In negotiations it was envisaged that £7.5m of the £25m would in fact be paid to Taylor and Francis by the shareholders of BP Holdings rather than by Mr Blackwell himself.

The 28 April 2003 agreement amounted to an impediment to Mr Blackwell acting freely to vote as he would have wished when the Wiley bid came to his attention. So his payment of £17.5 million was made to enhance the value of his shareholding and the enhancement was reflected in the asset when it was sold in the takeover.

A share is an intangible asset rather than a real object and that conceptually it consists of the rights and obligations that attach to it and derives its value from those rights. The First Tier Tribunal (FTT) held that the expenditure of £17.5 million was on the shares, that it was for the purpose of enhancing their value and that it was reflected in the state or nature of the shares, the last point being that it is more accurate to say it was their state than their nature. So Mr Blackwell won his appeal and he was allowed to deduct the expenditure he incurred.

3. Dividend waivers held to be a settlement

HMRC brings itself into disrepute when it uses the settlements legislation to challenge family arrangements and income sharing. HMRC's interpretation of the law ignores the clear policy statements made by the then Chancellor, Norman Lamont MP, when he was introducing the legislation for independent taxation. However, one can appreciate that certain aggressive arrangements need to be challenged especially when dividend waivers are necessary because otherwise there would not be sufficient retained profits to cover the whole dividend.

In **Donovan & McLaren v Revenue & Customs [2014] UKFTT 048** dividend waivers were held to be a settlement. Mr Donovan and Mr McLaren each faced discovery assessments for the three tax years ended April 2008, 2009 and 2010 for tax of approximately £13,800. Immediately I see a figure of tax that low I am concerned that there is no equality at arms because the appellants are unlikely to able to fund a contentious appeal.

Prior to 2001, the two gentlemen owned each 50% but then each gave their spouse 10% of the shares. A key finding of fact made by the first tier tribunal was that the company only held sufficient reserves if the earlier years' waivers were taken into account. The FTT took the view that to view the figures by ignoring previous waivers was artificial and that the cumulative effect of the arrangements should not be ignored. In those circumstances the FTT found that there was a lack of sufficient distributable reserves within the company were it not for the Appellants waiving the dividends.

The dividend waivers were not something which would have occurred on any arms length basis. The simple plan was to make use of the spouses' unused basic rate band by gifting income from the higher rate husband to the basic rate wife. The necessary element of bounty was there to decide that this was a settlement and the tax planning failed.

HMRC will be pleased by this victory but it is a persuasive authority only and not legal precedent. Practitioners advising their clients to share income amongst family members should ensure that there are sufficient distributable profits to cover the whole dividend before any waiver is considered to retain some of the profits within the company as working capital.

4. HMRC publishes it employers bulleting on 19 February

Issue 46 of the Employer Bulletin is now available (PDF994K). Aimed at employers and agents, it contains important information and news about topics which may affect payroll obligations to HMRC. At 40 pages it is worthwhile to download and read this bulletin the contents of which are listed below with the page numbers.

Employer Bulletin 46 Contents:

- Chancellor's Autumn Statement – page 4
- A reduction of up to £2,000 per year in your employer Class 1 National Insurance
- Contributions from April 2014 – page 6
- Operating PAYE in real time (RTI) – page 8
- Mandating the Scheme Contracted-Out Number (SCON) via Real Time Information (RTI) Submissions from 6 April 2014 – page 17
- 'Extra' paydays (week 53, 54 or 56) and underpayments of tax – page 18
- Starter checklists to replace P46 forms from April 2014 – page 19
- Percentage Threshold Scheme Ends – page 20
- Operating the correct Tax Code – page 22
- Collection of Class 2 National Insurance Contributions (NICs) debts through the P2 Coding run – page 23
- Employer Orderline – page 23

- Keeping things simple when paying HMRC – page 24
- Reconciling PAYE payments – page 26
- PAYE for Employees – the new digital service – page 27
- Employers can help their employees more with HMRC contact – page 28
- Toolkits to reduce common errors in returns – page 29
- Notification of a threshold change for student loan borrowers in the current Income Contingent Repayment (ICR) scheme – page 29
- Workplace Pensions Reform: The Pensions Regulator – Learn the early lessons of automatic enrolment – page 30
- How your PAYE data is helping make tax credits easier and more accurate – page 32
- Child Maintenance – what's new? – page 33
- Reprint requests for paper P9 coding notifications – page 33
- Payroll Giving – page 34
- Flexible working plans will bring benefits to business – page 35
- End of work restrictions on Bulgarian and Romanian nationals – page 36
- Withdrawal of Help books – page 36
- Employer diary – page 37
- Helpline & Orderline – page 40

5. HMRC names and shames 15 more deliberate defaulters

I have reservations about this policy of naming and shaming deliberate defaulters. I suspect that the detrimental effect of being named and shamed is much greater for a business in a wee place like Lochgelly in Fife than it is for a relatively anonymous business in a large city like London. **You can read the list here**, which now runs to 16 pages of deliberate defaulters.

6. Update from HMRC relationship with tax agents

HMRC has updated their **guidance on the Tax Agent Strategy -** including an update on the new online services for agents which should become available from March 2015.

Derek Allen

26 February 2014
Set your diaries for the next edition of the general tax update which will be published on 31 March 2014.

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