AAT tax update 3 February 2014

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

1. HMRC publish detail of its review and appeal process

In December 2013 HMRC published a six page report of the **HMRC internal review and tribunal appeal process for the year ended 31 March 2013.**

Taxpayers asked HMRC for reviews of 38,975 decisions in 2012-13 and HMRC completed 39,156 reviews, which includes the clearance of some cases from previous years. The number of review requests has fallen from 55,764 in 2011-12.

Litigation of an appeal to the First Tier tribunal (FTT) could be the start of a stressful and costly process and should never be undertaken lightly. Statistically, the taxpayer won only 17% of decisions at the FTT.

2. National Insurance Contribution (NIC) rates, limits and thresholds for 2014/15

HMRC has published draft regulations and an order setting out the NIC rates, thresholds and limits for the 2014-15 tax year. The draft regulations and order are subject to approval by both Houses of Parliament. As well as the draft regulations an Explanatory Memorandum for each has been published.

- **Social Security (Contributions) (Limits and Thresholds) (Amendment) Regulations 2014** (PDF21K).
- **Explanatory Memorandum** (PDF 29K)

- **Social Security (Contributions) (Re-rating and National Insurance Funds Payments) Order 2014** (PDF 30K)
- **Explanatory Memorandum** (PDF 57K)

3. HMRC consult on tackling marketed avoidance schemes

A consultation, **'Tackling marketed tax avoidance',** was published on 24 January 2014 including proposals to require individuals and companies to pay the tax in dispute during an enquiry or appeal relating to tax avoidance. The consultation runs until 24 February 2014. At 57 pages it is a necessary read for anyone involved in this area of advice.

4. Extra Statutory Concession (ESC) D33 deals with Capital Gains Tax (CGT) and compensation and now needs a claim

From 27 January 2014, to claim relief under ESC D33 from CGT on compensation payments of more than £500,000 which arise from a right to take court action you will need to make a claim. **You can read full details here.**

5. HMRC's views of the tax implications of adopting FRS101 &102

HMRC has published two papers to assist companies with the adoption of **New UK GAAP.** The papers provide an overview of the key accounting changes and tax considerations that arise for companies that transition from current UK GAAP to FRS 101 and FRS 102.

- the paper entitled **'FRS 101 Overview Paper'** (PDF 121K) provides an overview of the key accounting changes and the key tax considerations that arise for those companies that transition from current UK GAAP to FRS 101

- the paper entitled **'FRS 102 Overview Paper'** (PDF 129K) provides an overview of the key accounting changes and the key tax considerations that arise for those companies that transition from current UK GAAP to FRS 102.

The main section of the papers is split into two parts. Part A provides a comparison to the position under current UK GAAP and Part B provides a summary of the accounting and tax considerations that arise on transition

6. Penalty reduced to nil when Taxpayer not properly informed by HMRC

In **Marian Christie Armitage v Revenue & Customs [2014] UKFTT 55,** the tribunal considered an appeal against a penalty of £120 levied by HMRC (Finance Act 2009 Schedule 56) for the late payment of income tax of £2,404.40 due to be paid by 31 January 2013.

Ms Armitage was a secondary school teacher who started a new source of income in 2011/12. She had never required previously to submit a self-assessment return and sought advice from HMRC by phoning on 22 February 2012. HMRC advised her to wait until she received a notice to file and then issued a notice to the appellant to file a return for the year 2011/12 on 7 March 2013. Therefore, applying the filing rules, the return was due to be submitted by 7 June 2013.

The appellant submitted her return successfully online on 13 May 2013. This was late and so technically she might be liable to a penalty. The issue was whether she had a reasonable excuse because HMRC had only told her part of the story and had not advised her that she should make a payment to account.

The Tribunal Judge, Peter Sheppard, considered carefully the submissions of both parties before accepting Ms Armitage's argument that she was "a prudent and responsible person actively seeking to pay tax due. Accordingly she contacted HMRC. By failing to warn her and by failing to give her the necessary Unique Taxpayer Reference etc., HMRC caused her to miss the deadline of 3 March for paying her 2011/12 tax. HMRC state that the law requires them to charge a penalty unless she had a reasonable excuse for missing the deadline. Her reasonable excuse is that instead of helping her to meet the deadline they prevented her from doing so…."

"..In the Tribunal's view other than the late notification of her liability to pay tax the appellant has acted properly and in good faith. The late notification is not being penalised and was no doubt due to the appellant's newness to the self-assessment system. Unfortunately the advice she received from HMRC whilst helpful was incomplete. She may have been adequately and correctly advised about her filing and payment responsibilities but crucially she was not advised that if tax was due she needed to make a payment of that tax urgently in order to avoid a penalty. The Tribunal accepts that if the appellant had been advised of the position re payment she would have taken the necessary steps to avoid a penalty. Instead she was advised that a return would be sent to her for completion and that she would not be penalised for notifying HMRC late of the need to complete a tax return…"

Ms Armitage had a reasonable excuse and so the penalty assessment was vacated.

It is interesting to contrast this decision with the tribunal judge, Peter Sheppard's decision in **Beevers v Revenue & Customs [2014] UKFTT 38.**

Mr Beevers had been frustrated in filing his return because HMRC system had lost his details so he was given an extended deadline to file. He apparently completed virtually all of the information before the deadline but failed to press the submit button. Technically he had not filed his return but he thought he had so he claimed that he had a reasonable excuse for the failure.

The Tribunal ruled that "..a reasonable excuse is normally an unexpected or unusual event that is unforeseeable or beyond the taxpayer's control, and which prevents them from complying with their obligation to file on time. In the Tribunal's view this unfortunate simple omission by the appellant cannot establish a reasonable excuse for the failure to submit the return by the due date. It is a quick and simple process to check whether or not a return has been submitted and the appellant could have done this on 13, 14 or 15 February 2013. "

"Paragraph 16 (1) of Schedule 55 Finance Act 2009 allows HMRC to reduce the penalty below the statutory minimum if they think it is right because of special circumstances. HMRC have considered whether there any special circumstances in this case which would allow them to reduce the penalty and have concluded there are none. The Tribunal sees no reason to disagree."

So Mr Martin had to pay the penalty and perhaps more importantly, his compliance record is blemished and his risk assessment scores may well increase.

7. Were a doctor's travel expenses between his office at home and various sites allowable?

In **Dr Samad Samadian v HMRC [2014] UKUT 13**, the issue was the question of the extent of the right to deduct travel expenses when computing the profits of a trade or profession. Dr Samadian is a consultant geriatrician who works in full time employment in the NHS at certain NHS hospitals (principally St Helier and Nelson hospitals in south London) and also maintains a private practice as a self-employed medical practitioner.

This is a common pattern of working for senior medical practitioners. It is in relation to Dr Samadian's income from his private practice that the question of deduction of travel expenses arises.

For his private practice, Dr Samadian maintains an office at his home (where he does work relevant to that practice) and sees patients at consulting rooms hired by him at two private hospitals, St Antony's in North Cheam and Parkside in Wimbledon. He also occasionally conducts home visits. He uses a car to travel between these locations and to and from the NHS hospitals where he is employed.

Dr Samadian claimed a deduction which HMRC disputed for travel incurred:

(a) travel between the NHS hospitals and the private hospitals
(b) travel between home and the private hospitals
(c) travel between the NHS hospitals and a patient's home for a home visit.

The FTT found, among other things, that Dr Samadian had a place of business, in the sense of a "generally fixed and predictable" place at which he performs work in his private practice, at each of St Antony's and Parkside. It also found that he had "a place of business at his home, where he carried out part of the professional work necessary to his overall professional practice as well as the majority of the administration work related to it". The FTT ruled that (a) and (b) above were not deductible but (c) was allowable for tax purposes.

Because of the nature of the field in which Dr. Samadian practises, it is often important for him to take a "collateral history" from others, such as the patient's carer, relatives, GP, social services and the like. This helps him to build up a full picture of the case to enable him to structure his treatment plan properly. He will generally obtain any collateral history while working from his office at home, where he also does any necessary research and considers test results before deciding on the treatment plan. He then prepares the plan, generally in the form of a letter to the patient's GP, identifying what is wrong with the patient and what he considers should be done. This work is all done at home, and generally takes longer than the initial patient consultation.

Dr. Samadian has a separate office at his home which is used wholly or mainly for conducting his private practice. He has a desk, a chair, a medical library, a filing cabinet (with his business and clinical records) and computer, as well as his medical equipment and prescription pads. Sadly, for Dr. Samadian, although it was accepted that his home was a place of business, it was not his base of business. There was an implicit dual purpose when he travelled from home to a place where he saw patients and that was fatal to his claim to deduct the expenses.

The Upper tribunal ruled "…In my judgment, the FTT's decision was correct in all its essentials and this appeal should be dismissed. The FTT correctly applied sensible and coherent categories for treating travel expenses as deductible or non-deductible. I also think the categories applied would attract broad public acceptance. Travel expenses are treated as deductible in relation to itinerant work (such as Dr Samadian's home visits to patients). Travel expenses for journeys between places of business for purely business' purposes are treated as deductible. Travel expenses for journeys between home (even where the home is used as place of business) and places of business are treated as non-deductible (other than in very exceptional circumstances of the kind discussed at paragraph [27] above). Travel expenses for journeys between a location which is not a place of business and a location which is a place of business are not deductible…"

If you have clients who are doctors with a mixture of private and NHS employment work, this decision is a must read.

Derek Allen
3 February 2014