AAT Tax Update 28 February 2015

In this edition of the tax update we look at:

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3. HMRC consult on the penalty regime
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1. HMRC Taskforce activity and webinars

HMRC are running a **pilot scheme** and have published two maps of the UK. The first map shows what HMRC have done by way of taskforce activity. This is interesting in itself not only for the geographical distribution but also to see the varied types of activity. From an educational perspective the right hand side of the screen lists the free webinars that HMRC are offering to help taxpayers meet their compliance obligations.

According to HMRC, compliance taskforces are teams of highly skilled tax experts, who carry out intensive bursts of activity to tackle potential tax evasion. Taskforce activities focus on specific sectors and locations, and are supported by intelligence that identifies those areas at highest risk of tax evasion and tax fraud.

What is not said is that HMRC should be building a data bank of the risk areas in the trades covered by the task force which would include:

The fishing industry	Grocery and Retail	Hair and Beauty
Hidden Wealth	Holiday IndustryHot Food	
Landlords	Motor Trade	Property Rentals
Restaurants	Rag Trade	Scrap Metal dealers
Taxi operators	Undeclared property dealers	

HMRC have also published a map showing the sites of **successful criminal investigations.**

2. Public Accounts Committee recommends regulation of the tax profession

In a **16 page report**, the Public Accounts Committee (PAC) criticised PWC and the tax profession generally for selling tax avoidance schemes on an industrial scale. They recommended that the government should look further at regulating the tax profession and do more to stop aggressive tax avoidance schemes.

There is little doubt that the public attitude to tax avoidance is changing and most people think that big companies and the wealthy should pay more tax. Conversely, it is a truism that few people like paying tax and I think that there is a degree of hypocrisy which distils to others should pay more tax but not me. Tax planning to take advantage of the reliefs which Parliament has enacted is sensible. The problem, which the PAC recognises but glosses over, is that there is no clarity about the boundary between acceptable tax planning and aggressive tax avoidance.

There needs to be a mature debate and an attempt to clarify the boundary between acceptable tax avoidance and unacceptable aggressive tax avoidance. The latter should be capable of being tackled with the existing GAAR. The report is worth a read if only to confirm that politicians caused the problem by enacting bad legislation and politicians have no idea about the solution.

The mature debate needs to recognize that a professional adviser is obliged to tell the client of the reliefs which are available. If a professional adviser fails to give the right advice, that adviser risks being sued by the client for the tax paid, which could have been avoided.

I recommend that you should look carefully at your engagement letters and if you feel that tax avoidance is unacceptable, you should include a clause that makes it clear that you will not offer advice on aggressive tax avoidance schemes. It might help, but the problem remains that the watershed between sensible tax planning and aggressive avoidance needs to be clarified.

The National Audit Office (NAO) has also published its **report** which is complimentary that HMRC is cutting costs and increasing tax yield but critical that it needs to do more.

The NAO is critical of HMRC service standards and recognises that it is failing to meet the standard of responding to 80% of calls and letters within 15 days. Reading that, I thought that realistic commercial standards should be introduced and HMRC should be setting standards like 95% response within 24 hours.

3. **HMRC consult on penalty regime**

HMRC have issued a **consultation document** seeking views on the penalty regime which was overhauled by FA 2007. Personally, I believe that the penalty regime is, in too many cases, unfair and HMRC deserve serious criticism for imposing penalties when it is inappropriate. HMRC recognise this and are consulting to see if HMRC could better differentiate between deliberate and persistent non-compliers and those who might make an occasional error for whom alternative interventions are more appropriate.

HMRC received 10.24 million tax returns by midnight on 31 January. A record 85.5% of these were sent online. 210,000 more taxpayers filed their returns on time than last year.

Views on a reform of penalties are sought by 11 May 2015.

4. **Pension Annuity reform: Draft clause and schedule published**

HMRC has published **draft Finance Bill legislation** on the proposal for payments of annuities to beneficiaries to be made tax free on the death of an individual under 75.

The facility for a beneficiary to take a tax-free annuity following the death of the member will be particularly useful where the member had not himself taken out an annuity before death. These changes are similar to those made in respect of payments of income withdrawal from a drawdown fund on the death of an individual in TOPA 2014.

HMRC has issued Pension Newsletter 67. This addresses some of the additional points raised on the pension flexibility rules including:

- Pension flexibility guidance
- Payments and those that might be tax free
- PAYE and reporting
- Issuing a P45

5. **HMRC update list 3 of Professional Body allowable subscriptions**

You can **reclaim tax** paid on fees or subscriptions to approved professional organisations within **list 3** - but only if you must have membership to do your job or it's helpful for your work. The good news is that the annual subscription for AAT is included and can be found under the letter T.

6. **Transfer £1060 allowance between married couples from April 2015**

A spouse or civil partner who does not exhaust their personal allowance of £10,600 can transfer up to £1,060 of unused allowance to their spouse or civil partner providing the recipient does not pay tax above the basic rate of income tax. Only one person in a couple can apply online to transfer the allowance to their spouse or civil partner. That could be worth up to £212 a year and the transferable allowance starts for 6 April 2015.

The two stage process of registering interest and then applying is being introduced to allow HMRC to stagger applications so that it can manage demand better. The Government expects more than 4 million married couples and 15,000 civil partnerships will benefit from this allowance.

Couples who were born before 6 April 1935 already benefit from the married couples allowance.

Register interest at: **www.gov.uk/marriageallowance**

7. Company tax returns and mandatory XBRL taxonomy

The Financial Reporting Council (FRC) published new UK GAAP Financial Reporting Standards (FRS) during 2012 and 2013. These new accounting standards (FRS101 and FRS102) are mandatory for periods of account beginning on or after 1 January 2015, though early adoption was permitted.

Accounts submitted to HMRC as part of the Company Tax Return are required to be 'tagged' using the computer-readable Extensible Business Reporting Language (XBRL). Guidance issued in May 2013 (Online filing of Company Tax Returns: two years on) told early adopters of the new standards to tag their accounts with the existing IFRS (International Financial Reporting Standards) taxonomy until such time as a new taxonomy was available.

HMRC updated its systems in December 2014 and can now accept Company tax returns containing accounts that have been tagged with the new taxonomy. HMRC is therefore mandating the use of the new taxonomy. Accounts prepared under the new accounting standards or EU-adopted IFRS, submitted as part of a Company tax return and filed with HMRC on or after 1 April 2015, must be tagged with the new taxonomy.

If accounts have been prepared using the old tags, these need not be retagged as HMRC are giving concessions. **Read more here.**

8. Tax avoidance Eclipse 35 scheme fails

In a unanimous decision, the Court of Appeal (CoA) dismissed the taxpayer's appeal against the decision of the Upper Tribunal in ***Eclipse Film Partners (No 35) LLP v HMRC***. The CoA agreed with the conclusions of the First-tier and Upper Tribunals that the LLP was not carrying on a trade in the year ended 5 April 2007. If it was not a trade then the LLP's members were not entitled to tax relief for interest paid on money borrowed and contributed to the LLP as capital.

Derek Allen

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Set your diaries for the next edition of the general tax update which will be published on 31 March 2015

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