TECHNICAL NEWSLETTER

Welcome to the relaunched ATT Technical Team newsletter!

This relaunched newsletter will focus on the work of ATT's Technical Team and Technical Steering Group in all areas of tax. Bringing your attention to our work responding to consultations, recent news and updates released by HMRC and HMT, and reminders of changes recently brought into effect.

In this initial issue of the relaunched newsletter, we have split the content into sections and we welcome your feedback on what you have enjoyed reading and what you would like to see more of so we can ensure that we are tailoring this newsletter to our members' needs.

Practical Tax People
Association of Taxation Technicians

DIGITAL UPDATES

Making Tax Digital consultations postponed until after the EU referendum

Professional Bodies and agents were hoping to see the first in a series of consultations issued on the *Making Tax Digital* project at beginning of April this year. We know that there are to be multiple consultation documents and, with the Government's timeline expecting a testing phase to commence in April 2017, it seemed vital that the consultations should be launched as early as possible this year and certainly before the summer 'holiday' season.

However, the 'purdah' period caused by the EU referendum has meant that HMRC has not been in a position to release any of the consultation documents. We expect them to be released in quick succession soon after 23 June.

The ATT remains concerned about the truncated time now available to engage in a formal consultation with HMRC and has urged the Government to reconsider its timeline.

Our recent press release on this issue can be viewed here http://www.att.org.uk/technical/newsdesk/press-release-hmrc-urged-postpone-quarterly-digital-reporting-least-year

The published timetable for the introduction of digital quarterly reporting is as follows:

- April 2018 – unincorporated businesses (including partnerships of any size) required to provide quarterly updates for business records
- April 2019 – All VAT registered businesses (including companies) required to provide quarterly updates for VAT records.
- April 2020 – Companies required to provide quarterly updates for company business records.

Please keep a close eye on the consultations page of our website (http://www.att.org.uk/technical/consultations) as we will be posting details of the documents once they have been released and will be keen to hear from as many members as possible to feed into our responses.

AOSS renamed as Agent Services

HMRC recently announced that Agent Online Self Serve (AOSS) has been renamed Agent Services (AS).

HMRC also announced that AS has now refreshed its key priorities for 2016/17 and the revised name better reflects the scope of what HMRC aims to deliver for agents within this programme of work.

The four priority delivery areas for AS are:

- On-boarding - enable agents to access services and features contained in the personal and the business tax account using ***third party software*** which will give them the ability to see and do what their clients are able to do through their tax account.
- Subscription - a process that will allow HMRC to collect data about a tax agency as part of HMRC's agent strategy.
- Authorisation - enhance existing online agent authorisation (OAA).
- Inbound Secure Messaging - work to understand what information agents want to send to HMRC and explore the digital solutions that can be used to cater for this requirement.

A *Talking Points* digital webinar on AS was broadcast on 19 May 2016. If you missed this but would like to see a recorded version then this can be accessed at https://attendee.gotowebinar.com/recording/8425977991790860291

Introduction of Personal Savings and Dividend Allowances

On 6 April 2016 both the Personal Savings Allowance and Dividend Allowances came into effect.

Personal Savings Allowance: A basic rate taxpayer can now receive up to £1,000 of interest (after the personal allowance) free from tax, and for higher rate taxpayers up to £500 of interest. For certain taxpayers this savings allowance will operate in addition to the starting rate band which applies where an individual has income below the combined personal allowance and starting rate threshold. Banks and other deposit takers are now paying interest gross.

Dividend Allowance: Basic rate and higher rate taxpayers can now receive up to £5,000 worth of dividends (in excess of the personal allowance) free from tax. The dividend tax credit has now been abolished and the tax rates for dividend income are now 7.5%, 32.5% and 38.1%.

It is important to note that both allowances, although described as such, are not allowances in the full sense of the word but rather two nil-rate bands. The interest and dividends contained within the allowable amounts still use up the basic rate or higher rate bands and still count as taxable income – so will still impact on things like the High Income Child Benefit Charge and the restriction of personal allowances for income over £100,000.

Collection of the tax due on interest and dividends received above the allowances will, in most cases be expected to be done via a restriction in the taxpayer's PAYE code, and in other cases via the self-assessment system. We would advise members to check their clients' tax codes carefully for these restrictions to ensure that they are correct and adequate.

Trusts and estates are not eligible for either allowance, although trustees and personal representatives will now be receiving gross interest and gross dividends which may cause additional administrative burdens in reporting liabilities (please see our article in the Inheritance Tax and Trusts section).

The Low Incomes Taxes Reform Group have published a very useful factsheet on both allowances which can be found on our website at http://www.att.org.uk/technical/newsdesk/new-savings-dividend-tax-rules-%E2%80%93-essential-guide

PROPERTY TAXES

HMRC release response document and guidance on the higher rates stamp duty charge on additional purchases of residential properties

HMRC released the response document to the recent consultation on Budget Day and indeed George Osborne announced in his speech that there would no longer be an exemption from the higher rates for 'significant investors'. The Chancellor also announced that the period in which an individual could replace their main residence and be exempt from the charge or able to claim a refund (depending on whether there is a gap between purchases or an overlap of purchases of main residences) would be extended from the proposed 18 months to 36 months. As this was something we had suggested in our response to the consultation, this was a pleasing result. However, it was about the only change as the rest of the details remained, on the whole, as initially proposed. This includes the fact that individuals who find themselves in a 'bridging loan' situation, where they buy their new home without selling their old one at the same time (usually due to problems within the housing chain) will still be required to pay the relevant higher rate of stamp duty up front and will only be able to claim a refund once the old home has been sold and provided this in within the allowed time-frame of 36 months. We commented in our initial response that this would push many house buyers in such a situation into pulling out of the purchase rather than pay the additional cost, which they may just not be able to afford. In turn, this will have a detrimental effect on the position of the other people in the same chain.

HMRC has now issued the legislation and also guidance. The guidance includes the table of higher rates in Chapter 2 and an extensive question and answer section in Chapter 8, which members may find useful to read. It can be accessed at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/509184/GuidanceNote_Final.pdf

Micro-trading allowances

In the March 2016 Budget, the Chancellor announced two new tax-free allowances of £1,000 each for property and trading income. The aim is to help those involved in the sharing economy, such as people who rent out their home to holidaymakers on Airbnb or who buy and sell on eBay. Both allowances will be available from April 2017.

We issued a press release after the Budget which gave a cautious welcome to this attempt at simplification and recognition of the scale of these activities. However, we noted that the details of these allowances are not yet clear and further detail is required to clarify whether the allowances relate only to businesses that trade online or to all micro-entrepreneurs. In particular, we also believe that clarity is required on how the £1,000 allowance available to property income will interact with the existing rent-a-room relief. The Government has indicated that the new allowance will operate in a similar way to the rent-a-room exemption where a landlord has expenses to claim, in that a landlord will need to decide which one is the most beneficial to claim – the allowance or the expenses.

We are expecting a consultation on how both allowances will operate to be issued later this year.

To read our press release in full see http://www.att.org.uk/technical/newsdesk/press-release-microbusinesses-will-need-more-clarity-new-allowance-says-tax-body

Relief for finance costs related to residential property businesses

Clause 26 of Finance (No. 2) Bill 2016 introduces amended provisions concerning the calculation of the tax adjustment available where finance costs are restricted from April 2017 under the Finance (No.2) Act 2015. These are significantly clearer than the original version which ATT had questioned prior to enactment. It is clear from the new provisions that property business

losses brought forward are relieved in priority to the 'relievable amount' which creates the tax reduction.

The new provisions do not address the problems created by Finance (No. 2) Act in certain trust situations.

Property business deductions: replacement of domestic items

Clause 69 of Finance (No. 2) Bill 2016 introduces the new deduction for capital expenditure incurred by a residential property business (on or after 1 April 2016 for companies and from 6 April 2016 for unincorporated businesses) on the replacement of domestic items. Unlike the wear and tear allowance (repealed from the same dates), the new provision applies for all residential property businesses and not just furnished property.

Some of the uncertainties identified by the ATT in the draft version of the legislation that was published in December 2015 have been addressed but the main practical problem with the new relief remains. This concerns the question of whether the new item is "the same or substantially the same as the old item". If the new item fails that test, the available deduction is so much of the expenditure on the new item as does not exceed the hypothetical cost of a new item that would have passed the test. HMRC have promised detailed guidance in relation to the new provision.

The ATT has raised with HMRC whether some expenditure by a property business should be allowable for tax purposes in accordance with generally accepted accounting purposes in the same way as for trading businesses. In this connection, please see the commentary on *Replacement and alteration of tools* in the Business Taxes section of this newsletter.

CAPITAL GAINS TAX

Changes to CGT – Budget Highlights

Entrepreneurs' Relief (ER): It was announced that various changes made to ER in Finance Act 2015 (FA2015) would be amended to correct some of the unintended consequences arising.

Firstly, FA2015 had introduced the condition that for a disposal to be an associated disposal, the accompanying material disposal must represent a disposal of at least 5% of the partnership assets or shares/securities in the company. The Budget, and subsequent legislation published in Finance (No. 2) Bill 2016 added that a material disposal of less than 5% can still allow an associated disposal to qualify for ER provided the whole of the individual's partnership interest (or shares) is being disposed of and the claimant has owned 5% or more for 3 out of the 8 years preceding the disposal.

FA2015 also introduced the term 'partnership/ share purchase agreement' and this was considered to prevent ER from being claimed where a business owner was selling shares to family members as part of succession planning. F(No2)B 2016 has now confirmed that the material disposal is specifically excluded from being a purchase arrangement.

A further qualifying condition was added, though, in F(No2)B 2016 to the definition of an associated disposal, such that the asset (where acquired on or after 13 June 2016) being disposed of must have been owned by the claimant throughout the 3 years immediately preceding the disposal. This is in addition to the existing condition that the asset must have been used in the business for at least one year.

The above changes are to be backdated to the introduction of the FA2015 changes, which were introduced on 18 March 2015.

A second important change was made to the ER available on the disposal of goodwill. The FA2015 changes imposed that where goodwill is disposed directly or indirectly to a close company where the person disposing is a related party to the company, the goodwill will not be treated as being relevant business assets and so no ER can be claimed on the gain arising on the goodwill.

Legislation in F(No2)B 2016 has relaxed this position for certain cases. ER will still be available on the disposal of goodwill if the claimant is going to hold less than 5% of the ordinary shares and voting rights in the acquiring company.

If, though, 5% or more is initially going to be held in the acquiring company but this holding is subsequently sold (within 28 days) to another company and the claimant will hold less than 5% of the shares or rights in that final acquiring company, then ER can still be claimed on the disposal of the goodwill to the initial acquiring company.

Again, these changes are to be backdated to the introduction of the FA2015 changes which, in this case, was 3 December 2014.

Investors' Relief: The Chancellor announced on Budget day that ER would be extended to external investors. In fact, Investors' Relief is not actually an extension of the ER legislation after

all but a whole new relief with its own rules and qualifying conditions. In brief, if an investor purchases shares in an unlisted trading company in which he or she has no connection, they acquire newly issued shares on or after 17 March 2016 and hold them for at least 3 years (with that period starting from 6 April 2016), then the gain arising will be taxable at the special rate of 10%.

There is a separate lifetime limit of £10 million applying to gains qualifying under Investors' Relief. The draft legislation is currently contained in Clause 76 and Schedule 14 if F(No2)B 2016 and includes detailed provisions about qualifying conditions which must be met, not just for the initial 3 year period but for the whole period of ownership.

In ATT's press release on Budget day (issued before it was clear that Investors' Relief was a separate relief), our President commented:

"It will be interesting to see whether (Investors' Relief) prompts a shift away from EIS and SEIS. Much will inevitably depend on the how the legislation is structured and on the complexity of anti-avoidance provisions. If the provisions can be kept simple, they have the potential to provide a very attractive alternative to EIS and SEIS."

Reduction in rate of CGT: From 6 April 2016, the CGT rates have decreased from 18% and 28% to 10% and 20% respectively. However, this does not apply to disposals of interest in residential properties (not qualifying for main residence relief) or gains arising in respect of carried interest. These two types of gains remain chargeable at 18% and 28%. ATED-gains remain chargeable at 28%. A disposal of a residential property interest includes both UK and non-UK property.

We have recently commented on the draft legislation at Clause 72, Schedules 11 and 12 of F(No2)B 2016. To read our commentary see http://www.att.org.uk/technical/submissions/finance-bill-2016-clause-72-reduction-rate-if-capital-gains-tax-att-comments

A reminder to keep all receipts in respect of enhancement expenditure

We have become aware that in some recent cases involving CGT computations where significant enhancement expenditure has been claimed, HMRC have been very insistent in seeing the relevant invoices and receipts to verify the amount of expenditure being claimed. This can prove problematic when the property has been held for a long time and the information cannot even be obtained from third parties who may have destroyed the information due to their own internal deadlines for shredding data. It is also a problem when the agent only becomes aware of the fact that enhancement expenditure has been incurred at the point the property is being sold or even after it has been sold, meaning the agent has not had chance to advise the client to keep records of everything spent. The property may initially have started off an a main residence only to then become a rental property and so there may have been no reason for the owner to think that enhancement expenditure incurred on their main residence needed to be recorded.

This is just a reminder to our members that circumstances can change and it might be useful to remind clients to keep records of all enhancement expenditure incurred on properties they own – you never know when they might need to rely upon it!

INHERITANCE TAX AND TRUSTS

Trusts, Estates and the impact of the Personal Savings Allowance.

As from 6 April 2016, banks, building societies and NS&I ceased to deduct tax on the interest paid to customers, as a result of the Personal Savings Allowance being introduced which will exempt from tax the first £1,000 or £500 of interest received by many individuals from tax. Although trustees and personal representatives are not entitled to a Personal Savings Allowance, they will also receive bank and building society interest gross, the same as individuals. The ATT and other representative bodies pointed out to HMRC that this would impose new reporting burdens on those trustees or personal representatives who do not currently complete a tax return, or make informal payments to HMRC, as new liabilities will now arise on the gross interest.

HMRC have responded to these comments with a recent statement, published in the Trusts & Estates newsletter (April) edition.

"Following feedback from customers and stakeholders we are putting in place interim arrangements regarding trustee returns, returns for estates in administration and payments made under informal arrangement.

"This means that for the tax year 2016-17 we will not require notification from trustees or personal representatives dealing with estates in administration where the only source of income is savings interest and the tax liability is below £100."

"We are currently reviewing the situation longer term and will notify key customers prior to tax year 2017-18 as to the new arrangements."

A similar problem will of course exist for trustees and personal representatives in receipt of gross dividends from 6 April 2016. HMRC have confirmed that the above interim arrangements do only apply to the receipt of interest income and at present no similar arrangements exist where minimal amounts of dividend income have been received.

Copies of the Trust and Estates newsletters can be read at https://www.gov.uk/government/publications/hm-revenue-and-customs-trusts-and-estates-newsletters

Consultation on reform of probate fees

The ATT has recently responded to a consultation published by the Ministry of Justice (MoJ) on reforming the system of probate fees. The MoJ are proposing to change the current fee structure from a flat fee of £155 (when probate is sought by a solicitor) or £215 (when the application is made by an individual) to a sliding scale structure where the fee charged would be based on the value of the estate. The table below details how the sliding scale would operate.

Value of estate (before inheritance tax)	Proposed Fee
Up to £50,000 or exempt from requiring a grant of probate	£0
Exceeds £50,000 but does not exceed £300,000	£300
Exceeds £300,000 but does not exceed £500,000	£1,000
Exceeds £500,000 but does not exceed £1m	£4,000
Exceeds £1m but does not exceed £1.6m	£8,000
Exceeds £1.6m but does not exceed £2m	£12,000
Above £2m	£20,000

Under the current structure, estates worth up to £5,000 do not have to pay a fee to obtain probate. Under the new proposals, this exemption would increase to estates worth up to £50,000. The justification for increasing the fee structure for the probate service, a service which effectively pays for itself, is that extra funds are required to fund the deficit in the rest of the courts and tribunal services.

In our response to the consultation, we provided the following commentary:

- It is not justifiable to increase the fees for higher value estates by such huge amounts when the service being offered is more or less the same for any estate, regardless of the value.

- There is no obvious basis for concluding that the estates of deceased individuals should subsidise either the criminal justice service or sections of the civil justice service.
- Increasing the threshold level at which fees become payable to £50,000 is a good idea and we appreciate that to do this will most likely require an increase in probate fees. However, we believe that a flat rate fee system should be maintained and fees should only be increased to the level necessary to ensure the Probate Service remains self-funding.

Our full response can be read at http://www.att.org.uk/technical/submissions/proposals-reform-fees-grant-probate-att-comments

The MoJ have not put forward a date when the proposed new fee structure would be put in place, although it is intended to dovetail with a 5 year plan to deliver improvements to the justice system between now and 2020. The consultation period has now closed and the responses are being analysed. We will keep our members updated on any developments in due course through our website, twitter account and further issues of this newsletter.

EMPLOYMENT TAXES

HMRC's launches its post-implementation review of RTI

HMRC launched its post-implementation review of RTI in April and approached Stakeholders for their input on a number of points including what HMRC had done well, what it could have done better and what actions still need to be taken. ATT provided a detailed response. A summary of this is provided below:-

What HMRC did well during the introduction of RTI.

The decision to defer the implementation of in-year filing penalties until 6 October 2014 for large employers and to further defer this for small employers to 6 March 2015 were both welcome moves.

Another welcome move by HMRC was the decision, following lobbying from the ATT and other professional bodies, to remove from the final FPS the requirement to answer certain questions (which had previously been included on the old form P35). Answering these questions by 19 April had been problematic and administratively burdensome for employers, usually resulting in the need to submit a further return via an Employment Payment Summary once the employer was in a position to answer the questions.

What HMRC could have done better.

Overall, it was felt that, although there was early consultation, the initial warning comments made by the stakeholder community appeared to be largely ignored. ATT noted that a number of issues raised earlier on by employers and agents are only now being acknowledged and addressed by HMRC.

How HMRC dealt with disputed charges could have been handled much better. There should have been a clear procedure in place from the outset that was communicated to agents and employers. Instead, disputed charges appeared to disappear into a 'black-hole' for months and a back-log at HMRC's end rapidly built up.

The issues employers are still struggling with

ATT's response pointed out that the requirement to file 'on or before' is continuing to raise issues for employers. HMRC did introduce a couple of easements to assist employers (for micro employers and also a relaxation for all employers submitting within a three day window of payment) but both of these were due to end on 5 April 2016. We were concerned that the education provided by HMRC in the interim has not been enough and that employers are continuing to struggle.

Fortunately, HMRC have confirmed in recent weeks that the three day easement will continue to exist for at least another tax year, after which HMRC will review the risk-based approach to penalties.

Submitting amendments by an End of Year Update form (EYU) is still problematic. ATT have been pushing for a while now for the EYU form to be redesigned to report year-to-date figures rather than the difference between amount submitted and the correct amount.

The lessons HMRC can learn for the future

In ATT's opinion, the number one lesson that should be taken away from this review is the importance of listening to the people who are on the front-line dealing with the area that is the subject of any project. As ATT highlighted, this will be an absolutely critical lesson to carry forward into the 'Making Tax Digital' project.

Further work or actions that should be considered by HMRC

ATT are strongly of the opinion that there is now an overwhelming business case for reviewing the 'on or before' requirements and moving the filing deadline to 5th of each month. This would have an extremely positive impact on the whole payroll community as it would significantly reduce burdens. Much of the justification for the 'on or before' requirements would appear to have less relevance following the introduction of the Surplus Earnings provisions by the Department for Work and Pensions. The Surplus Earnings provisions work to effectively 'smooth'

out fluctuations in earnings when determining the amount of the Universal Credit award, making the exact pay date far less significant.

Continuation of the three day easement

As noted above, HMRC has now announced that this easement will continue for another tax year at least.

HMRC has provided the following statement:

"Following a review of the three-day easement and risk-assessed approach adopted last tax year, which has seen a significant reduction in returns filed late, HMRC has decided to continue this approach for a further tax year. As a result employers will not incur penalties for delays of up to three days in filing PAYE information during the 2016-17 tax year."

"Late filing penalties will continue to be reviewed on a risk-assessed basis rather than be issued automatically."

"The three-day easement is not an extension to the statutory filing date, which remains unchanged. Employers are required to file on or before each payment date unless the circumstances set out in the sending an FPS after payday guidance are met. HMRC won't charge a late filing penalty for delays of up to three days after the statutory filing date. However, employers who persistently file after the statutory filing date but within three days will be monitored and may be contacted or considered for a penalty."

"HMRC will continue to review its approach to PAYE late filing penalties beyond 5 April 2017 in line with the wider review of penalties, and will continue to focus on penalising those who deliberately and persistently fail to meet statutory deadlines, rather than those who make occasional and genuine errors for which other responses might be more appropriate."

HMRC abandons 'Travel & Subsistence' proposals

Included within the Budget documents was the announcement that H M Treasury (HMT) and the Government had decided not to go ahead with proposals to change the tax system in respect of tax relief for Travel & Subsistence.

In the Discussion Document, issued at the end of September 2015, HMT had put forward a proposed framework of changes in conjunction with a list of underlying principles. However, in HMT's response document issued a few days after the Budget, HMT explained that, although the responses to the Discussion Document supported the principles as set out in the proposed framework, there were difficulties in translating these principles to a workable set of rules. HMT no longer believes that the proposed framework provides enough simplicity to justify the upheaval for employees or the potential cost to the Exchequer.

The ATT was fairly critical of a number of the proposals in the Discussion Document, including the proposals dealing with Homeworkers. However, it does seem a shame that HMT appear to have given up at the first attempt in trying to reform certain areas, which we were in agreement did need improvement.

HMT have pledged to continue to look at other areas of Travel & Subsistence that are worthy of a review and where it feels it can achieve real progress but does appear to be focusing now on simplifying reporting requirements rather than tackling any fundamental changes.

EMPLOYMENT TAXES

Statutory Trivial Benefits exemption introduced from 6 April 2016

It is now possible for Employers to provide small benefits up of to £50 to their employees free from income tax and NIC, provided the gift qualifies under the following conditions:

1. the cost of providing the benefit does not exceed £50 (or the average cost per employee if a benefit is provided to a group of employees and it is impracticable to work out the exact cost per person,
2. the benefit is not cash or a cash voucher,
3. the employee is not entitled to the benefit as part of any contractual obligation (including under salary sacrifice arrangements),
4. the benefit is not provided in recognition of particular services performed by the employee as part of their employment duties (or in anticipation of such services).

An employer can provide an employee with any number of qualifying Trivial Benefits in a year but there is a cap of £300 per annum imposed for close company directors.

Each director has their own £300 annual cap. However, Trivial Benefits made to members of their family or household will need to be counted within the director's £300 annual cap, unless the member of the family or household works for the company in their own right. In such cases the family or household member will have their own £300 annual cap, even if they are not themselves a director.

If for example, mother and father are both directors and daughter does not work for the company but receives a £50 bunch of flowers on her birthday, this benefit will need to be equally apportioned to her parents so that £25 comes off each parent's £300 annual cap.

HMRC has published draft guidance on this and other aspects of the Trivial Benefits legislation which can be found at https://www.gov.uk/government/publications/tax-exemption-for-trivial-benefits-in-kind-draft-guidance/tax-exemption-for-trivial-benefits-in-kind-draft-guidance

Changes to the Employment Allowance

From 6 April 2016, the amount of the Employment Allowance increased from £2,000 to £3,000 per annum.

However, from the same date the Employment Allowance is no longer available to single director companies. In order to maintain eligibility to the allowance, there must have been at least one other employee in respect of whom the employer was a secondary contributor at some point in the year.

When the draft regulations were first issued, it was not clear whether that other employee actually needed to be paid above the secondary threshold (£156 per week for 2016/17) and therefore for Class 1 employers NIC to physically have to be paid. This was a query raised by the ATT Technical Team when we responded to the brief consultation earlier this year. The regulation has not been changed but HMRC have indicated in their published guidance that at least one other employee, besides the director, does needs to be paid above the secondary threshold.

If a company has two directors then entitlement to the allowance is maintained provided both of them are paid above the secondary threshold, and for directors the annual secondary threshold of £8,112 for 2016/17 (or pro-rata if the directorship began after the start of the tax year) would need to be applied to ensure the criteria is met.

If the single director is the only employee paid above the secondary threshold for part of the tax year, but there are other employees paid above the threshold for some part of the tax year then the full amount of the allowance will still be available

Read HMRC's guidance in full at https://www.gov.uk/government/publications/employment-

allowance-more-detailed-guidance/single-director-companies-and-employment-allowance-further-employer-guidance

New Starter Checklist - printable version now available

Here at ATT we hear a lot of complaints about HMRC's current trend for issuing iforms which can only be completed on-line and only reveal the questions that need to be answered once an answer to the last question has been completed.

For agents and employers this can make life very difficult if they cannot print off a full version of the questions in order to obtain all of the answers required from their clients in advance.

The New Starter Checklist was one such example of a problematic iforms.

However, following lobbying by the Professional Bodies, we are pleased to report that this form is now also available as a printable version at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/513621/Starter_checklist_v1.0.pdf

The issue of iforms and the difficulties they can cause agents and employers is a frequent topic of discussion at the joint ATT/CIOT Working Together meetings. Anyone with other examples of problems caused by iforms should send the details to wt@att.org.uk

HMRC release new VAT Notice 733 in respect of Flat Rate Scheme

ATT's VAT sub-group had been keenly following HMRC's response to tribunal decisions in the cases of Chilly Wizard Ice Cream Co Ltd [VTD19977], Calibre TAS Ltd [VTD20508], Idess Ltd [TC3638], SLL Subsea Engineering Ltd [TC4256], and KTD Management Ltd [TC4808]

What do all of these cases have in common? They represent cases found in favour of the taxpayer where HMRC had challenged the business category being applied under the Flat Rate Scheme.

Why had HMRC started to challenge the business categories being applied? Well the issue stemmed from the fact that not all business sectors are covered by the 51 scheme categories. This results in many consultants, for example a health and safety consultant or an employment law consultant, correctly choosing the sweep-up category for 'other business services not listed elsewhere' which has a rate of 12%.

However, HMRC had been taking a different view on categorisation. Its guidance in VAT Notice 733, para 4.4, previously stated:

"If you act as a consultant and you do not fit into another specific sector, you should choose management consultant. This sector is not restricted to businesses that fit the traditional idea of management consultancy."

By applying this guidance to our examples of a health and safety consultant or employment law consultant, HMRC believed that the correct percentage to apply was the higher rate of 14%, the rate applicable to management consultants. The tax tribunal has not, however, agreed with HMRC.

HMRC had also been trying to apply the category of 'architect, civil and structural engineers' (with a rate of 14.5%) to mechanical engineers. However, in the cases of Idess Ltd [TC3638] and SSL Subsea Engineering Ltd [TC4256] it was concluded that a mechanical engineer provides services linked to plant and machinery rather than land so the sweep-up category with the 12% rate is the correct one to choose.

The clear message from each of the cases mentioned at the start of this article is that a business owner should use ordinary everyday words in choosing their category, so an advertising consultant would never describe him or herself as a management consultant and a mechanical engineer would never describe him or herself as a civil engineer. Yet HMRC guidance, until recently, continued to ignore this message.

Not anymore! We can now report that HMRC has responded to those recent court defeats by issuing a revised version of VAT Notice 733.

The notice now takes into account the fact that a business should 'use ordinary English' in choosing its flat rate category. The revised notice also removes the para 4.4 quoted above.

Read ATT's press release http://www.att.org.uk/technical/newsdesk/press-release-hmrc%E2%80%99s-flawed-thinking-risks-more-small-business-consultants-being

The revised VAT Notice 733 can be found at https://www.gov.uk/government/publications/vat-notice-733-flat-rate-scheme-for-small-businesses/vat-notice-733-flat-rate-scheme-for-small-businesses

Income tax relief for irrecoverable Peer-to-Peer loans

Clause 32 of Finance (No. 2) Bill 2016 introduces a new Income Tax relief that will enable lenders to set losses from peer-to-peer lending against their taxable income from peer-to-peer loans. For loans that became irrecoverable between 6 April 2015 and 5 April 2016, the lender will need to make a claim if they want the relief. For loans that became irrecoverable on or after 6 April 2016, the relief is automatic.

The Explanatory Note published alongside the clause stated that "a loss arising from a loan that became irrecoverable on or after 6 April 2016 will no longer be eligible for any relief under TCGA 1992." However, HMRC have advised the ATT that Capital Loss Relief will continue to be available (assuming that the relevant conditions apply) where the investor cannot legally claim the new Income Tax Relief on P2P loans – such as when the loan becomes irrecoverable after the lender has ceased to receive any significant interest from any peer-to-peer loans. HMRC have indicated that the point will be clarified in guidance.

Distributions in a winding up

Clause 35 of Finance (No. 2) Bill 2016 introduces a Targeted Anti-Avoidance Rule (TAAR) which is designed to prevent the distribution of the reserves of close companies in capital form where "it is reasonable to assume, having regard to all the circumstances that the main purpose or one of the main purposes of the winding up is the avoidance or reduction of a change to income tax…."

The rule applies to distributions made on or after 6 April 2016. The key ingredient that triggers the TAAR is that an individual who has at least a 5% interest in the close company has some involvement (whether direct or indirect) within the two-year period beginning with the distribution in the carrying on of a trade or activity which is the same or similar to that previously carried on by the company which made the distribution.

The ATT has expressed concern about the breadth of the targeted circumstances, the vagueness of the terminology and the absence of a clearance procedure. Guidance from HMRC is likely to be very important in identifying whether particular circumstances fall within the rule.

Rate of tax on Loans to Participators

Clause 46 of Finance (No. 2) Bill 2016 amends the rate of tax charged on a close company that makes a loan to a participator from 25% to the upper dividend rate (currently 32.5%). The increased rate applies to loans made on or after 6 April 2016. It does not apply to loans that existed prior to that date. We expect HMRC guidance to illustrate the order in which loans are repaid.

Replacement and alteration of tools

Clause 68 of Finance (No. 2) Bill 2016 repeals (with effect from 1 April 2016 for companies and from 6 April 2016 for unincorporated businesses) the parallel Income Tax and Corporation Tax legislation which provides tax relief on expenditure incurred by a business on the replacement and alteration of tools. The Explanatory Note published with the clause indicated that relief for this type of expenditure was available to traders through the capital allowances regime.

When the ATT asked HMRC whether the repeal would mean that traders would be obliged to claim capital allowances on low value capital items which typically were of limited durability, HMRC indicated that they would expect such expenditure to be expensed in business accounts in accordance with generally accepted accounting practice and allowed as such for tax purposes. The position is, however, unclear on matters such as whether items with a life-expectancy of two years or more will need to be dealt with under the capital allowances regime. The ATT has alerted HMRC to questions which will need to be addressed in guidance.

Consultation on corporate contributions to grassroots sports

In March 2016, the Treasury published a consultation concerning the possible introduction of tax relief on corporate contributions to grassroots sports.

In our response, the ATT has questioned why the relief should be confined to corporate contributions and suggested that relief should extend to contributions in kind. We have also put forward an idea for an administrative regime for the relief which would involve the various National Governing Bodies and which could give contributors greater certainty of entitlement to relief and reduce the commitment which HMRC would have to make in checking compliance.

ATT's response which includes a link to the Treasury consultation can be found here: https://www.att.org.uk/technical/submissions/corporate-contributions-grassroots-sports-att-comments

Consultation to abolish Class 2 NIC and reform Class 4 NIC

Earlier this year we responded to the consultation on abolishing Class 2 NIC and reforming Class 4 NIC so that it would become contributory based.

Our response focused on the impact of the proposals on those self-employed workers earning below the Small Profits Threshold. Under the new proposals, these individuals will not be entitled to a credit for Class 4 NIC and in order to protect their entitlement to state pension and benefits will need to pay voluntary Class 3 NIC at a much higher rate. This represents a major change to the current system where they can opt to pay Class 2 NIC voluntarily. Moreover, they can do this through their Self-Assessment Tax Return, whereas Class 3 NIC payments would need to be made via a separate process.

We suggested that this will be creating barriers for lower earners and discouraging them from protecting their benefit entitlement. The risk is that those affected will decide not to make Class 3 NIC payments either due to the increased cost or the increased burden of a separate process (or even a lack of knowledge of a separate process) and will therefore fail to build up adequate provision for retirement and will be more reliant on the state for assistance.

We suggested that the proposed zero-rate band for Class 4 NIC (which will protect the benefit entitlement without an NIC payment actually being due), which is currently proposed to start above the Small Profits Threshold, should actually start at zero profits to protect all self-employed workers with low profits.

We put forward in our response that a zero-profits entry point could also have the benefit of encouraging low earning self-employed workers to register their self-employed activities with HMRC.

We also suggested that the Digital Tax Accounts should be designed in a way that allows individuals to check their NIC record and make voluntary payments.

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