

TAX NEWSLETTER DECEMBER / JANUARY 2015



Welcome to this month's Tax Newsletter - and a Happy New Year to you. We are now less than four months away from the General Election and only two months away from Budget 2015, and whilst the only two certainties in life are meant to be death and taxes, the constantly changing landscape of tax ensures tax is anything but certain.

For example, who could have foreseen the surprise attack on incorporations in the Autumn Statement, denying a 10% tax rate on the disposal of goodwill to a limited company, and in many cases, the denial of the subsequent corporation tax relief on the write down of that goodwill?

There was also wide spread panic last year on the back-door attack on UK residents owning second homes, with the proposal that the 'flipping' election to exempt residences from capital gains would no longer be available; the proposals have thankfully been watered down unless you are non-UK resident or own a home abroad.

The constant proposals; consultations; revised proposals; shock announcements with immediate effect; draft legislation and actual legislation make it very difficult to plan for all eventualities, but the constant changes do mean that seeking regular up to date advice from your accountant has never been more important.

If you have any concerns over your own tax position, please do get in touch.

CONTENTS

[A taxing Christmas](#)

[RTI: Filing penalties and appeals](#)

[Take aim with caution](#)

[Benchmark rates for accommodation and subsistence](#)

[VAT recovery on M&A fees](#)

[Mis-sold interest rate hedging products](#)

[Have you received a personal tax summary?](#)

[Self assessment address updates](#)

[Improvements to HMRC's bereavement service](#)

A TAXING CHRISTMAS

Were you one of the 148 people who filed their tax return on line between midday and 1pm on Christmas Day? If you were, you joined the 1,625 others who filed on 25 December; with a total of 24,228 returns being filed between Christmas Eve and Boxing Day: an increase of 5% on 2013. Christmas Eve was the busiest day seeing 17,644 returns being filed, with 4,811 being filed on Boxing Day.

Even though you can file online at any time of the day or night and have until 31 January 2015 to do so in most cases, it is always a better idea to file as early as possible to ensure the return is properly filed and to give yourself as much time as possible to understand your total tax liabilities and to plan for their payment or possible mitigation.

If you are struggling with your own return and would like some help, please do get in touch. If you already have an adviser, do make certain that you have provided all your information to them so that your return can be dealt with promptly.

[Top of page](#)

RTI: FILING PENALTIES AND APPEALS

In the latest Employer Bulletin HMRC are reminding employers that they are about to issue penalty notices to those employers who have failed to meet their RTI filing obligations.

Late filing penalties began on 6 October for employers with schemes of 50 or more employees. Those employers who have incurred these penalties will start to receive the penalty notices, which will be issued on a quarterly basis, from the beginning of February 2015: Agents will **not** be sent copies of the penalties.

The notice will be in the form of a 'paper letter', and will set out all filing penalties incurred for the third quarter of 2014/15 (for tax months 7, 8 and 9 covering the period 6 October to 5 January 2015). The penalty notices may contain more than one penalty.

As set out above, agents will not be sent a copy of this notice so if you receive one and would like guidance on whether the penalty is due or how to appeal against it please do get in touch as soon as possible. Further guidance on this issue can be found on page four of the latest Employer Bulletin.

Internet link: [Employer bulletin](#)

[Top of page](#)

TAKE AIM WITH CAUTION

Shares quoted on the alternative investment market (AIM) qualify for 100% business property relief (BPR) for inheritance tax (IHT) purposes once they have been held for 2 years, provided they are shares in a trading company and not an investment company. This means no IHT will be payable on the shareholder's death under current legislation and they provide a valuable IHT planning tool for many individuals.

More than 1,000 companies are listed on AIM and around half of these companies conduct their operations to allow their shares to be potentially regarded as relevant business property for IHT purposes. However, care must be taken as it will not always be possible to demonstrate that the shares held in an overseas company can be regarded as relevant business property for IHT purposes and this can lead to complications as the onus to demonstrate eligibility will fall on the executors of the deceased.

Secondary Listing

At first sight, such overseas companies may appear to qualify for the relief based on their apparent trading activities. However, if they have a separate listing on another recognised stock exchange outside of the UK then BPR cannot be claimed.

Let us look at an example of how this might affect an IHT liability:

Mr Cook, aged 85, invested £100,000 on the advice of his stockbroker in AIM Co plc, on the understanding that his IHT liability would be improved after two years. Mr Cook survived the second anniversary of the share purchase but unfortunately died six months later.

At this point the shares were worth £160,000 and the executors therefore believed that £64,000 of IHT had been avoided. Sadly, what Mr Cook had failed to spot was that two months before his death AIM Co plc had secured a secondary listing on a recognised stock exchange. Mr Cook had not read the documentation issued to him by the registrars of AIM Co plc otherwise he would have realised that BPR would cease on the date that the secondary listing was launched.

Even more bad news for the executors as, by being listed on a secondary recognised stock exchange, they had lost the ability to pay IHT on this shareholding by instalments.

It is clear that the relief on these shares can be lost overnight through no fault of the investor. If care is taken, it may be possible to make a timely disposal of the AIM shares and reinvest in another qualifying company, or a qualifying asset of a different nature. However, timing will be key as the disposal must be made before the shares cease to qualify: otherwise, another two years will have to elapse before the relief is reinstated.

The issue above may not only arise on death but could also arise on a lifetime gift of shares. If Mr Cook had gifted the shares to his son, and then failed to survive the gift by 7 years, BPR would only be available if the shares were still qualifying at the date of Mr Cook's death.

If you would like any advice on AIM investments, or on IHT in general, then please do get in touch.

[Top of page](#)

BENCHMARK RATES FOR ACCOMMODATION AND SUBSISTENCE

HMRC provide advisory benchmark scale rates for payments to employees to cover subsistence expenses when they are obliged to undertake business travel.

The rates only apply to travel within the UK and the rate to be used depends on the amount of time the employee is away from home. The **rates** are the maximum that can be paid to an employee free of tax and NIC, without the employee having to provide a receipted expense claim. The employer must have a dispensation in place to cover the use of these scale rate payments.

HMRC also provide **worldwide subsistence rates**, which were updated from 1 October 2014, that employers can use to reimburse accommodation and subsistence expenses incurred by employees who have to travel outside of the UK. These rates do not cover incidental, allowable expenses that employees may incur enroute, such as a taxi fare to the airport, which should be reimbursed separately.

[Top of page](#)

VAT RECOVERY ON M&A FEES

VAT incurred on merger and acquisition fees can sometimes be substantial at 20% of all legal, accountancy and some banking fees. The VAT charged will become a cost of the business if it is not able to recover the VAT from HMRC.

Traditionally, companies could recover VAT on deal fees by adopting one of two approaches:

1. VAT Grouping Route

The first option was for Newco to join the target's VAT group. Advisors were required to delay issuing their invoices for professional fees relating to the deal until after completion and then VAT was recovered on the basis that the VAT incurred related to the outbound supplies of the trading subsidiary.

2. Stand Alone Registration

The second option was for Newco to supply strategic management services to the target group and to charge a fee for these. Often the fee would be minimal and the alleged services, highly questionable.

In the past though, HMRC have generally accepted either approach.

The BAA Decision

However, as the recent case involving BAA shows, VAT recovery has become a particularly tricky issue where a UK Newco is set up to act as the purchaser in an M&A deal. In this case, BAA failed to recover several million pounds of VAT on fees.

VAT recovery was denied on the basis that the principle function of Newco would be to acquire the shares and the target and then receive dividends arising from its shareholdings. These functions are regarded as investment activities, rather than business activities for VAT purposes and therefore the Newco was not able to VAT register on a stand alone basis (although it could join a VAT group, assuming that the normal conditions are met). Any VAT incurred on costs relating to investment activities cannot be recovered from HMRC.

Post BAA Decision

Whilst the law and practice on this issue are now in a state of flux and further guidance should be forthcoming from the CJEU within the next couple of years, HMRC have already updated their guidance which now states that:

Stand Alone VAT Registration

A holding company will need to charge substantial management fees if they are to recover the VAT they incur on M&A fees. Charging substantial fees will potentially have other tax consequences and companies will now have to weigh up the viability of any VAT focussed arrangements.

VAT Grouping Route

HMRC now state that any VAT incurred by a holding company in making intra group supplies to its subsidiaries can be recovered only to the extent that those costs are a cost component of taxable supplies made outside the VAT group by those subsidiaries. Therefore, to recover VAT, there must be a direct and immediate link between the cost incurred by the holding company and the taxable supplies of the group.

As it will be difficult for the tax payer to establish such a direct and immediate link in most cases, the VAT grouping is probably not the preferred option in most cases now.

Has VAT Been Properly Charged?

It is important to ensure that VAT has been charged correctly in the first instance. For example, if the purchaser is a non UK company, professional fees on the deal will generally not be subject to UK VAT. It is important to check the right charges are therefore being made.

You should therefore think about VAT early on in the transaction and consider putting place a management services agreement with the target company. The key issue now will be that the holding company must charge the targets efficient management fees to recover its deal fees over a "sensible period". HMRC's guidance suggests this should be between 5 and 10 years. The tax consequences of such fees will also need careful consideration.

You will need to be aware that putting a service contract in place primarily for VAT recovery purposes could be caught under arrangements to obtain a tax advantage and therefore, whilst you should not ignore the VAT recovery aspect, the audit trail should not evidence that the services are being put in place primarily for VAT recovery purposes.

In all cases, please do seek advice before the deal is structured.

[Top of page](#)

MIS-SOLD INTEREST RATE HEDGING PRODUCTS

Following a review of the way some banks sold Interest Rate Hedging Products (IRHP), some businesses are entitled to redress payments. These redress payments are now starting to be made to those businesses which were affected.

Mis-sold interest hedging products (IRHP)

The Financial Conduct Authority (FCA) has identified failings in the way some banks sold IRHP to businesses taking out business loans, which were intended to offer protection against rising interest rates.

The banks calculate the amount due which can be made up of three elements:

basic redress - represents the difference between the actual payments made and the payments that would have been made without the product compensatory interest - at 8% per year and consequential losses - losses suffered due to not having the use of the money.

If you do receive a redress payment please let us have the paperwork so we can review the position. There are certain circumstances where the tax treatment of the payment will be different so please do contact us so we can investigate the position and ensure the correct accounting and tax treatment.

[Top of page](#)

HAVE YOU RECEIVED A PERSONAL TAX SUMMARY?

Around 16 million taxpayers will receive a 2013/14 personal tax summary from HMRC showing how their income tax and NIC have been calculated for the tax year. Another 8 million self-assessment taxpayers will be able to view their summary online, if they are enrolled for HMRC's online services.

The reverse side of the tax summary will show broadly how the taxpayer's personal taxes have been spent.

Taxpayers who have not received a summary can use HMRC's tax calculator to estimate their tax bill and see how it contributes to public spending. The app can be downloaded free from the Apple app store or Google Play by searching 'HMRC tax calculator'.

The tax summaries are for information only and do not require any action on the taxpayers part. If you have any queries regarding your personal tax summary then please do get in touch.

[Top of page](#)

SELF ASSESSMENT ADDRESS UPDATES

HMRC have updated their postal address as part of their 'post scanning project'. The new postal address should be used for all self-assessment correspondence.

The address is: HM Revenue & Customs, BX9 1AS

[Top of page](#)

IMPROVEMENTS TO HMRC'S BEREAVEMENT SERVICE

Since 2012 HMRC have provided a specialised service for bereaved taxpayers. There have been ongoing improvements to the service to try and simplify the process, based on what taxpayers have told HMRC is important to them.

There is a dedicated 'Bereavement Helpline' which is open 8.00am to 8.00pm Monday to Friday, and 8.00am to 4.00pm on Saturdays. The telephone number is 0300 200 3300. This specialist bereavement team act as a single point of contact for bereaved PAYE and self-assessment taxpayers.

The latest improvements include the removal of form R27 'Reclaiming tax or paying tax when someone dies'. From 13 October 2014 this form has been withdrawn and replaced with an automated process for PAYE taxpayers. For self-assessment taxpayers there will be a more tailored service, including a letter matching the individual's circumstances.

The authorisation process for those acting on behalf of the bereaved has also been simplified.

If you need any help or advice on dealing with the estate of a deceased person then please do get in touch.

[Top of page](#)



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