Inland Revenue

tax BULLETIN

ISSUE 68

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Revenue Targets Late Filers

The Inland Revenue has the power, subject to the agreement of the Commissioners, to impose penalties of up to £60 per day where SA returns are overdue. The Department's Receivables Management Service (RMS) have recently been given new funding through the Chancellor's Spend to Save package to enable them to form specialist teams to impose the penalties where people refuse to send us their returns.

RMS Director of Debt Management, Keith Marshall says, "Whilst we will take a tough line where people do not return their SA forms on time we want to emphasise that our objective is getting the Return in, rather than imposing penalties. In many cases those who haven't yet filed will be due a tax refund and where that's the case we want to pay it back. In other cases where tax is due for payment it is right that we ensure that the correct amount is paid as soon as possible. If people are not sure how to complete the form or even whether they need to complete it then they should get in touch with us now.

Another important message is that the imposition of daily penalties only reflects the failure to submit the Return, so if they are imposed they remain due even if there is no tax to pay. If we impose them and there is a tax liability the daily penalties are due in addition to all other amounts and are not offset when the Return is sent in. Whilst this measure has been available to the Department for some time it has been used relatively infrequently. From October this has changed."

The Department's emphasis is very much on opening dialogue with taxpayers and their agents, giving the support they need to provide the right documentation and pay the right amount of tax. The policy of taxpayers "burying their heads in the sand" is now more risky - and potentially expensive - than ever. Don't wait for us to contact your clients. Encourage them to act now.

In addition to the case specific advice that can be obtained through local Revenue offices, RMS managers are available to speak to representative body meetings if required. To check availability please e-mail Andy Rushton, Assistant Director of Communications at andy.rushton@ir.gsi.gov.uk. Please give details of the specific interests of your group and the date and location of the meeting when replying.

What is RMS and what does it do?

- Formed in April 2001
- Employs 8,600 people nationally
- Deploys specialist teams to recover debt covered by different rules and legislation
- Accounts for all money paid to the Inland Revenue
- Collects over £240 billion every year
- Pursues around one million overdue self assessment returns annually
- Actively seeks to help taxpayers who are in genuine difficulty
- Applies consistent standards when pursuing late payment and debt.

Teleworkers: Reimbursed Expenses And Benefits For Employees Working At Home

Increasing numbers of employees are working wholly or partly at home. A recent report by The Work Foundation ("Time to go home: embracing the homeworking revolution" by Tim Dwelly and Yvonne Bennion) suggested that 2.2 million employees in the UK (about 7.4% of all employees) work at home at least one day a week using a telephone or computer. Around one million employees work mainly at home. The number of employees working at home is increasing by around 13% a year.

The great majority of these home workers are employees who are sometimes referred to as teleworkers; workers who rely on the use of computers and telecommunications to carry out office work at home. Government policy aims to support employers that seek to provide better work-life balance opportunities.

In the last few years a number of changes to legislation have been made to help employers support teleworkers and other employees who agree to work at home without incurring a tax charge or liability for NICs. This article looks at that legislation and also at tax relief for expenses incurred by teleworkers as a result of working at home.

Employer provided equipment

Employers can now provide all of the computing facilities, telecommunications links, office furniture and supplies that a teleworker needs to work at home, without a tax charge. This is achieved by:

- Section 316 ITEPA 2003, which provides an exemption for provided furniture, equipment, supplies and services where the employer's sole purpose in providing them is to enable the employee to perform the duties of the employment and any private use is not significant,
  - an article in Tax Bulletin 49 ("Schedule E benefits in kind – part business use and part private use") provides further guidance,
  - this exemption can extend to the provision of a telephone line in the employee's home and to broadband Internet access in the circumstances described in EIM21615 in the Inland Revenue's Employment Income Manual;
- Section 320 ITEPA 2003, which permits a limited exemption for provided computer equipment up to the first £500 of cash equivalent. Where this limit is exceeded the exemption in Section 316 ITEPA 2003 can apply to the excess.

Where benefits are exempted from tax there is no liability for Class 1A NICs (Section 10(1)(a) SSCBA 1992).

Expense payments to the employee

New legislation in Section 316A ITEPA 2003 applies with effect from 6 April 2003 to prevent any tax charge where an employer makes payments to employees to reimburse the additional household expenses that they incur in working at home. There is further guidance on this at EIM01472. Such payments could already be made without a NICs liability arising.

Exempt payments can be made where there are arrangements between the employee and the employer under which the employee regularly works at home. This covers employers' homeworking policies but will not cover employees who work at home informally and not by arrangement with the employer. So, for example, the new exemption will not apply to employees who simply take additional work home in the evenings.

The exemption applies to employees who do some or all of their work at home with the agreement of the employer instead of working on the employer's premises. For example, the new exemption could apply to payments made to an employee who arranges to spend two days each week working at the office and the other three days working at home.

The additional expenses that the employer may reimburse are those connected with the day to day running of the employee's home. This might include additional costs of heating and lighting the work area, or the metered cost of increased water use. There might also be increased charges for Internet access or telephone use. In some cases work at home may lead to an increase in household contents insurance or to a liability for business rates. It might be difficult for employers to calculate the exact amount of additional costs that an employee is incurring as a result of working at home. So we have published a guideline rate of £2 per week that can be paid to employees working regularly at home without the employer having to justify the amount paid or the employee having to keep any records to demonstrate the additional expenditure.

The £2 per week figure is not a maximum, and greater amounts can be paid where the employer provides evidence to justify them. There are two ways to do this. The employer can agree in advance with their Inland Revenue office on a scale rate payment that is calculated to do no more than reimburse the average additional costs that the employees are meeting while working at home. It may be useful to agree that the scale rate payment can be increased annually in line with inflation. If the employer has agreed a scale rate payment based on reasonable estimates of additional

household costs derived from records of costs kept by employees it is not necessary for employees to keep subsequent evidence of costs incurred.

Alternatively, an employer may prefer to reimburse the actual additional costs incurred by each employee. In such cases we would expect the employer to keep records to show how the payments have been computed. In turn this will depend on evidence retained by the employee about the amount of additional costs.

Expense deductions

Travel expenses
The rules on travel for necessary attendance in Sections 338 and 339 ITEPA 2003 assist teleworkers. Relief is available for home to work travel unless that travel is ordinary commuting. Many teleworkers do not have an ordinary commuting journey and are entitled to tax relief for all of their business travel. Where those costs are met by the employer, they can be covered by a dispensation in the normal way.

In this context the facts of the recent case of Kirkwood v Evans (74TC481) are slightly unusual. Mr Evans worked mainly at home but travelled regularly on one day each week to his employer's office. There was no evidence that he would do so for a limited duration or for a temporary purpose. So his employer's office was a permanent workplace and he was not entitled to tax relief for his travel. This simply shows that a teleworker might still have an ordinary commuting journey.

Many teleworkers no longer use the employer's office as a permanent workplace. Visits to the employer's office become irregular or self-contained, so that the employer's office becomes a temporary workplace. For example, teleworkers may occasionally need to visit the office to attend team meetings or similar events. Irregular visits, or regular but self-contained visits, do not make the office a permanent workplace. Where the employer meets the cost of such visits they can be covered by a dispensation.

Where a teleworker who was previously office based begins to work from home the status of the employer's office as a permanent workplace needs to be reconsidered in the light of the new working pattern. The fact that the employer's office was once a permanent workplace does not mean that it must remain one.

Household expenses
The exemption for payments by employers in Section 316A ITEPA 2003 is wider than the existing relief for employees' expenses in Section 336 ITEPA 2003. So the fact that an employer could make exempt payments to an employee for additional household expenses does not mean that the employee would be entitled to relief for unreimbursed expenses.

The principal difference between the rules for exemption and those for deduction is that the exemption applies wherever an employee works at home under homeworking arrangements with the employer. By contrast an employee is only entitled to a deduction for expenses incurred in working at home where the nature of the employment itself would require any employee to work at home.

This distinction can be illustrated by Kirkwood v Evans. Mr Evans worked at home out of choice under his employer's voluntary scheme. If his employer had met the additional household costs he incurred then the payments would now be within the scope of the exemption in Section 316A. However, there was nothing about the nature of his work that dictated working at home and so he was not entitled to a deduction under Section 336 ITEPA 2003.

We anticipate that most employees who work at home under homeworking schemes will be doing so by choice and so will not be entitled to a deduction for any unreimbursed additional household expenses.

Non-Residents Working In The Uk For Short Periods:

The "60-Day" Rule

Most of the United Kingdom's double taxation agreements contain a provisionwhich may enable an employee who comes to work here on a short-term basis to be taxed only in his or her home country. An employee must show that he or she fulfils a series of conditions specified in the agreement to makea valid claim to exemption from UK tax. One of those conditions will be that the employee's remuneration must be 'paid by or on behalf of an employer' who is not resident in the United Kingdom.

In many cases, it is clear that the employer is the non-resident company for whom the taxpayer was working before he or she came to the UK. In other cases, the employee may have been seconded by his or her overseas employer to work for a UK company, or the overseas employer may carry on a business of hiring out staff to other companies. A formal contract of employment remains with the overseas employer, but the employee works in the business of the UK company, which obtains the benefits and bears any risks in relation to the work undertaken by the employee. In economic terms, this state of affairs is recognised by the overseas employer recharging the cost of the employee's earnings to the United Kingdom and the UK company might be described as the 'economic employer'.

In such a case, the exemption from UK tax for short-term visitors will not be available. This was explained in Tax Bulletin 17, published in June 1995.

However, the position of very short-term visitors caused concern, and Tax Bulletin 25 dealt with this in October 1996. This reproduced a statement by the Financial Secretary to the Treasury (FST) that the Inland Revenue would not consider that a short term business visitor was sufficiently integrated into the business of a UK company for it to be regarded as the employer where:

- the employee concerned is in the UK for less than 60 days in a tax year; and
- that period does not form part of a more substantial period when the taxpayer is present in the UK.

This has become known as the "60-day rule". This article gives further guidance on common situations where it may be an issue.

Does the worker have to be from a country with which we have a full double tax agreement for the 60-day rule to apply?

The 60-day rule is framed in terms of accepting without enquiry that the conditions in a DTA for short-term business visitors to be solely taxed in their country of residence have been satisfied. That exemption, and consequently the 60 day rule, is therefore only relevant if the person is resident in a country with which we have signed a comprehensive double tax agreement. If not, domestic legislation will apply in full.

Is the 60-day exemption available if the employee is on the UK payroll?

No. The FST's statement was made in the context of workers who were paid via a non-resident employer's payroll but whose economic employer might be in the UK.

How do you count the days for the 60-day rule?

It is based on physical presence in the UK in the same way as the 183 days are counted for the purposes of Article 15(2) of the OECD model Tax Convention.

Is the 60 days a fixed limit? For example, an employer has a succession of people who work for him and he bears their wages, but they may be in the UK up to 90 days.

The 60-day rule represents a balance between a loss of tax revenue which may be due to the UK and the compliance costs to both employers and the Revenue of ascertaining and collecting such tax for very short-term visitors. There are no plans for it to be altered. However individuals working in the UK may be exempt under the relevant DTA anyway, for example if their earnings are paid by an overseas company, not recharged in any form to a UK company or permanent establishment and no UK company acts as their employer.

Is the 60-day rule available where the earnings have been recharged to a UK permanent establishment rather than a UK-resident company?

Although not covered in the actual wording of the 1996 statement, the Revenue accepts the 60-day rule should apply in these circumstances also.

How should the phrase "part of a more substantial period" be interpreted?

The aim is to provide consistency:

- Between very short-term workers, regardless of the particular dates involved; and
- Between short-term workers seconded from overseas and the normal workforce of the UK employer.

The most obvious example met is where less than 60 days are worked up to 5th April and less than 60 days after, but the overall period is more than 60 days. In these circumstances, the 60-day exemption will not be available, to be consistent with periods of more than 60 days worked over, say, November to January.

What if there is a gap between two shorter periods of employment?

To consider whether the 60-day period has been exceeded, the following factors may be relevant:

- Is there an expectation that the employee will return to the UK when they depart initially?
- How long is the gap between visits in comparison to the length of those visits?
- How frequently does the employee return to the UK?
- How integral to the business are the duties performed?

It is impossible to give an exact formula that will cover all circumstances. However, the following examples should assist in seeing how the Revenue will approach this question.

Example 1: Alain visits the UK for 35 days in Feb/March 2003, then returns to Austria for a fortnight's holiday, and returns again to the same contract for 40 days in April/May.

The 75 days would be regarded as one period. The gap here is insignificant compared to the two periods either side and liability to UK tax would be consistent with a person who works for 75 days here continuously. As the periods are part

of the same contract, the employer would be expected to operate PAYE from day one. If there had been no expectation of returning during the first 35 days we would expect PAYE to be operated only for the second period even though liability to UK tax would exist for both for Alain. This is because the 60 days is an objective test whilst PAYE is based on "reasonable expectation" that payments are liable to UK tax.

Example 2: Beatrice visits the UK for 35 days in Year 1. She returns to Belgium but unexpectedly is asked to return in Year 2, after a 7 month gap, and does so for 40 days.

Each episode in the UK would be regarded as separate periods of less than 60 days. Beatrice's return was unexpected, and after a relatively long gap. So there is no UK liability for either and no PAYE is due.

Example 3: Cedric is the financial controller for a Canadian group. Each year he visits the UK subsidiary for 55-59 days.

Once there is an expectation that this will be the work pattern, the Revenue would consider that the episodes of work here were part of a more substantial period. A financial controller will be significantly integrated into the business, whether this is of the UK subsidiary or possibly a permanent establishment of the parent company. PAYE will apply from when it is clear that visits will recur as part of a regular and integrated pattern, although Cedric may have to consider whether he is also liable under self assessment to UK tax for an earlier period of work, as for Alain in Example 1. Cedric and the group will then be able to decide the duration and timing of visits to the UK on business grounds rather than for individual tax considerations.

Example 4: Danielle spends 50 days working in UK between 10 April and 15 January, with visits averaging 3 days each. Then from 1 June to 6 October a further 15 days are spent visiting UK for business meetings on the same piece of work.

Although Danielle is taxable from the very start, we would not expect either her or the company to be able to recognise this. However, the Revenue would expect PAYE to be operated in Year 2.

For guidance on any particular case, the first approach should be to the tax office that deals with the individual. For further information on the Revenue's general approach to taxation for internationally mobile employees working in the UK, please contact

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interpretation

Assignment on divorce of life insurance policies, capital redemption policies and purchased life annuities

This article explains about a change of view that may affect the income tax implications when there is a transfer on divorce of all or part of the rights under a life insurance policy, life annuity contract or capital redemption policy. [All further references in this article to life insurance policies should be read as also being references to purchased life annuities and capital redemption policies.]

Background

Life insurance policies can give rise to 'chargeable events' on which 'chargeable event gains' can arise. These gains are taxable as income. Gains normally only arise when the policyholder receives value from the policy. There is no chargeable event and so no gain when the owner assigns all of the policy rights to another person but receives no money or money's worth in return. A gift of part of the policy rights could have given rise to a gain before the 2001-02 tax year, but cannot do so now.

When the owner sells a policy for cash to an unconnected third party it is obvious that the owner receives money or money's worth. But there may also be circumstances in which there is money or money's worth received in return for the change of ownership even when no cash changes hands.

Previous view of the law

Until recently the Inland Revenue took the view that the transfer by one spouse to the other of all or some of the rights under a policy as part of a divorce settlement was invariably for money or money's worth. It is for example not uncommon for a jointly owned mortgage endowment policy to change hands on divorce. This view was based on legal advice that an assignment as part of a divorce settlement involved a valuable "exchange" of rights. The policy rights in such cases were understood to be transferred in return for the surrender by the transferee of rights over other property, which he or she would otherwise have been able to exercise to obtain alternative financial provision. As a consequence the assignment of all or part of the policy rights was potentially within the charge to tax.

Revised view of the law

The Inland Revenue has now received further legal advice that the relevant matrimonial legislation, and the nature of the court orders following proceedings under that legislation, means that it must revise its view. This follows judicial observations by Coleridge J. in G v G [2002] EWHC 1339 about capital gains tax gift hold-over relief (see article in August 2003 Tax Bulletin). The advice is that where there is recourse to the courts and a court makes an order

- for ancillary relief under the Matrimonial Causes Act 1973 (or for financial provision under the Family Law (Scotland) Act 1985) which results in a transfer of rights under a life insurance policy from one spouse to another or

- formally ratifying an agreement reached by the divorcing parties that deals with the transfer of assets including a life insurance policy

the spouse to whom the rights under the life insurance policy are transferred does not give money or money's worth, in the form of surrendered rights, for their transfer. A Court Order made in these circumstances reflects the exercise by the court of its independent statutory jurisdiction. The transfer of ownership is not therefore the consequence of any party to the proceedings agreeing to surrender alternative rights that they might have in return for receiving rights under the life insurance policy.

This new approach represents a change in the previous view and prevailing practice. One consequence is that transferring ownership of the rights conferred by a life insurance policy under a Court Order is not for money or money's worth and no gain can arise because of it.

In the past insurers may have issued chargeable event certificates reporting gains as a result of assignments on divorce. The Self-Assessment (SA) Tax Return Guide for 2002-03 income also says that such assignments are to be treated as being for money or money's worth for tax purposes.

As a consequence of this new approach, anybody

- who has included a gain in box 12.2 or box 12.5 of the SA return (or box 6.8 of the foreign pages) **and**

- the gain arose as a result of assigning some or all of the rights under a policy as part of a divorce settlement **and**

- the transfer took place in the circumstances described above,

may be entitled to amend their SA return **provided** they are within the normal time limits for doing so.

Years affected and time-limits for amending a Self-Assessment – chargeable event gains

As this revised interpretation represents a change of view and of prevailing practice, there is no right for taxpayers to go back to years that are not in-date for an amendment to the SA return. The in-date years are as follows:

- SA returns for years of assessment before 2001-02 may only be amended where a life insurance policy has been the subject of a **full assignment*** on divorce, a court order was made and, exceptionally, the returns are either still within the time limit for amendment by the taxpayer (because the notice requiring a return was issued later than normal) or are under enquiry;

- All SA returns for 2001-02 may be amended before 31 January 2004, where a life insurance policy has been the subject of a **full assignment*** on divorce where a court order was made;

- SA returns for 2002-03 may be amended before 31 January 2005 where the gain arose as a result of a **full or part assignment** on divorce where a court order was made.

(*The new interpretation does not normally alter the tax treatment of **part assignments** taxable in years prior to 2002-03. Before changes to the taxation of part assignments were made in Finance Act 2001, they were potentially taxable whether or not they were made for money or money's worth. The way in which the FA 2001 commencement rule operates means that part assignments made during the year ended 5 April 2002 are generally not taxable until 2002-03.)

Taxpayers who want to amend their SA return and are within the time limit for doing so should send the amendment to their tax office. If that time limit has passed but the return is under enquiry this matter should be brought to the attention of the officer conducting the enquiry.

Life Assurance Premium Relief ('LAPR')

Some people may have had LAPR removed from the premiums they pay because a change of life assured took place at the same time as an assignment to change the beneficial ownership of the policy as part of a divorce settlement. LAPR is only available for qualifying policies taken out before 14 March 1984.

One of the necessary conditions for retaining entitlement to LAPR in these circumstances is that there is no consideration given in connection with the change of life assured. Under the revised view the Inland Revenue acknowledges that there is no consideration for the assignment where there is recourse to the courts and a court makes an order

- for ancillary relief under the Matrimonial Causes Act 1973 (or for financial provision under the Family Law (Scotland) Act 1985) which results in a transfer of rights under a life insurance policy from one spouse to the other or
- formally ratifying an agreement reached by the divorcing parties that deals with the transfer of assets including a life insurance policy.

The change of view may mean that the new owner of the policy should have continued to receive LAPR but did not do so. The policyholder may therefore be eligible to apply now to the insurer to restore tax relief at source from future payments of premium. However, if the change of life assured on the policy took place when there was less than ten years to run before the maturity of the policy, it may not be possible to have LAPR reinstated.

The insurance company will know the details of a policy and is best placed to be able to say whether a policy is a qualifying policy. A qualifying policy is a regular premium policy with a life of at least 10 years. The most common type of qualifying policy is a mortgage endowment policy. There is normally no income tax charge when a qualifying policy pays out.

Years affected and time-limits for making a claim - LAPR

Policyholders are entitled to claim relief for all past years that are in-date for claims. They have to claim relief from the Inland Revenue, not from their insurer. The statutory time limit for making such a claim is longer than for making an amendment to an SA Return. Policyholders have 5 years from the 31 January following the year of assessment to which the claim relates to claim LAPR. The earliest in-date year of assessment is at present 1997/98. The time-limit for a claim to relief for 1997/98 is 31 January 2004. If you think that you or your client can make such a claim, you should write to Savings and Pensions Schemes (SPS), Team 1 Repayments, 3rd Floor, St John's House, Merton Road, Bootle, Merseyside, L69 9BB with the name of the insurer, policy number and other relevant details.

Qualifying policies

Another consequence of the previous view was that a policy might exceptionally have ceased to be treated as a qualifying policy because of a change of life assured on divorce, whether or not LAPR was previously given. This is only likely to be the case when the change of life assured took place with less than ten years to run to the maturity of the policy. If you think that this may apply to you or your client, you should contact the insurer, whether or not it has already been made aware of the facts, to tell it about the order or ratification of an agreement issued by the divorce court. This will enable the insurer to update its records and administer the policy as a qualifying policy in future where that would be appropriate.

Capital Gains Tax ('CGT')

In the majority of cases there are no CGT implications when a policy or contract is transferred on divorce. This is because

- section 210 Taxation of Chargeable Gains Act ('TCGA') 1992 takes life insurance policies and deferred life annuity contracts, which have not changed hands for actual consideration, outside the scope of CGT
- section 237 TCGA 1992 excludes other annuities from CGT
- section 204 TCGA 1992 excludes capital redemption policies from CGT.

Finance Act 2003 changed the rules in section 210 TCGA 1992. There is guidance on the new rules in the Capital Gains manual at paragraphs CG69040 to CG69071.

miscellaneous

Keeping Employers Posted About Online Filing And Electronic Payment

Last month, the Inland Revenue wrote to every employer in the UK, telling them how they are affected by the move to online filing of end of year returns for their PAYE schemes.

Copies of the letters have not been sent to agents, although employers have been asked to show the letter to whoever is acting for them.

The letters tell employers whether - according to our records on 26 October - their PAYE schemes are large, medium or small.

- From May 2004, large schemes (250 or more employees) must start paying tax and other deductions electronically, or face a surcharge. And they must send end of year returns online, starting with the 2004/05 return, due by May 2005, or may be charged a penalty.
- Medium-sized schemes (50 - 249 employees) must file 2005/06 returns online by 19 May 2006, or face a penalty.
- Small schemes (fewer than 50 employees) do not have to start online filing until later. But those who start filing online early can get up to £825 tax-free from the Revenue over five years, starting with 2004/05 end of year returns.

The letters explain how to appeal if we have got the number of employees in their PAYE scheme(s) wrong. (Employers have had a letter for each scheme.)

Every letter included *Do It Online: Your Guide to Filing PAYE Returns and Paying Electronically*, a brand new publication explaining:

- what the online filing deadlines are
- how small schemes can qualify for up to £825 tax-free for early online filing
- the benefits of doing it online
- how to file online (changes are currently being made to the Revenue's website to make it easier) and pay electronically.

The guidance is at www.inlandrevenue.gov.uk (click on employers). And details of the tax-free payments are at www.inlandrevenue.gov.uk/825 .

New schemes set up after 26 October will be treated as small schemes and so will be entitled to a tax-free payment for filing the 2004/05 return online. Copies of *Do It Online: Your Guide to Filing PAYE Returns and Paying Electronically* are now in the New Employer Starter Packs. Please remind your clients that they may be able to get up to £825 tax-free for early online filing.

Regulations for online filing, electronic payment and the tax-free £825 (SI 2003/2494 and SI 2003/2495) are at www.inlandrevenue.gov.uk/si/index.htm. Legislation giving the Revenue powers to pass detailed regulations (Boards Directions) are at www.inlandrevenue.gov.uk/ebu/boards-directions.htm. They cover quality standards, the date the Department counts employees, and the approved methods of electronic communication (the PAYE Online services for employers and agents over the Internet).

Electronic Data Interchange is not specified in the Directions because the wording of SI 2003/2494 46ZC (1)(a), "transmit the specified information electronically to the Inspector…" is already defined in regulation 2 of the PAYE regulations (SI 1993/744).

The new laws exclude Magnetic Media (it is not an approved method of communication so is not included in either of the above).

More details, including information about electronic payment and Construction Industry Scheme, will be in the next issue of Tax Bulletin.

Capital Allowances: Long-Life Assets - Aircraft

Aircraft within the BATA Agreement

The agreement described in Tax Bulletin 41 (June 1999) expires on 31 December 2003. Following further discussions between the Inland Revenue and the British Air Transport Association (BATA), it has been agreed that the arrangements will be extended for a further 5 years to 31 December 2008 on exactly the same terms as the original agreement. Copies of the forms to elect into the renewed agreement in both airline and lessor versions together with copies of the original explanatory statement referred to in Tax Bulletin 41 are available from Nottingham and Manchester Large Business Offices.

Manchester Large Business Office (CT)
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Nottingham
NG2 1BE

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Aircraft outside the BATA Agreement

In Tax Bulletin 46 (April 2000) we set out in some detail the approach that would be adopted in relation to a wide range of other types of aircraft not within the BATA agreement which relates only to commercial jet aircraft with 60 or more seat capacity. The indications given for the various categories of aircraft in Tax Bulletin 46 have greatly reduced the number of instances in which claims to Capital Allowances on aircraft have had to be reviewed in detail. Discussions with representative bodies and users have continued and as a result of these and further research some changes in our approach are appropriate. These are set out in detail below.

1. **Regional Jets** – The BATA agreement covered jet airliners with a seating capacity of 60 seats or more. There is a new class of jet aircraft entering service with airlines that will have fewer than 60 seats. These are commonly known as Regional Jets. Some later variants of these new types of aircraft will automatically fall within the BATA agreement as their seating configuration will exceed 60 seats. Following further discussions with the airlines, the Revenue will accept, in relation to irrevocable contracts entered into on or before 31 December 2008, that Regional Jets with less than 60 seats operated by commercial airlines are not long-life assets.

2. **Turbo-prop airliners with a maximum take-off weight over 5700kgs operated by commercial airlines** – These aircraft have tended to survive only in a limited range of uses and are in part being replaced by the Regional Jets referred to above. Although in the past, some of these airliners have lasted more than 25 years, the change in the market does suggest that those acquired since the start of the long-life asset rules are unlikely to have a life expectancy of more than 25 years in commercial use. We will continue to accept that they are not long-life assets.

3. **Executive Jet Aircraft** – In normal single corporate ownership these aircraft will, in general, last well over 25 years, although this is very dependent on the particular pattern of use. There is a new development, particularly noticeable in the United States but beginning to be seen in the United Kingdom, of fractional or shared ownership of corporate jets, as well as a growing number of companies operating corporate jet services as a business for a variety of users. Based on our research we will accept that where annual usage is above 600 flying hours the aircraft can be treated in the same way as those within the BATA agreement, namely 50:50 assets. These assets are capable of refurbishment and often are upgraded to prolong their lives over the 25-year period. Below 600 flying hours, the life cycle of the aircraft is likely to exceed 25 years without such major refurbishment and we will approach claims on the basis that these are long-life assets attracting allowances only at the long-life asset rate of 6%.

4. **Fixed Wing Turboprops/Piston Driven Aircraft in excess of 2730 kilograms maximum take-off weight** – In general these smaller aircraft are not subject to major refurbishment of components that might be regarded as separate assets under FRS15. The class embraces many types of aircraft in a wide variety of uses. We will accept that where they are flown for more than 600 hours per annum they will not be long-life assets. This will generally mean that aircraft used commercially, for example by flying schools, will not be long-life assets. For aircraft that are used at an annual rate of below 600 hours per annum, the evidence is that they will last more than 25 years and we will approach claims on the basis that these are long-life assets attracting allowances only at the long-life asset rate of 6%.

5. **Helicopters** – Based on further research and discussions with interested parties, we will accept that the long-life asset legislation will not apply to helicopters which:

   - are in use for more 1,000 hours per annum; or
   - are in use for more than 600 hours with 2,000 or more landings per annum; or
   - have a maximum take-off weight of less than 650 kgs.

   Helicopters not covered by the above three categories will continue to be regarded as long-life assets.

6. **Fixed Wing Aircraft below 2730 kgs** – These small aircraft are sometimes used in business but more often in private use. Patterns of operation vary enormously but there is little evidence to suggest that the life expectancy is easily predictable at the outset of the aircraft's life. We are therefore prepared to accept that they are not long-life assets.

   These guidelines which apply to the application of the long life asset rules in Part 1 Chapter 10 of CAA 2001 are intended to run for the same period as the agreement with BATA, that is, until 31 December 2008 and will then be reviewed.

Business Income Manual

There is guidance on computing trading and other business profits in the new Business Income Manual. It is in the publications area of the Inland Revenue website (www.inlandrevenue.gov.uk). This manual replaces the material on this topic in the Inspector's Manual. The BIM is different from the material previously in the Inspector's Manual in two main areas:

- general improvements to content and presentation; and
- enhanced content on some subjects.

BIM10040 explains how the guidance has been improved.

We will be improving the new manual regularly. A first priority is to provide guidance on new rules in the 2003 Finance Act, which affect business profits.

We welcome feedback on both content and presentation. BIM10020 explains how to contact the Editor.

The rest of the Inspector's Manual has been republished with minor improvements which are explained in the 'recent changes to this manual' message on the main contents page.

Revenue Prosecutions

The Inland Revenue has a policy of selective prosecution involving the most serious cases across the whole range of the tax system. The Board sees this as an important part of its strategy to deter tax fraud and evasion. As part of the wider publicity for this strategy, details of Revenue Prosecutions are occasionally published in Tax Bulletin.

Michael Richard Stannard
Michael Stannard, a 54 year-old barrister, has been ordered to pay £1,678,954 following an extended confiscation hearing at Southwark Crown Court recently.

Stannard, of Hambye, Normandy in France was given 12 months in which to satisfy the Order. If he fails to do so, he risks adding 4 years to the 4 and a half years prison sentence he received at Southwark Crown Court in February 2001, where, after a 4 month trial, he was convicted on 2 counts of fraud committed between 1 October 1992 and 31 October 1997.

The fraud was one of claiming a deduction against profits of two companies Bonnington Shipping Ltd and Fairflight Leasing Ltd, for interest paid in advance in respect of false debenture bonds when no such transactions had taken place.

The Confiscation Order was based on the pecuniary advantage that Stannard obtained through the 2 companies whereby they had not paid the tax due on the true profits, and not on the lower figure of the sums retained by Stannard. In the written statement handed down at the confiscation hearing, His Honour Judge Fingret stated that "had this fraud succeeded (Stannard) would have been better off to the tune of £2,129,649 plus interest….of £969,381,a benefit of £3,099,030."

A Confiscation Order is made in the lower of two figures, the benefit obtained and the Defendant's realisable assets. His Honour Judge Fingret identified assets either belonging to Stannard or which he had gifted to others. Some assets were held by offshore companies, owned by a discretionary Liechtenstein trust. The Judge found that there was "clear evidence that the Rupert Trust is or was controlled by Stannard". He continued that Stannard "cannot hide behind the Rupert Trust in these proceedings".

Assets of the Rupert Trust were thereby treated as Stannard's together with sums identified as being gifted by him to others. The Judge calculated the realisable assets to be £1,678,954 and he ordered that this amount should be paid within 12 months.

The Criminal Justice Act 1988 provides for a default sentence to be made in addition to the sentence of the crime if the confiscation is not satisfied within the time specified. If Stannard fails to pay the £1,678,954 within 12 months a default sentence of 4 years will apply.

Michael Richard Stannard, is a Tax Barrister of the Middle Temple having been called to the Bar in 1973. He is also a member of the Gibraltar Bar. An appeal by him against conviction and sentence were dismissed on 13 February 2002.

Michael Keith Graham
At Leeds Crown Court in August, Certified Accountant Michael Keith Graham, a 57 year-old married man, was found guilty of defrauding the Inland Revenue.

On 14 October 1999, Graham signed his 1996/1997 Tax Return, which contained a claim for capital allowances in respect of cars. This included a claim for balancing allowances amounting to £22,300. Graham claimed that he had disposed of his Mercedes car for £50,000 and indicated that during the same year he bought another Mercedes for £50,000.

Revenue investigations revealed that Graham had neither bought nor sold any car during that year and had therefore claimed allowances of £22,300 to which he was not entitled. The resulting amount defrauded was £16,502.

Graham has been qualified as a Certified Accountant for 28 years and has practised in Ilkley, Yorkshire since 1986, trading under the name of M K Graham & Co.

The court agreed with the prosecution that the defendant had wilfully and deliberately made a fraudulent claim in the full knowledge that what he was doing was wrong. He was fined £5000 and ordered to pay prosecution costs of £15,000 in addition to paying all defence costs.

The Inland Revenue Special Compliance Office in Leeds, which deals with the most serious cases of fraud and evasion, took the prosecution case after investigations. The hearing lasted 4 days.

Richard James Mitchell

Richard James Mitchell, formerly of Holmesfield near Sheffield, currently in HMP Sudbury, had been convicted of 5 counts of fraudulent trading and was due for release on licence in early August 2003, having served 2 years of his 4 year sentence.

However, he failed to satisfy the Confiscation Order of £30,000 imposed upon him by Nottingham Crown Court in December 2001, and was sentenced to a further 18 months imprisonment by District Judge Friel at North East Derbyshire and Dales Magistrates Court, recently.

The Court found that Mitchell had made no attempt to sell a property in Cyprus, which the Crown Court had ruled he held an interest in when imposing the Confiscation Order. Additionally, Mitchell had failed to make any payments on account as an act of good faith after having earned a salary whilst on day release from prison.

The Court was sceptical of Mitchell's claim that payments would be made towards the Order following his release on licence. The Court was also concerned that there was a risk that Mitchell would flee the jurisdiction.

This is the first occasion that the default sentence set by the Crown Court following the making of a Confiscation Order has been imposed in an Inland Revenue case. To date the Inland Revenue has been extremely successful in ensuring that Confiscation Orders made by the Crown Courts in Revenue cases have been paid through effective case management and the appointment of Enforcement Receivers where appropriate.

The underlying purpose of the Confiscation legislation is to deprive criminals of the financial benefit of their crime. Default sentences are intended to encourage offenders to satisfy their Confiscation Orders to ensure that they do not retain that benefit.

After serving just over a month of the default sentence, full payment of the Confiscation Order of £30,000 was received by the Magistrate Court. Mitchell was released.

This case highlights the increasing commitment of the Magistrates Court to ensure that the confiscation process is rigorously enforced, and the close working relationship between Magistrates courts and the Inland Revenue.

Where an offender wilfully fails to satisfy the Order of the Court, the sentence in default, which is set in every Confiscation Order, will be pursued.

Joseph Maxted Higgens Senior & Joseph Maxted Higgens Junior

A father and son who were directors of two companies which operate a butchers franchise, have been jailed for 15 months and sentenced to 240 hours community service respectively.

Joseph Higgens Senior from Wigan and Joseph Higgens Junior from Warrington were sentenced at Bolton Crown Court recently.

Both men had been arrested and had their properties searched in October 2001 in a joint operation between Greater Manchester Police and officers from the Inland Revenue Special Compliance Office Manchester. They were directors of the companies which operated franchises in several Kwiksave/ Somerfield supermarkets including Irlam, Ramsbottom and Bolton, and butchers shops in Northwich, Stafford and Congleton.

On 10th June 2003 both men pleaded guilty of Cheating the Public Revenue between July 1995 and October 2001 of Pay As You Earn tax, National Insurance Contributions and interest of at least £250,000. They did this by paying employees 'cash top up' wages over and above the amounts shown on the payroll records, consequently the correct amount of tax and NIC was not paid to the Exchequer.

In passing sentence, His Honour Judge Knopf said that the money, which should have gone to the Inland Revenue, would have been used for the advantage and benefit of society as a whole. He warned that others contemplating similar offences should be aware that they would face a similar penalty if found guilty.

Inland Revenue Statements of Practice and Extra-Statutory Concessions issued between 1 October 2003 and 30 November 2003

Extra Statutory Concessions

There have been no Extra Statutory Concessions for this period

Statements of Practice

There have been no Statements of Practice for this period

You can get copies of SPs and ESCs by telephoning 020 7438 4266.

CONTENT

The content of Tax Bulletin gives the views of our technical specialists on particular issues. The information published is reported because it may be of interest to tax practitioners. Publication will be six times a year, and include a cumulative index issued on an annual basis.

- You can expect that interpretations of the law contained in the Bulletin will normally be applied in relevant cases, but this is subject to a number of qualifications.
- Particular cases may turn on their own facts, or context, and because every possible situation cannot be covered, there may be circumstances in which the interpretation given here will not apply.
- There may also be circumstances in which the Board would find it necessary to argue for a different interpretation in appeal proceedings.
- The Bulletin does not replace formal Statements of Practice.
- The Board's view of the law may change in the future. Readers will be notified of any changes in future editions.

Nothing in this Bulletin affects a taxpayer's right of appeal on any point.

Letters on any article appearing in Tax Bulletin should be sent to the Editor, Mr Shell Makwana, Room G7, New Wing, Somerset House, Strand, London, WC2R 1LB or e-mail Shell.Makwana@ir.gsi.gov.uk. We are sorry though that neither he nor our contributors will normally be able to enter into correspondence about Tax Bulletin or its contents.

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