241. Motor and travelling expenses

It has generally been accepted by the Inland Revenue that, where a sole trader or partnership business is based at the home address, then motor and travelling expenses from the home incurred wholly and exclusively for business purposes are claimable for tax purposes. The leading case on this subject for many years has been *Horton v Young* 46 TC 70, concerning a building industry subcontractor.

Recently this principle was attacked by the Revenue in the case of a 'franchise milkman'. As is well-known many milkmen now rent a milk float from the relevant dairy and purchase milk and other goods for resale to customers on a self-employed basis.

In the case of *Powell v Jackman* SpC 338 the Revenue attempted to disallow the travelling from home to the dairy to collect the float and milk, as well as the return journey home. However the agreement between Mr Powell and the dairy provided that he was not allowed to trade from the dairy or use the depot as his business address. The taxpayer kept his books at home, where all office-related tasks were carried out.

The Special Commissioner, Dr Nuala Brice, found in favour of the taxpayer, but his claim that the Revenue had acted unreasonably in connection with the appeal did not succeed.

Enquiries and Investigations

242. Hansard procedure revisions

With immediate effect there has been a change made to the 'Hansard procedure' used in certain investigation cases. This is a process by which the Inland Revenue offers a taxpayer suspected of serious tax fraud an opportunity to confess to all of the irregularities in their tax affairs. The term 'Hansard' is used, because the practice of the Board of Inland Revenue is set out in a statement by the Chancellor of the Exchequer in the Parliamentary Hansard records.

From time to time the Chancellor of the day updates the Hansard statement to reflect the latest practice of the Inland Revenue. The Chancellor made such a revision on 7 November 2002 and this revised statement will lead to changes in the Inland Revenue's Code of Practice number 9, which provides further information about these types of investigations.

The latest revision is a result of the House of Lords' decision in *R v Allen* [2001] UKHL 45. In this case the appellant claimed that the admission into evidence of statements made in response to the Hansard procedure breached his right to a fair trial under Article 6(1) of the European Convention on Human Rights. This, he claimed, was because he had been subjected to an inducement at the time when the statements were made. The inducement in question was said to be the assurance implicit in the Hansard statement that if the taxpayer makes a full confession criminal proceedings would not be instituted against him.

Although in that case the appellant had not made full disclosure in accordance with the terms of the Hansard statement, it raised the question of what would occur where a taxpayer did make a full confession under the procedure and was subsequently prosecuted anyway. Although there is no record of any case in which a taxpayer who has made a full confession under Hansard being prosecuted for these offences later, the substantive point is how assured the taxpayer can be that the Revenue will not prosecute in these circumstances.

This has led to the revised statement about the Board of the Inland Revenue's policy on these matters. In response to a Parliamentary Question on 7 November 2002 the Chancellor said:

Further to the statement made on 18 October 1990 at column 882 by the then Chancellor, the Rt. Hon. John Major, the practice of the Board of Inland Revenue in cases of suspected serious tax fraud is as follows:

The Board reserves complete discretion to pursue prosecutions in the circumstances it considers appropriate.

Where serious tax fraud has been committed, the Board may accept a money settlement instead of pursuing a criminal prosecution.

The Board will accept a money settlement and will not pursue a criminal prosecution, if the taxpayer, in response to being given a copy of this Statement by an authorised officer, makes a full and complete confession of all tax irregularities.

The significant points to note are that a taxpayer making a full confession under this procedure may now be assured that the Inland Revenue will not pursue a criminal prosecution. This seems a welcome development and should provide some greater comfort to those under investigation in such circumstances, providing they do fully co-operate. Note however, that this new Hansard procedure only applies to Inland Revenue practice and has not been extended to the procedures being operated by Customs and Excise.

The term 'pursue' is used in the revised statement because the Revenue is a prosecuting body in its own right only in England and Wales. In Scotland and in Northern Ireland it refers cases to the Procurator Fiscal and the Director of Public Prosecutions, respectively, for their consideration. The revised text refers to a copy of the Statement being given by an authorised officer. For these purposes, an authorised officer is a current serving member of the Inland Revenue Special Compliance Office.

The Revenue also has placed a note on its website concerning these changes. This includes the following:

It must however be made clear that the Board does not hold out the opportunity of Hansard indefinitely. So, for example, if a taxpayer who had been given Hansard took an unreasonable amount of time in making their full disclosure, the Inland Revenue may decide to commence its own investigation. Depending upon the information held or obtained by the Inland Revenue, this may lead at any time to the withdrawal of Hansard and the start of an investigation with a view to criminal prosecution. If this happened a full confession subsequently made by the taxpayer would not by itself prevent the Board from continuing to pursue the prosecution.

Business Tax

243. Wayleaves and receipts for grants of easements

An easement is the right to use, or to restrict the use of, the land of another person in some way. A wayleave is the right to use a defined area of land for purposes unrelated to its primary use.

Landowners may receive payments for easements from electricity and gas concerns, or other similar undertakings, for easements in connection with cables, pylons etc, on or over their land. The types of payment which may be made include:

a) yearly payments for easements
b) single lump sum payments for grants in perpetuity or for a specified number of years.
c) yearly or lump sum payments for disturbance arising from the erection of pylons, relaying of mains etc.

A lump sum payment to a farmer for the granting of an easement or wayleave (whether in perpetuity or for a term of years, and whether or not under an enactment incorporating compulsory powers of purchase) to place, construct or maintain a pipe, main, cable etc, in, on, over, or under land should be dealt with in accordance with the Inspectors Manual IM363. Any element of compensation received for temporary loss of profit, or for damage to crops or to reimburse revenue expenditure on the repair of damage to land or buildings falls to be included as a receipt taxable under Case 1 of Schedule D.

Thus, there can be a choice between a capital or a trading receipt depending upon the wording on the document. This can be used as an effective tax planning tool. The emphasis has to be on ensuring the agreement is sorted beforehand.

Contributed by Julie Butler, Butler & Co.

Corporation Tax

244. Substantial shareholdings – guidance issued

The Inland Revenue has published a Statement of Practice covering the application of the anti-avoidance provision in paragraph 5 of Schedule 7AC of the Taxation of Chargeable Gains Act 1992 (Exemptions in case of substantial shareholding). Paragraph 5 prevents any of the exemptions in Schedule 7AC from applying where certain, clearly defined conditions are met. (Schedule 7AC was inserted into the Taxation of Chargeable Gains Act 1992 by Schedule 8 to the Finance Act 2002.)

There had been general concern that the Revenue might use this provision extensively to effectively negate the value of the new substantial shareholding relief. However, the Statement of Practice states that the Revenue expects the 'cases where the anti-avoidance rule is in point to be unusual and infrequent'.

The main points of the Statement of Practice are set out below:

- For the purposes of paragraph 5(1) a gain is 'untaxed' if the gain, or all of it but a part that is not substantial, represents profits that have not been brought into account (in the United Kingdom or elsewhere) for the purposes of tax on profits for a period ending on or before the date of the disposal.
- 'Profits' for these purposes means income or gains, including unrealised income or gains. But profits are not 'untaxed profits' if an amount in respect of these profits is apportioned to and chargeable on a UK-resident company under the controlled foreign company rules for an accounting period of the company ending on or before the date of the disposal.
- It will be a question of fact in any particular case as to whether a gain wholly, or wholly except for a part which is not substantial, represents untaxed profits. Broadly, this will involve looking at how the consideration obtained for the shares is derived from assets held directly or indirectly by the disposing company.

  Examples of situations where the profits will not be untaxed profits for the purpose of paragraph 5 are:
  - a dividend received by a holding company that is paid out of taxed profits of the subsidiary;
  - where the profits in question themselves represent an exempt gain on disposal of a substantial shareholding;
  - where no tax is payable on profits because they are covered by a specific relief (eg loss relief).
- In the context of this legislation the Revenue will interpret 'substantial' as meaning more than 20 per cent.
- Even if on this basis the gain wholly, or wholly except for a part which is not substantial, represents untaxed profits, the exemption would be denied only if:
  - each of the circumstances set out in paragraph 5(1) occurs in pursuance of arrangements; and
  - the sole or main benefit that could be expected to arise from the arrangements is that the gain accruing on the disposal would otherwise be exempt under Schedule 7AC; and
  - from the outset the sole or main benefit expected to arise from the arrangements is the achievement of that outcome.

245. Allocation of group relief

You act for a group of companies. Some are profitable, some loss-making. Of the profitable companies, some may be paying at the full rate and some at the marginal rate. This raises an interesting conundrum about how you should allocate group relief. In the past you would normally have allocated primarily to companies in the marginal relief band, in order to obtain relief at what is now an effective 32.75 per cent rate. But nowadays, allocating it to companies which pay tax at the full rate may be better: relief may be obtained only at 30 per cent but it is achieved earlier – how valuable this may be could depend on the availability and cost of cash resources to the company. What you can't do is allocate to full-rate companies for the purpose of computing instalment payments and to marginal-rate companies when it comes to filing CT600s.

So what's the right answer? There probably isn't a single 'right answer' for all cases: but ignoring the point and automatically doing what you always used to do is definitely the wrong one!

From Brass Tax, published by Berg Kaprow Lewis.

Capital Allowances

246. 100 per cent allowance for energy efficient cars

Don't forget that since 17 April 2002, there is a 100 per cent first year allowance available on the purchase of an energy efficient car. The relevant legislation is set out in section 69 and Schedule 19, FA 2002. Businesses can claim a 100 per cent of expenditure on cars with a carbon dioxide emission (CO_2) figure of no more than