

Written evidence submitted by the Association of Accounting Technicians (AAT) (FB 16)

About AAT

The Association of Accounting Technicians (AAT) is a professional accountancy body with over 49,800 full and fellow members¹ and 80,900 student and affiliate members worldwide. Of the full and fellow members, there are over 4,200 licensed members who provide accountancy and taxation services to individuals, not-for-profit organisations and the full range of business types.

AAT is a registered charity whose objectives are to advance public education and promote the study of the practice, theory and techniques of accountancy and the prevention of crime and promotion of the sound administration of the law.

Introduction

AAT is submitting this response on behalf of our membership and for the wider public benefit.

AAT has added comment in order to add value or highlight aspects that need to be considered further.

AAT has focussed on the operational elements of the proposals and has provided opinion on the practicalities of implementing the measures outlined.

Furthermore, the comments reflect the potential impact that the proposed changes would have on SMEs and micro-entities, many of which employ AAT members or would be represented by our operationally skilled licensed members.

Summary

AAT's position and recommendations on the detailed budget proposals are outlined below and are listed in the order in which they appear in the Overview of tax legislation and rates 2016 (OOTLAR):

- Taxable benefits in kind
- Employment intermediaries
- Renewals allowance
- Employee shareholder status
- Inheritance Tax
- VAT representatives

Preventing liability to charges being removed from certain taxable benefits in kind: (1.7, OOTLAR)

- 1.1 AAT acknowledges that this notice is not intended to change the existing legislation in any way other than to clarify the point that the term "fair bargain" cannot and does not in fact apply to those Benefits in Kind (BIKs) specifically covered in Part 3 Chapter 10 ITEPA 2003, except where a car hire company employee seeks to hire a car at a fair bargain rate, ensuring that the company car benefit will not apply in such situations.
- 1.2 This proposal is fair and equitable but AAT would like clarification on a similar scenario whereby an employee of a van hire company also seeks to hire a van under the fair bargain principles.
- 1.3 The proposed clarification makes no mention of the van scenario and thus implies that a van benefit could potentially be conferred upon an employee under the strict provisions of Part 3 Ch.10 ITEPA 2003 if the van were deemed to have been used privately. This would represent an unintended consequence of the legislation.

Employment Intermediaries and tax relief for travel and subsistence (1.11, OOTLAR)

- 1.4 AAT considers that whilst this legislation brings travel and subsistence for workers supplied through intermediaries into line with other workers in terms of the temporary workplace rules, which is undoubtedly equitable, it appears to be creating unnecessary legislation where no significant positive economic outcomes for the Exchequer will be realised.

¹ Figures correct as at 31 Mar 2016

- 1.5 AAT considers that the legislation in respect of Agencies, Intermediaries, Supervision, Direction and Control (SDC) and all related matters is now so complicated that the likelihood of compliance is significantly impeded.
- 1.6 Professional tax advisers and lawyers are finding it difficult to interpret existing legislation and this in turn can only mean that both represented and unrepresented taxpayers will be finding it almost impossible to understand, increasing the likelihood of it being ignored altogether.
- 1.7 AAT recommends that the Office for Tax Simplification (OTS) should undertake a special project regarding the whole area of taxation of workers supplied through intermediaries. This review should encompass the agency legislation, the SDC rules and the IR35 legislation in an attempt to address the complexity and volume of legislation which is still largely ineffective as a tax collection mechanism.

Repeal of renewals allowance (1.21, OOTLAR)

Clause 68 Finance Bill 2016 (FB2016)

- 1.8 Clause 68, FB2016 repeals the renewals legislation for the replacement and renewals of trade tools. Section 68 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA) contains the income tax rules for the renewals allowance. The equivalent corporation tax rules are contained at Section 68 of Corporation Tax Act 2009 (CTA 2009). They are repealed from April 2016 for income tax purposes and from 1 April for corporation tax purposes.
- 1.9 These dates are aligned with the introduction of replacement furniture relief for residential landlords, ensuring alternative relief for this type of expenditure is available.
- 1.10 The measure will ensure that tax relief for expenditure incurred by a business on replacement and alteration of tools is obtained under the same rules that apply to other equipment used in a trade or property business.
- 1.11 AAT acknowledges that the abuse of the relief has caused HMRC to look again at its scope and notes that HMRC has concluded that the best way to deal with the abuse is to repeal the legislation and to make it a capital relief.
- 1.12 The OOTLAR states that the relief is no longer necessary. AAT does not agree because from an operational point of view, there is a balance to be struck between items that are clearly capital in nature and those that could be capital, but in some circumstances are better classified as revenue items. The two examples below illustrate this point:

Example 1:

A carpenter buys wood and gets through a saw every week.

Is it reasonable for him to have to split the expenditure on the saws from the expenditure on the wood and then claim tax relief through the capital allowances regime on the saw, yet put the expenditure on the wood through the trading account in the P&L?

Common sense suggests that the saws are consumables and do not merit a capital treatment. Similarly, from an accounting perspective capital items are usually material items purchased for long term use in the business.

Example 2:

A tree surgeon burns out three chainsaws in a year.

Whilst these would appear to rank for a capital treatment, in practice they would be better treated as consumables. Similarly for accounting purposes it would not make sense to capitalise the chainsaws and account for depreciation only to write off the burnt-out chainsaw to the P&L account, which is likely to be in the year it was purchased.

- 1.13 AAT considers that the replacement and alteration of trade tools legislation in ITTOIA 2005 and CTA 2009, would be best kept for the reasons stated above.
- 1.14 To stop the sections from being abused, AAT recommends that there is a monetary limit placed on the expenditure –say £1,500 maximum in a year, to allow for trade tools that are genuinely consumable items to continue to be treated as such.

Changes to Employee Shareholder Status (1.52, OOTLAR)

- 1.15 AAT considers that it would have been more sensible to implement this perceived anti-abuse regulation when the first set of ESS legislation was introduced in 2012, and thus AAT takes the view that the original legislation was possibly somewhat short-sighted.
- 1.16 The OOTLAR has not provided substantive evidence to illustrate that the old regulations have been so prolifically abused that it is now necessary to amend them to restrict the exempt gains which can be realised.
- 1.17 AAT considers that it appears the ESS measure is effectively being withdrawn in stages due to the restrictions now being placed on the exempt gains.
- 1.18 AAT recommends that as the ESS law is enshrined in section 205A of the Employment Rights Act 1996, it is essentially therefore a piece of employment law as opposed to a piece of employment tax law. Further consideration should also be given to restricting an employer's ability to reinstate employment rights after ESS is agreed between employers and employees, which is a far wider abuse than the perceived abuse of exempt gains, on which no real data appears to be available.
- 1.19 AAT considers that the notion of forfeiting one's employment rights (ostensibly permanently although as noted above, this is not always happening in reality) only to be taxed on gains exceeding £100,000 for the sake of an estimated Exchequer gain of £35m over 5 years is heavy handed.
- 1.20 AAT considers that due to the above contentions, a piece of already complicated legislation is being further complicated without any appreciable benefit.
- 1.21 The most likely unidentified impacts and unintended consequences of this legislation are employment law and HR ones in terms of having an adverse effect on morale, recruitment, retention, and productivity. Employment lawyers may have been able to adequately circumvent the legislation for those employers who were willing to pay by reinstating rights, whilst other employees will undoubtedly have been disadvantaged by exchanging employment rights for gains which may never materialise.

Inheritance Tax: Downsizing and the residence nil-rate band (1.53, OOTLAR)

- 1.22 AAT maintains the view that a much simpler solution for these downsizing provisions and the residence nil rate band could have been achieved with an incremental increase in the value of the current nil rate band. This would avoid the need to further complicate the existing IHT legislation and allow for a fairer and much a wider and simpler succession distribution amongst all family members.
- 1.23 As further evidence of the difficulties to be created by these provisions AAT understands that HMRC are already experiencing difficulties with applications received for the existing Transferable Nil Rate Band (TNRB) and therefore AAT can only expect further complications to have to be dealt with by HMRC in the near future.
- 1.24 These provisions will require detailed record keeping and complex calculations which may be beyond the understanding of many taxpayers. This being in part due to the "downsizing addition" value not being based upon the value of the property sold and the lower value one purchased with the difference in funds remaining carried forward as would be expected, but for the option of a more complex method to be used. No doubt HMRC will need to provide calculation tools on line to assist taxpayers.

1.25 AAT would also suggest in consideration of the modern family unit linear distributions as set out under the legislation should be amended to allow provisions for:

- both descendants and ascendants
- nominated guardians

Estates Duty and Inheritance Tax: Objects granted exemption from Estate Duty (1.54, OOTLAR)

1.26 AAT was surprised by the Government's announcement without any prior consultation to seek to make several changes on the interaction of Estates Duty (ED) and Inheritance Tax (IHT) for objects granted exemption from ED.

1.27 The amendments, as set out under Clause 86 Finance (No 2) Bill 2016, are highly technical in operation. Previously this specialist area of taxation has undergone quite lengthy consultation with all interested stakeholders leading to the publication by HMRC's Heritage team of the "Capital Taxation and the National Heritage" memorandum which runs to 224 pages and provides a detailed insight and valuable assistance into the specific operation and administration of this area of taxation for tax practitioners.

1.28 The Tax Information and Impact Note (TIIN) impact assessment reports that these changes will apply in only a small number of situations for around 2,000 individuals. While it may only affect a few it will be extremely important for those individuals who still have in existence conditional exemptions from ED which will be affected now or in the future by these proposed changes.

1.29 It is AAT's view that the amount of the overall deferred tax liability involved from this collection of individuals is the most relevant point for which HMRC should have data available.

1.30 AAT recommends further consultation specifically for changes to the charging provisions that should be undertaken. Additional guidance should be provided by HMRC to establish how they plan to use these new provisions, if enacted, which will increase the complexity of the tax computations involved in reverting back to earlier ED methods of calculation. The end result will be that for the majority of cases there will be a sizable increase in the amount of tax to pay.

Changes to charging provisions

1.31 AAT questions the necessity for imposing an anti-forestalling measure for setting the tax charge from 16 March 2016, with the other two measures being effective from the date of Royal Assent given that under the summary of impacts the TIIN states that there will be negligible impact on the Exchequer from these changes.

1.32 AAT is therefore not aware of the rationale for this measure and the speed of introduction. Furthermore, AAT notes the Background note Paragraph 19 of Clause 86 Finance (No 2) Bill 2016 which would indicate that HMRC are concerned about lost tax revenue under the current operation of the existing legislation as a reason for this action but do not account for why it has to be effective from 16 March 2016.

1.33 AAT does not agree with the point that cases are made solely for obtaining a conditional exemption in order to facilitate a sale at a lower rate of IHT than would have been charged under ED. Furthermore, AAT would have liked to have seen evidence to support this in relation to the number of applications received for conditional exemption and the time elapsed for a CE.

1.34 AAT considers that the open market sale for a large number of these ED conditionally exempt objects would be extremely specialised, involve lengthy negotiations and valuations for the completion of an eventual sale by auction. AAT recommends therefore, a short period of consultation, the delayed implementation of the changes should not present a major risk to the exchequer in terms of lost revenue and would allow for some transactions to be completed as planned based on current practice which may have already taken many months of negotiations and involved financial costs to all parties involved in the preparation of an object for sale.

1.35 The only other option available is a heritage sale by a private treaty to a body listed in Schedule 3 of the Inheritance Tax Act (IHTA) 1984, which AAT assumes would now offer a greater advantage for

all parties involved due to the increased tax liability produced as a result of these ED changes and the credited douceur of 25% of the tax paid to the vendor, unless in these instances HMRC would elect for the lower IHT charge.

- 1.36 AAT recommends that subsection (7), Point 17, Clause 86 Finance (No 2) Bill 2016 be amended to allow for a delayed implementation date as a minimum to coincide with the other changes proposed from the date of Royal Assent expected for late June or early in July 2016 and further consultation be undertaken with interested stakeholders.

Changes to VAT representatives legislation and the introduction of joint and several liability on the online marketplaces (1.57, OOTLAR)

- 1.37 AAT notes the business tax policy document (the Document) published on 16 March 2016 regarding VAT representatives for overseas businesses and joint and several liability for online marketplaces.
- 1.38 The Document refers to the amendment of VATA 1994 section 48 and that the amended legislation will have effect from the date of Royal Assent to FB2016. The Document also refers to new legislation that will have effect from the same date which will enable HMRC to hold an online marketplace jointly and severally liable for the unpaid VAT of an overseas business that sells goods in the UK via the online marketplace's website.

The amendment of VATA 1994 section 48

- 1.39 Currently VATA 1994 section 48 provides power to HMRC to direct a person (the principal) not established in the UK and/or another EU country to appoint a VAT representative.
- 1.40 Currently section 48 (3) includes provisions making a VAT representative personally liable in respect of any failure to secure the principal's compliance with or discharge of the principal's VAT obligations or liabilities as if the obligations and liabilities imposed on the principal were imposed jointly and severally on the VAT representative and the principal.
- 1.41 The Document indicates that the amended section 48 will provide HMRC with strengthened powers for directing the appointment of a VAT representative, including a requirement that the VAT representative is in the UK, and will provide more flexibility in respect of seeking a security.
- 1.42 The Document indicates that HMRC will only use these strengthened powers on the highest risk cases to tackle non-compliance.
- 1.43 A significant proportion of the Full and Fellow members of AAT are licensed by AAT to provide accountancy and taxation services to a portfolio of clients. A potential effect of HMRC using its strengthened powers to direct the appointment of a UK VAT representative in the highest risk cases is that more UK businesses (including licensed AAT members) could be held jointly and severally liable for the VAT underpaid by non-compliant overseas businesses. According to the Document, the VAT underpaid by non-compliant overseas businesses may have amounted to £1.5 billion in 2015 to 2016.
- 1.44 Alternatively, the effect of HMRC using its strengthened powers to direct the appointment of a UK VAT representative in the highest risk cases could be that less UK businesses will agree to provide VAT representative services.

New legislation

- 1.45 The Document refers to new legislation which will enable HMRC to hold an online marketplace jointly and severally liable for the unpaid VAT of an overseas business that sells goods in the UK via the online marketplace's website.
- 1.46 The effect of HMRC using the new legislation to hold an online marketplace jointly and severally liable for the unpaid VAT of an overseas business that sells goods in the UK via the online marketplace's website could be that the online marketplace will refuse to provide its website facilities to a non-compliant overseas business.

July 2016