

Feedback

We prefer contributions to Feedback to be e-mailed to taxation@lexisnexis.co.uk, but you can also write to: 2 Addiscombe Road, Croydon, Surrey CR9 5AF. Letters may be added to taxation.co.uk as comments to articles. We reserve the right to edit letters or only use extracts.

Correspondence from readers on topical subjects.

A fairer tax system

In his recent Hardman Lecture, Dave Hartnett referred to creating a relationship between HMRC and tax advisers of 'mutual trust'. I agree with much of what Dave said, but would myself stress the word 'mutual', whereas he stressed 'trust'.

One of the issues Dave raised was tax avoidance. To me, the position of both HMRC and the Government appears to be that where the law can be construed so as to provide a benefit to the taxpayer in circumstances which were clearly not envisaged by Parliament when the law was enacted, taxpayers should refrain from seeking to take advantage of the law. I would have a great deal of sympathy for this view if HMRC were to say, similarly, that they would not seek to take advantage of the law so as to collect tax in circumstances that were clearly not envisaged by Parliament when it enacted the law. Sadly, however, HMRC point out that they have a statutory obligation to collect the tax that the law decrees to be due, however unfair it may be to do so.

I would like to help Dave build mutual trust by enabling him to be able to point to mutual fairness. I have accordingly started a petition on the 10 Downing Street website (www.lexisurl.com/DiscPet) asking the Prime Minister to amend the tax law by giving HMRC discretion not to enforce it where to do so is necessary to act fairly towards the taxpayer. Please can I ask those of your readers who agree with my petition to sign it. The easiest way to find it is to go to the site and search 'HMRC discretion'.

I would stress that I am not asking for HMRC to be given discretionary power to amend the law. What I am asking is that where the law creates a tax liability that it would be unfair to enforce, HMRC should have power not to enforce it.

The sort of case that I have in mind is *JE Chilcott v HMRC (and related appeal)* [2009] SSCD 148 (SpC 727), where Mr Chilcott exercised a share option that he and his employer both believed was not obtained by virtue of his employment. Eight years later, the case ended up before the Special Commissioners and was decided in favour of HMRC. HMRC then said: 'The liability has to be grossed up because Mr Chilcott did not refund the tax within 90 days of having exercised the option'. I have no doubt that, had Parliament realised that a dispute might go to appeal, it would have provided for the 90-day period to have started from the time of the resolution of the appeal.

I could list other such cases where HMRC seem to me to have been forced by the law to act unreasonably, and which I am sure Dave would rather HMRC had not been forced to pursue, but do not wish to take up more of your valuable space.

Robert Maas

Time to pay

I have just phoned the Business Payment Support Service on behalf of a client. Their VAT liability for the quarter ended 31 December 2009 is just over £3,500.

One of the normal questions asked is, 'Have you used this scheme before?' When I replied the client had used the scheme for the past four quarters I was told the scheme was only intended for first requests for deferred payments.

This does not correspond with my experience. Another client less than four hours earlier was given time to pay for their fifth consecutive VAT return and they are paying their corporation tax by monthly instalments under the scheme as well.

I had actually phoned earlier in the day for the first client and was told I had to supply the number of previous requests to

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the Business Payment Support Scheme, the amounts involved and dates and amounts of payments. When I phoned back after looking up these details I was told the information wasn't needed.

This episode raises a number of interesting points:

- Has the Government changed the rules?
- If so, why have businesses and the public not been told?
- Why are there no rules for the type of information which has to be supplied with a request?

Stuart Jones FCA

3CA Chartered Accountants

Reply from HMRC press office: The eligibility rules for the Business Payment Support Service have not changed since it was introduced in November 2008. Although there is no limit on the number of arrangements a business can have, additional questions would be asked when businesses make a repeat request. This is to ensure that the business is still viable and is taking all possible steps to pay off its other debts. Each request must therefore be considered on its own merits and any extra information required will vary from case to case.

However, we do welcome this type of feedback as we can use it to make sure we apply consistency in dealing with cases.