

## October

### Trivia

Germany's

Oktobertfest

originally began

on 12 October

1810, the wedding

day of King

Ludwig 1



In the old Roman

calendars,

October was the

eighth month of

the year and got

its name from the

word 'Octo'

meaning eight.

The Saxons called

it Wyn Monath

because it was the

season of wine

making

## Are HMRC Being Unreasonable?

There has been a spate of recent First-Tier Tribunal cases where the actions of HMRC have been deemed to be unreasonable considering the circumstances. It begs the question whether HMRC, as a result of this current climate of contempt towards tax planning, are overstepping the mark and adopting a 'shoot first ask questions later' policy to seemingly reasonable positions adopted by taxpayers. Below is a summary of a few recent cases where the stance adopted by HMRC has been questionable.

### **Penalty Procedure: Morgan v HMRC and Donaldson v HMRC**

These two cases, heard jointly, dealt with whether the procedural requirements for charging daily penalties of £10 per day on the late filing of self assessment returns were being met by HMRC. The tribunal found that the taxpayers had not been given proper notice of the penalties so they should not be chargeable.

### **Ignoring the Facts: Benedict Manning v HMRC**

The above case involved an employee share scheme and the amount of PAYE due. HMRC tried to impose anti-avoidance legislation on a legitimate share scheme 'without apparently troubling to look at the scheme rules' according to the tribunal judge. The taxpayer's appeal was duly upheld.

### **Unreasonable test for Reasonable Excuse: Eclipse Generic Ltd v HMRC**

Reasonable excuse cases continue to be found in favour of taxpayers, casting further doubt on HMRC's internal policy regarding Reasonable Excuse (see our blog post – '[Death, disease or disaster](#)').

The trend continued in the P35 case of Eclipse Generic Ltd v HMRC. The taxpayer claimed to have submitted their P35 online in April 2011 and stated they had received confirmation from HMRC. In August 2011, the taxpayer was told the form had not been processed, so they submitted it again. Then, HMRC levied them with a late filing penalty. The tribunal found that due to computer system updates taking place at the time of the original submission it was possible there had been a fault, with the taxpayer incorrectly receiving an acknowledgment. The tribunal stated that the circumstances meant that the taxpayer did have a reasonable excuse, and allowed their appeal. It is interesting that the taxpayer had to take such a case to tribunal where it was found that the likely fault lay with HMRC's system. It might be thought that HMRC ought to be a little more lenient and sympathetic to the taxpayers who employ them, especially in the light of their own continuing administrative difficulties. I suspect some HMRC 'customers' may wish they could take their custom elsewhere! The cases do show the continued importance of getting proper technical advice and challenging HMRC penalties and interpretation where a genuine excuse exists, not just accepting the standard HMRC line.

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#### More Trivia...

1 October 1908

The first Model T Ford was introduced by Henry Ford

14 October 1926

Winnie-the-Pooh was first published. Written by AA Milne (1882-1956)

11 October 1968

Apollo 7 was launched from Cape Kennedy, making it the first manned flight of the Command Module that would carry men to the moon

1 October 2000

Last commercial Hover Craft flight across the English Channel



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## Courts find against two avoidance schemes

### Are new rules really needed?

We wrote recently about HMRC's consultation on 'Raising the Stakes on Tax Avoidance', with new proposals to target the promoters of avoidance schemes. Two recent cases heard by the courts considered whether two such complex schemes were actually effective. The defendants' case revolved around the Ramsay principle but this was dismissed; the tribunal ruled that the scheme had no commercial purpose, other than the intended obtaining of a tax advantage. As such PAYE/NICs was found to be payable on the bonuses. Both Tower Radio and P and O lost in the Courts on complex avoidance schemes, with the schemes being criticised as 'elaborate tricks'.

**Conclusion** - In both cases, the fact that the schemes were implemented for no reason other than tax avoidance was found to be of importance by the courts. This is before the new General Anti-Abuse Rule (GAAR) is even taken into account. With the courts already finding against such schemes, and the new GAAR set to undermine such schemes still further, it is reasonable to question whether any new provisions on avoidance are really needed.

Businesses and taxpayers need certainty as to the law. Giving HMRC the resources to enforce existing powers would be far superior all round than giving them vague powers to attack at whim, which could not possibly be applied on a consistent basis, leading to uncertainty, economic mistrust and a failure of law.



## HMRC "closing in on undeclared income"



HMRC is continuing with its anti-evasion publicity campaign, "closing in on undeclared income", through targeted advertisements on over 3,000 billboards in public spaces. The basic poster is perhaps tacky and to some eyes a little sinister in terms of implicit State Surveillance, but clamping down on evasion is generally good.

The website has a link saying, "Remember you can get independent advice". When you click on this however, you get a list consisting of:-

Tax Aid, Citizens Advice Bureau, GOV.UK setting up, Business Finance and Support

As advisors, we are forced to ask, why is there no mention of real independent tax advice, through qualified professionals? It seems insulting to qualified professional advisors, who seek to act ethically, that they are not mentioned at all as "independent advisors" but obviously rank behind "family and friends" in terms of expertise, according to the GOV.UK article.

Bearing in mind the recent consultation on so-called 'High Risk Tax Providers', it appears that there is a running theme of mistrust of the profession from HMRC. We fear this may not bode well for the future of general tax compliance relationships. HMRC do not seem to have the resources to deal with straightforward matters, let alone helping businesses plan for the future. It is important that taxpayers have access to independent qualified advice to help the economy develop.