# Technical Bulletin

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## A new tax on 'side hustles'?

Since the return from the Christmas break, there has been a range of social media reporting, suggesting that new rules will result in sales made on online marketplaces being taxed - termed as the 'side hustle tax'. We expect that, alongside the peak period in the run up to the 31 January self-assessment deadline, many of our members will have received calls from their clients worried about this so-called new tax.

As ever, it is important to not rely on everything that is posted on social media as, contrary to the recent speculation, someone clearing their attic and selling off items that are no longer wanted is highly unlikely to be carrying out a taxable activity. Nothing has changed here, as the new rules relate to the disclosure of information to HMRC rather than a change to what is and isn't taxable. The fact that the items are being sold on an online platform also makes no difference to the tax treatment compared with more traditional forms of sale. So, the suggestion that everyone should stop using platforms like EBay, Vinted or Etsy and instead set up a stall at their local car boot sale to get round the new tax is nonsense as nothing has changed in the underlying tax rules before or after the changes in the disclosure requirements from 1 January 2024.

**What has changed?**

Section 349 Finance (No. 2) Act 2023 gave the Treasury powers to issue regulations to require platforms such as eBay, Vinted, Etsy, Airbnb to disclose information to HMRC as part of the OECD model rules for reporting by platform operators with respect to sellers in the sharing and gig economy. However, the change did not alter the underlying rules on the tax treatment of transactions on digital platforms. If a taxpayer is liable to pay tax on a transaction, this would have been the case previously, and continues to be so.

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Although there is no change to the underlying tax rules on whether an online platform transaction is taxable, the new rules create an obligation to provide HMRC with information on an ongoing basis. For some time now, HMRC has been able to receive information on an ad-hoc basis, but going forward this will be an annual report for the calendar year. This means the first reports will be due from the online platform providers by 31 January 2025.

There will not be a reporting requirement for 'casual sellers'. This is defined as taxpayers with less than 30 sales per year for no more than €2,000, the threshold being in Euros as it is based on an OECD report. As long as both thresholds are not exceeded, no disclosure will be made to HMRC.

While there is no change to the tax rules, HMRC will have more visibility on transactions to determine whether a tax liability may arise.

HMRC has issued an information sheet, providing details of the tax treatment in a few different scenarios. Selling unwanted items is seen as different from a clothes reseller selling clothes for a mark-up, selling handmade cards to customers or a model car collector (all three of which are regarded as commercial enterprises intending to make a profit).

Understanding the badges of trade is an important starting point for identifying whether a taxpayer is trading. This is relevant when it comes to selling on online platforms, but the badges of trade apply equally when it comes to more traditional sales methods (such as car boot sale or local market).

**The badges of trade**

The badges of trade are a range of factors which need to be considered when forming a view of whether a trade is being carried out. A single factor is not enough in itself, so the position would need to be looked at in the whole.

Profit seeking motive: where there is an intention to make a profit, this is more likely to be a trading business. So, in the case of selling unwanted clothes or old books from the attic, this is unlikely to be with the intention of making a profit so unlikely to be trading.

Repeated transactions: the higher the frequency of transactions, the more likely those transactions are trading. Selling one old handbag would not be trading, but selling several handbags each week would be more likely to be trading and indeed many businesses will operate a trade of selling on pre-loved handbags.

Method of acquisition: where someone has been given or has inherited an asset, then its subsequent sale is highly unlikely to be trading.

Quantity purchased: The higher the quantity of assets purchased, the more likely that the transaction will be trading. There's some interesting case law on this - Rutledge v CIR [1929] 14TC490 was where the taxpayer bought a million toilet rolls, which by anyone's standards is clearly more than would be needed for the taxpayer's personal use and indicative of trading.

Length of ownership: the shorter the time between purchase and sale, the more likely that a transaction is trading.

Nature of the asset: assets which will give personal enjoyment are less likely to be classed as trading, compared with those where the only benefit of owning the asset will be realising a gain on its sale (profit seeking motive as above).

Modifications to the asset: where the asset has been modified to make it easier to sell, then this is more likely to indicate that a trade is taking place.

Connections with an existing trade: where transactions are similar to those being carried out in an existing trade then it is difficult to argue that a transaction is not trading. Case law in this area looks at where a house builder then buys a property as an investment – HMRC would be likely to argue that there was a connection with the housebuilding trade and that the sale of property bought would be considered trading when sold.

As well as the 'side hustle' tax being a myth, even if a transaction was considered to be trading, it does not necessarily mean that there is tax payable. The £1,000 trading allowance means that trading income of up to £1,000 per tax year is exempt from income tax. A similar allowance applies in respect of property income. Beyond this, there will also be cases where the income is covered by the taxpayer's personal allowance.

**If a transaction is not trading income, could there be capital gains tax implications, in which case what capital gains tax exemptions could apply?**

There are special capital gains tax rules for 'chattels', defined in Section 262 of the Taxation of Chargeable Gains Act 1992 (TCGA 1992) as tangible moveable property. Many of the items sold on online platforms may qualify as chattels given that they can be touched and moved, but they will often be of low value and may be exempt from capital gains tax.

Section 262 TCGA 1992 exempts chattels which are bought and sold for less than £6,000 from capital gains tax. There is a separate exemption in Section 45 TCGA 1992 for wasting chattels, being assets with a useful life of less than 50 years.

There will be cases where a transaction is neither trading nor chargeable to capital gains tax, which means the alarm caused by the new disclosure rules is rather unnecessary.

**What happens if a taxpayer has not disclosed trading income from online platforms?**

If a taxpayer should have declared income and this exceeds the £1,000 trading allowance, they should consider if they need to register for Self Assessment. It is important to bear in mind that income tax will only be payable on taxable profits. We recommend that it is worthwhile keeping details of any receipts for expenditure that could be tax deductible.

# Key announcements in the Scottish budget for 2024/25

Commenting on the Scottish Budget announced in December, ICAS said the budget is short sighted and fails to deliver economic growth for Scotland.

Bruce Cartwright CA, Chief Executive at ICAS, said: “The Scottish government’s budget is both short sighted and fails to drive sustained economic growth. We continue to call for a five-year roadmap for growing the economy which would also give Scottish businesses some reassurance and stability – something we know they want to see.”

“ICAS has been advocating for a long-term business plan for Scotland for a considerable time and we were dismayed to see that we have another year of only planning one year ahead. The Scottish Fiscal Commission produced a set of five-year forecasts on 25 May 2023 and the Scottish Government could have used this information to outline a five-year roadmap to sit alongside them.”

**Scottish income tax rates and bands**

Justine Riccomini, Head of Tax (Employment and Devolved Taxes) at ICAS said: “Implementing further tax increases on higher earners is not a long-term sustainable solution and will have a negative impact on positioning Scotland as an attractive place to live and do business. Scotland already has five of the highest tax bands in the UK, and these changes will impact the growth of the Scottish economy, while only covering 5.4% of the budget deficit.

“Additional tax bands introduce more complexity into an already overcomplicated tax system. We have called for tax simplification for many years to make it easier for taxpayers to understand and engage with the system. A complex tax system drives up costs for both taxpayers and businesses, and we urge devolved governments to work closely with the UK government when designing devolved or new taxes to make sure that tax is kept as streamlined and simple as possible.

Chris Campbell, Head of Tax (Tax Practice and Owner Managed Business Taxes) at ICAS, said: “Today's budget announcement reveals that anyone earning more than £28,867 will pay more income tax then their UK counterparts. Aside from the new advanced tax rate and the increase in the additional rate, today’s announcement has also not improved the tax burden on so-called 'middle earners'. The freezing of income tax thresholds at the Higher Rate and above will result in more employees being brought into those tax bands when they receive pay rises. After last month’s Autumn Statement, employees living in Scotland earning between £43,663 and £50,270 will still be asked to pay an effective tax rate of 52%, including national insurance. This is 22% higher than employees living elsewhere in the UK on equivalent salaries.

“Those in the new advanced rate band and earning over £100,000 will have an effective marginal rate of tax, including national insurance, of 70%. It’s possible that individuals in this position with multiple job offers who may be deciding on where to locate in the UK will take account of the new tax rates before making a final decision on where to be based.”

Justine Riccomini said: “We believe in the need to expand the tax base in Scotland, so that income tax revenues are sustainable to fund public services. The Scottish government has stated that the new tax rates will mean that 58% of taxpayers will pay less than they would if they lived in the rest of the UK. This means there is continuing reliance on a minority of taxpayers earning above £28,887 to pay for public services in Scotland. There is a need for a longer-term strategy to grow the economy, moving employees out of lower paid jobs and reducing the inactive working population."

Chris Campbell said: "Those who operate unincorporated businesses in Scotland and are affected by the changes in tax rates may also decide to re-evaluate whether they should operate as a company. Where a business becomes a limited company, this is likely to lead to less tax revenue for the Scottish government, as corporation tax is paid to the UK government. The Scottish government may have to rely on tax receipts based on profits extracted from a company, where the tax changes have resulted in a business changing its status."

| Income £ | Scottish taxpayer Tax + E'ee NI 2023/24 £ | Scottish taxpayer Tax + E'ee NI 2024/25 £ | Tax £ | National Insce £ | Overall (Reduction) / increase £ | rUK taxpayer Tax + E'ee NI 2024/25 £ | Scottish taxpayer v rUK taxpayer 2024/25 £ |
|---|---|---|---|---|---|---|---|
| 15,000 | 744 | 706 | (1) | (36) | (38) | 729 | (23) |
| 20,000 | 2,319 | 2,206 | (1) | (111) | (113) | 2,229 | (23) |
| 25,000 | 3,894 | 3,706 | (1) | (186) | (188) | 3,729 | (23) |
| 28,867 | 5,144 | 4,889 | (10) | (244) | (255) | 4,889 | - |
| 30,000 | 5,512 | 5,240 | (10) | (261) | (272) | 5,229 | 11 |
| 35,000 | 7,137 | 6,790 | (10) | (336) | (347) | 6,729 | 61 |
| 40,000 | 8,762 | 8,340 | (10) | (411) | (422) | 8,229 | 111 |
| 45,000 | 10,668 | 10,171 | (10) | (486) | (497) | 9,729 | 442 |
| 50,000 | 13,343 | 12,771 | (10) | (561) | (572) | 11,229 | 1,542 |
| 55,000 | 15,569 | 14,993 | (10) | (566) | (576) | 13,297 | 1,696 |
| 60,000 | 17,769 | 17,193 | (10) | (566) | (576) | 15,397 | 1,796 |
| 70,000 | 22,169 | 21,593 | (10) | (566) | (576) | 19,597 | 1,996 |
| 80,000 | 26,569 | 26,143 | 140 | (566) | (426) | 23,797 | 2,346 |
| 90,000 | 30,969 | 30,843 | 440 | (566) | (126) | 27,997 | 2,846 |
| 100,000 | 35,369 | 35,543 | 740 | (566) | 174 | 32,197 | 3,346 |
| 110,000 | 41,869 | 42,493 | 1,190 | (566) | 624 | 38,397 | 4,096 |
| 120,000 | 48,369 | 49,443 | 1,640 | (566) | 1,074 | 44,597 | 4,846 |
| 140,000 | 58,991 | 60,445 | 2,020 | (566) | 1,454 | 54,768 | 5,678 |
| 150,000 | 63,891 | 65,445 | 2,120 | (566) | 1,554 | 59,468 | 5,978 |
| 160,000 | 68,791 | 70,445 | 2,220 | (566) | 1,654 | 64,168 | 6,278 |
| 180,000 | 78,591 | 80,445 | 2,420 | (566) | 1,854 | 73,568 | 6,878 |
| 200,000 | 88,391 | 90,445 | 2,620 | (566) | 2,054 | 82,968 | 7,478 |
| 250,000 | 112,891 | 115,445 | 3,120 | (566) | 2,554 | 106,468 | 8,978 |
| 500,000 | 235,391 | 240,445 | 5,620 | (566) | 5,054 | 223,968 | 16,478 |

Analysis provided by icas

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**Scotland for business**

Chris Campbell said: “We’re disappointed to note that no announcements have been made in relation to extensions to the tax reliefs for a further five years in the two Scottish Green Freeports, which was announced in the UK Autumn Statement in relation to English Freeports. If the Scottish government had opted to replicate the tax reliefs currently in place across the rest of the UK, the potential for growth would have been significantly higher.

“While many businesses will welcome the freeze in the non-domestic rate poundage and the retention of the small business bonus rates relief, there will be many more businesses who will be disappointed. Although there was limited relief for hospitality businesses in the Islands, we feel certain that we will see representations being made by those in the beleaguered hospitality and retail sectors in the coming days in relation to the failure to address business rate reductions which businesses south of the border currently benefit from. More could have been done to assist the sector.”

**VAT and air departure tax**

On the devolution of air departure tax, Justine Riccomini said: “It's unfortunate that the Deputy First Minister didn't indicate any movement on the devolved tax powers in relation to VAT and air departure tax in her statement. Both powers have now been available to the Scottish government for several years, but issues surrounding their introduction remain unresolved. We would like to see a clear path set out for both measures to provide businesses with certainty.

"In collaboration with the Chartered Institute of Taxation (CIOT), we recently published 'Building a better tax system: Progress report', calling on the Scottish government to use the tenth anniversary of the Smith Commission next year to review the implementation of Scotland’s devolved tax powers. ICAS would like to see more attention being paid to the devolved powers it already has."

**Land and buildings transaction tax (LBTT)**

Chris Campbell said: "Today’s Scottish Budget made no changes to the rates of LBTT or the additional dwelling supplement (ADS). ADS rates increased to 6% in last year’s Scottish Budget, so it was unlikely that there would be further changes this time.

“While there were no changes in LBTT and ADS, we are aware of the need to correct anomalies in LBTT and ADS in comparison to the rest of the UK. Where someone buys residential property in Scotland, and have not sold their old house, they only have 18 months to reclaim the tax from Revenue Scotland, compared with three years for stamp duty land tax in the rest of the UK. Further anomalies remain in respect of separating couples. We understand that the Scottish Government will introduce legislation, so we will look closely to see whether these anomalies have all been rectified."

# Employment Appeal Tribunal case takes accountants back to basics on self assessment

Our members will no doubt be very interested to learn about the decision issued in the December 2023 case of Stuart Harris Associates Ltd v Gobudhun [2023] EAT 145, an Employment Tribunal case involving an internal dispute over estimated expenses on clients’ income tax returns at a firm of accountants.

**Background**

The firm, Stuart Harris Associates Ltd, had employed Anita Gobudhun (AG), a member of ACCA, since 1 November 2014. In 2020, AG contacted her professional body to ask for advice in relation to estimated expenses values which she had been instructed to insert in clients’ income tax returns. AG’s professional body advised her that “estimated expenses” should be excluded from tax returns (see para 11 of decision).

Upon receiving further instructions from Mr Harris to include further amounts of estimated expenses on tax returns, AG refused to do this, claiming that they amounted to “unsubstantiated deductions in the accounts". AG had concerns that enquiries had been opened into other clients’ affairs due to the practice, and in certain cases, accurate figures were available but were not used and a higher 'estimated' figure substituted.

Mr Harris maintained throughout that HMRC accepted estimated expenses in income tax returns, and explained this to clients, stating that it was to cover any other miscellaneous items that might crop up later on, even where exact figures had been supplied by the clients.

**Disciplinary and dismissal**

An online disciplinary meeting followed in June 2020 and on 23 June, a final written warning was issued, and in July AG's appeal was rejected, which led to her resigning with immediate effect in August 2020. AG claimed constructive dismissal because her employer required her to include 'estimated' expenses in tax returns (which were often not based on figures provided by clients and higher than the accounting records indicated) and she felt this compromised her professional integrity and debased the trust and confidence within the employment contract.

**Two issues**

The two main allegations against the firm by AG were that returns were prepared dishonestly (where exact figures were available) and the other being that AG was constructively dismissed for challenging the practice of inflating expenses claims.

**Provisional and estimated expenses on self assessment returns of individuals**

Going back to basics, it should be noted that the guidance from HMRC on provisional and estimated expenses, updated as at 8 January 2024, explains these key points:

1. Returns which include provisional or estimated figures should be accepted provided they can be regarded as satisfying the filing requirement.
2. A provisional figure is one which the taxpayer/ agent has supplied pending the submission of the final/ accurate figure.
3. An estimated figure is one which the taxpayer/ agent wishes to be accepted as the final figure because it is not possible to provide an accurate figure, for example, where the records have been lost…tell us in the 'any other information' box why estimated figures have been used.
4. Where it appears that a particular agent is filing a significant proportion of returns with provisional or estimated figures, you [the HMRC officer] should inform the compliance manager.

**Decisions**

Due to Covid and other delays, the Employment Tribunal hearing was suspended but the judge gave a provisional view that AG had in fact been constructively dismissed. When the trial resumed, that decision was confirmed – and Mr Harris was described as "either dishonest or incompetent".

On appeal, the Employment Appeal Tribunal concluded that whilst the decision reached by the Employment Tribunal in relation to the dishonesty argument as presented by AG was based on an incorrect test, AG had indeed been constructively dismissed. This resulted in AG being awarded a basic award, compensation and costs amounting to around £50,000.

**ICAS Tax Committee**

If you wish to contribute to the debate…why not join an ICAS tax committee and bring your expertise straight to the Tax Team?

**Let us know your views**

ICAS responds to many tax calls for evidence and consultations, as well as producing tax policy papers and reports. We also regularly attend meetings with HMRC at which service levels, delays and other issues are discussed, and we raise problems being encountered by members. We welcome input from members to inform our work; email tax@icas.com to share your insights and feedback.

# 2023 – the year that sustainability reporting took centre stage

2023 was an eventful year for sustainability reporting, with the publishing of several new disclosure standards/frameworks and the amalgamation of issuing bodies. While significant progress has been made, the volume and complexity of these new disclosures have left many businesses feeling overwhelmed.

The various changes that took place were driven by the need for consolidation, alignment and comparability, but with even more acronyms to master many report preparers and users worry that they have taken 'two steps backwards'.

2024 may not bring about the desired 'three steps forward', but we are hopeful that a clearer path will become apparent over the next twelve months, potentially presenting new fee-earning opportunities for members in practice as well as additional expectations on members in industry.

In this article we focus on the main new standards/ frameworks, explore the key issues concerning sustainability disclosures and predict priorities for the year ahead.

## The main new disclosure standards/frameworks

The following is a high-level summary of the three main newly introduced disclosure standards/ frameworks at time of writing:

**International Financial Reporting Standards Sustainability Disclosure Standards (IFRS S)**

Delivering on their promise made at COP26 in Glasgow, the International Sustainability Standards Board (ISSB) launched the first two IFRS S (the sustainability equivalents of IFRS accounting standards) in June 2023. S1 'General Requirements for Disclosure of Sustainability-related Financial Information' applies when a business prepares and reports sustainability-related financial disclosures in accordance with IFRS S.

S2 'Climate-related Disclosures' reflects the core recommendations or recommended disclosures of the Task Force on Climate-related Financial Disclosures (TCFD), with the inclusion of additional details. The TCFD has since been disbanded, but its website will remain, as it is a rich resource for implementation guidance, critiques of applying TCFD and more.

An interesting twist is that reporters are required to refer to and consider the applicability of the disclosure topics in the Sustainability Accounting Standards Board (SASB) standards when applying IFRS S. SASB was a US-based not-for-profit standard setter whose mission was "to establish industry-specific disclosure standards across ESG topics that facilitate communication between companies and investors about financially material, decision-useful information". It was one of the organisations that moved under the umbrella of the IFRS Foundation in 2022. The SASB standards underwent consultation to improve their international applicability and were released in December 2023.

Global uptake of these standards is still growing. If and how UK versions of IFRS S will apply will be determined by the UK government. Specifically, the Secretary of State for Business and Trade will consider the endorsement of the IFRS Sustainability Disclosure Standards (SDS), to create the UK SDS, taking advice from a newly formed Technical Advisory Committee and Policy and Implementation Committee. We should know the UK government's decision on this later in 2024/early 2025.

ICAS welcomed the introduction of the IFRS S but wishes that the standards went beyond only considering matters that are financially material, to also include information about how organisations impact both society and the environment. If use of these standards is mandated by either the UK government or Financial Conduct Authority (FCA), it is envisaged that in the first instance only larger listed businesses would be in the scope of use.

Key facts: IFRS S are voluntary (so far), adopt financial materiality and leave assurance as voluntary.

**European Sustainability Reporting Standards (ESRS)**

On 31 July 2023, the European Commission passed a Directive that adopted the ESRS. The standards are mandated for use by all businesses subject to the Corporate Sustainability Reporting Directive (CSRD), with effect for accounting periods beginning on or after 1 January 2024.

While it was a Herculean achievement to launch 12 standards at one time, we've learned many in- scope reporters are swamped by the data requirements, even with the phase-in reliefs. While supporting guidance is emerging, reporters can take comfort given the interoperability of ESRS (details on this below). It's important to note that some non-EU businesses will be caught under these requirements, depending on the size/nature of their activities in Europe. Exactly what will apply to non-EU businesses, including those in the UK, and when is not yet clear.

Key facts: ESRS are mandatory for in-scope reporters and adopt double materiality, and the CSRD mandates initially limited (and later reasonable) assurance on sustainability reporting.

**TNFD (Taskforce for Nature-related Financial Disclosures) recommendations**

September 2023 saw the release of the final recommendations for voluntary nature-related risk management and disclosures. They present a familiar formula, lifting the same governance, strategy, risk management, metrics and targets structure from its TCFD cousin. These similarities will be helpful for boards as they try to govern for and assess the risks and opportunities presented by these two connected topics. Conceptually it could be trickier to understand how to assess nature impacts to and by an organisation, so the LEAP (Locate, Evaluate, Assess and Prepare) approach introduced in the TNFD is a very welcome practical tool and starting point.

Key facts: Many consider "nature is the new climate", so nature-related assessments, considerations and disclosures are expected to increase given the enhanced focus of stakeholders on such matters.

## Key issues concerning sustainability disclosures

**Materiality**

A materiality assessment is an early step that drives activity and disclosures for sustainability matters, regardless of the framework. Such an assessment must be carried out and disclosed to explain why an item is considered immaterial, so it's unavoidable.

There is however a dichotomy in thinking around how materiality is assessed that can be summarised as follows:

| | | |
|---|---|---|
| Cause-effect relationship | the impact **on** the business of environmental and social issues | the impact **of** the business on the environment and society |
| Example of standards | IFRS Sustainability Disclosure Standards | GRI Standards |
| Materiality | financial materiality | impact materiality |
| | double materiality | |

IFRS S adopts financial materiality, which is a shorthand way of referring to the IFRS S requirements of businesses "to disclose information about all sustainability-related risks and opportunities that could reasonably be expected to affect the entity's cash flows, its access to finance or cost of capital over the short, medium or long term." (IFRS S1 para 3). Whilst the Global Reporting Initiative (GRI) adopts impact materiality and ESRS adopts double materiality.

So, report readers need to beware that what is labelled as a 'sustainability report' could comprise very different content across organisations, as they may be reporting based on financial, impact or double materiality.

Sustainability reporting by applying both IFRS S and GRI would produce a report per international standards that would better serve more stakeholders. This is why ICAS supports the end goal of double materiality. We believe that this comprehensive disclosure of targets and progress of both the impact on the business of environmental and social issues, and the impact of the business on environmental and social issues allows sustainability to be truly gauged.

**Interoperability**

Despite the concurrent development of new disclosures, the disclosing bodies have been keen to give comfort that the resulting requirements will be interoperable. This means that compliance with one disclosure requirement will serve another, so that double effort and reporting of the same item in different ways by reporters will not be required. Blanket memorandums of understanding between Europe, ISSB and the GRI assured their stakeholders while the various standards were being developed, but now that the various standards have been released we will get a true sense of what interoperability means.

ICAS' cheat sheet for interoperability and other core guidance:

| | **ESRS** | **IFRS Sustainability Standards (IFRS S)** |
|---|---|---|
| **Global Reporting Initiative (GRI) (globalreporting.org)^** | Entities reporting under ESRS are considered as reporting "with reference to" the GRI Standards<br><br>New co-operation agreement and public release of GRI-ESRS Interoperability Index | Sustainability Innovation Lab launched to advance capabilities for reporting aS per GRI and IFRS S<br><br>New resource on emissions reporting by GRI and ISSB |
| **Task Force on Climate-Related Financial Disclosures \| TCFD) (fsb-tcfd.org)** | ESRS E1 Climate Change leverages TCFD | TCFD IFRS S2 comparison |
| | European Commission, EFRAG and ISSB confirm high degree of climate-disclosure alignment | |
| **The Taskforce on Nature-related Financial Disclosures (TNFD) (tnfd.global)** | Newly signed cooperation agreement | TNFD is consistent with IFRS (and GRI)^ |
| **Others** | Q&A service | |

**Connectivity**

Ultimately ICAS believes that the UK government needs to make sustainability reporting mandatory for appropriate classes of entity, proportionate to business size, to ensure that it is on par with the level of detail and scrutiny given to financial reporting. We believe that the most comprehensive understanding of a business's plans and progress for every stakeholder can only be made when financial information is presented alongside, and in a way, that is connected to the non-financial information, including sustainability matters.

As ICAS stated when the IFRS S were released: "We believe that increasingly, in five, maybe ten years, sustainability factors will not be considered on their own, but routinely will be integrated throughout the strategy and functions of a business, so that the whole organisation operates in a comprehensively sustainable way. Reporting will follow suit, so that sustainability disclosures will increasingly form a part of routine reporting and the impacts of an organisation are seen as equally important as the financial impacts on an organisation."

## Priorities for planning ahead

**Get board members on board**

Now more than ever, it is crucial to make sure that board members are informed and aware of their new climate and other sustainability responsibilities. Sustainability litigations are growing exponentially, and directors of larger entities are increasingly being taken to task and even having their remuneration linked to the achievement of sustainability KPIs. Governance is the starting point for many of the new standards, so board members really do have to understand and be involved. If you need some persuasive and grounded business-logic in the language of the board room, our interview with Peter Bakker, CEO of the World

Business Council for Sustainable Development (WBCSD), is a useful starting point.

**Tackle data challenges**

Accountants demand quality, reliable, verifiable financial data and information, but unfortunately its ESG counterpart is not yet of a comparable standard. Estimates, extrapolations, the use of industry averages, applying cost-based approaches and more, are part and parcel of some ESG data. Accountants would be advised to accept this reality and get comfortable with the uncomfortable.

While some sectors, countries or businesses may have better sources than others, the reality is that the world of ESG data is imperfect for most so a lack of data can't be used as an excuse for not evaluating and disclosing material matters. Given that more sustainability reports will now include material value chain partners, significant suppliers and customers may have newfound influence on ESG data collecting as they will be seeking key GHG and other ESG data from their trading partners. As larger businesses increasingly review their respective supply chains and seek information for entities therein, even SMEs may be asked to provide certain sustainability-related information.

**Keep tracking the science**

Fully assessing sustainability risks and opportunities involves assimilating more and new data. It can be an overwhelming task, but turning to trustworthy, complete and up-to-date data sources will provide a solid basis on which to do the analyses. There are many reputable sources that address different needs. For example, when it comes to climate, the consensus conclusions from the world's leading climate scientists are somewhat hard to refute. When it comes to rolling forward a risk register or revamping a strategy, we suggest the Intergovernmental Panel on Climate Change's latest report released in March 2023 is one worthy reference.

## In conclusion

2024 will be a year of implementing or gearing up to implement these new standards/frameworks, with all the bumps that adoption brings. While more guidance is promised, there is wide acceptance that the first round of disclosures may leave room for improvement, as was seen with the TCFD disclosures.

Accountants in industry will have a key role in setting up new governance policies and practices for new ESG matters, building new data management processes and controls to track and report internally, and ensuring external sustainability disclosures are a faithful representation of the reality. Accountants in practice will want to keep abreast of reporting developments and guidance, and their associated assurance requirements.

On top of this, we can expect some less seismic developments. These may include: SME versions of some standards; more details about digital taxonomies; ongoing developments at international (e.g. new GRI topic and sector standards), national (e.g. US SEC Climate Change Disclosure Rules) and sub-national (e.g. California's new climate disclosure rules) levels; further details on more interoperability (e.g. with CDP and ESRS); and a revision to the commonly used (and referenced in IFRS S) GHG Protocol. And of course, we wait in anticipation of what will be rolled out for the UK.

With arguably the most significant year in the development of sustainability reporting standards/frameworks behind us, we believe immediate priorities will now turn to successfully implementing their requirements. While reporting is a vital part of supporting the transition to a cleaner economy, we caution members to remember that reporting is not the end game. It is crucial that we channel appropriate resources to tackling current/future climate change and other unsustainable practices in the real world.

**CPD**

Did you know that ICAS provides a range of CPD courses on sustainability/ESG. Look out for other sustainability updates and initiatives in 2024.

# Tax rules on entertaining and gifts – a reminder

In the run up to the Christmas season, and certainly now the COVID19 restrictions of previous years are no longer relevant, many businesses will be returning to entertaining their staff and/or customers. Christmas is also a time when businesses may give their staff or business contacts a gift. As a reminder, we look at the special tax rules surrounding business entertainment and gifts as businesses may be thinking about the tax consequences of recent expenditure.

### Understanding the general position

As will be well understood, the general position is that expenditure on business entertainment and gifts is not deductible from the business' trading profits and any expenditure on this should be disallowed in tax computations.

For companies, this is outlined in Section 1298 of the Corporation Tax Act 2009. For unincorporated businesses, this is outlined in Section 45 of the Income Tax (Trading and Other Income) Act 2005.

As always, there are exceptions to the general rule. These can be found in Sections 1299 and 1300 CTA 2009 for companies, and Sections 46 and 47 ITTOIA 2005 for unincorporated businesses. Although the legislation for companies and unincorporated businesses are in different Acts, the rules are essentially the same.

### Trade samples

If the gift or entertainment is part of the business of the trader and are given as part of the advertisement of a product to the general public, such as trade samples, this would be allowable.

This makes the context of the business important. Here are two examples:

- An alcohol manufacturer gifts a miniature bottle of alcohol as a trade sample to the public. This would be classed as an allowable deduction as it showcases their product.
- Someone who runs a joinery business gifts customers a bottle of wine at Christmas. This would be disallowed as the bottle of wine is not the business' trade to provide, so the special rules for trade samples can't apply.

### Small gifts with a clear advert for the business

There is a specific exception for small gifts where there is a clear advertisement for the trader. This exception normally enables things like calendars, golf umbrellas, pens and other similar items to be gifted.

To qualify for the exception:

- The gift must have a prominent advert, such as a company logo
- The cost of the gift, plus any other gifts to the same recipient, must not exceed £50 per accounting year for companies, or per tax year for unincorporated businesses

The exception would not apply if the gift were food, drink or tobacco, or a voucher which can be exchanged for any of these things. However, if the gift was a trade sample, it may qualify for the exception above.

### Staff entertaining and gifts

The cost of staff entertaining and staff gifts provided to employees would normally be an allowable deduction from the business' taxable profits.

However, if a company's employees receive entertainment or gifts that are incidental to the entertainment and/or gifts provided to others, this will be classed as part of the cost of client entertaining and/or client gifts. This is disallowable in the tax computation of the business.

It's important to determine whether the expenditure is classed as client or staff entertaining/gifts as this will have an impact on the employment taxes issues for the employee or director.

- Client entertaining (whilst not tax deductible for the business) is not a taxable benefit on the employee as long as it relates to their duties of employment.
- Staff entertaining (which should be tax deductible for the business) could be taxable, although there are exemptions for annual social functions and parties open to all employees and trivial benefits.

There have been instances where HMRC has considered whether the individuals being entertained were business contacts or customers. For example, if a director were to entertain their family or friends, who are neither a customer or supplier or other business contact, this would likely be classed as staff entertainment and follow the treatment above. In some cases, the circumstances will need to be looked at closely before determining the correct treatment.

For annual social functions, to qualify for the £150 exemption it is important that the events are open to all staff generally. Although there are special rules if the business operates from more than one location, as it is possible to have separate functions at each location. Different department events are also possible as long as every employee is able to attend one of them. It is also important to remember that the £150 is a cost per head exemption, so if say an employee can bring their spouse along this would reduce the cost per head of a particular event. HMRC manual EIM21690 gives more details on the application of the £150 exemption where there is more than one annual function in a year costing more than £150 per head in total.

In cases where staff entertaining and/or gifts would lead to a taxable benefit in kind on the employee, many employers enter into a PAYE settlement agreement with HMRC. This allows the employer to pay the tax and national insurance on behalf of the employee, although it will be more expensive as the amounts included are "grossed up" by the employee's tax rate.

Members who act for a client in both accounting and tax matters may be uniquely placed to help support their client in securing the correct treatment. It is also important that there is a consistency between the treatment across the taxes. For instance, if entertaining is for staff the business should not suffer an add back in its tax computation, but this should go hand in hand with the employee either paying tax on the entertainment or the business doing so via a PAYE settlement agreement unless the expenditure was covered by an employment tax exemption. But in the case of the annual staff Christmas party, provided this was open to all employees and cost less than £150 per head, then this should be allowable in the business' tax computation but with no employment tax implications.

**Special rules for the hospitality sector**

HMRC manual BIM45030 covers special rules for businesses in the hospitality sector that sell goods or services as part of the normal course of trade. This is not classed as business entertainment, and the relevant expenditure in providing the hospitality would be allowable as a deduction from trading profits. However, this exception won't apply where goods or services are subsidised or given away, unless it is for advertising purposes, which is explored further in HMRC manual BIM45032.

If we take a restaurant business for example, the business may offer special offers to the public such as 'two meals for the price of one'. This would be part of the normal course of trade and wouldn't be considered business entertainment. However, if the same restaurant gave free meals to selected friends or customers, this wouldn't be part of the normal course of trade, and the cost of the meals would be disallowable.

A further example would be where the hospitality is not part of the main trade but is part of the service which customers would normally expect from that trade. HMRC give the example of customers being provided a tea or coffee in the hairdressers or refreshments at a casino, but equally the cost of tea and coffees for an accountant meeting their client to discuss the annual accounts and tax returns would follow similar lines (contrasted with client entertainment at a musical, sporting or similar event outwith the normal business dealings, which is completely different). As long as the expenditure is not "excessive", HMRC should accept that the cost of the refreshments is included in the overall price that the customer pays.

**Gifts to charities and good causes**

The tax treatment of entertaining and gifts can be complicated when they interact with donations to charity and sponsorship for good causes, such as supporting community groups and organisations.

Sponsorship of local good causes are likely to be deductible from the taxable profits of the business. This would be particularly so if there's an element of promotion or publicity of the business, like a prominent advert in recognition of the sponsorship.

**Charitable donations**

For companies, charitable donations are different. These are added back in the calculation of trading profits, but then deducted from profits chargeable to corporation tax, in line with Section 189 CTA 2010.

Qualifying charitable donations can reduce a company's taxable profits to nil but can't create a loss. This means if a company doesn't have sufficient taxable profits to cover the charitable donation, the tax relief may be lost.

For unincorporated businesses, where relief is not available as a deduction from trading profits, it's possible that the sole trader or partner may be able to claim Gift Aid on charitable donations. This would depend on whether they had signed a Gift Aid declaration and paid sufficient income tax and/or capital gains tax to cover the tax recovered on the gift.

**Sponsorship with benefits**

If a business sponsors a sporting, cultural or similar event for promotional/publicity purposes, this would be an allowable deduction from its taxable profits. This scenario is covered in HMRC manual BIM45055.

But if the business receives something in return (such as free tickets) for the sponsorship, the value of the benefits received would be disallowable.

However, sponsoring a community event (such as school sports teams, community organisations) is different again. As the business is less likely to receive anything in return, the promotion/publicity generated is likely to make the expenditure an allowable deduction from the taxable profits of the business.

In all cases, it's best to look at the circumstances before deciding on the final tax treatment.

# Updated guidance for ICAS members acting for Scottish charities

We have published a revised edition of our Guidance for ICAS members acting for Scottish charities.

This edition of the guide has been updated to reflect the legal and regulatory environment, accounting standards, and guidance in issue on 1 December 2023. It also highlights related developments expected to impact the sector in the near future, where commencement dates are unknown or uncertain.

With significant changes to FRS 102, and the Charities SORP (FRS 102) not expected until periods beginning on or after 1 January 2026, this edition of the guide is relevant with immediate effect.

New material highlighted in the revised guide covers:

- The Charities (Regulation and Administration) (Scotland) Act 2023.
- OSCR's regulatory priorities and annual return changes.
- Companies House reforms.
- The periodic review of FRS 102 and the next edition of the Charities SORP (FRS 102).
- Supplier finance arrangements.

**The Charities (Regulation and Administration) (Scotland) Act 2023**

This Act received Royal Assent in August 2023 and makes changes to the Charities and Trustee Investment (Scotland) Act 2005. The changes are intended to:

- Make charities more accountable and transparent.
- Strengthen OSCR's powers.
- Bring Scottish charity law up to date with certain aspects of the law in England and Wales, and in Northern Ireland.

The provisions of the 2023 Act will be brought into effect through two commencement orders. The timing of these orders and the dates for implementing each provision have not been announced. However, commencement of the 2023 Act is expected to occur in two tranches. The first tranche is expected in 2024, and the second in 2025.

**OSCR's regulatory priorities and annual return changes**

OSCR has published updated regulatory priorities for 2024 to 2026. These include a focus on charity trustees' understanding of core governance matters and activities, and the risk that these can be flawed and incomplete in areas such as:

- Trustee disqualification
- Governing documents
- Trustee quorum
- Narrative reporting and accounts

**Companies House reforms**

Amendments to Section 444 of the Companies Act 2006, under the Economic Crime and Corporate Transparency Act 2023, remove the option for small non-charitable companies, including trading subsidiaries, to prepare abridged accounts. Small companies will also no longer be permitted to file filleted accounts, which removes any dubiety around the ability of charitable companies to file filleted accounts with Companies House.

The effective date of amendments to Section 444 has not been made public.

**The periodic review of FRS 102 and the next edition of the Charities SORP (FRS 102)**

The FRC is finalising amendments to FRS 102, following its periodic review of UK GAAP and public consultation on its proposed changes.

The next edition of FRS 102 is due to be published in the first six months of 2024 and is not expected to be effective before periods commencing on or after 1 January 2026. This should mean that there is at least 18months between notice of the amendments and implementation.

The Charities SORP (FRS 102) will be updated, and its effective date will coincide with the effective date of the next edition of FRS 102. A consultation draft of the Charities SORP (FRS 102) will be published after the final amendments to FRS 102 are known.

**Supplier finance arrangements**

FRS 102 is to be amended to introduce additional disclosure requirements to be made alongside the statement of cash flows in relation to supplier finance arrangements. The amendments are being made to reflect changes to IFRS accounting standards. The new disclosure requirements are not expected to be relevant to many charities, and do not apply if a charity does not prepare a statement of cash flows.

These amendments are expected to be published alongside the periodic review amendments, but with an effective date of periods commencing on or after 1 January 2025. Charities with supplier finance arrangements preparing a statement of cash flows will therefore need to comply with these new disclosure requirements, in advance of the periodic review amendments to FRS 102 and the next edition of the Charities SORP (FRS 102).

# Kaye Adams wins nine-year court battle against IR35 determination by FTT

**Nine years in the making**

After nine years of to-ing and fro-ing, and at a cost to her of around £200,000, BBC TV presenter Kaye Adams finally won against HMRC. She succeeded in convincing the First Tier Tribunal (FTT), not for the first time, that the work she had undertaken for the BBC was carried out by her as an individual working under a self-employed contract, and not through her personal service company, Atholl House Productions Ltd.

**Five tiers of court hearings – is it really necessary?**

The decision which had been remitted back to the FTT and was decided on 29 November 2023, was the fifth hearing which took place to resolve the dispute between Ms Adams and HMRC. The case journeyed up to the Court of Appeal where it was remitted back to the FTT via the Upper Tribunal. All of which seems to be extremely heavy-going to decide whether two tax years' worth of earnings for one individual was caught by IR35 or not.

The case has followed the following path:

| Date | Court | Decision |
|---|---|---|
| March 2019 | FTT | In favour of Atholl House |
| November 2020 | UT | FTT decision set aside – remade decision in favour of Atholl House |
| February 2022 | CA | Decision set aside; referred back to UT to remake decision |
| October 2022 | UT | Remitted to FTT as the most appropriate forum |
| November 2023 | FTT | In favour of Atholl House |

**What was the court asked to decide?**

The FTT was asked to consider whether, if the work undertaken by Ms Adams had been provided directly to the BBC and not through the Atholl House intermediary, that work would be under a deemed employment contract or not.

This resulted in the so-called "third limb" test being carried out by the FTT, as follows:

- Stage 1: What were the terms of the actual, factual contract and how were the services delivered in reality?
- Stage 2: What are the terms of the hypothetical contract?
- Stage 3: Is the hypothetical contract a contract of employment, using the Ready Mixed Concrete case tests as a measure?

The FTT decided that on balance there were more pointers towards self-employment than there were towards employment. These included:

- Ms Adams' ability to freely carry out other separate engagements/explore other opportunities.
- Ms Adams' financial/economic independence from the BBC.
- Ms Adams not having been treated as a run of the mill employee by the BBC throughout the period in question.
- All written agreements showed that neither party believed or intended that an employment relationship existed.

**Conclusion**

Naturally, HMRC could choose to appeal this case – they have 56 days to appeal. The case is not binding, given that it is a FTT case decision – however, one hopes that for Ms Adams' sake, the final credits have rolled on this long-running saga. Clearly the costs to both sides outweigh the tax at stake (£125,000, but more like £70,000 after add backs) but on occasion, HMRC's own Litigation & Settlement Strategy overrides the best use of taxpayer's money and forcibly pursues what most would consider to be lost causes.

# You can't rely on AI

Written by Paul Robbins ACA CTA, Associate Director for Tax, Croner-i Ltd

The First-tier Tribunal has encountered AI and it didn't like what it saw.

In Harber [2023] TC 09010, the Tribunal found that the taxpayer (unrepresented but with the help of 'a friend in a solicitor's office') used AI to compile a list of nine FTT decisions for the Tribunal to consider. The full texts were not provided and nor were any FTT reference numbers. The HMRC's legal representative failed to identify any of the decisions, leading the Tribunal to conclude that none were genuine.

The decisions cited were, to some extent, plausible. The Tribunal attempted to join the dots showing how some of the decisions may have been assembled from available information but in that process crucial facts were simply wrong.

Whilst the Tribunal accepted that the taxpayer did not know the cases were fabricated or how to check them, the Tribunal judges were scathing about the consequences.

Firstly, on practical grounds:

'But that does not mean that citing invented judgments is harmless. It causes the Tribunal and HMRC to waste time and public money, and this reduces the resources available to progress the cases of other court users who are waiting for their appeals to be determined.'

They then made an even more important point about the impact of such behaviour on the legal process:

'As Judge Kastel said, the practice also "promotes cynicism" about judicial precedents, and this is important, because the use of precedent is "a cornerstone of our legal system" and "an indispensable foundation upon which to decide what is the law and its application to individual cases", as Lord Bingham said in Kay v LB of Lambeth [2006] UKHL 10 at [42]. Although FTT judgments are not binding on other Tribunals, they nevertheless "constitute persuasive authorities which would be expected to be followed" by later Tribunals considering similar fact patterns…'

If the taxpayer in Harber had been represented, I expect the Tribunal's comments would have been even stronger. And it would be unwise to think that professionals would never be tempted. Judge Kastel presided in a US decision (Mata v Avianca 22-cv-1461 (PKC)) where an attorney attempted to rely on summaries and full text judgments generated by ChatGPT.

I suggest that, right now, tax practitioners should be very wary of AI and not accept what it says without extensive checking. As recent Solicitors' Regulation Authority guidance (quoted in the decision) states:

'All computers can make mistakes. AI language models such as ChatGPT, however, can be more prone to this. That is because they work by anticipating the text that should follow the input they are given, but do not have a concept of 'reality'. The result is known as 'hallucinations', where a system produces highly plausible but incorrect results.'

It is always worth remembering that AI is only as good as the content on which it has been trained and ChatGPT, for example, has not been trained on authoritative or current tax content.

I lead a team of expert writers at Croner-i whose job it is to analyse tax issues using official sources for legislation, cases and HMRC guidance and to cite those sources thoroughly and accurately. For the medium term at least, I would argue that real intelligence trumps artificial intelligence.

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# Are all members of LLPs self-employed?

Salaried members of LLPs are subject to anti-avoidance legislation contained in section 863A to 863G ITTOIA 2005 whereby their profit shares will be subject to PAYE and NIC if three conditions are met. In order to be taxed as self-employed individuals, at least one of these tests must be failed.

The provisions came into effect on 6 April 2014 to remove the presumption of self-employment for some members of LLPs who were more like employees than partners in a traditional partnership.

The three conditions are:

A. This condition is met if, at the relevant time, it is reasonable to expect that at least 80% of the total amount of a member's profit share is: fixed; or variable, but is varied without reference to the overall amount of the profits or losses of the LLP; or is not in practice affected by the overall amount of those profits or losses.

B. Condition B is that the mutual rights and duties of the members of the LLP do not give the member a significant influence over the affairs of the partnership.

C. Condition C is that the member's capital contribution to the LLP is less than 25% of the amount of his profit share.

The Upper Tier Tribunal decision in HMRC v BlueCrest Capital Management (UK) LLP (2023) UKUT232 was an appeal by HMRC against the decision of the First Tier Tribunal that certain members had significant influence over the affairs of BlueCrest such that condition B was failed.

BlueCrest cross appealed against the decision of the FTT on the grounds that condition A was not met by any of its members.

BlueCrest provided investment management services to the groups funds as sub investment manager of funds of around $15 billion. There were 82 members including members of the Original ExCo.

HMRC had nine grounds for appeal:

1. That the FTT failed to consider adequately, the legal basis for the distinction between employees and partners. HMRC submitted that the FTT focused on the role or function of a traditional partner to "find, mind and grind", that is to find work, supervise others doing the work and doing the work themselves. HMRC considered that the FTT identified the role of a partner in a traditional partnership by reference to what a partner did rather than analysing the nature of the relationship between traditional partners and failed to consider the statutory question of influence. The UTT considered this to be misconceived but instead it was required to apply the words of condition B to the facts of the case as he found them.

2. HMRC submitted that the test of influence applies to the affairs of the LLP generally, looking at the business as a whole as opposed to one or more aspects. The judge did not accept this submission and to do so would be to write additional words into condition B. The reference is not to the entirety of the affairs of the partnership which the judge held was a highly unrealistic approach, except for a possibility of small partnerships with only a couple

of members. In other cases, he would expect the members of a partnership to have individual areas of responsibility within the business.

3. HMRC submitted that the influence required by the legislation was influence over the management of the partnership business and not financial influence or impact. The judge rejected this argument for the same reason as ground 2 above. The UTT view was that HMRC were seeking to import words into the statute and there is no warrant for demarcating particular types of activity as giving or not giving significant influence. This all depends on the facts of the particular case.

4. HMRC submitted that the FTT had erred in its construction of “significant”. The UTT did not accept this, finding that the FTT judge had in mind the need to find significant influence if condition B was to be failed. Reference was made to paragraph 194 of the FTT judgement where the judge said that “in my judgement, each individual portfolio manager with a capital allocation of $100 million, does have significant influence over the affairs of the partnership”.

5. HMRC argued that the FTT failed to appreciate that any significant influence must ultimately derive from the LLP agreement, failed to take into account the terms of that agreement and that this left little room for the portfolio managers, and all members other than the Board, to exercise influence over the affairs of the partnership. The UTT noted that it was common ground that the FTT was entitled to consider the actual position and that paragraph 188 of the FTT judgement stated, “both parties accept that significant influence does not need to be exercised through a formal constitutional procedure but requires a realistic examination of the facts”. This remained the position in the UTT hearing where it considered that this was sufficient to dispose of ground 5.

6. HMRC submitted that the FTT was wrong to apply the analogy with a traditional professional services firm, in particular referring to the role of a partner as being to “find, mind and grind”. The UTT found that this ground, in common with the remainder of the appeal, did not respect the terms of the FTT decision. The UTT agreed with the FTT that significant influence over the affairs of a partnership was not restricted to significant influence over the affairs of the partnership generally. In view of the UTT, attempts to force the test of condition B into an artificial straight jacket was not correct but instead the question was a multi-factorial one, requiring careful analysis of all aspects of the workings of the partnership. The UTT rejected this ground.

7. HMRC submitted that the FTT was wrong to conclude that the relevant portfolio managers had “managerial clout”. The UTT held that, for the same reason as ground 3, this argument must fail. There is nothing in the wording of condition B which restricts the types of activity or sources of influence within a partnership which can be considered for the purposes of deciding whether an individual meets or fails condition B.

8. HMRC submitted that the FTT’s findings in relation to “involvement” in operational decisions were not sufficient to demonstrate significant influence of the type required by condition B. The FTT had identified operational activities as:

   - Hiring and firing
   - Identifying and exploiting new business opportunities
   - Bringing on junior members of staff
   - Managing counterparty relationships

   The UTT considered that this assertion was no more than an attempt to re-argue the evidential case and that HMRC’s exercise of “island hopping” through selected extracts from the evidence before the FTT provided no basis for interfering with the FTT conclusions.

9. HMRC asserted that the FTT was wrong to conclude that a capital allocation of $100 million was sufficient evidence to demonstrate significant influence and that financial impact is not on its own sufficient to demonstrate influence of the type required by condition B. The UTT pointed out that the difficulty for HMRC was that the FTT judge did not rely on financial impact alone albeit he did decide that the management of $100 million or more did mean that the portfolio managers did have significant influence. In the case of desk heads, he also found that they exercised significant influence without making express reference to a specific level of capital allocation. The UTT rejected HMRC’s argument in support of ground 9.

The UTT dismissed HMRC’s appeal, considering that the FTT made findings of fact that it was perfectly entitled to make and that there was no error of law in its approach to and construction of the legislation.

The UTT also dismissed the cross appeal by BlueCrest in relation to condition A.

The FTT had decided that:

1. All members met condition A because their remuneration from the LLP was not variable by reference to profits or losses of the partnership.
2. Portfolio managers managing capital allocations of $100 million or more and the desk heads do not meet condition B because they have significant influence over the affairs of the partnership as a result of the activities they carry on within the LLP which included managerial as well as financial influence.
3. The other portfolio managers and non-portfolio managers, other than the Original ExCo, meet condition B because they do not have significant influence over the affairs of the partnership.

BlueCrest is an LLP carrying on business in the alternative investment industry, providing investment management services to the BlueCrest group funds. In the context of LLPs carrying on other types of business, it may not necessarily be the case that only members of an LLP's management board have significant influence. Other members who "get on with their work" in bringing in work, managing it, recruiting and developing staff, and being responsible for a large part of the firm's client base can also have significant influence.

Each case will be determined upon its facts and, where salaried partners are concerned, the simplest way of failing one of conditions A, B or C is for such members to contribute capital to the firm in excess of 25% of their fixed share.

# The Scottish Aggregates Levy Bill: About more than just aggregate

The Aggregates Tax and Devolved Administration (Scotland) Bill was laid before the Scottish Parliament on 14 November 2023. The Bill essentially comprises two parts: The first part of the Bill concerns itself with how the Scottish aggregates has been extensively consulted on, both through standard consultation processes and expert panels with sector experts. The second part of the Bill was not consulted on at all.

**Part one of the Bill**

According to the Scottish government, part one of the Bill provides for the key aspects of the tax, to be known as the "Scottish Aggregates Tax" (SAT). It defines SAT and its key concepts, including key definitions, proposed exemptions and reliefs, and how the tax should be calculated. It also gives Scottish ministers the power to set the rate of tax, which will be considered separately from the Bill. The Bill also creates several penalties, including a penalty for anyone who does not pay the tax when they are required to do so.

**Part two of the Bill**

The Scottish government go on to explain that part two contains a small number of miscellaneous administrative amendments to the Revenue Scotland & Tax Powers Act 2014 (RSTPA), which are intended to support the efficient and effective collection of tax by Revenue Scotland. These amendments reflect discussions between the Scottish government and Revenue Scotland and, where relevant, take account of provisions which already exist in UK tax legislation. Note that these provisions do not relate to Scottish Aggregates Tax, but to general Revenue Scotland powers.

In summary, the measures in part two are:

1. A power for Revenue Scotland to refuse a repayment claim for tax where the claimant has failed to pay other devolved tax due.
2. A provision clarifying the penalty in the RSTPA for failure to pay land and buildings transaction tax.
3. A provision clarifying the legal continuity of acts by different designated officers of Revenue Scotland and clarifying how summary warrants for the recovery of unpaid amounts of tax are to be executed.
4. A power for Scottish ministers to make regulations on the use of communications from Revenue Scotland to taxpayers, including provision about the use of electronic communications.
5. A power for Scottish ministers to make regulations on the use of automation by Revenue Scotland.
6. A power for Revenue Scotland to off-set a taxpayer debit against a credit.

7. A minor amendment to section 94 of the RSTPA, substituting the word "section" for "paragraph".

Most of the provisions are fairly routine and serve to tidy up certain aspects of how Revenue Scotland conducts its business – just as would usually be set out in a 'care and maintenance' Act in UK tax law, such as the Finance Act which follows a Budget. We have been calling for a similar fiscal event to take place in Scotland on a regular basis so that any changes to the taxes and taxing powers are clear and unambiguous and not sitting at the bottom of bills relating to other matters, which adds opacity for tax experts and taxpayers alike.

Number six in the listing has been discussed with the Scottish government, as this new power would be based on the powers available to the UK government under s.130 FA 2008. ICAS and others have asked for clarification on the extent of these powers, which concern themselves with offsetting debts and credits across the taxes. With such a small amount of relatively new devolved taxes mixed in with reserved taxes currently, it is questionable as to whether such a power is even necessary at present in Scotland.

The Scottish Parliament has issued a call for evidence as set out below, which we are intending to respond to. The Scottish Aggregates Tax expert panel group, which ICAS attends as a member, is continuing to meet in 2024 until the legislative provisions and guidance have been finalised.

The Call for Views on the Aggregates Tax and Devolved Taxes Administration (Scotland) Bill closes on 9 February. If you have any views which you would like ICAS to represent, please contact Justine Riccomini.

# Economic Crime and Corporate Transparency Act 2023

The Economic Crime and Corporate Transparency (ECCT) Act was enacted on 26 October 2023. The ECCT Act gives Companies House the power to play a more significant role in tackling economic crime and supporting economic growth. Over time, it is expected that the measures will lead to improved transparency and more accurate and trusted information at Companies House.

This represents the biggest single change to Companies House (CH) since its establishment in 1844 and it will have new objectives and powers. We welcome that it will move from being largely a depositary of information to having greater powers to ensure the accuracy of the information that it oversees. We believe this is a long overdue positive development.

The ECCT Act will be implemented in phases via various different sets of regulations over a 30-month period. Some of the draft regulations will require parliamentary debate whilst others won't. The first set of Statutory Instruments will be published around spring 2024. Indeed, some draft regulations have already been laid.

The proposed timetable is very much dependent on having sufficient parliamentary time available but as the Act has cross parliamentary support this should not be an issue. Some of the changes require systems development at Companies House and these are ongoing.

The ECCT Act will introduce new statutory objectives for the Registrar of Companies which they must promote when performing their functions. The act will also provide the registrar with a suite of new and enhanced powers, to enable them to meet their objectives.

The registrar's new objectives are:

- to ensure that anyone who is required to deliver a document to the registrar does so (and that the requirements for proper delivery are complied with)
- to ensure information contained in the register is accurate and that the register contains everything it ought to contain
- to ensure that records kept by the registrar do not create a false or misleading impression to members of the public
- to prevent companies and others from carrying out unlawful activities or facilitating the carrying out by others of unlawful activities.

These objectives also apply to the Registrar of Companies for Scotland and the Registrar of Companies for Northern Ireland.

There'll also be new responsibilities for:

- all new and existing company directors
- people with significant control of a company (PSCs)
- anyone who files on behalf of a company.

## Companies House – key changes

Some of the key changes from a Companies House perspective are as follows:

- Improving the quality of data on Companies House's registers (from 4 March 2024, greater powers for Companies House to query information, stronger checks on company names, new rules for registered office addresses, and new lawful purpose statements)
- Identity verification (anyone setting up, running, owning or controlling a company in the UK will need to verify their identity)
- Changes to accounts (transitioning towards filing accounts by software only, and changes to small company accounts filing options)
- Confirmation statement changes (from 4 March 2024, new requirements to provide a registered email address and to confirm that the intended future activities of the company will be lawful). Every year, the company will need to confirm that its future activities will be lawful on their confirmation statement.
- Changes to Companies House fees (increased fees to take new future expenditure into account, as well as making sure costs are recovered from existing expenditure)
- Protecting personal information (individuals will be able to apply to suppress personal information from historical documents, and apply to have personal information protected from public view because of risk of harm)
- Changes to limited partnerships (they will need to file their information through authorised agents, and they'll need to file more information with Companies House)
- Improving transparency of company ownership (new requirements to provide additional shareholder information, and restrictions on the use of corporate directors)
- Investigation, enforcement and data sharing (more effective investigation and enforcement powers for Companies House, and new powers to share data with law enforcement agencies and other government departments)

We will now look at some of the new powers in greater detail.

### Statement of lawful purpose

There'll be a new requirement when someone registers or incorporates a company from 4 March 2024. The subscribers to the company will need to confirm they're forming the company for a lawful purpose. A company will also need to confirm its intended future activities are lawful, on their annual confirmation statement.

### Registrar's powers

From 4 March 2024, the registrar will have greater powers to query and challenge information that appears to be incorrect or inconsistent with information that they hold. In some cases, Companies House will also be able to remove information more quickly, if that information is inaccurate, incomplete, false or fraudulent. There'll be stronger checks on company names which may give a false or misleading impression to the public. This will help Companies House to improve the accuracy and quality of the data they hold and help to tackle the misuse of company names. Companies House will also use annotations on the register to let users know about potential issues with the information that's been supplied. They'll also be taking steps to clean up the register, using data matching to identify and remove inaccurate information.

### Identify verification process

They'll also start introducing a new identity verification process in 2024. Anyone setting up, running, owning or controlling a company in the UK will need to verify their identity to prove they are who they claim to be.

For new companies, all directors and people with significant control (PSCs) will need to complete identity verification.

Identity verification will also apply to other registration types. For example, any members of a limited liability partnership (LLP) will also need to verify their identity. For existing companies, all directors (or equivalent) and PSCs will have a transition period to verify their identity with Companies House. Anyone acting on behalf of a company will also need to verify their identity before they can file information.

Persons can verify directly with Companies House, or through an authorised agent. Companies House will put in place a service to enable identity verification using ID documents, such as a passport. Companies House will provide a range of support and services available to help individuals to complete this process.

Companies House authorised agents, also known as Authorised Corporate Service Providers (ACSPs), are individuals or organisations that undertake anti-money laundering (AML) supervised activity, such as:

- accountants
- company formation agents
- solicitors.

Authorised agents already have a duty to carry out due diligence checks on all their clients. The Companies House identity verification process will build on these existing checks. Identity verification checks by authorised agents must meet the same level of assurance as those who verify directly with Companies House.

Companies House will publish detailed guidance for authorised agents on these identity verification requirements.

**Enforcement and sanctions**

There'll be serious consequences if a company does not respond to a formal request from Companies House for more information. This could include:

- a financial penalty
- an annotation on the company's record
- prosecution.

**Registered office**

There could also be serious consequences for a company if their registered office is not an appropriate address. Companies will not be able to use a PO Box as their registered office address.

If Companies House is satisfied that a company's registered office is not appropriate, they'll change it to a default address, held at Companies House. If a company's registered office is moved to the default address, they must provide an appropriate address with evidence of proprietary ownership within 28 days, or Companies House could start the process to strike the company off the register.

**Accounts filing changes**

The changes to filing of accounts are likely to take effect in 2026 (likely to be accounts filed after a specific date – more information will be available at a later date).

Likewise, it is envisaged that regulations to specify the format of the profit and loss account to be filed by micros and small companies will be set out in regulations to be published in 2026. It is not expected that this will deviate much, if any, from existing profit and loss account format requirements.

**Further Information**

There is a new Companies House micro-site that will provide updates on this process as well as newsletters, emails etc.

In order to stay up to date with developments at Companies House, members should consider signing up to receiving its update newsletter.

# FRC Audit Inspection Results

The Financial Reporting Council (FRC) undertook 13 inspections of audits conducted by Tier 2 and Tier 3 audit firms during 2022/23 when there were 5 firms in Tier 2 and 24 firms in Tier 3. A summary of the key findings is included below. Of these inspections:

- 5 (38%) were assessed as requiring no more than limited improvements (36% average in this category over the period 2016/17 to 2021/22).
- 5 (38%) were assessed as requiring significant improvements (highest in this category since 2019/20).

These percentages should be treated as indicative, given the small sample, that different firms and audits are inspected every year, and that the results of individual firms may vary. However, the FRC has stated that the overall results of inspections for 2022/23 continue to indicate an urgent need for improvements in audit quality in this sector of the market.

The key inspection findings for the year were common across the period and largely consistent with previous years, with the significant majority relating to the audit of:

- Judgements and estimates, reflecting that complex and judgemental audit areas require audit teams to exercise robust professional scepticism in their audit response.
- Going concern, with weaknesses in the rigour of the audit work and the challenge of the underlying evidence provided by management.

- Journal entry testing, including the lack of linkage to the presumed fraud risk of management override of controls.

The FRC noted that weaknesses in firms' related quality control procedures, such as shortcomings in the reviews of audit work performed by Engagement Partners and/or Engagement Quality Control Reviewers, were contributory factors to the deficiencies noted in the audit work performed. However, they did see a reduction in the number of findings in the audit work over inventory and the financial statements.

The audit quality monitoring activities conducted on Tier 2 and Tier 3 firms' non-PIE audits by the Recognised Supervisory Bodies (RSBs) including ICAS, continue to show an improving trend with 76% of audits reviewed in 2022/23 being assessed as good or generally acceptable. The FRC believes that these results may reflect the lower complexity of these non-PIE audits or differences in the scope of the review. The FRC supervises and reviews the RSBs' audit quality monitoring activities and reports annually on this to the Secretary of State.

The FRC's 2022/23 reviews of Tier 2 and Tier 3 firms' quality control procedures also found similar themes to previous years with actions required by firms in:

- Developing competency frameworks for audit partners and staff, and improving links between audit quality and reward.
- Improving procedures for archiving audit files in line with the requirements of auditing standards.
- Establishing adequate procedures to monitor compliance with ethical standards, in particular regarding non-audit services and fees.
- Formalising acceptance and continuance procedures for audit engagements.
- Improving the depth and rigour of firms' internal quality monitoring procedures, including processes to follow up and remediate findings.

**Review of individual audits**

The following themes reflect the most common areas of inspection findings that drove the FRC's assessment of audits requiring improvements or significant improvements.

1. Estimates and judgements

The FRC had findings in this area on 77% of the audits that they inspected (previous report: 60%), more than half of which were assessed as requiring improvements or significant improvements. Similar to the FRC's previous inspection cycles, many of their key findings were as a result of audit teams not demonstrating sufficient professional scepticism, which is essential for an appropriately robust audit of these areas, given the significant levels of management judgement and the potential for bias. Examples of key findings:

- Expected Credit Loss (ECL) provisions: Weaknesses in the audit procedures performed to test the methodology, assumptions and data inputs used in ECL calculations, including in relation to significant increase in credit risk criteria and macro-economic and other overlays.
- Investment valuation: Insufficient audit procedures to challenge the accounting treatment for unlisted investments, and to test management's valuation of these investments.
- Impairment: Weaknesses in audit procedures performed to corroborate and challenge cash flow forecasts used in management's impairment assessment of intangible assets.

2. Going concern

The FRC had findings in this area in 38% of the audits that they inspected (previous report: 37%), all of which were assessed as requiring improvements or significant improvements. Going concern continues to be an area of particular challenge for audit teams, with several of the entities the FRC inspected experiencing financial difficulties. Many of the FRC's findings were linked to weaknesses in the rigour of the underlying going concern assessments and supporting evidence provided by management. It is vital that audit teams exercise appropriate professional scepticism when assessing and challenging management's assessment of going concern. Examples of key findings include:

- Insufficient procedures to test cash flow forecasts and to assess the impact of related sensitivities in the going concern model.
- Inadequate procedures to evaluate the impact of breaches of loan covenants during the reporting period on the continued availability of cash resources from financing arrangements.
- Insufficient procedures to assess the refinancing of debt, in a case where this was a key assumption in management's going concern assessment.

3. Journal entry testing

The FRC had findings in this area on 69% of the audits that they inspected (previous report: 31%), of which the majority were assessed as requiring improvements or significant improvements. The increase in the number of audits with findings in this area reflected the FRC's inspection focus on fraud and on the audit of journal entries as a key response to the fraud risk of management override of controls. Many of the findings that the FRC had identified related to weaknesses in the planned audit approach and the linkage of this to the audit team's fraud risk assessment. The design of the audit approach and executed procedures should be appropriately robust and responsive to the potential fraud risks identified. Examples of key findings include:

- Weaknesses in the fraud risk assessment performed by the audit team, which informed the selection of journals for testing.
- Insufficient or no procedures performed to test journals that were identified as meeting fraud risk criteria.
- Insufficient procedures to test the completeness of journal entry listings obtained from management.

4. Other findings resulting in lower quality assessments

Key findings in the following areas also supported the FRC's lower quality assessment of individual audits:

- Revenue: On two audits that the FRC inspected, insufficient procedures had been performed to respond to audit risks identified related to revenue accuracy, completeness and/or cut-off.
- Accounting errors: On an audit that the FRC had assessed as requiring significant improvements, inadequate procedures had been performed to assess the accounting treatment for an acquisition occurring during the period. As a result, a material accounting error was not identified by the audit team.

5. Examples of good practice the FRC observed in 2022/23

- On one audit, the effective use of bespoke data analytic tools as part of a robust audit approach over lease accounting.
- On another audit, the engagement of specialists to support the audit team's evaluation of management's going concern assessment and related financial statement disclosures.

The FRC encourages audit teams to refer to the What Makes a Good Audit publication which includes best practices observed during inspections.

**Review of quality control procedures**

During 2022/23, the FRC inspected the quality control procedures at seven (out of 11) firms inspected. Their inspection programme covered each area set out in International Standard on Quality Control (UK) 1 (ISQC (UK) 1): leadership, compliance with ethical requirements, acceptance and continuance procedures, human resources, engagement performance and monitoring. As well as reviewing a firm's system of quality control, the FRC also evaluate samples of the application of individual policies and procedures (usually as part of the review of individual audits). For 2022/23, the FRC performed their inspection based on the policies and procedures the firm had in place on 30 September 2022.

The following themes reflect the FRC's most common inspection findings in relation to firms' quality control procedures.

1. Human resources

The FRC had findings across the human resources component of ISQC (UK) 1 at all seven of the firms inspected, with numerous key findings at the majority of firms. Recruitment, performance management and reward processes are key to creating and maintaining a culture and environment that supports high quality audits. Examples of key findings include:

- Lack of a formalised appraisal process for partners in the audit practice.
- Where a formalised appraisal process was in place, the lack of linkage between audit quality and reward.
- Lack of a competency framework for staff and partners in the audit practice.

2. Engagement performance

The FRC had findings in this area at five of the seven firms inspected. Many firms do not have formalised procedures to lock down and appropriately archive audit files in line with the requirements of auditing standards. Consequently, most of the FRC's inspections were performed on files which had not been appropriately archived. The FRC expects firms to take immediate action to implement appropriate archiving procedures. Examples of key findings include:

- Shortcomings in processes for the archiving of audit files in line with the requirements of the auditing standards.
- Insufficient measures to ensure that working papers added after the date of the auditor's report, but before the date the file was archived, are logged and the reasons for their addition are recorded.

- Inadequate controls to prevent or detect inappropriate edits to an audit file after being archived (and the FRC identified such edits in one audit).

3. Compliance with ethical requirements

The FRC had findings in this area at five of the seven firms inspected. Some firms do not have formalised procedures to deal appropriately with ethics-related matters. The FRC's Revised Ethical Standard 2019 requires additional measures to be implemented by firms over and above those required by ISQC (UK) 1. Examples of key findings include:

- Insufficient measures to ensure ethics and independence consultations are formally completed and documented.
- Inadequate processes to monitor audit and non-audit fees.
- Absence of appropriate ethical walls between accounting and audit functions.
- Lack of formalised processes to monitor gifts, hospitality and entertainment.
- Inadequate measures to monitor and address audit partner rotation and long association.

4. Acceptance and continuance procedures

The FRC had findings in this area at four of the seven firms inspected.

Robust acceptance and continuance procedures are essential in ensuring that a firm's audit portfolio is within its capacity and capability to perform high quality audits. Examples of key findings include:

- Lack of a policy and formal process, driven by a risk-based assessment, for accepting new clients and re-accepting existing clients.
- Failure to consider appropriately factors such as staff availability, profitability and recovery rates, reputational risks, potential conflicts, requirements relating to regulated entities or the need for specialist skills.

5. Internal quality monitoring

The FRC had findings in this area at three of the seven firms inspected that were subject to firm quality control inspection. It is important that a firm's quality monitoring function is independent of the audit function and that appropriate root cause analysis is performed to understand how deficiencies have occurred. Examples of key findings

- Inappropriate grading of files subject to monitoring reviews.
- Failure to communicate thematic findings to the wider audit practice.
- Lack of appropriate guidance on how to perform root cause analysis.
- Insufficient identification of themes, which indicated that additional training or supplemental methodology guidance is required.

6. Examples of good practice the FRC observed in 2022/23

- Where a firm's leadership takes an active interest in driving audit quality, the FRC see improvements in audit quality in the files inspected.
- Firms with robust client acceptance procedures are able to make better informed decisions on resources required to perform high quality audits.

Audit firms are encouraged to focus on the implementation of ISQM (UK) 1 and ISQM (UK) 2 which came into effect on 15 December 2022.

# IESBA Update

The following is an update on developments at the December 2023 meeting of the International Ethics Standards Board for Accountants (IESBA).

**Revisions to IESBA Code of Ethics on tax planning and related services**

IESBA approved revisions to its International Code of Ethics for Professional Accountants (including International Independence standards) related to the provision of tax planning and related services, by professional accountants in business (PAIBs) and professional accountants in public practice (PAPPs).

Subject to certification by the Public Interest Oversight Board (PIOB), the final pronouncement is expected to be issued by mid-April 2024. From an IESBA perspective the pronouncement will be effective for tax planning activities or services beginning after June 30, 2025, with early adoption permitted. ICAS and the other Consultative Committee of Accountancy Bodies' members will consider how these revisions interact with the existing requirements of the Professional Conduct in Relation to Taxation in the UK before a decision is made as to when the ICAS Code of Ethics will be revised to take account of these changes.

Compliance with PCRT remains mandatory for members advising on UK tax matters. Members must be familiar with and comply with PCRT and a failure to do so may result in disciplinary action. It can be found on the ICAS tax page.

**Strategy and Work Plan 2024-2027**

IESBA approved its Strategy and Work Plan 2024-2027 (SWP). Subject to confirmation by the Public Interest Oversight Board (PIOB) that due process has been followed, the SWP is expected to be issued by mid-April 2024.

The key elements of this are as follows:

Projects/work streams commenced before 2024

- Sustainability (at exposure draft stage)
- Use of experts (at exposure draft stage)
- Collective Investment Vehicles, Pension Funds and Investment Company Complexes

New work streams

- Firm culture and governance
- Exploring extending the impact of the code to all preparers of sustainability information
- Development of profession-agnostic independence standards for sustainability assurance engagements not within the scope of Part 5
- Role of CFOs and other senior PAIBs
- Audit firm – audit client relationship
- Business relationships
- Post-implementation review – Engagement team – group audits

Other topics of interest

- Definitions and descriptions of terms
- Custody of data
- Communication with those charged with governance

Pre-committed work streams

- Post-implementation review – Non-compliance with laws and regulations (NOCLAR)
- Post-implementation review – Long association phase 2
- Post-implementation review – Restructured code
- Post-implementation review – Non-assurance services and fees
- Post-implementation review – Definition of public interest entity

**Using the work of an external expert**

IESBA approved for exposure three proposed new sections to the Code addressing using the work of an external expert – proposed Section 390 for PAPPs, proposed Section 290 for PAIBs, and proposed Section 5390 for sustainability assurance practitioners.

The proposed sections establish an ethical framework to guide PAPPs, PAIBs or sustainability assurance practitioners, as applicable, in evaluating whether an external expert has the necessary competence, capabilities and objectivity to use the expert's work for the intended purposes. The proposals also include provisions to guide a PAIB, PAPP or sustainability assurance practitioner, as applicable, in applying the Code's conceptual framework when using the work of an external expert.

The development of the proposals was closely coordinated with the International Auditing and Assurance Standards Board (IAASB).

The Exposure Draft (ED) is expected to be issued by the end of January 2024 with a comment period of 90 days.

**Sustainability**

The IESBA approved for exposure:

- Proposed revisions to Parts 1 to 3 of the Code addressing sustainability reporting by professional accountants.
- A proposed new Part 5 of the Code, International Ethics Standards for Sustainability Assurance (including International Independence Standards) for all sustainability assurance practitioners, regardless of whether or not they are professional accountants, when performing sustainability assurance engagements that are within the specified scope of Part 5. The proposed new standards set out provisions that are at the same level as those for audits of financial statements. Among other matters, they address independence considerations relating to group sustainability assurance engagements, using the work of another practitioner, and assurance of sustainability information from value chain entities.
- New terms and definitions including "sustainability information," "sustainability assurance engagement" and "value chain".

The ED is expected to be issued by the end of January 2024 with a public comment period of 100 days.

# HMRC and Companies House updates

## New normal for the ADL from 1 February

Agents looking forward to the end of restrictions on the ADL after 31 January may be disappointed that HMRC has announced that some services will continue to be restricted on an ongoing basis. However, these restrictions will largely relate to early progress chasing, so should not affect complex and urgent queries.

**Restrictions up to 31 January**

The service provided on the ADL was initially restricted to calls about self-assessment filing, payments or repayments from 11 December – but from 22 December additional restrictions were put in place, with any progress chasing queries for self-assessment repayments redirected to online tools. Restrictions were expected to end after 31 January.

**Webchat services will continue to be available**

HMRC has confirmed that webchat services for the ADL will continue to be available for both self-assessment and PAYE queries from 1 February. HMRC's announcement noted that around 15,000 agents per month have been using HMRC webchat services.

HMRC's self-assessment ADL webchat will focus on all self-assessment topics in line with how it was working in December. Agents will be able to access the service via HMRC's digital assistant – according to HMRC, this is currently dealing with around 40% of all self-assessment queries without the need to transfer to an adviser. If you are an agent with complex or urgent self-assessment queries and you need to speak to an adviser, you will still be able to call the ADL, selecting option 1 from the menu.

The PAYE webchat service will focus on repayment queries and can be accessed through the PAYE digital assistant. Agents with PAYE coding queries or complex PAYE queries will also still be able to call the ADL, selecting option 2 from the menu.

**Ongoing restrictions: progress chasing**

HMRC states that the majority of repayments are being made well within its service level agreements. However, more than a third of calls to the ADL are from repayment agents progress chasing self-assessment, PAYE or payment protection insurance tax relief repayments, often within a few weeks of claims being submitted and sometimes in large quantities. This means that advisers cannot help agents with more complex or urgent enquiries.

From 1 February, all agents who wish to progress chase repayments should consult the 'Where's my reply tool' before contacting HMRC. HMRC define progressing chasing as contacting them specifically to find out when the repayment claim is likely to be processed or paid.

If the estimated date for processing shown by 'Where's my reply' has not passed, ADL advisers will not deal with the query. If the date has passed, you will be able to contact the ADL to check the status of the claim.

Additionally, from 1 February, if an agent wishes to progress chase a PAYE repayment once the date on 'Where's my reply' has passed, this must be done using the PAYE webchat service only, where HMRC says it will be able to provide dedicated and expert support.

For self-assessment repayments, if a repayment has been selected for security checks, HMRC may also ask you to wait a further 12 weeks before contacting it again to allow time for those checks to take place.

**Digital options for agents**

Prior to the December restrictions, HMRC had already made changes to the ADL (from 2 October), including removing the 10 minute service level. Agents generally prefer to use online services, rather than waiting on helplines, so it was helpful that HMRC indicated that it was looking at some possible improvements to digital options for agents.

**Let us know your views**

Let us know by emailing mailto:tax@icas.com which digital services for agents you would like to see improved, or any new digital options you think should be put in place.

### Inheritance Tax and applying for probate

From 17 January 2024, customers applying for probate in England and Wales, will no longer need to complete an IHT421 Probate Summary to submit with their IHT400.

Instead, the letter sent to confirm receipt and processing of the form IHT400 will provide a unique code and the details of the estate values which will be needed to make a probate application. Where HMRC are unable to issue the unique code, they will advise in the letter what further action must be taken.

This unique code should be used to apply for probate using the HM Courts and Tribunals Service (HMCTS) online portal. Applications for probate where an IHT400 has been submitted to HMRC will not be possible without the unique code and estate values.

This new process will:
- mean that customers will have one less form to complete
- prevent premature probate applications which can cause delays
- give customers the confidence to proceed with their probate application at the right time

The process in Scotland and Northern Ireland will remain the same.

### New National Insurance tool for employees

The Class 1 employee National Insurance contributions rate was reduced from 12% to 10% from 6 January 2024, announced in the Autumn Statement.

HMRC have launched an online tool on GOV.UK for anyone to estimate how the January 2024 National Insurance contributions changes will affect you.

### Married Allowance Transfer Claim Form (MATCF)

From 26 February 2024, all agents submitting a P87 or MATCF repayment claim on behalf of their clients will need to use the new standard HMRC forms.

Failure to submit claims in the agreed format will result in the claim being rejected and returned. In these circumstances, you would need to resubmit the claim using the correct format.

The new P87 and MATCF forms will be made available for download on GOV.UK from 12 February.

### Scottish Income Tax changes from 6 April 2024

The Scottish Government have announced changes to Scottish Income Tax, which will take effect from 6 April 2024 which includes the introduction of a new tax band called Advanced Rate.

For further details on the changes, refer to the factsheet published by the Scottish Government — Scottish Income Tax 2024 to 2025: factsheet

HMRC has engaged with payroll software providers for the updating of payroll software products for 2024 to 2025 to make sure (Scottish) Income Tax is calculated and deducted correctly from the start of the new tax year.

Further guidance will be published via GOV.UK ahead of the new tax year.

### Changes to Paternity Leave and Pay

HM Government are making changes to the way Paternity Leave and Pay can be taken and claimed which will make it more flexible for father and partners to access. The changes will come into effect from 8 March 2024.

Further guidance can be found here.

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