Technical Bulletin

Issue no. 177
May 2024

Declaring dividends lawfully

The timing and amount of dividends is a really important part of tax planning for any owner managed business. It also features as part of decisions on the level of salary and dividends for the owners in the businesses.

But it is important to remember that there is a right way to declare and pay dividends. Getting it wrong can have serious consequences – not just for the company, but potentially for advisers as well.

Key principles

Dividends are not dividends unless they are properly declared.

Interim dividends must be declared at a board meeting. To be valid, per Section 830 Companies Act 2006 the directors must first give consideration to the company's financial health, and be able to demonstrate that there are sufficient profits from which a dividend can be paid. It is essential that evidence of this is recorded in the board minutes and dividends must be correctly minuted and paid, or credited to the director's loan account, in real time. Interim dividends are only treated as income of director shareholders when they actually paid.

Final dividends are usually declared at the Annual General Meeting and may have a specified future payment date. On declaration, they become the income of director shareholders from the date of entitlement, even if in fact paid later.

Where things sometimes go wrong

Minutes - taking account the requirements of Section 830, the lack of minutes supporting a dividend payment could cause issues if challenged. There is a risk that no minuted evidence = no dividend.

Example:

ABC Ltd is a close company and the directors are empowered to declare dividends. They decide it would be beneficial to extract money quarterly, as dividends, and to make journal adjustments to directors' loan accounts to reflect quarterly interim dividends.

But there is no contemporaneous minute showing that the directors actually considered if the company had

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sufficient distributable profits to cover the dividends – or indeed any minute proving that a dividend had actually been declared.

What does paid mean?

Section 1168 (1) Corporation Tax Act 2010 states that dividends are treated as paid on the date they 'become due and payable.' What does 'paid' mean? A final dividend may be paid when declared, as that is the date that the shareholder gains a legally enforceable right to the declared dividend, even if it is actually paid later.

Per HMRC's Company Taxation Manual CTM15205, 'A dividend is not paid, and there is no distribution, unless and until the shareholder receives money or the distribution is otherwise unreservedly placed at the shareholder's disposal, for instance by being credited to a loan account on which the shareholder has power to draw.'

A particular danger can arise with interim dividends, since they are only deemed 'paid' when the director shareholder can actually use them.

Ultra vires dividends

Where a distribution is made when a company lacks sufficient distributable profits, it is an unlawful distribution. The director of a close company is unlikely to be able to argue that they lacked knowledge of the state of the company's finances here.

As per Section 847 Companies Act 2006, the consequences of unlawful distribution, the amount paid is not a dividend, and must be repaid.

Should insolvency be a possibility it is likely that HMRC will take a very serious view indeed, with directors becoming personally liable to repay the supposed dividend to the company. If the company is solvent, the sum may still require repayment, which may leave an outstanding balance on a director's loan account… triggering a tax charge under Section 455 Corporation Tax Act 2010 s455 CTA 2010.

Accountants and tax practitioners beware

The ICAS Code of Ethics and Professional Conduct in Relation to Taxation covers all members of ICAS. The payment of a dividend, rather than salary, could be seen as part of tax planning, and should be read in the light of PCRT guidance at 2.29.

HMRC can impose Dishonest Agent penalties where it considers an agent has been dishonest with a view to bringing about a loss of tax revenue.

It is very important to appreciate that under NO circumstances should dividend paperwork be backdated as this could be considered to be fraud. Accountants and tax practitioners should never try to recreate past events, whether for tax reasons or otherwise. There is nothing wrong with effective tax planning in advance, followed by properly declared dividends after checking whether the company has sufficient distributable reserves.

MTD for ITSA update

Following the announcement of the delay in mandation until April 2026, ICAS has been working closely with HMRC as a trusted stakeholder on Making Tax Digital for Income Tax Self Assessment (MTD ITSA). We expressed concerns about the low level of uptake for HMRC's initial pilot and the fact that it was only available to self-employed taxpayers and landlords who had an accounting year end date of 5 April. This is because we felt that it is important for HMRC to expand the range of self-employed taxpayers and landlords who can take part, not just to help ensure that HMRC's systems can be sufficiently tested, but also to instil confidence in businesses that there will not be any further delays to the MTD ITSA implementation.

Expansion to HMRC testing from April 2024

On 22 April 2024, HMRC announced the expansion of the MTD testing programme, when the existing pilot moved to private beta. Essentially, this term means that a larger, but still restricted pool of self-employed taxpayers and landlords will be able to test HMRC's systems. This is before public beta is introduced from April 2025, giving taxpayers and their agents a full year of testing their readiness for MTD ITSA ahead of its mandation in April 2026.

HMRC is hoping that around 1,000 taxpayers will sign-up for the private beta phase. By registering your clients for private beta, you can help prepare your practice for MTD ITSA and test the compatibility of your systems and those of your clients ahead of implementation. If every tax agent put a handful of clients in, this would give HMRC a broad spectrum of self-employed taxpayers and landlords, during a period of a more lenient penalty system being in place. The 2023 Autumn Statement announced how penalties will only arise on an annual basis.

Taking part in private beta will give you access to HMRC's dedicated MTD ITSA support team. As an incentive to sign up, it has been confirmed that the support team will be able to give further assistance beyond MTD for those clients who register in the 2024/25 tax year. Signing up for private beta is also an opportunity for those in the pilot to seek the support they need while ensuring their systems are compliant.

Who can take part in private beta

HMRC has confirmed that the pilot will only be open to taxpayers who are a UK resident, have a National Insurance number and have submitted at least one tax return under self-assessment. It will also be necessary for taxpayers to have no outstanding tax liabilities and for the taxpayer's personal details to be up to date.

Although it will be open to a wide range of taxpayers, those who have a High Income Child Benefit Charge will unfortunately not be able to take part. It's also still unavailable to those who hold a payment plan with HMRC; are a partner in a partnership; claim Married Couple's Allowance; claim Blind Person's Allowance; are currently, or are going to be, bankrupt or insolvent; are an MP, minister of religion or Lloyds underwriter; have income from being a foster carer or gain income from being in a shared lives scheme; have income from a trust; have income from a jointly owned property; have income from a furnished holiday let; are subject to a compliance enquiry; use farmers' averaging relief or averaging for creators of literary or artistic works; or are signing up on behalf of someone else (unless an agent).

Private beta will also be unavailable for those who wish to carry back losses, change their accounting period or change their accounting method.

Previously, the pilot was only open to taxpayers with 5 April accounting year ends. However, it is now possible for taxpayers with a 31 March accounting year ends to take part, as long as the chosen software package can support this. Taxpayers with other accounting year ends are unable to take part.

We understand that taxpayers without a National Insurance number are unable to take part, however, this is perhaps less of concern as they would be exempt from the MTD ITSA mandation under the revised MTD ITSA regulations in any case.

Getting set up for joining private beta

The first step for agents is to make sure that they are registered for HMRC's agent services account (ASA). You can find details of how to create an agent services account on GOV.UK. It will be necessary to complete a digital handshake so that the client can authorise an agent to act on their behalf in this way.

HMRC has some agent specific guidance on the process and the information needed for agents to register their clients for private beta testing. It is possible for taxpayers to sign up themselves up for this – there is separate guidance on the process to be followed in that case.

Is my software compatible with private beta?

At the time of launching private beta, HMRC confirmed that five software providers had compatible software. A further 21 providers are in the process of developing their software in order to take part in this phase. We expect that more software providers will be able to facilitate private beta in the coming months.

Let us know your views

Please let the ICAS Tax team know how MTD ITSA will affect your practice and your clients.

We want to hear your feedback, thoughts, observations and concerns so that we can represent your views in our discussions with HMRC.

Please email tax@icas.com to share your insights and feedback.

HMRC wins latest IR35 battle

We explain how HMRC won their case on off-payroll working against ex-footballer and commentator, Neil McCann.

Case background

On 5 April 2024, after a six-month wait, we finally saw a decision on the employment status case involving football pundit Neil McCann, which was heard by the Upper Tribunal (UT) on 10 October 2023. Mr McCann works for Sky Sports and is a former professional footballer who played for Southampton, Rangers and Scotland. This case involved potential liabilities of around £200,000.

The case centered on off-payroll working (IR35) and whether there was mutuality of obligation which must be present for an employment contract to exist between the engager and the worker. In IR35 cases, the court's role is to determine whether the absence of a limited company or other qualifying intermediary, the hypothetical contract between worker and engager, would have been one of employment or self-employment.

Mr McCann appealed to the UT because the First Tier Tribunal (FTT) concluded that his contract was one of employment, and due to the presence of an intermediary, he was bound by the IR35 legislation of Chapter 8 of ITEPA 2003.

The appeal

In cases like this, it is important to examine the fact pattern, and Mr McCann's case demonstrated that he worked in return for an annual fee. This appears to have been paid monthly to him, similar to a salary, and the work he carried out was almost entirely for Sky Sports. Unusually for a TV personality, he didn't seem to have been paid by appearance. Therefore, it was irrelevant whether he worked once a week or six times – the payment was the same. When Mr McCann took on a caretaker/manager role for a few weeks and didn't appear on TV in his pundit role, he was still paid by Sky in the usual manner.

In addition to the payment pattern, it appears that a substantial amount of editorial control was exerted over Mr McCann. Other than having the freedom as an expert to speak in technical terms, the editing and overall production was under the control of Sky – unlike in the case of Scottish TV presenter and journalist, Kaye Adams.

The decision

The Upper Tribunal dismissed any reference by the appellant to the so-called 'PGMOL' case, which is currently awaiting a Supreme Court decision. The decision of the Supreme Court could either ratify the lower court's decision or overturn it.

The Upper Tribunal upheld the FTT decision and found in favour of HMRC, having utilised the Ready Mixed Concrete case once again as a benchmark.

Conclusion

It isn't particularly surprising that HMRC have been awarded the spoils in this case, due to the payment pattern. It will be interesting to see what the outcome of the PGMOL case is and we will cover updates on this once they have been released. As ever, IR35 and off-payroll working are extremely complex in nature, so guidance and advice on these matters should be sought from suitably qualified experts.

RALC case overturned five years later

We explain the outcomes from the latest employment taxes decision relating to National Insurance contributions in an off-payroll working context.

Background

In the case of HMRC v RALC Consulting Limited [2024] UKUT 00099 (TCC), the Upper Tribunal (UT) received an appeal from HMRC which was heard on 14 and 15 December 2023, with the decision published on 12 April 2024.

In 2019, The First Tier Tribunal (FTT) originally decided in favour of the taxpayer, Robert Alcock. He had been providing services through a limited company (RALC Consulting Ltd) to Accenture (UK) Ltd, who then contracted him to Police Scotland and the Department of Work and Pensions between 2010 and 2015, concluding that the work was done outside of IR35.

What was the UT asked to do?

HMRC provided several grounds of appeal, but in the end, only the first two were considered in any detail. The remaining five grounds concerned themselves with erring in law or reaching perverse conclusions, however, the first two grounds served to decide the other five.

The first ground stated that the FTT 'failed to properly identify the terms of the hypothetical contracts and to apply the common law test of employment status to those terms' in line with the legislation. The FTT considered the Atholl House case and followed the three-stage process set out in that case:

1. Locate the actual terms of the contractual arrangements.
2. Construct a hypothetical contract.
3. Consider whether the hypothetical contract represented a contract of employment.

The UT's analysis of the FTT's examination of the three-stage process found that the FTT hadn't applied the assessment of facts to the hypothetical contract to determine whether employment or self-employment existed in RALC. The FTT had only looked at certain facts - the court had been distracted.

The second ground stated that the FTT 'erred in law in its approach to mutuality of obligation' which then led to them concluding that there was insufficient mutuality of obligation. It's commonly known that the mutuality of obligation needs to be present, in accordance with the key employment status case, Ready Mixed Concrete, for an employment relationship to exist.

- Despite the FTT knowing that the right to turn down further work doesn't eradicate the presence of mutuality of obligation, in a similar way to not having a guarantee of minimum hours or the power to terminate a contract. These are set out in many employment contracts so don't automatically mean that an individual is self-employed because of them. The UT noted that the FTT had failed to take these into account in their overall assessment of the employment status. This swayed them into thinking that IR35 didn't apply.
- The UT considered the PGMOL case, looking at the concept of overarching contracts. However, it was unusual for them to consider this at all, given that the Supreme Court decision on PGMOL is to be determined, and could change things depending on what decision emerges. In the McCann case, the grounds that the PGMOL case should be considered were dismissed.

Decision of the UT

The UT concluded there were material errors of law in the FTT's decision and decided to set it aside, remitting it back to the FTT and potentially causing Mr Alcock to once again be exposed to potential tax liabilities of around £250,000.

Conclusion

HMRC seem determined to obtain decisions based on mutuality of obligation at the current time, when the CEST tool clearly and unambiguously states that HMRC doesn't consider mutuality of obligation to influence an employment status decision one way or the other. Therefore, it is excluded from CEST, despite it being a key component in what is universally acknowledged to be the leading case authority – Ready Mixed Concrete.

The fact that the UT was prepared to consider the PGMOL case is also an unusual turn of events, given that other cases are purposefully not including it in their deliberations. It seems that the judiciary doesn't know which way to turn on employment status cases at the present time, which makes life even more complex for those caught up in disputes.

IASB issues new IFRS on presentation and disclosure in financial statements

In April, the International Accounting Standards Board (IASB) issued International Financial Reporting Standard (IFRS) 18 'Presentation and Disclosure in Financial Statements'. IFRS 18 becomes effective from 1 January 2027 with early adoption permitted and replaces International Accounting Standard (IAS) 1 'Presentation of Financial Statements'. Certain parts of IAS 1 which have not been changed have been transferred to IFRS 18 and other IFRS. The standard will of course need to be adopted by the UK Endorsement Board before it can be applied in the UK.

The new standard will not impact how companies measure financial performance but rather will affect how companies present and disclose financial performance.

The standard's objective is to improve how companies communicate in their financial statements, with a focus on information about financial performance in the statement of profit or loss and aims to respond to feedback from stakeholders on such matters as follows:

Stakeholder feedback	IFRS 18 response
Statements of profit or loss vary in structure and content.	The standard adds defined subtotals to the statement of profit or loss which makes companies' financial performance easier to compare and provides a consistent starting point for investors' analysis.
Measures defined by management are useful to investors, but companies might not explain how these measures are calculated and why they are used.	The standard requires companies to disclose information about management-defined performance measures which increases discipline over their use and transparency about their calculation.
Investors would like to see information more appropriately grouped (aggregated or disaggregated) in the financial statements.	The standard sets out requirements on whether information should be in the primary financial statements or the notes and providing principles on the level of detail needed improves effective communication of information

Whilst the changes impact all primary financial statements, the main impact is on the statement of profit or loss (income statement) and the notes to the financial statements.

Key requirements

Presentation of new defined subtotals in the statement of profit or loss

IFRS 18 requires companies to report:

- operating profit; and
- profit before financing and income taxes.

These subtotals provide a consistent structure for the statement of profit or loss, thereby improving comparability. IFRS 18 will not affect how companies measure their financial performance and the overall profit figure.

Disclosure of management-defined performance measures

Many companies report alternative performance measures or non-GAAP measures. When those measures meet the definition of management-defined performance measures (MPMs), IFRS 18 requires companies to disclose reconciliations between those measures and subtotals listed in IFRS 18 or totals or subtotals required by IFRS Accounting Standards. MPMs are subtotals of income and expenses used in public communications to communicate management's view of an aspect of the financial performance for the company as a whole.

Enhanced requirements for grouping (aggregation and disaggregation) of information

IFRS 18 sets out requirements to help companies determine whether information about items should be in the primary financial statements or in the notes and provides principles for determining the level of detail needed for the information. IFRS 18 also includes requirements for the presentation of operating expenses in the statement of profit or loss, disclosure of specified expenses by nature, and further information on items grouped together and labelled 'other'.

Subtotals in the statement of profit or loss

IFRS 18 requires a company:

- to classify income and expenses into operating, investing and financing categories in the statement of profit or loss—plus income taxes and discontinued operations; and
- to present two new defined subtotals—operating profit and profit before financing and income taxes.

Operating Category

This is intended to provide a complete picture of a company's operations. The operating profit subtotal is used by investors as a measure of how a company is performing in its business activities and as a starting point for forecasting future cash flows. It consists of all income and expenses that are not classified in the investing, financing, income taxes or discontinued operations categories – income and expenses classified in those categories are items that investors generally analyse separately.

The operating category is the default category and:

- includes all income and expenses arising from a company's operations, regardless of whether they are volatile or unusual in some way. Operating profit provides a complete picture of a company's operations for the period. It is not intended to measure only 'persistent' or 'recurring' operating performance.
- includes, but is not limited to, income and expenses from a company's main business activities. Income and expenses from other business activities, such as income and expenses from additional activities, are also classified in the operating category if those income and expenses do not meet the requirements to be classified in any of the other categories.

Investing category

This is intended to enable investors to analyse returns from stand-alone investments separately from a company's operations and includes:

- income and expenses from assets that generate returns separately from a company's business activities—for example, a company might collect rentals from an investment property or dividends from shares in other companies.
- income and expenses from cash and cash equivalents and investments in associates and joint ventures – for example, a company might earn its share of profits from an associate.

Financing category

This and the subtotal for profit before financing and income taxes is intended to enable investors to analyse companies' performance before the effects of its financing.

This category includes:

- income and expenses on liabilities such as bank loans and bonds (liabilities arising from pure financing transactions); and
- interest expenses on any other liability, for example, lease and pension liabilities.

Therefore, the financing category includes interest expenses on all liabilities.

Other categories

The income taxes category consists of income tax expense (or tax income) that is included in profit or loss in accordance with IAS 12 Income Taxes, and any related foreign exchange differences.

The discontinued operations category consists of income and expenses from discontinued operations recognised in accordance with IFRS 5 Non-current Assets Held for Sale and Discontinued Operations.

Implementation and supporting tools, including educational webcasts and webinars are available here.

Revised LLP SORP issued

The Consultative Committee of Accountancy Bodies (CCAB), of which ICAS is a member, has published a new edition of the Limited Liability Partnerships (LLPs) Statement of Recommended Practice (SORP). The underlying purpose of the SORP is to deal with issues that are specific to LLPs and ensure that, as far as possible, LLPs present financial statements that are comparable with those of other entities.

The SORP has been updated to reflect 'The Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022 (SI 2022/46') which require certain LLPs and groups to make climate related financial disclosures aligned with the Taskforce for Climate-related Disclosures (TCFD) recommendations. LLPs within scope of the climate-related financial disclosure requirements, must report this information in the strategic report, if one is required to be prepared, or in the energy and carbon report otherwise. Further guidance on mandatory climate-related financial disclosures, including guidance on the scope criteria and required content of the disclosures, is available in the Government's non-binding guidance, Mandatory climate-related financial disclosures by publicly quoted companies, large private companies and LLPs.

The main revisions to the revised SORP are that additional guidance has been added in relation to:

- the sharing of group profits and amounts payable to former members;
- post-retirement obligations in the context of FRS 103 Insurance Contracts;
- certain scenarios when section 26 'Share-based Payment' of FRS 102 The Financial Reporting Standard applicable in the UK and Republic of Ireland might apply to post-retirement payments

to members. In the case of a contractual obligation that meets the definition of a share-based payment, this will fall in the scope of section 26. For an LLP whose members have equity interests, an example of a share-based payment might be where a former member is entitled to a specified percentage of disposal proceeds if the business of an LLP is sold within a specified period following the member's retirement, to be paid by the LLP to the former member. This would meet the definition of a share-based payment transaction as a result of the former member having provided services to the LLP; and

- the treatment of profits which are automatically divided to members who do not provide any substantive services to the LLP. It now specifically recognizes that, there may be situations where all members of the LLP contribute capital, but certain members may not provide any substantive services to the LLP. For example, where a member of the LLP only provides capital, this does not constitute a substantive service to the LLP. In cases where a member does not provide substantive services to the LLP, the automatic right to a share of the LLP's profits (reference should be made to paragraphs 46 and 48 of the SORP) should be treated as a return on capital which is the right to share in future profits of the LLP. This is illustrated in example 11 at appendix 2 of the SORP.

The updated SORP is effective for periods commencing on or after 1 July 2024 (with early adoption permitted).

Let us know your views

We welcome input from members to shape the ICAS response to the call for evidence. Please email tax@icas.com by 15 April to give your views.

Update on Companies House reform

Update on Companies House reform

The Economic Crime and Corporate Transparency Act ('the Act') amends the Companies Act 2006 to reform Companies House's processes and furnish the Registrars with new statutory functions and objectives. The Act expands the statutory role of the Registrar of Companies for England and Wales (and equivalents in Scotland and Northern Ireland) beyond their previous remit of registering company information. The Registrars are now tasked with doing more to protect the integrity of the information on the register and seeking to prevent companies and others from carrying out unlawful activities. To support this the Act equips them with new powers. This includes powers to query suspicious appointments or filings, request further evidence or reject filings.

On 4 March 2024 the first measures of the Act came into force, which:

- introduced the Registrars' new objectives.
- tightened requirements around company and business names, including restricting the use of names for criminal purposes or which might be otherwise misleading, and prohibiting companies from re-registering names they have been directed to change. The Registrar was granted additional powers in respect of changing unsuitable names.
- introduced additional requirements for registered office addresses and email addresses.
- furnished the Registrars with more effective investigation and enforcement powers including a power to reject documents for inconsistency, for the informal correction of documents, for administrative removal of information from the register.
- granted the Registrars a new function of information analysis for the purpose of crime prevention and detection.
- introduced a number of new criminal offences with civil penalty regulations to criminal sanctions to support these amendments.

Companies House immediate priorities have been to:

- target false or misleading information across several areas including where names and addresses have been used without consent.
- tackle companies whose registered office address has been changed to a default address, due to that address being inappropriate or having been used without consent.
- ensure existing companies with PO Box Addresses provide an appropriate registered office address.
- resolve discrepancies in directors' data.

From 4 March to 1 April 2024, Companies House has:

- commenced the process to remove names and addresses used without consent. This includes

removals of People of Significant Control (PSC) and shareholders - previously those wishing to have their details removed would have had to apply to the courts.
- removed 4,000 registered office addresses.
- removed 2,100 officer addresses and 2,300 PSC addresses.
- redacted 3,600 incorporation documents to remove personal data used without consent.
- removed 1,250 documents from the register, including 800 false mortgage satisfaction filings which would have previously required a court order.
- contacted 3,800 companies with PO Boxes as their registered office address, to make them aware that this would no longer be legally compliant and requiring them to provide an alternative appropriate address. As of 1 April 2024, the number of companies on the register using a PO box has reduced to 1,900.

Where a company's registered office is not appropriate, such as in instances of fraudulent use, Companies House will change the address to a default address. These companies will be struck off the register unless they can provide an appropriate address with evidence that they are entitled to use that address.

There were 26,800 companies with a defaulted registered office address on the register on 4 March. On 1 April, this had increased to 28,800 due to Companies House changing 4,000 company addresses to a default address. This is to protect personal address information which has been misused. Despite this increase, the following progress has been made in ensuring companies provide an appropriate address:

- 1,400 default addresses are no longer in scope due to the company entering liquidation, starting on the path to dissolution, or becoming dissolved, and
- 600 default addresses were removed due to the company providing an appropriate registered office address.

These reforms are supported by further changes to require those setting up, managing, and controlling companies and other registrable entities to have a verified identity with Companies House, or have registered and verified their identity via an anti-money laundering supervised third-party agent. This will make anonymous filings harder and discourage those wishing to hide their company ownership through nominees or opaque corporate structures.

Changes will also be introduced to improve the financial information on the register. These are intended to lead to better financial management practices within small to medium sized enterprises, promote the transition to digital reporting, support better business and credit decisions, and help wider efforts to combat economic crime.

Preparations for the next phases of implementation are set out in Companies House 2024 to 2025 Business Plan. These include introducing the technical capability to verify an individual's identity and the introduction of a registration process for third party agents to become authorised corporate service providers (ACSPs).

Proposed legislative change to better promote electronic distribution of accounts

Other company law changes to be introduced by summer SI

The UK Government is at the final stages of enacting 'The Companies (Non-financial Reporting) (Amendment) Regulations 2024' which it plans to lay this summer with the revisions planned to take effect for financial years starting on or after 1 October 2024. This article focusses on a proposed change to company law which covers the ability to more easily distribute annual accounts and reports electronically.

Easier distribution of accounts electronically

The Companies Act 2006 provisions do not currently enable easy digital sharing of annual reports. Section 423(1) imposes a duty on companies to send a copy of its annual accounts and reports each financial year to: every member of the company; every holder of the company's debentures; and every person who is entitled to receive notice of general meetings. Although this duty does not explicitly require that the copies of the accounts and reports sent out are physical; the use of 'current address' in clauses (2) and (3) creates a reasonable presumption that the duty to share copies of annual accounts and reports mean that physical copies must be shared. This is because the definition of 'current address' in this part of the Act is only a physical address.

In the extant legislation, a company does not need to share their annual accounts and reports as physical documents with those entitled to receive copies where the company makes use of s1144 and Schedule 5 of the Companies Act 2006:

(i) Documents or information can be sent by a company in electronic form to a person who has agreed (generally or specifically) that the document or information may be sent or supplied in that form;

(ii) Documents or information can be sent or supplied by the company via their website if the members and debenture holders have resolved (voted and agreed) that the company can supply/share documents that way, or.

(iii) Documents or information can be sent or supplied by the company via their website to members if the company's articles say as such, and to debenture holders if the instrument creating the debenture also says as such.

Based on these provisions in the Companies Act, a company would need to seek the agreement of all those entitled to receive a copy of the annual reports to share their reports via email, and to do so specifically through a resolution to share the reports via their website. This is obviously cumbersome and time consuming. Alternatively, the company's articles of association would need to be changed, via special resolution, to include a provision that the company shares its annual reports with entitled persons via email.

Therefore, companies may currently find it challenging to share a digital version of their annual accounts and report. Considering the new Companies House power to require companies to deliver their accounts electronically to the Registrar, (new power from the Economic Crime and Corporate Transparency Act 2023), allowing for easier circulation of digital reports is an obvious course of action.

As a result, the Government proposes to append the relevant clauses in the Companies Act that define "address" as including "an address used for the purposes of sending or receiving documents or information by electronic means." This will remove the current presumption that annual accounts and reports should be circulated as physical copies. We welcome this proposed change which we believe is long overdue.

Having trouble increasing your fees and pricing/ selling advisory work?

Written by Heather Townsend, founder of The Accountants' Growth Club on behalf of Croner-i

Inflation has run at over 10% for the last two years. Whilst it may now be getting down to manageable levels, the damage has been done to your firm's bottom line. The question is, how do you safely increase your fees to repair your profit margin – particularly as wages have shot up with the rising cost of living and the changes to the National Minimum Wage?

The fear of raising prices

We've all been there. You and your partners stare at the numbers, and the impact of the rising cost of wages, rent, business rates, and software is clearly evident. Deep down, you and your partners know that a price increase is necessary if the partnership will make the right profit. But you know your partners are anxious. After all, what happens if over half of the clients walk away? Or even 30% of the clients? Particularly the good ones. Some partners want to be bullish and put fees up by 20%, saying that this will eliminate the long tail of unprofitable clients and free up much-needed capacity. Then, some are so fearful they can't even countenance a 10% fee increase. As a result, the conversations go around in circles and nothing changes.

This fear of raising prices is a surprisingly common foe for tax practices. It's the fear of good clients going, the fear of seeming greedy, and the fear that the firm will no longer be seen as good value. And prospects and clients will instead move to the cheaper, younger, local competitor. In the 15 years I have been helping accountants and tax advisors put up fees, I've found that firms always tend to think that 30–50% of their clients will leave. If your firm's service level is good, very few clients will leave if you put your fees up by 10%. If you decide on a punchier 30% fee increase, you will see a little more attrition, but this will mainly be with clients who struggle to see the value of your firm's services, i.e. the low fee unprofitable clients.

How do you break the deadlock with your partners or the battle in your mind to just start with your fee increases? What if there could be another way? A way that releases much-needed capacity for better clients AND simultaneously increases the firm's profit? The rest of the article looks at opportunities to change your mindset so you can enjoy the benefits of a fee increase.

Embracing a growth mindset when it comes to pricing

The fear of raising prices often stems from a fixed mindset around pricing. This mindset views prices as static, fearing any change will disrupt the delicate balance and cause clients to consider whether they need a new tax advisor. But what if your partners embraced a growth mindset instead?

A growth mindset sees price as a dynamic tool, which reflects the value your firm delivers to your clients. It acknowledges that as your firm steps up to justify its higher fees, the value you generate to clients will improve. For example, if you put your fees up by 30% and lose the bottom 10% of your clients by value, you'll find that a disproportionate amount of capacity will be freed up. This capacity can then be used to deliver a better service to the 90% of clients who have opted to stay.

Here's how adopting a growth mindset can help your partners embrace a fee increase.

- Focus on the value your firm is bringing, not what the timesheet says you should charge. Tax advisory work is an easy type of work to value price. For example, can you fix your price using a share of savings type model?
- Confidence in your firm's work: It encourages you (and your partners) to believe in your offer's worth. After all, who wants to be the tax equivalent of the 'pile it high, sell it cheap' Tesco's of the 1980s? You may find that being at a higher price point actually helps you get more of the larger and bigger clients.
- It helps your firm fail fast and learn quickly. Fee increases are often delayed or not big enough because of a fear of failing. A fear that too many clients will leave. As a result, there is often no commitment behind the fee increase, so the necessary impact never quite happens.

Value before price

We often believe that clients buy on price, particularly when we have been losing good leads to other firms. But clients buy on value. You and I know your clients are not simply buying a product or service. They often invest in a long-term tax-based solution to improve their current lives or future lifestyles or secure their wealth for future generations. Your firm's job is to clearly articulate the value that your firm can bring to them. This means the specific benefits and positive outcomes that tick all your clients' boxes emotionally, rationally and financially.

Here's how focusing on value helps your firm ask for and get higher fees:

- it justifies your firm's higher fees;
- it helps your firm be confident when it comes to quoting a fee.

Transparency is key

Clients are not always against a fee increase. They want to know why there needs to be a fee increase. This is why educating your clients that they should expect an annual fee increase is important. But also, why do you need to put up your fees more than they are expecting? For example:

- Has inflation pushed up your firm's wages or other significant costs?
- Have your software costs increased, and can you no longer afford to swallow the increase?
- Do you need to increase your fees to increase salaries and retain your good staff members?
- When was the last time your firm put up its fees?

Can you mitigate the impact of the fee increase?

If your firm will put up fees, can you also sort out any other fee, price issues, or engagement letter problems? For example, can you negotiate a smaller fee increase in return for the client paying by direct debit and a larger fee to start any work? If your firm is going to go through the pain of a fee increase, let's get all the pricing and fee issues sorted out in one go.

Can you start small?

It's a brave firm that will write a letter to every client and say fees are going up by 30% on this date. You don't need to be that firm. Often what your firm's partners need is the data and evidence that the price increase is going to help, not hinder the firm. There are many ways of testing out a new fee structure, for example:

- Charge new clients at the new rate. Do clients still sign up at the same rate? Is there any pushback for the new rate?
- Take a small segment of the client base and test the fee increase. What is the attrition rate for these clients? How would this impact the whole practice if replicated across the firm?
- Start increasing fees for existing clients when they have a new piece of work or when it's their annual renewal time.

Summary

The fear of doing a fee increase is often worse than actually doing it. You may find that you can break the deadlock around fees with your partners by just getting on and increasing your clients' fees.

Croner-i – Evolve Partner

Do you feel confident pricing and selling advisory work?

Join James Butterworth, Senior Tax Consultant and VIP Commercial Manager at Croner-i, in this free webinar where he will share insights that will support you in growing confidence around pricing and selling consultancy work.

'How to Price and Sell Tax Consultancy Work' takes a proactive focus that will help you to price and sell assignments as well as handle objections.

As part of ICAS' partnership with Croner-i, you can book a free consultation with James to discuss your advisory needs, to obtain free advice and discover how Croner-i can support you.

Why cyber insurance isn't a substitute for cyber risk management

Written by Mitigo, ICAS Evolve Partner

So you think buying cyber insurance means your firm will avoid a major nightmare?

You've bought a cyber insurance policy to help protect your firm against devastating cyber-attacks. It looks comprehensive so you can finally sleep at night. But before you get too carried away, is that really the case?

Many accountancy practices which have been victims of a cyber-attack held cyber insurance policies. That cyber insurance did not prevent them from being the next victim. Of course, you will be glad you had the policy if the worst does happen, but it is essential to understand the difference between cyber risk management and cyber insurance. Simply put, cyber insurance is the transfer of residual risk once you have taken the right steps to manage your cyber risks in the first place. That includes carrying out proper cyber risk assessments and implementing robust cyber security controls.

What is not covered by cyber insurance?

There is no substitute for having proper cyber risk management in place. Cyber insurance may allow some costs to be recouped, provide cyber specialists to help deal with the immediate crisis and may even allow payment of a ransom demand in some cases, but there is a range of issues that cannot be resolved by simply putting insurance in place.

Difficulties that we have seen firms trying to manage after a cyber-attack include:

- Senior management working through the night trying to work out how they are going to continue to run the business with no functioning systems.
- Fee earners unable to continue cases while locked out of their systems.
- Having difficult conversations with clients explaining how and why their confidential information has been breached and the fact that their transactions are unable to proceed.
- The requirement to communicate the problem to clients, staff, other third parties and the press, again without being able to use the firm's usual methods of communication.
- The need to report the incident to the ICO, ICAS and law enforcement agencies.
- Internal disruption, as well as blame and condemnation among personnel.
- Extensive lost time.
- The arguments over fault and liability in cases of diverted payments.
- Trying to negotiate with criminals over their ransom demands for the return of confidential data or decryption of systems.
- The fact that the underlying weaknesses that allowed the cyber attack to happen will still need to be identified and eliminated.

The National Cyber Security Centre (NCSC) notes that:

*"Cyber insurance will **not** instantly solve all of your cyber security issues, and it will not prevent a cyber breach/attack. Just as homeowners with household insurance are expected to have adequate security measures in place, organisations must continue to put measures in place to protect what they care about."*

Why is cyber risk management essential for accountancy practices?

The professional services sector is a high-risk when it comes to cyber security. Criminals have found a variety of methods, including email account takeover and ransomware attacks to be particularly profitable in a profession where data protection and client confidentiality are crucial.

The major risks of failing to proactively implement strong cyber security measures that cyber insurance will not help with include:

Breach of legal and regulatory obligations

ICAS requires all practices to comply with legislation. This includes compliance with UK GDPR for the protection of personal data. Basic requirements include:

- Carrying out regular risk assessments for the security of data.
- Putting effective controls in place, including:
  - Providing relevant training to personnel and having policies in place outlining expected behaviour.
  - Having secure technology.
  - Having the right policies and framework in place in respect of governance.
- Regularly testing, assessing and evaluating the controls.
- Being able to provide evidence of compliance with the above.

Failure to comply with legal and regulatory obligations can result in substantial fines – fines by the way, that your cyber insurance policy won't cover.

Data breaches

In the case involving law firm Tuckers LLP, the ICO issued a fine of £98,000. A ransomware attack resulted in a personal data breach. Files were encrypted by the hackers, including court bundles, and a number were offered for sale on the dark web. The ICO found this was a result of the firm's failure to implement appropriate technical and organisational measures and Tuckers had failed to process personal data in a way that ensured its security and protection.

The ICO stated that due to the confidential nature of data held, schemes such as Cyber Essentials and Cyber Essentials Plus were NOT sufficient security standards.

As Tuckers involved a law firm, the ICO also highlighted breaches of the Solicitors Regulation Authority Code of Conduct which it regarded as an aggravating factor. In the context of a breach relating to ICAS members, one can expect the ICO to scrutinise (for example) ICAS Code of Ethics, including 110.1 A1 Fundamental Principle (c) (Professional Competence and Due Care) and related R113 (competent professional service based on current standards and relevant legislation, and maintaining awareness of technology developments); Fundamental Principle (d) (Confidentiality) and related R114 (to take all reasonable steps to preserve confidentiality, and being alert to the possibility of disclosure); Fundamental Principle (e) (Professional Behaviour to comply with relevant laws and regulations and in accordance with professional responsibility) and related R115; ICAS Investigation Regulations 3.1 (duty to report).

In the Interserve case, the ICO fined the construction company £4.4m over its failure to protect its employees' data from cyber attacks. The Information Commissioner said companies should "expect a similar fine from my office" if they fail to put proper protections in place. The ICO made it clear it will have regard to "relevant industry standards of good practice" such as ISO 27001; the National Institutes of Standards and Technology; the various guidance from the ICO itself; from NCSC and from any sector regulator.

Breaches of client confidentiality

A breach of client confidentiality will have implications for your clients, their affairs and your reputation. It is very hard to remedy the loss of confidentiality in any meaningful way and there is a substantial risk that major clients could look elsewhere for advice.

Business disruption

Business disruption can also result in substantial losses, both in momentum and for clients who may lose trust in a firm that has failed to put adequate security in place. The initial difficulties can be crippling, and the long-term issues can last for many weeks or months whilst those involved scramble to restore systems and databases and persuade clients not to jump ship.

The importance of dealing with cyber security at partner level

Given that cyber security failures have the potential to devastate a practice, it must be understood that this is a matter for the senior leadership team in the firm. It is the senior partners who will have to face the consequences, answer to regulators, the ICO, clients, other affected third parties and their own colleagues. The senior leadership team need to have the appropriate management information in place that is discussed regularly at partners meetings.

The Government's draft Cyber Governance Code of Practice, aimed at executive and non-executive directors and other senior leaders, highlights the fact that cyber risk should have the same prominence as financial or legal risks and that responsibility and ownership of cyber resilience is a Board level matter.

The importance of independent assurance

It should also be recognised that proper cyber risk management requires some independent assurance carried out by genuine cyber security specialists with in-depth knowledge of the latest security risks and experience of the attacks taking place in your sector. They should be independent of your IT provider, because having your IT mark their own homework is a non-starter from a compliance perspective.

Who are Mitigo and how can we help?

Mitigo offers specialist advice and cyber security services to accountancy practices and other professional service firms. They are not an IT company. They know that you are a prime target for cyber criminals and their experts have the understanding needed of both your business and potential cyber risks to give you the protection you need.

Mitigo can work with your business and your IT partner to identify potential risks and eliminate them without delay. Do not rely on your cyber insurance to save the day. The only way of effectively protecting your organisation is to ensure that your security protocols and systems are as strong as possible.

Their bespoke service takes into account the particular requirements of your working practices and the threats you face.

Contact Mitigo today for a vulnerability risk assessment

If you would like a cyber security overview carried out by their cyber security experts, fill out this contact form, or see below. Mitigo will identify any issues that need attention and work with your business to ensure that you have the optimal cyber security protection for your organisation.

Mitigo - Evolve partner

ICAS have partnered with Mitigo to offer cybersecurity management services with exclusive discounts for Evolve members.

To book a free no-obligation consultation or for more information, visit the Mitigo website, or you can contact them on 0131 564 3131 or email icas@mitigogroup.com

HMRC and Companies House updates

HMRC publishes updated standard for agents - including a helpful endorsement of PCRT

HMRC's standard for agents was first published in 2016 and sets out the behaviour HMRC expects from all tax agents and advisers. It explains how HMRC will tackle the minority of agents who don't meet the standard. The latest version of the standard was published on 17 May 2024.

Interaction with Professional Conduct in Relation to Taxation

Professional Conduct in Relation to Taxation (PCRT) is the code, co-authored by seven professional bodies, including ICAS, setting out the principles and standards of behaviour that all members, affiliates and students of the PCRT bodies must follow in their tax work. The PCRT group has worked collaboratively with HMRC on amendments to the standard for agents since the last major update at the beginning of 2023.

The standard doesn't override the duties set out by ICAS and the other bodies, and PCRT sets the highest standards for our members. We are pleased that the updated standard recognises the importance of PCRT and states that if agents are meeting their professional body's code of ethics, the HMRC standard shouldn't place further requirements on them. This is a welcome clarification and removes any unnecessary compliance burden arising from applying multiple and potentially misaligned codes of conduct.

The updated standard also addresses some inconsistencies that had arisen between HMRC's standard and PCRT (and the supporting ethical codes of the professional bodies), following the 2023 update. There is now consistent messaging, and we welcome the collaborative approach taken by HMRC to resolve points raised by our members.

Statement from the PCRT group of professional bodies

In a joint statement welcoming publication of the updated standard for agents, the bodies said:, "We welcome the renewed recognition of Professional Conduct in Relation to Tax (PCRT) as the gold standard through its inclusion in the revised standard.

There is currently considerable focus on potential future regulation of the tax services market with an ongoing government consultation. The PCRT group are keen that any future direction raises standards consistently across the whole market to the high levels required by PCRT. The revised standard is reassuring in its endorsement of PCRT as setting and meeting the desired high standards of tax agents, as well as ensuring that those meeting it are not having to consider multiple, overlapping codes of ethics."

New HMRC manual – VAT Tertiary Legislation

HMRC has launched a new manual which contains the tertiary legislation for VAT published by HMRC.

What is tertiary legislation?

Government departments, including HMRC are sometimes given the power to publish additional legally binding conditions or directions on a given topic. This is known as 'tertiary legislation' and it carries the 'force of law', ie it has the same legal status as primary and secondary legislation.

The new manual

Prior to the publication of the manual, 'force of law' VAT provisions appeared in the VAT notices, so much of the content in the manual now appears in two places (the manual and the notices) – apart from the revised Margin Schemes tertiary legislation which only appears in the new manual following the withdrawal of VAT Notice 718.

In a note circulated to members of the Joint VAT Consultative Committee (JVCC), HMRC commented, "To date, we haven't removed any force of law content from VAT Notices and so, much of it is duplicated in this product and its original home. We wouldn't normally encourage duplication, but it allows us to ensure tertiary legislation will always be available to those that want to read it. In due course, we will be able to remove legal content from the Notices and replace it with plain English where appropriate."

Let us know your views

ICAS belongs to the JVCC - we regularly raise VAT issues reported to us by members. HMRC is interested in feedback on the new manual, including anything that might have been missed or the way it is structured: groupings, subheadings, etc. Email tax@icas.com if you have any feedback.

Check Your State Pension forecast service now available

Men (born after 5 April 1951) and women (born after 5 April 1953) have until 5 April 2025 to pay voluntary National Insurance contributions to make up gaps from 6 April 2006 if they are eligible. The deadline is for paying voluntary National Insurance contributions for tax years 2006/07 to 2017/18.

There is now an enhanced online digital service which is also available through the HMRC app. The service provides information to help your clients decide whether to pay voluntary National Insurance contributions based on which years are available for them to fill and the cheapest or most beneficial years to pay. If your clients have fillable gaps they are then able to follow the process and pay online, should they decide to do so.

It is a good opportunity to ask your clients to use the Check Your State Pension forecast service at the earliest opportunity either online or through the HMRC app, so that they have time to identify any shortfalls and see if they would benefit by paying voluntary National Insurance contributions.

Reporting profits on a tax year basis

All sole trader and partnership businesses must now report their profits on a tax year basis, beginning with the Self Assessment return due by 31 January 2025 (covering the tax year 2023 to 2024) and going forward.

Any business that previously had a different accounting period must declare profits from the end of the previous accounting date in 2022 to 2023 up to 5 April 2024, with the additional profit (after overlap relief) being transitional profit. The transitional profit will be spread by default over 5 years including 2023 to 2024. Accounting periods ending on 31 March will now be treated as equivalent to those ending on 5 April.

HMRC recently published a YouTube video on basis period reform.

There is also a full package of online interactive guidance to support completion of the return and working out transitional profit for these cases. Any computations entered into the interactive guidance do not form part of the return itself — it is there to guide completion of the boxes on the return.

Profits incurred in the 2023 to 2024 tax year can be reduced by any overlap relief which is entered on the 2023 to 2024 Self Assessment return. We have provided an online service to ask HMRC what the overlap relief figure is according to our records. This has been running since September 2023, but we have seen a major increase in demand since February 2024.

Using the payrolling benefits in kind service

HMRC has developed a new service for agents to register employment benefits which will be taxed through their client's payroll on or after 6th April 2025.

These include but are not restricted to:

- mileage and motoring expenses
- private medical expenses
- relocation expenses

To payroll benefits in kind online you have to opt in to use the Employer Liabilities and Payments service. You can access the Employer Liabilities and Payments service on GOV.UK.

You must continue to submit P11Ds for the tax year 2023 to 2024 and 2024 to 2025 for benefits and expenses that have not been payrolled.

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