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EMPLOYEE BENEFIT TRUSTS - WHY ALL THE FUSS?

The impact on the taxation of Employee Benefit Trusts (EBTs) has recently generated a deal of excitement, not only within the professional tax world, but also within the world at large, much of it in Scotland.

That there should be so much Scottish popular interest in EBTs is in no small measure due to the First-tier tax tribunal (FTT) decision in **Murray Group Holdings and others v HMRC [2012] UKFTT 692 (TC)**, commonly described as "the Rangers case". The taxpayer will, however, be referred to here as Rangers. Although Rangers tasted victory before the FTT, HM Revenue & Customs (HMRC) have lodged an appeal which is being heard before the Upper Tribunal in Edinburgh from 24 February 2014 to 21 March 2014. The hearing is at the Edinburgh Tribunal Centre and will be held in public. Given the extended period over which the appeal has been set down, it is likely that it will be some time before a decision is handed down.

What is an EBT?

For practitioners wishing to find a compact definition for an EBT in the tax legislation the search will not be very helpful. Although both s550 Income Tax (Earnings and Pension) Act (ITEPA) 2003 and s86 Inheritance Tax Act (IHTA) 1984 refer to EBTs, simple definitions for tax purposes are not easy to find. An EBT is usually an irrevocable discretionary trust which will have been set up by a company to benefit its employees. EBTs need not only be set up by a company, a partnership or other employer could do so too. Either way the employer should be excluded from any benefit under the trust. The trust deed will typically recite that the employees of the company are to be the beneficiaries. Usually the EBT will have offshore trustees but this is not a necessary requisite. EBTs became popular in the 1980s, being seen in some quarters as a means of generating "income" free from income tax and NIC. Such vehicles have attracted significant attention from HMRC who have sought to discourage their use.

Why have EBTs upset HMRC?

Companies which had set up EBTs were, of course, concerned that they should secure a corporation tax deduction for any contributions made to the EBT. This idea made HMRC unhappy since any income tax and/or NIC charge, if there was one at all, lay some way off. It appeared to HMRC to be a double whammy if corporation tax relief became available too!

An early example of HMRC's resolve to attack EBTs can be found in the case of **E Bott Ltd v Price (Inspector of Taxes) 59 TC 437 [1987] STC 100**. The case gave notice to HMRC that tax professionals were awaking to the possibility of using EBTs as a tax planning tool. The shares in the company were held by two elderly directors and the employees were concerned that the company's trade would cease when the directors died. The company therefore

asked its accountants to review matters particularly in regard to capital transfer tax (CTT) planning, and surprisingly, without the knowledge of the employees, established a discretionary settlement so that the employees should have an interest in the business, a share in its profits, and a voice in the direction of its affairs. The company was excluded from benefit; a crucial condition if the planning had any prospect of success. It made three payments towards the trust and sought a deduction for corporation tax purposes.

Before the General Commissioners, HMRC argued firstly that the payments were on account of capital and secondly that they were not laid out wholly and exclusively for the company's trade. The General Commissioners held against the Revenue on the first ground but upheld its argument on the second ground. The company appealed and, before the High Court, HMRC agreed that the payments to the trust were on revenue account.

The High Court went on to hold that "*it was clear from the terms of the settlement that its principal object was… to acquire shares in the company for the general benefit of the company. It followed therefore that on the facts and in the* ***absence of evidence of another purpose****, the payments made to the trustees of the settlement were wholly and exclusively laid out for the purposes of the company's trade.*" (emphasis added). Consequently the company secured the corporation tax relief it sought on the contributions to the trust. As with many cases involving disputes with HMRC, much is owed to the individual facts of the case and the evidence led.

Not long after the decision in **Bott**, new provisions appeared in s38 Finance Act (FA) 1989, designed to provide a direct link between provision being made for remuneration in company accounts and qualifying for corporation tax relief and the actual payment of that remuneration to the third party concerned. Under these rules, an employer can only secure a deduction if the remuneration is paid within 9 months of the end of the relevant accounting period. If the 9 month window is missed, then relief will not become due until the accounting period in which the remuneration is paid. The 9 month rule is now set out in s36 Income Tax (Trading and Other Income) Act (ITTOIA) 2005 for income tax purposes and in s1249 Corporation Tax Act (CTA) 2009 for corporation tax purposes.

The next step

EBTs were seen as the way to defeat s38 FA 1989. However, to secure a deduction, the promoters of such arrangements had to be able to show that payments made to the EBT did not ultimately become remuneration at some future time.

The success of such arrangements was called into doubt following what have been euphemistically described as the 'Dextra appeals'. The appeal worked its way through from the Special Commissioners to the House of Lords. The appeal process began life in the summer of 2002 as **Dextra Accessories and others v Macdonald (HMIT) [2002] UKSC SPC 00331**.

Dextra was one of six members of a group of companies, the Caudwell Group. On 18 December 1998, the group holding company, Caudwell Holdings Ltd, settled funds as settlor in Jersey and set up an EBT. Later that month substantial payments were made to the EBT and the taxpayer then sought a deduction for corporation tax purposes for the accounting period to 31 December 1998. The Inspector agreed that the payments had been made "*wholly and exclusively… for the purposes of the trade*." However, the Revenue argued that the payments were "*potential emoluments*" within s43 (11) FA 1989. Before the Special Commissioners, the Revenue put forward an alternative argument for disallowing the deductions based on the Ramsay principle as invoked by the House of Lords in **MacNiven v Westmoreland Investments Ltd [2001] STC 273**.

The Special Commissioners allowed the taxpayers' appeals, holding that the contributions were not "*potential emoluments*". They also rejected the Inland Revenue's other arguments finding the EBT to be a genuine trust with an independent trustee who exercised unfettered discretion.

The High Court also rejected the Revenue's appeal. The Revenue by this time were becoming increasingly concerned by the proliferation of EBTs, many of which were set up on the basis that the company making the contribution to EBT would secure a corporation tax deduction before a loan was made to the employee. These loans, categorised as "soft loans", were an integral feature not only in **Dextra** but also in Rangers. Typically, "soft loans" were made over a very long term and, as indicated earlier in this article, any potential income tax liability lay many years down the line. In the meantime, the employer had secured a tax deduction in respect of its contribution to the EBT.

HMRC were concerned at developments in Dextra and, although it had lodged an appeal with the Court of Appeal against the High Court's decision, it decided to press ahead with legislation. The result was the introduction to the statute book of Sch24 FA 2003. The idea of the new rules was to ensure that there would be no relief until such time as the EBT made a distribution to a beneficiary which would in turn lead to an income tax and NIC charge. There would then be a matching of tax deduction on the one side and tax charge on the other.

Consequently, the Court of Appeal upheld HMRC's appeal to the High Court and which in turn was confirmed unanimously by the House of Lords. The House of Lords noted at paragraph 17 of its judgement that the Court of Appeal "*…decided that the funds were held with a view to becoming relevant emoluments*

if they were held on terms which allowed a realistic possibility that they would become relevant emoluments". Lord Hoffman, who gave the leading judgement, continued at paragraph 18:

"*In the ordinary use of the language, the whole of the funds were potential emoluments. They could be used to pay emoluments.*"

Lord Hoffman continued at paragraph 20:

"*It is true that the effect of the Revenue's construction is that unless the funds are at some point applied in the payment of relevant emoluments, they never become deductible at all. This was identified by the Special Commissioners and Neuberger J as an anomaly unfair to the taxpayer. But precisely that result has been achieved by section 143 and Schedule 24 of the Finance Act 2003, which replaced section 43(11)(a) shortly after (and possibly in response to) the decision of the Special Commissioners. The anomaly and unfairness has therefore not troubled a more recent Parliament and may not have troubled the Parliament of 1989. As Jonathan Parker LJ observed, it is the result of an arrangement into which the taxpayers have chosen to enter. Any untoward consequences can be avoided by segregating the funds held on trust to pay emoluments from funds held to benefit employees in other ways.*"

Clearly the top tier of the tax appeal hierarchy has little sympathy for the concept of the EBT and taxpayers involved with such vehicles.

Further restrictions

HMRC have kept up the attack on EBTs. Sch 2 FA 2011 introduced the concept of "disguised remuneration". The provisions of Sch 2 have been incorporated into the legislation as Part 7A ITEPA 2003 and apply with effect from 6 April 2011. In looking to resolve what HMRC perceive to be widespread tax abuse by the use of EBTs, the new rules have a scatter gun approach.

HMRC has published guidance on disguised remuneration which is updated regularly. Nevertheless, because the legislation set out in Part 7A of ITEPA 2003 is extremely complicated, HMRC's views of the new provisions must be approached with some care.

The following can be regarded as first ports of call:

- HMRC Employment Income Manual from EIM45000 onwards;
- Frequently Asked Questions (FAQs) issued in July 2011;
- NIC FAQs issued in December 2010;
- HMRC IHT Manual from IHTM42900 onwards.

HMRC have stated that they have attempted to limit the impact of the legislation "*on employers and individuals where it has been possible to identify arrangement that are not used for avoidance purposes*". The rules have now been in operation for almost three years, but it is difficult to identify the impact on employers and tax advisers.

The scope and complexity of the legislation is such that if any steps are taken to reward or recognise an employee, some basic questions have to be asked. Firstly, salary and benefits provided by the employer in the normal course are generally not caught by the disguised remuneration provisions.

In every other situation the following questions need to be asked:

- Is the arrangement caught by Part 7A?
- Does it pass through a gateway to a safe harbour?
- If not, which employee's taxable income is it?
- What is the taxable amount?
- Does the arrangement pass through a secondary gateway, and if so, to what extent?
- Are there any other consequences?

Those likely to be affected by the new provisions will be keen to identify a way out of its clutches. This is to be found in s554A(i)(c) which reads:

"*it is reasonable to suppose that, in essence –*
(i) the relevant arrangement… is (wholly or partly) a means of providing, or is otherwise concerned with the provision of rewards or recognitions or loans in connection with A's employment, or former or prospective employment, with B."

This is a large gateway. It can be seen that the arrangement must be something concerned with employment, that being the "essence" of the arrangement. Where employment does not exist, or payments are seen as not essentially related to it, the arrangement may not pass through the gateway towards the rest of the rules. This appears to be a key substance test which cannot be adjusted by claiming the payments relate to things other than employment when they clearly do not.

The concept of relevant steps has to be considered next and they fall into three categories:

- allocation of money or assets;
- vesting of money or assets; or
- making available of assets.

The allocation of money or assets may take the form of their being:

- earmarked, however informally; or
- starting to be held,

with a view to a later relevant step being taken in relation to that sum of money or asset or any sum or asset which may derive, directly or indirectly, from the first sum of money or asset.

An employer's act of earmarking or starting to hold money or assets with a view to meeting an undertaking essentially for a contribution to a vehicle for providing retirement benefit otherwise than under a registered pension scheme, may also be an allocation event.

Earmarking is not defined and, as indicated above, may be informal. Earmarking may not take the form of a readily identifiable event. However, it

must follow that HMRC will have to point to some objective evidence to show that assets or money have been set aside or marked out for the purpose of a later relevant step.

The measure is particularly aimed at sub trusts, ie appointments out of a main trust for particular individuals, but is not confined to them. Trustees will need to exercise care, especially where the numbers of potential beneficiaries are few. Earmarking may be easier to avoid in family based situations than it is where persons acting at arm's length may be keener to stake their claim.

It is best to avoid an earmarking, as it can bring the tax point forward without any value actually passing to the employee. S554Z14 (ITEPA 2003) does provide relief where a later relevant event means there will not be an ensuing relevant step, ie an employee will not actually benefit.

There are four years to claim this relief from the date of the relevant event. If avoidance is not a motive this may be an escape route for anyone who has inadvertently walked into the trap.

A relevant step will have been taken if a sum of money or asset otherwise starts being held by or on behalf of a person (defined in the legislation as P) specifically with a view, so far as P is concerned, to a later relevant step being taken by P or any other person.

That later step may be taken:

- by any person and whether or not subject to a future condition being satisfied, and
- in relation to the earmarked sum of money or asset which may arise or derive from it, either directly or indirectly.

In each of these cases earmarking does not apply if the relevant step is taken on or after death.

Much has been made of "soft loans" in the popular press, so can loans be released without a disguised remuneration based charge? The answer appears to be "yes" and this is confirmed by HMRC's instructions; the reason is that the release is not in itself a relevant step. Comfort may also be found in HMRC's reply to FAQ14, but an avoidance motive must not be involved. However, s188 ITEPA will potentially treat such employment related loans that are released as taxable earnings.

In most cases where income tax is due under the disguised remuneration rules, a NIC liability will also arise. If a relevant step is taken after death there will be no NIC liability.

Given the complexity of the provisions, it will be apparent that great care will have to be taken going forward.

Other recent cases of interest

There are other cases which are worth reading by those practitioners who have an interest in EBTs and their ilk. Such cases would include **HMRC v PA Holdings Ltd [2012] STC 585**. The company deserted its appeal to the Supreme Court at the last gasp.

HMRC were recently successful in the Court of Session involving a case where a large number of employees who were allocated bonuses from an offshore EBT which in turn set up so called "money-box" companies for the employees concerned to receive the said bonuses. The case in question is **Aberdeen Asset Management PLC v HMRC [2013] CSIH 84**. This last case will be of particular interest to Scottish practitioners but the circumstances which led to the dispute with HMRC arose in the years of assessment 2000/01 to 2002/03 inclusive, many years ago.

Inheritance Tax

Special provisions apply to EBTs in terms of IHT.

Reference is not specifically made to IHT in this article other than to mention that EBTs do not represent relevant property in terms of the periodic charge, ie they are not subject to the 10 yearly charge.

Conclusion

Although the Rangers case is likely to add to the long line of case authority in terms of EBTs, because the points at issue arose before the introduction of the FA 2011 regime and, indeed the provisions of FA 2003, it is difficult to discern at this point what practical effect it will have on those who advise on those matters.

Members will be aware that HMRC are keen to come to arrangements with taxpayers who have been party to EBTs. Whether they go down that route, if at all, or await the Rangers decision, is a moot point. Either way, great care should be taken in moving forward.

REAL TIME INFORMATION – THE STATE OF PLAY

It has been almost a year since some employers began operating their payrolls in real time (or more than this for those that were involved in HM Revenue & Customs' (HMRC's) pilot programme in 2012/13), and it is probably fair to say that most employers are becoming accustomed to the new reporting requirements. However, that is not to say that there have not been some problems in the initial stages.

The "on or before" aspect of Real Time Information (RTI) reporting is continuing to cause some puzzlement amongst practitioners, especially given that an 'end of month' reporting regime would still tell HMRC how much it was owed. Universal credit is to be paid to claimants monthly, so it would seem logical that RTI would be administered on the same basis. This is currently not the case, but ICAS remains hopeful that HMRC may see the error of its ways and change this at some point.

Another example where the RTI system could be made more user-friendly is in relation to the speed of recognition of payments made to HMRC. Currently there is a significant time delay between payment and recognition, unlike, for example, internet banking. This lack of functionality is another burden on payroll processors, since it prevents any sort of real time reconciliation.

There have also been errors made by HMRC. In PAYE months 6 and 7 of 2013/14, a number of late filing notices were sent out to employers who had in fact filed on time, as a result of an HMRC internal systems upgrade. This, of course, resulted in significant administration costs for those who had submitted returns correctly but then had the burden of following this up with HMRC. It would certainly make life easier for payroll processors if HMRC could improve their systems management.

HMRC intends that the penalties regime for RTI goes ahead as planned in April 2014. However, on a more positive note, those that have used reasonable care in meeting the reporting requirements should have very little to worry about.

Also, please note that micro businesses (those with 9 or fewer employees) which are currently exempted from reporting in real time had the exemption period extended to April 2016 just before Christmas 2013.

We will keep you posted with any further developments on RTI as they arise, but, in the meantime, please report any problems that you or your clients are encountering with the system to **tax@icas.org.uk** and these will be communicated to HMRC. Hopefully this will lead to a better system for everyone.

HMRC TASKFORCES UPDATE

HM Revenue & Customs (HMRC) have been quietly working away within their VAT and alcohol focused taskforces over the last two months and recently announced a further addition to their alcohol strategy.

The new Joint Alcohol Anti-Fraud Taskforce (JAAT) is made up of HMRC, UK Border Force, the Home Office, Trading Standards and other key industry stakeholders. The JAAT will "*work to improve intelligence and information-sharing and current legislation and processes, to prevent fraud and make it more difficult for fraudsters to operate*". This taskforce is expected to make a significant contribution to recovering some of the £1 billion that is lost through alcohol fraud every year. During 2012/13 a total of £600m of duty unpaid alcohol was seized by HMRC and UK Border Force and it is hoped that this new taskforce will help boost this further.

The Scottish VAT taskforce was launched in the second half of 2013, focusing on those using the flat rate and self-billing schemes. It expects to bring in around £5m as a result. HMRC has announced that it has arrested a 59 year old Aberdeenshire man on suspicion of committing a fraud in relation to abuses of the flat rate scheme.

HMRC DEBT COLLECTION – BEING PROACTIVE AND TIME TO PAY

Taxpayers who are struggling to pay their tax bills (both businesses and individuals) still have the option of contacting HM Revenue & Customs (HMRC) and using a "time to pay" (TTP) arrangement, subject to them being eligible. Time to pay allows a tax debt to be repaid in fixed amounts over an agreed period.

Those who wish to take advantage of time to pay are urged to contact HMRC before the tax debt becomes due.

Although HMRC may still be agreeable to arrangements being put in place after a debt becomes due, those who do so beforehand will avoid any penalties arising.

Many of the tax cases for penalties arise in respect of taxpayers who have fallen into arrears and, although they have spent time on the telephone with HMRC negotiating payment, have incurred penalties. TTP needs to be a specific arrangement that has been agreed by HMRC and put in place before the due date of payment if penalties are to be avoided. It may be worth reminding clients of this fact and encouraging them to contact you or HMRC well in advance of any due date if they have insufficient funds to settle their bills.

More information on TTP and paying HMRC can be found at: **www.hmrc.gov.uk/payinghmrc/problems/cantpay.htm**.

HMRC TAX CALCULATORS – A WARNING

As you will probably be aware, all the public–facing web content, including tools, calculators and manuals, on the HM Revenue & Customs (HMRC) website is being moved to the Gov.uk site. The HMRC online services that require you to login will remain on the existing site.

The transfer of technical content began during summer 2013 and is expected to be completed by summer 2014. ICAS is involved in the consultations on this transition and a very practical issue came up at a recent meeting on the transition between the two sites. As part of the Government's Open Data strategy, all the material on Gov.uk is open source and this means that new code is being written for all the calculators on the HMRC site – the tool is not just transferred across but a whole new one is written.

Errors have been identified in the new versions of the calculators – the High Income Child Benefit (HICB) calculator was mentioned in the meeting and this has now been amended. Members should be wary of the results from the calculators when they are first included on Gov.uk. The HICB error was amended in a few days and HMRC are sure that any errors from the calculators that taxpayers rely on would be able to be recreated because of the way the source code is made available. However, it is probably best to keep a print out of any calculator result that your firm relies on to show that reasonable care has been taken.

TAX AGENT STRATEGY – AN UPDATE

HM Revenue & Customs (HMRC) continues to implement two of its major areas of work, namely its engagement with agents and also the digitisation of its processes. In many ways the two areas have become merged with the pace of development being dictated by the Government digitisation project rather than the HMRC agent strategy.

HMRC have issued a further update to the Tax Agent Strategy and Agent Online Self-Serve which sets this in the context of the Government's Digital by Default agenda and to begin to explain the impact and influence of the Cross–Government Identity Assurance (IDA) programme. IDA has inevitably had an impact on the original timetable for delivering Agent Online Self-Serve, as the two delivery timelines are now aligned (Agent Online Self-Serve has moved to the slightly slower IDA timeline, to avoid the need for agents to have to go through two separate authorisation timelines within a short period of time). HMRC are seeking to accelerate the introduction of IDA for organisations but, until that is in place, they are unable to verify that an agent is who they say they are and introduce Agent Online Self-Serve. HMRC are working to have a limited (beta) service available for use by early adopters by Autumn 2014. This will then be scaled up and extended as new digital services are developed for customers and agents.

HMRC have also indicated that they want to reassure agents that HMRC sees them as an essential part of the tax system, playing a key role in compliance and administration – both now and in the future.

To support the work that HMRC are doing in this area they have set up a blog which you can access here: **https://taxagents.blog.gov.uk/**.

The blog supports HMRC's strategy for engaging with agents. In particular, it provides a new channel to communicate about:

- Joint HMRC and agent consultative meetings
- The rollout of HMRC's Tax Agent Strategy
- Improvements to HMRC services by working together
- The services available for agents.

The blog will be relevant for anyone interested in the new approach and how HMRC are developing their strategy. If you have any issues regarding the Tax Agent Strategy you can raise these on the blog.

HIGH VOLUME REPAYMENT AGENTS – THE LATEST NEWS

The topic of HM Revenue & Customs' (HMRC's) focus on high volume repayment agents (HVA) was covered in some detail in Issue 119 of Technical Bulletin. It is important to distinguish between the work that HMRC is performing to address the risks posed by HVAs, and that being covered by its CIS repayment pilot (mentioned in Issue 123). The former is deemed to have much greater risks than the latter.

HMRC does not anticipate that its HVA work will have significant implications for professional accountants. They have defined HVAs as those who usually:

- Provide services on a commission or "no repayment no fee" basis
- Target clients in a specific trade or industry, eg construction
- Submit high numbers of repayment claims relating to expenses incurred

in their clients' employment or trade
- Receive the tax repayment as a nominee for their client
- Are not members of a professional taxation accountancy body
- Have little or no face to face contact with their clients ie majority of business is carried out electronically.

HMRC contend that a large proportion of the claims that HVAs make on behalf of their clients contain inaccuracies due to:

- Failing statutory tests
- Containing estimated/round sum figures with no statutory basis
- Being speculative/excessive
- Having little or no supporting evidence to verify that costs have been incurred
- Having undergone little or no pre-claim checking by the HVA.

One point worth noting is that while agents taking commission based on the total repayment achieved have been a primary risk as far as HMRC is concerned, accountants claiming repayments on behalf of clients where expenses are more than 20% of turnover have also been caught up in this activity.

More information on HVAs can be found at: **www.hmrc.gov.uk/manuals/chmanual/CH820000.htm**.

BUSINESS OWNER RETIREMENT – KEY TAX ASPECTS

A business owner who is seeking to retire will have a myriad of issues to deal with, ranging from tax and accounting matters, legal and company secretarial duties (if carried on through a company), business management and continuity arrangements and, where applicable, succession plans. The main focus of this article is on the tax planning aspects that a business-owner must address prior to retiring, of which there are a number:

- Income tax
- Corporation tax where the business is carried on by a company
- Capital gains tax
- Inheritance tax.

Other taxes and aspects will also have to be considered, such as de-registering for VAT and dealing with payroll taxes.

Income tax

Income tax is most relevant when dealing with an unincorporated business, particularly where the financial year is other than 31 March or 5 April. The reason for this is that the final year of assessment of the individual, including a partner in a partnership, will be based on the results to the normal accounting date plus results of any short period thereafter up to the date of retiral, less overlap relief.

The issue here is that, if profits have increased over the years then the amount of overlap relief may be quite modest in relation to the profits of the other two periods. Consideration should therefore be given to whether the cessation occurs shortly before 5 April or shortly after 5 April. A cessation shortly after 5 April will result in fewer than 12 months' profits being assessed, less any overlap relief.

If the individual will be a higher rate taxpayer in the year of cessation, then it would be worth minimising taxable income in the remainder of the year. For example, income need not be drawn from the pension fund, but instead, the individual might draw his tax-free lump sum or utilise savings to cover living expenses.

Pension contributions could also be maximised in the years running up to retirement to potentially obtain income tax relief at a higher rate and, for personal contributions, while there are still earnings against which the relief may be offset.

Where the individual who is retiring is the shareholder of a company, he may consider reducing his remuneration or dividends, subject to income tax, at rates between 20% and 45% (after 5 April 2013) and instead receive a higher consideration for his shares, either on sale or the liquidation of the company which may be subject to lower rates of capital gains tax of 10% (Entrepreneurs' Relief) or 18%/28% if Entrepreneurs' Relief is not available.

Corporation tax

The main corporation tax consideration occurs when a company ceases to trade upon the retiral of the individual. It may then be wound up or, alternatively, carry on as an investment company.

An accounting period ends when trade ceases. Care has to be taken where, for example:

- A pension contribution is to be made. This should be paid prior to cessation of trade rather than after, as there may be nothing to offset it against in the subsequent period.
- If there are trading losses in the final period and a capital gain arises subsequently, the losses will not be able to be offset against the gain.

If the assets of the company are to be sold, this may give rise to corporation tax liabilities on chargeable gains and it may be worth exploring with the purchaser the possibility of selling the shares instead. There may also be a Stamp Duty Land Tax advantage to the purchaser, who will suffer Stamp Duty at 0.5% where shares are purchased, rather than at 4%, where a property is one of the assets being acquired. However, the transaction could be more complicated as the purchaser may want to carry out due diligence and there will also be the costs of a very substantial sale agreement with warranties and indemnities.

Capital gains tax

Disposal of chargeable assets such as business premises and goodwill and

shares in a company will give rise to capital gains.

Entrepreneurs' Relief will be available where the disposal is of:

- An interest in a trading business.
- Shares or securities of a trading company. HM Revenue & Customs (HMRC) view a company whose non trading activities are no more than 20% as being a trading company.
- Assets owned personally but used by a partnership of which the individual is a member or a company in which the individual owns shares and the disposal is associated.

To qualify for Entrepreneurs' Relief, the individual must have owned the business or shares during the 12 months up to the disposal. In the case of shares, it is necessary for the individual to have at least 5% of the ordinary shares and voting rights and to have been an officer or employee throughout the 12 months to the date of disposal.

It will clearly be advantageous to ensure that Entrepreneurs' Relief will be available and the following are among the aspects to be considered:

- Consider removing surplus assets not used in the trade from a company so that it falls within the 20% test. The 20% test is looked at in the round, with turnover, profit, management time spent and assets employed in trading and non-trading activities being considered.
- Where a working spouse owns the requisite 5% shareholding and a non-working spouse owns shares, then the latter could consider gifting shares to the working spouse. It is not necessary for the gifted shares to be held for a year, only that the spouse who does qualify has held 5% throughout the 12 months.
- Where a business is sold but the purchaser does not require the business premises then, provided these are sold within three years of the date of cessation of trade, Entrepreneurs' Relief will be available, even if the property has been rented out in the interim.
- Ensure that assets owned personally, such as the business premises, are sold at the same time as the main disposal of the interest in a business or shares. Where this is in doubt then the property could be sold, at market value, to a company set up for the purpose.

Where Entrepreneurs' Relief is not available, or even where the individual wishes to mitigate capital gains tax at 10%, then he can consider:

- Creating capital losses by disposing of other chargeable assets standing at a loss.
- Gifting an interest to a spouse to make use of an additional annual exemption.
- Making an investment under Enterprise Investment Scheme (EIS) or Seed Enterprise Investment Scheme (SEIS) which will enable the capital gain to be deferred and also obtain 30% or 50% income tax relief.

Inheritance tax

Retirement per se does not give rise to an inheritance tax liability. However, where a business or company shares have been disposed of at the same time, it may be that the individual now has cash or loan notes which will be fully exposed to inheritance tax on death rather than assets qualifying for 100% Business Property Relief.

Inheritance tax planning may involve:

- Investing in replacement assets, which can be another business, shares in an unquoted trading company or farming assets.
- Giving away the proceeds of sale.
- Effecting life assurance to cover all or part of the liability.

There are many things to consider in the run up to retirement from a tax point of view and it is worth looking at these in the two or three years leading up to the proposed retirement date so that an efficient strategy can be devised.

JOINTLY OWNED LAND – SEPARATING INTERESTS

Sections 248A-C of Taxation of Chargeable Gains Act 1992 enacts what was previously an extra statutory concession which allows joint owners of land to separate their interests such that each becomes the sole owner of a specific piece of land.

The Sections enact what was previously an HM Revenue & Customs concession in respect of disposals after 5 April 2010.

Providing that the following conditions are met, the gain on disposal of part of an interest in one piece of land can be rolled over against the value of the piece of land being acquired:

a) The landowner and one or more other persons jointly hold an interest in land or two or more separate holdings of land.
b) The landowner disposes of an interest (relinquished interest) in the holding of one or more holdings to the co-owners or to one or more of the co-owners.
c) The consideration for the disposal is or includes an interest (acquired interest) in a holding of land held jointly by the landowner and one or more of the co-owners.
d) As a consequence of the disposal the landowner and each of the co-owners become the sole owner of part of the holding or the sole owner of one or more of the holdings.
e) The acquired interest is not an interest in excluded land.

Excluded land is defined by Section 248C and is a dwelling house or part of a dwelling house and, the whole or any part of a gain accruing on a disposal of it, at a material time, would not be a chargeable gain. The "material time" is a period of six years beginning with the date of acquisition. The effect of this is that the land owner cannot roll the gain arising on the interest he is disposing of into a property which will be his main residence. Section 248C(3) covers the situation where, at the time of acquisition, a house is not excluded land but becomes so within the six year period.

Section 248B covers the computation of the relief:

- If the value of the consideration for the disposal of the relinquished interest is equal to or less than the value of the consideration for the acquired interest, the land owner is treated:
  - as if the consideration for the disposal of the relinquished interest were of an amount giving rise to neither a gain nor a loss, and
  - as if the value of the consideration for the acquired interest was reduced by the excess of the value of the relinquished interest over the consideration which the land owner is treated as receiving for the relinquished interest.
- Where the value of the consideration for the disposal of the relinquished interest exceeds the value of the consideration for the acquired interest then, if the excess is less than the gain on disposal of the relinquished interest, the landlord is treated:
  - as if the amount of the gain were reduced to the amount of the unexpended consideration, and
  - as if the amount of the consideration for the acquired interest were reduced by the amount by which the gain is reduced.

Section 248A is headed "rollover relief on disposal of joint interests in land" and the relief described above operates in a similar way to rollover relief on replacement of business assets. One of the main differences is that the Sections 248A-C relief does not require new land to be used in a business. It is a very useful and valuable relief in situations where, for example, children are bequeathed joint interests in a number of properties or farmland and they each wish to acquire sole ownership of specific properties or specific areas of land. Spouses or civil partners who are living together are treated as a single landowner or a single co-owner for the purposes of the relief.

AMATEUR SPORTS CLUBS

There are many amateur sports clubs throughout the country whose members are engaged in diverse activities ranging from football to cricket, cycling to rugby and swimming to athletics. Anyone who is involved in this type of organisation will know that many clubs struggle to raise finance. These organisations play a vital role in community life and the Community Amateur Sport Club (CASC) scheme recognises this by offering beneficial tax treatment to qualifying organisations that distinguishes them from other businesses.

The benefits of registering as a CASC are:

- 80% mandatory business rate relief – Local Authorities have discretionary powers to offer 100% relief.
- Use of Gift Aid to raise funds – but there are restrictions for membership subscriptions as outlined below.
- Exemption from corporation tax on trading activities where the trading income is under £50,000 (to be introduced with Finance Act (FA) 2014, currently £30,000) so all funds can be retained by the club – this covers income from club bars, cafes and venue hire.
- Any capital gains made where the whole gain is used for the purposes of the CASC are exempted from corporation tax.
- Exemption from tax on income from property activities where the gross income is under £30,000 (to be introduced with FA 2014, currently £20,000).
- If a CASC has trading income below the limits and gross rental income below the relevant limit, it does not have to file a corporation tax return with HM Revenue & Customs (HMRC).
- A CASC may also reclaim tax deducted from other income such as on bank or building society interest, as well as on tax deducted from income arising on gifts left to them in a will.

As is evident from the exemptions, the CASC status can apply to clubs which own property and have rental income from their property.

A very good toolkit has been produced which can be downloaded from **www.scottishathletics.org.uk/index.php** and is filed under external funding, gift aid toolkit – Winning Scotland Foundation. There is also information at **cascinfo.co.uk**. The HMRC guidance is at **www.hmrc.gov.uk/casc/casc_guidance.htm**. The Gift Aid toolkit has some very useful advice on whether an organisation is eligible as either a charity or a CASC.

As indicated, a CASC can benefit from Gift Aid and reclaim basic rate income tax relief from HMRC. For example, a £100 payment made under Gift Aid can enable a CASC or charity to reclaim £25 from HMRC. Non taxpayers should not however make payments under Gift Aid. A basic rate taxpayer need do nothing else, but a higher or additional rate taxpayer will be able to claim further

relief from HMRC.

To register as a CASC, form CASC A1, which is available from HMRC's website, should be completed and lodged.

To become a CASC, a club must:

- Have as its main purpose providing facilities for and encouraging participation in one or more eligible sports (list available at: **www.hmrc.gov.uk/casc/annex1.pdf**). It is not necessary to have premises, however - take the example of a cycling club which promotes and organises training rides on public roads.
- Be organised on an amateur basis, ie:
  - it must be non-profit making
  - it must only provide members and their guests with the sorts of benefits that an amateur sports club would normally provide. This can be a tricky area and what is reasonable will vary from one CASC to another. Some governing bodies provide guidance for clubs wishing to retain amateur status but these should not be confused with the CASC conditions which can be more onerous. Help in this area can be received from HMRC Charities Helpline.
  - if the club is wound up, whatever funds are left over must be used for approved sporting or charitable purposes.
- Be open to the whole community, ie:
  - Membership is open to all without discrimination
  - Facilities are available to members without discrimination
  - The level of membership fee does not pose a significant obstacle to membership or use of the facilities.
- Meet the management condition, ie, the club must have managers (persons having the general control and management of the administration of the club) that are fit and proper persons.
- Meet the location requirement, ie, is established in and provides facilities in an EC Member State or relevant territory.
- Have a formal constitution.

There are important differences between a CASC and a charity and the administrative requirement for a charity are more onerous than for a CASC. It is important to be aware that for a CASC, Gift Aid cannot be used for the membership fees as these are specifically excluded by the legislation. To maximise Gift Aid it is possible to set a basic membership fee and then seek a top up voluntary donation. This approach has commercial risks - the member may not pay the top up, with an impact on income.

One of the more complex areas for sports clubs is PAYE where there are payments made to reimburse players for expenses. A CASC has no exemption from operating PAYE so if these types of payments are taxable then the club will need to consider its tax position, particularly in the light of the introduction of Real Time Information.

TAX TABLES – USE THE CORRECT ALLOWANCES, RELIEFS, RATES ETC

The 2013/14 tax year is almost at an end and we have therefore included the 2014/15 allowances, rates and reliefs for all of the key taxes at Appendix 1.

Probably the biggest change going into 2014/15 is the reduction in the upper rate of corporation tax from 23% to 21%, with convergence to 20% planned for the following year. Another key area to watch out for relates to company car tax – those vehicles with emissions of 76g/km or more will have an automatic 1% increase on their benefit in kind charge from 6 April 2014.

THE COTTER CASE – JURISDICTIONAL BOUNDARIES AND HMRC'S ENQUIRY APPROACH

The Supreme Court has allowed HM Revenue & Customs' (HMRC's) appeal in the Cotter case (2013 UKSC 69) which covered a number of interesting areas:

- The jurisdictional boundaries between a specialist tax tribunal and the ordinary courts.
- The approach taken by HMRC to enquire into a claim for loss relief made as part of a tax avoidance scheme used by some 200 taxpayers.

The case revolved around a dispute between the taxpayer and HMRC regarding their attempt to enforce collection of an amount of tax payable for 2007/08 of £211,927. The taxpayer made a claim in the following year to carry back losses incurred for 2008/09 against the 2007/08 income to eliminate the tax liability and create a credit on his self–assessment statement of account. The loss arose as a result of a tax planning scheme entered into by the taxpayer which HMRC eventually struck down.

The case had originally been taken to the County Court by HMRC in connection with the collection of the tax due from the taxpayer. The First Tier Tribunal (FTT) has exclusive jurisdiction to hear

taxpayer's appeals against assessments to tax, but in the Cotter case the original case was about collection rather than assessment. The judge noted that the County Court and High Court do have jurisdiction to determine issues which do not encroach on the FTT exclusive jurisdiction, but in this case the issues concerned the underlying tax legislation.

The tax technical issues were about whether relief should be given for the loss relief claimed in the return for the later period against the tax liability in 2007/08. Mr Cotter wanted the credit to be offset and given effect to through his self-assessment statement of account, but HMRC would not adopt this approach as the 2008/09 return was under enquiry in connection with the tax planning undertaken. The taxpayer had made full disclosure on his 2008/09 return and indicated that his interpretation of the law might not accord with HMRC and that "*for these reasons I assume that you will open an enquiry*".

The issue of whether the refusal of HMRC to offset the credit was lawful depended on the provisions under which the enquiry was being carried out.

There are two alternatives:

- Taxes Management Act (TMA) 1970 s9A – if the enquiry was under this section, then HMRC are required to give effect to the set off until the enquiry is complete – collection of the tax is deferred.
- TMA 1970 Sch 1A – if the enquiry was under this schedule, then the loss relief in the next period does not have to be taken into account and the tax has to be paid up front.

The distinction between the two parts of TMA 1970 is as follows:

- S9a applies to anything "*contained in a return or required to be contained within a return*" including any claim or election included in the return.
- Sch 1A applies to claims not included in the return.

In effect, the question came down to whether the claim for relief was made in the return (9A) or not (Sch 1A). The return actually submitted for 2007/08 did not include any claim for the losses brought back or a note that there would be a claim. The return was made by 31 October 2008 and the taxpayer asked for HMRC to calculate the tax – which they duly did without any allowance for loss relief. The claim for relief was made in the return for 2008/09 and the court looked at whether this claim would mean that the enquiry would be under section 9A TMA. The conclusion was that this was not the case and the approach taken by HMRC was correct – HMRC were entitled to ignore the claim made in the return for the later period under Sch 1A TMA 1970 and did not have to give effect to the loss claim before the enquiry was complete.

There are some very important issues to draw out from the case – along with the complexities of tax law. The provisions of section 9 TMA mean that HMRC have to take claims into account when seeking collection of tax due so it is very important that claims are mentioned in the return for the relevant year where tax is payable. This protects the taxpayer's position and will defer any tax payments which become due if an enquiry means additional tax is due. The other issue the case highlights is that allowing HMRC to calculate the tax due is not always the best course of action – and for Mr Cotter it had the effect that the relief that he had been planning for was not taken into account.

TAX CASE

R&C Commissioners v Bosher (2013) UKUT 0579 (TCC)

Point at issue: Whether penalties for late filing of Construction Industry Scheme (CIS) returns were proportionate or in contravention of the appellant's human rights.

Facts: The appellant, R&C Commissioners, had appealed to the Upper Tribunal (UT) against the decision by the First Tier Tribunal (UKFTT 631) that penalties for late filing of CIS returns imposed on Mr Bosher were disproportionate and in contravention of his human rights.

The original appeal by Mr Bosher was against penalties of £54,100 (reduced from a previous level of £64,400) in respect of failure to make monthly returns by the due date under the CIS.

These penalties were made up of:

- 193 fixed penalties of £100 pursuant to s98A(2)(a) Taxes Management Act (TMA) 1970
- 17 variable 'month 13' penalties totalling £34,800 imposed pursuant to s98A (2) (b) TMA 1970.

Month 13 penalties are dependent on the number of failures to file on time in the previous 12 months and are on a sliding scale of £300 for just one failure to file on time to £3,000 for 6 or more failures to file on time.

In January 2011, HM Revenue & Customs (HMRC) had offered to reduce the penalties to £14,600, under s102 TMA. This offer was turned down by Mr Bosher, so that the appeals before the FTT were in relation to the higher amount of £54,100.

Mr Bosher argued at the FTT that (a) he had made each CIS return on time, and (b) he had not received a large number of penalty notices. This evidence was rejected. In fact, the Tribunal went as far as to say that Mr Bosher's compliance record had historically been very poor, referring back to the period 2004/5 to 2006/7 where he had received numerous penalties (£1,200 worth) for

failing to submit CIS36 annual returns on time.

Nevertheless, the Tribunal found that the variable penalty amounts levied by HMRC were "excessive" and decided to reduce them to the greater of £100 or whatever CIS tax was due in respect of the relevant return. The Tribunal calculated the aggregate of the month 13 penalties to be £6,287 on this basis.

In relation to the fixed penalties, the Tribunal took the unusual step of determining that section 3 of the Human Rights Act permitted it to read the word "incorrect" in s100B(2)(a)(iii) TMA in such a way so as to include penalties which are disproportionate and therefore breach a taxpayer's human rights. It therefore reduced these penalties to zero. It is unsurprising that HMRC appealed this decision.

Arguments: Mr Bosher's argument was based on the premise that the penalty regime, as it had been applied to him, had resulted in penalties that were not proportionate and so his human rights (so-called A1P1 rights per the European Human Rights Act 1998) had been infringed.

As part of his skeleton argument served shortly before the UT hearing, Mr Bosher also introduced a new argument, namely, that penalty notices, being computer generated and without any human intervention, were not penalty notices at all.

HMRC's appeal to the FTT was on the basis of whether the Tribunal had the jurisdiction to cancel the penalties. HMRC believed that FTT did not have this power and even if they did, the penalties were proportionate and should not have been interfered with.

A key aspect of the HMRC's argument was that, if penalties imposed on an individual are deemed to be disproportionate, they are still subject to HMRC's power to mitigate under s102 TMA, and, failing agreement, susceptible to judicial review. On this basis, there would be no need to depart from the ordinary interpretation of S100B and section 3 of the Human Rights Act would not apply. HMRC also argued that even if there was an infringement of the taxpayer's rights, the extent to which the interpretative, and not legislative, provisions could rewrite s100B was limited and that Mr Bosher was seeking beyond that limit.

Judgement: The UT considered its role and that of the FTT. It believed its role was one of legal precedent in contrast to that of the FTT which has a wholly statutory jurisdiction. The FTT, in relation to fixed penalties, therefore had the power to set aside an incorrectly imposed penalty, or to correct a penalty which has been imposed in the correct amount. It could not, however, discharge or adjust penalties because these were unfair. HMRC, on the other hand, do have the power to mitigate penalties and, if penalties mitigation does fail, judicial review is available. The FTT had therefore taken the wrong approach, allowing the UT to substitute its own views. The UT found that:

- The legislation and the right to a judicial review did not infringe the taxpayer's rights under A1P1;
- Even if that was incorrect, section 3 does not enable the tribunals and courts to read the legislation as if it gives effect to those rights; and
- The penalties imposed by the regime and in this case were not disproportionate.

The appeal was therefore allowed.

Commentary: There are some interesting points coming from this case. Firstly, the concept of proportionality is one which Mr Bosher may wish to appeal further and this seems to be an eventuality which the UT is prepared for. However, this will need to take the form of a judicial review (in the administrative court). It could then be transferred back to the Upper Tribunal. Unfortunately, in practice, success with this route may be difficult, not only due to the cost, but the need for the taxpayer concerned to overcome the Wednesbury principle (ie the decision is so unreasonable that no reasonable person could have come to that decision).

Secondly, shortly before the appeal, Mr Bosher introduced a new argument to the case. This was based on the fact that penalty notices were computer generated and not therefore valid penalty notices. Although UT acknowledged that it had the power to allow a new point to be introduced, it chose not to do so. This was partly due to the lateness of the appeal, but also due to potential costs to Mr Bosher. There was an order preventing either side from recovering any costs of the appeals. However, the judges felt it was one thing to allow Mr Bosher to present arguments as the defendant without exposing himself to an adverse costs order and quite another to give him the same protection when he was raising a new point and not simply defending himself. The judges also took into account that HMRC would appeal any decisions on the validity of penalty notices if they lost in the UT and, depending on the costs position, Mr Bosher might not wish to participate in later appeals leaving an "objectively undesirable position". It was also noted that there were cases in the system which would be more suitable to discuss this point.

TAX QUERY

Query: *I have a client who is intending to incorporate his business into a limited company. Although he has been trading as a sole trader for many years, we are wondering whether the property from which the company trades should be retained personally by him or whether the premises should be transferred into the limited company.*

I am aware that, if the property is retained by the client, then the capital gains relief under S.162 The Taxation of Chargeable Gains Tax Act (TCGA) 1992 will not be available. However, we are not worried about crystallising a capital gain as the client will be entitled to entrepreneurs' relief. I am concerned, in particular, about the inheritance tax position.

Answer: Shares in an unquoted trading company will generally qualify for business property relief for inheritance tax purposes. If the premises are owned by the company then shares are likely to have a higher value which will qualify for business property relief.

However, if the company did get into difficulties then the business premises would be at risk as they would be an asset of the company.

The 50% rate of business property relief also applies in situations where partners personally own each property from which a partnership, of which they are a member, trades. This can sometimes be the case where more senior partners own the business premises as the more junior partners have not the wherewithal to acquire a share in valuable business premises.

If the client retained the premises personally, then under S.105(1)(d) Inheritance Tax Act (IHTA) 1984 and S.104(1) IHTA 1984, business property relief at 50% would be available provided that the premises were used wholly or mainly for the purposes of a business carried on by the company and the transferor had control.

From your query, it does appear as if your client will have control of the company but, nevertheless, relief will only be available at the 50% rate. For this purpose, holdings of related property can be taken into account.

Instances can arise where two otherwise unconnected individuals own the business premises from which their company trades and the shareholdings are in unequal proportions, say 51% and 49%. The 51% shareholder may then qualify for 50% business property relief in respect of his interest in the property but the 49% shareholder will qualify for nothing at all.

A possible solution to this would be, rather than retaining the business premises personally, to create a group of companies consisting of a holding company and a wholly owned trading subsidiary. The entire trade and assets could be transferred to the holding company and, shortly thereafter, the trade and all assets excluding the business premises, are hived down to the trading subsidiary.

Subject to there being no cross guarantees between the two companies, were the trading company to fail then the property would be protected within the holding company. Your client's shares in the holding company would qualify for 100% business property relief on the basis that they consist of shares in a holding company of a trading subsidiary (S.105(4)(b) IHTA 1984).

A GUIDE TO THE SMALL COMPANIES (MICRO-ENTITIES' ACCOUNTS) REGULATIONS 2013

A new category of company – the 'micro-entity' - has been created by the UK Government in an effort to seek to reduce the apparent administrative burden on business. Businesses qualifying as micro-entities are entitled to prepare and file a more concise form of accounts.

The Small Companies (Micro-Entities' Accounts) Regulations 2013 (the Regulations) came into force on 1 December 2013. They apply for financial years ending on or after 30 September 2013 for accounts of applicable companies filed on or after 1 December 2013. It is believed that scope will be given by the UK Government to extend the scope of these Regulations in due course, eg to encompass LLPs.

Table 1

The qualifying conditions are met by a company in a year in which it satisfies two or more of the following requirements:

Requirement	Limit
1. Turnover	Not more than £632,000
2. Balance sheet total (Total of Fixed and Current Assets)	Not more than £316,000
3. Number of employees	Not more than 10

Micro-entities definition

The definition of a micro-entity is similar in nature to that of a small company and the qualifying conditions are shown in Table 1 above.

The number of employees means the average number of persons employed by the company in the year, determined as

follows:

(a) find for each month in the financial year the number of persons employed under contracts of service by the company in that month (whether throughout the month or not),
(b) add together the monthly totals, and
(c) divide by the number of months in the financial year.

A company qualifies as a micro-entity in relation to its first financial year if the qualifying conditions are met in that year.

A company qualifies as a micro-entity in relation to a subsequent financial year if the qualifying conditions are met in that year; and where on its balance sheet date a company meets or ceases to meet the qualifying conditions, that affects its qualification as a micro-entity only if it occurs in two consecutive financial years.

A parent company qualifies as a micro-entity in relation to a financial year only if:

(a) the company qualifies as a micro-entity in relation to that year; and
(b) the group headed by the company qualifies as a small group.

Entities excluded from the micro-entity regime

The Regulations only apply to UK companies, so LLPs (although referred to above), qualifying partnerships, overseas companies and unregistered companies cannot currently qualify.

In order to qualify, companies must also meet the definition of a small company, ie they must not be a PLC, a member of an ineligible group, an insurance company or an ineligible financial services company. Additionally, a company that is part of a group which prepares group accounts does not qualify as a micro-entity. Finally, the following types of company are also excluded:

- Investment undertakings
- Financial holding undertakings
- Credit institutions
- Insurance undertakings
- Charities.

Content of accounts

The Regulations introduce a new ‘abridged’ accounts format that qualifying micro-entities may apply in the accounts prepared for members and to be filed. Only one abridged profit and loss format is permitted, with the option of two alternative balance sheet formats. Micro-entities need not provide notes to the accounts except for the minimum shown in Table 2 below.

Table 2

Minimum notes required for micro-entities

(i) Those required by section 413 of the Companies Act 2006, ie details of advances and credits granted by the company to its directors, and guarantees of any kind entered into by the company on behalf of its directors.

Details Required of Advance or Credit	Details of Guarantees
(a) its amount; (b) an indication of the interest rate; (c) its main conditions; (d) any amounts repaid; (e) totals of (a) and (b) respectively.	(a) its main terms (b) the amount of the maximum liability that may be incurred by the company (or its subsidiary); (c) any amount paid and any liability incurred by the company (or its subsidiary) for the purpose of fulfilling the guarantee (including any loss incurred by reason of enforcement of the guarantee); and (d) totals of (b) and (c) respectively

(ii) The disclosures required by paragraph 57 of Part 3 of Schedule 1 to The Small Companies and Groups (Accounts and Directors’ Report) Regulations 2008. These are:

(a) Particulars of any charge on the assets of the company to secure the liabilities of any other person, including, where practicable, the amount secured.
(b) The following information with respect to any other contingent liability not provided for: the amount or estimated amount of that liability; its legal nature; and whether any valuable security has been provided by the company in connection with that liability and if so, what.
(c) Where practicable, the aggregate amount or estimated amount of contracts for capital expenditure, so far as not provided for.
(d) Particulars of any pension commitments included under any provision shown in the company’s balance sheet, and any such commitments for which no provision has been made, and where any such commitment relates wholly or partly to pensions payable to past directors of the company separate particulars must be given of that commitment so far as it relates to such pensions.
(e) Particulars of any other financial commitments that have not been provided for, and are relevant to assessing the company’s state of affairs.
(f) Commitments within any of sub-paragraphs (a) to (e) which are undertaken on behalf of or for the benefit of any parent undertaking or fellow subsidiary undertaking, or any subsidiary undertaking of the company, must be stated separately from the other commitments within that sub-paragraph, and commitments within paragraph (a) must also be stated separately from those within paragraph (b).

Micro-entities must still prepare a Directors report, but they can use the small company exemptions. Following the introduction of the Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013, which take effect for accounting periods ending on or after 30 September 2013, all that a small company is required to include in the directors report is: the names of the directors, and political donations made (if any).

The accounts should be prepared under the usual accounting principles, but the alternative accounting rules and fair value accounting rules cannot be applied, meaning that all fixed assets and investment properties will have to be measured at cost.

If the accounts are prepared in accordance with the micro-entity provisions, the balance sheet must contain, in a prominent position above the signature, a statement to that effect.

Filing requirements

Micro-entities will not be able to file 'abbreviated accounts' as defined in the Companies Act, but they may choose not to file their directors' report and profit and loss account, therefore the position is effectively similar to that for small companies.

True and fair view

In relation to satisfying the true and fair view requirement of company law in relation to a company's accounts:

(a) Where the accounts comprise only micro-entity minimum accounting items, the directors must disregard any provision of an accounting standard which would require the accounts to contain information additional to those items,

(b) In relation to a micro-entity minimum accounting item contained in the accounts, the directors must disregard any provision of an accounting standard which would require the accounts to contain further information in relation to that item, and

(c) Where the accounts contain an item of information additional to the micro-entity minimum accounting items, the directors must have regard to any provision of an accounting standard which relates to that item.

Therefore, in order to show a true and fair view, all that is required is to ensure that the specified requirements are met - the micro-entity minimum accounting items included in the company's accounts for the year are presumed to give the true and fair view.

Pros and cons

The Regulations have been introduced by the EU as a simplification measure for the smallest businesses. While the volume of information included in a micro-entity's accounts will obviously decrease, the work effort involved in producing the accounts may not change significantly as the same recognition and measurement principles will still apply. Businesses qualifying as micro-entities and their advisers should consider whether the new accounts format will serve them better than the existing accounts formats. Entities should consider which parties will be interested in their accounts – if these are mostly internal, then micro-entity accounts may be sufficient. However, external parties, such as banks and credit agencies, may require additional information. Therefore, in these cases, continuing to produce small company accounts may be more appropriate. Consideration will also need to be given of what HMRC will require, e.g. a detailed profit and loss account.

Accountants' report

It is not expected that the wording of the accountants' report under the ICAS Framework for the Preparation of Accounts will need to be changed.

Misleading accounts

The ICAS Code of Ethics has been revised as of 1 January 2014. One of the changes is to reflect the introduction of the micro-entity regime and the possibility that an ICAS member could be associated with a set of accounts that whilst legally showing a "true and fair" view were possibly misleading. The Code now states at paragraph 110.2:

A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information:

(a) Contains a materially false or misleading statement;

(b) Contains statements or information furnished recklessly; or

(c) Omits or obscures information required to be included where such omission or obscurity would be misleading.

In relation to accounts prepared under 'The Small Companies (Micro-Entities' Accounts) Regulations 2013, accounts which satisfy the 'true and fair' view requirement of this Statutory Instrument cannot be held to be misleading.

When a professional accountant becomes aware that the accountant has been associated with such information, the accountant shall take steps to be disassociated from that information.

We would advise firms to consider this issue carefully when preparing accounts on the micro entity basis using the available exemptions such that they do not fall foul of this. The Code can be found at: **http://icas.org.uk/Ethics/**.

The next edition of Technical Bulletin will include a set of model micro entity accounts which should be of some assistance to those firms who have clients wishing to take advantage of the disclosure exemptions.

EXCEPTIONAL AND ADDITIONAL LINE ITEM REPORTING – FRC SEEKING CONSISTENCY

The Financial Reporting Review Panel (FRRP) of the Financial Reporting Council (FRC) has identified a significant number of companies who have reported exceptional and additional line items inadequately.

FRS 3 defines an exceptional item as a "*material item which derives from events or transactions that fall within the ordinary activities of the reporting entity and which individually or, if of a similar type, in aggregate, need to be disclosed by virtue of their size or incidence if the financial statements are to give a true and fair view*".

IAS 1 "*Presentation of financial statements*" requires that disclosure of such items should be on the face of the income statement via additional line items or headings, if their presentation is necessary to understand the entity's financial performance. Otherwise, these items should be disclosed in the notes to the financial statements.

The key, therefore, is to decide which items require separate presentation. The FRC states that the "*approach taken in identifying additional items that qualify for separate presentation should be even-handed between gains and losses, clearly disclosed and applied consistently from one year to the next. It should also be clearly distinguished from alternative performance measures used by the company that are not intended to be consistent with IFRS principles*".

Other matters that preparers of financial statements should note include:

- Gains and losses – should not be netted off in arriving at an amount disclosed unless otherwise permitted.
- Recurring material items – need to consider whether these should be included as part of underlying profit.
- Tax effect of additional items – needs to be explained.
- Material cash amounts relating to additional items – should be presented separately in the cash flow statement.
- If underlying profit is used in determining executive remuneration or in the definition of loan covenants – companies should take care to disclose the methodology used.
- Management commentary on results - should be clear on which measures of profit are being commented on and should discuss all significant items which make up the profit determined according to IFRS.
- Significant items of expense unlikely to be finalised for a number of years or may subsequently be reversed - the effect of such changes should be similarly identified as additional items in subsequent periods to allow readers to track movements between periods.

Further information can be obtained on the FRC's website at: **http://frc.org.uk/News-and-Events/FRC-Press/Press/2013/December/FRC-seeks-consistency-in-the-reporting-of-exceptio.aspx**.

APPROPRIATE CONSIDERATION OF POST BALANCE SHEET EVENTS – A SALUTARY REMINDER FROM THE FAREPAK CASE

The recent fine handed down to the auditor of Farepak Food and Gift Limited ("Farepak"), should serve as a reminder to all audit firms of the importance of ensuring that post balance sheet events are adequately considered and recorded on their files. The auditors were fined £1m (£700k damages and £300k costs), predominantly for failing to perform adequate procedures to obtain sufficient appropriate audit evidence that all material subsequent events up to the date of their audit report which required adjustment of, or disclosure in, the financial statements had been identified and properly reflected therein.

The consolidated accounts for the European Home Retail (EHR) group, of which Farepak was a subsidiary for the year to 30 April 2005, were signed off on 10 August 2005. The audit report on the Farepak subsidiary accounts was signed off on 13 February 2006. In relation to Farepak's accounts, there was a failure by the auditors to:

- Properly consider Farepak's ability to: continue as a going concern;
- Properly consider whether any relevant disclosures were required in the financial statements to give a true and fair view;
- Make proper enquiries of the directors; and,
- Examine the appropriate financial information.

In particular, there was a failure to adequately identify the liquidity and cash flow problems facing EHR and, by extension Farepak, that had arisen since the balance sheet date, principally

the absence of financial headroom in January and February 2006.

Additionally, in relation to a letter of representation, regarding post balance sheet events, there was a failure to seek or obtain adequate corroborative evidence for the assertions, properly evaluate whether the representations made appeared reasonable and consistent with the other audit evidence obtained, or properly consider the implications of the lack of evidence for their audit report.

Full details of the decision can be found at: **frc.org.uk/News-and-Events/FRC-Press/Press/2013/December/Outcome-of-disciplinary-case-against-Ernst-Young-L.aspx**.

ACCOUNTING AND AUDITING QUERIES

Query: *I am preparing the accounts of a Scottish unincorporated charity for the year ended 31 December 2013 and would like to clarify whether these accounts should receive an audit rather than an independent examination. For the year to 31 December 2012 the charity's gross income was £480,000 and an independent examination was conducted. This year the charity's gross income from its usual sources amounted to £460,000 and in addition it received a bequest of £100,000. Should the bequest be included as part of the charity's gross income for determining whether it should be audited?*

Answer: If a Scottish charity's gross income in a year is £500,000 or more (if period is not 12 months then adjust on a proportionate basis) it will require an audit. This is the case irrespective of whether the charity is incorporated or not.

The definition for gross income in the Scottish Charity Accounts (Scotland) Regulations 2006 (as amended) is "*incoming resources of the charity in all restricted and unrestricted funds but excluding the receipt of any donated asset in a permanent or expendable endowment fund*". For periods commencing on, or after, 1 April 2011, this definition replaced the definition "*total recorded income of the charity in all unrestricted and restricted funds but not including resources received as capital funds*".

Therefore, it would be worth checking with the charity's legal advisor or the donor's solicitor, as appropriate, whether the bequest is a permanent or expendable endowment. If this is the case the amount of the bequest would not be 'gross income' for the purposes of determining whether the charity requires an audit.

The ICAS Charities Committee has issued guidance for ICAS members acting for Scottish Charities. The guidance provides additional details about the external scrutiny requirements which apply to Scottish charities and can be accessed at: **http://icas.org.uk/charityguide2011/**.

Query: *I am employed by an accountancy firm and have been asked by a local charity's trustees if I would be willing to independently examine the charity's accounts on a voluntary basis. I do not hold a practising certificate.*

Answer: ICAS permits members who do not hold a practising certificate to undertake charity independent examinations in limited circumstances. You will also need to ensure that you have sufficient knowledge and experience to undertake the independent examination and are independent from the charity. It is also worth confirming, from your employer's point of view, that there is nothing to prevent you taking on this engagement. Additionally, you will need to consider the size of the charity and the accounts and external scrutiny requirements that specifically apply to it.

With regards to the ICAS rules a member would not be regarded as engaging in practice and hence would not require to hold a practising certificate provided:

(i) any fee charged for the independent examination is regarded as a nominal fee; and

(ii) the member does not undertake more than three such appointments.

In respect of (i) above, if a member is to receive a fee in excess of £50 per engagement then it may be difficult to justify that the fee concerned is nominal. Also, in respect of (ii) above, a member who is undertaking more than three engagements free of charge, or for nominal fees, may be regarded as being in practice.

An ICAS member who provides accountancy services, including independent examinations, to a number of different charities for free or for a nominal fee, and has any doubt about whether a practising certificate is required should contact the Public Practice Committee, formerly, the Practitioner Certification Committee. Queries should be directed via Rachel Richardson at **rrichardson@icas.org.uk** or on 0131 347 0286.

Members who do not hold a practising certificate and who provide accountancy services to charities on the basis described above, do not need to carry professional indemnity insurance (PII), although they can do so if they wish. However, if no PII is carried, the charity's trustees should be notified in writing.

Further information on this topic is included in the ICAS Charities Committee's guidance on ICAS rules for ICAS members acting for UK charities. This guidance is available on the ICAS website at: **http://icas.org.uk/home/technical-and-research/technical-information-and-guidance/charities/guidance-for-charities-and-their-advisors/**.

Query: *I have a charity audit client which has received a government grant of £1.5 million for the purchase of a tangible fixed asset. The charity has treated the grant as deferred income in its accounts in accordance with Statement of Standard Accounting Practice (SSAP) 4 on government grants. The Office of the Scottish Charity Regulator (OSCR) has rejected the accounts and has advised that in order for the charity's accounts to give a true and fair view the full amount of the government grant should be credited to the Statement of Financial Activities in the year of receipt. Is OSCR's suggested approach correct?*

Answer: Yes. OSCR's suggested approach is correct.

The Charities Statement of Recommended Practice (SORP) 2005 (revised) states that "*where incoming resources are given to provide fixed assets are donated, the charity will normally have entitlement to the incoming resources when they are receivable. At this point, all incoming resources should be recognised in the SoFA and not deferred over the life of the asset.......This treatment accords with the requirements under accounting standards for the recognition of assets and liabilities and provides the most appropriate interpretation of SSAP 4 for charities.*"

The Charities Accounts (Scotland) Regulations 2006 (as amended) requires that charities, which are not entitled to or do not prepare receipts and payments accounts, must prepare their accounts in accordance with the SORP 2005 in order for those accounts to give a true and fair view. The Regulations include the ability to override both the Regulations and the SORP if this is considered necessary for the accounts to give a true and fair view. However, it would be difficult to justify using the override in this instance.

Under the new Charities SORP, which is due to be issued during 2014, there will be no change to the accounting treatment of government grants received for the purchase of fixed assets. The new Charities SORP will be effective for accounting periods commencing on, or after 1 January 2015. The Scottish Government will of course need to amend the Regulations to require charities to apply the new version of the SORP.

The ICAS Charities Committee submitted comments on the latest draft Charities SORP and these are available to view at: **http://icas.org.uk/home/technical-and-research/technical-information-and-guidance/charities/charities-committee-submissions/**.

IMPORTANT CHANGES TO THE CONSUMER CREDIT LICENCE REGIME - AFFECTS ALL CA FIRMS

The UK Government has recently announced important changes to Consumer Credit regulation with effect from 1 April 2014. If you are engaged in any consumer credit activity, then it is important that you consider your activities and the next steps now (if you have not already done so), as the changes will affect your firm.

What is changing?

The Regulator

The consumer credit licensing regime will transfer from the Office of Fair Trading (OFT) to the Financial Conduct Authority (FCA) with effect from 1 April 2014. Over the last few months, the FCA has consulted on its proposed changes to the regime (see CP 13-07 and CP 13-10 (**www.fca.org.uk/news/cp13-10-consumer-credit-detailed-proposals**)).

The end of the group licence

The group consumer licence regime currently provides general consumer credit permissions to ICAS monitored/regulated firms. The FCA no longer intends to issue group licences to professional bodies and they will cease on 1 April 2014.

What this means

The impact on your firm depends on the type and extent of your consumer credit activities and your authorisation status for financial services. You should identify the potential consumer credit activities that you provide, if you have not done so already. The two most common consumer credit activities that firms are engaged in are:

- Fee payment by instalment (this is classed as 'consumer credit' or the other term is 'entering into a regulated credit agreement'). Please note that there is an exemption for any instalment arrangements where there are less than four payments in a 12 month period and no interest is charged; and
- Referring or introducing clients to a finance company, to allow them to pay their fee by instalments (classed as 'credit brokerage').

Further help in identifying any consumer credit activities can be found on the ICAS website at: **http://icas.org.uk/regulation-ethics/authorisations/consumer-credit-licence/**.

Becoming an exempt professional firm

If you are not currently authorised by the FCA for financial services and your consumer credit activities are incidental, arising out of, and complementary to the provision of professional accountancy services, you will be an exempt professional firm.

The activities (as long as incidental)

covered under this regime are likely to be limited to the consumer credit activities covered under the previous group consumer credit licence (entering into a regulated credit agreement, credit brokerage, debt-adjusting, debt-counselling, debt administration and credit information services) and not the other activities not currently covered (consumer hire, debt collecting, credit reference agency or peer to peer lending).

Firms meeting the exempt professional firm criteria should be covered automatically from 1 April 2014 by the transitional regulations until 1 October 2014 and therefore do not need to do anything else in the meantime. On 1 October 2014 ICAS will roll out its full DPB regime and is hoping that the FCA will allow it to operate an automatic coverage scheme for CA firms rather than requiring each firm to obtain a licence. ICAS will keep you updated of any developments in this regard.

Becoming an FCA licensed firm

An anomaly of the proposed change is that consumer credit and financial services are considered together and firms will only be allowed to be exempt for both activities or authorised for both. Firms are not allowed to be authorised for one area and exempt for the other. You will require to apply for an interim permission or interim variation of permission from the FCA if:

- Your firm currently holds a consumer credit licence issued directly by the OFT and you intend to continue to conduct non-incidental consumer credit activities. Please note you would no longer be eligible to be DPB licensed for investment business and your FCA licence would need to cover both; or
- Your firm is authorised directly by the FCA for financial services; or
- Your consumer credit activities are not incidental (again you would no longer be eligible to be DPB licensed for financial services and would need to be licensed by the FCA for both).

The FCA will be issuing reminders to these firms, who will need to apply before 1 April 2014 so as to enable the firm to take advantage of the FCA transitional arrangements which will be in place from 1 April to 1 October 2014.

What about insolvency practitioners?

The position for insolvency practitioners (IPs) has been a dynamic one, but the new insolvency 'exception' has now been agreed. Any person providing debt adjusting, debt counselling, debt collecting, debt administration and/or credit information services and who is appointed as an IP, judicial factor or official receiver, or is in reasonable contemplation of being appointed as an IP, has an exception from requiring a licence from these activities.

This exception cannot, however, be used for any of the other consumer credit activities not listed in the exception (eg entering a regulated credit agreement, credit brokerage, consumer hire, credit reference agency, peer to peer lending).

How do I get an FCA interim permission or interim variation of permission?

Forms and guidance in relation to registering for interim permission can be obtained from the FCA website at: **www.fca.org.uk/firms/firm-types/consumer-credit/consumer-credit-interim**.

Only firms that have a current OFT consumer credit licence are eligible to register for an interim permission or an interim variation of permission. If your firm does not have an OFT licence this will require to be obtained first. Forms and information can be obtained at: **www.oft.gov.uk/OFTwork/credit-licensing/apply/;jsessionid=B8C191FCBEDB3A3B445620B71B79D951**.

The FCA fee for interim permission is £350 for firms and £150 for sole practitioners. The OFT fee for firms is £1,466 and £670 for sole practitioners.

Firms with interim permissions and interim variation of permissions will subsequently be considered for full authorisation or for a full variation of permission by the FCA in due course.

More detailed information on this subject can be accessed at: **http://icas.org.uk/regulation-ethics/authorisations/consumer-credit-licence/**.

Further useful links on this subject are:

- ICAS FAQs (**http://icas.org.uk/regulations-ethics/reg-authorisations/credit-licence-FAQs.pdf**)
- Consumer Credit section of the FCA website (**www.fca.org.uk/firms/firm-types/consumer-credit**)
- Consumer Credit section of the OFT (**http://oft.gov.uk/OFTwork/credit-licensing/do-you-need**)

USING THE CLOUD

A lot has been made of the benefits of "the cloud" and how practitioners should be embracing cloud computing as part of their client offering. A recent ICAEW survey showed that just over one third of firms surveyed are using online accounting software. If your firm is not, then what are the benefits and what do you need to consider?

Client needs

As the needs of clients evolve, accountants need to adapt their service offering to ensure that they retain existing clients and attract new ones. With the development of IT services and, in particular cloud-based technology, clients want more and different advice

from their accountants and they want it now and at less cost.

Armed with a myriad of apps, many of which are free, clients can do much of the routine accounting work and so they are looking to their accountants to provide them with more help in driving their businesses forward. In other words, many clients don't just want the annual compliance services provision, but more business advice and support.

In addition, because information nowadays is available at the touch of a button, clients increasingly want more of a dynamic, pro-active service from their accountants. They are also increasingly recognising the benefits that access to real-time financial data can provide when it comes to short term decision-making. Cloud-based software offers an easy way to access up to date information and advice from their accountants.

Cloud characteristics

The key characteristics of cloud-based software are:

- Instead of software and client data being stored locally on the firms' server, it is kept at an external location or data centre which is managed by the cloud provider. A benefit of this arrangement is that the firm may have access to virtually unlimited storage (subject to their user agreement).
- Access to the cloud is via logon and password.
- Software updates, upgrades etc. are all handled automatically by the cloud provider. As well as this, the firm's records will be backed up automatically by the cloud provider which will make information recovery much easier.
- Most cloud-based accounting software providers have separate "customer" and "accountant" areas which allow accountants to manage their clients' accounts.
- Clients generally pay a monthly fee for using a cloud accounting service such as Xero or Kashflow. This varies depending on the level of complexity attached to the client's arrangements (a sole trader account is likely to cost less than a limited company with a large payroll, for example).
- Cloud accounting providers appear keen to use accountants as the "middle man" or as advocates to try and encourage potential customers to sign up. Accountants, in turn, are given the tools to be able to provide insight to their clients.

What are the benefits?

- Many offerings are geared to providing a complete accounting service which includes functionality to produce and send invoices, pay suppliers, record expense payments, monitor cash flow movements and reconcile bank accounts.
- Accountants with clients using cloud software are able to download the usual data from which management reports can be prepared (eg trial balances, nominal ledger reports, aged debtors and aged creditors listings). Some cloud software will actually prepare these management reports on the accountants' behalf, at the click of a button.
- Online location of software means that users can access information from anywhere that has an internet connection. This therefore facilitates flexible or home working.
- Data processing is more likely to be performed by the client under a cloud arrangement, opening up additional time for their accountant to provide strategic business advice ie helping them work "on" their business rather than "in" it.
- Improved efficiency and productivity as a result of better functionality – in many ways, cloud software is more user-friendly and intuitive than existing forms of accounting software. Because it is updated constantly by the service provider it is often much faster than network-based software.

Impact on costs

Depending on how you look at it, relocating to a cloud - provider can be more or less expensive than a firm's existing arrangements. With most network-based software implementation there is an initial up-front cost and then on-going annual subscription fees. With cloud-based arrangements there is no up-front cost but there is the on-going cost of subscribing to whichever provider you decide to use.

Many firms that are considering using a cloud-based provider may be thinking of using it in conjunction with their existing network based system, mainly because there may be current clients who feel more comfortable with the existing set-up and potential new, more tech-savvy clients who are looking to use a cloud-based provider because of the added flexibility.

Firms should also be aware that there will also be implementation costs associated with changing to a cloud-based provider. Some of these costs will, however, apply equally when changing from one "on premises" product to another. These costs could include:

- Business process changes – moving to the new system
- Requirement for additional network capacity and links
- Moving data into the cloud – time requirement
- Data cleansing and restructuring
- Staff training on new system
- Possible HR costs/redundancies in the situation where IT staff are no longer required (big cost saving on the plus side, however)
- Replacing lost functionality.

Consider your firms compatibility

Firms considering implementing a cloud system may want to consider the following issues when deciding whether their practice would be compatible:

Security – prospective cloud-users should research providers that they are thinking of using. Questions to which

they may want answers could be:

- Where are their data centres based? (Europe-based data centres are preferred)
- What procedures are in place for disaster recovery?
- What controls do they have in place to ensure that data is securely stored/is the provider compliant with the Data Protection Act 1998?
- Have they been independently verified for security?

Lock-in – firms may be concerned that, once they have chosen a supplier, they could remain locked into using their software despite them no longer offering the level of service that they require. Also, a provider could cease trading, in which case the firm would need to know that it could use the existing client data going forward/ensure that it is able to retain downloads of client data that it is able to use.

Customisation – some firms may be concerned that a cloud provider's proprietary software could not be customised to any special requirements that they may have. The question which they need to consider is "is our business so unique that it has special requirements?" Firms may find that the efficiency gains from using the cloud-based software could outweigh the expense of searching for an arrangement that provides a "direct fit" for their business. Alternatively, they may not and it could be a "show stopper".

Availability – a concern is borne by some as to how their business would cope if, for some reason, access to the cloud was not possible due to, for example, an IT malfunction (eg crash), a defunctive browser or if the cloud provider themselves experienced a problem with their software. Businesses involved in online sales could be very concerned that a period of downtime would affect their business adversely – especially during a busy period such as at Christmas.

Final thoughts

Moving to the cloud is a big decision and it is important that firms considering the move do their research prior to taking the plunge. Ultimately, the decision to move to a cloud-based provider needs to take into account the needs of the firm and its clients at present and in the future, and also the needs of prospective clients. If a firm is serious about growing its client base, then having a cloud capability could be a very good tool for business development. The survey mentioned earlier indicated that, for those firms not currently using an online product, almost 60% of these expected to be doing so within the next 12 months. This is a strong indication as to where firms think they need to be going if they want to stay competitive in an ever-changing marketplace.

ERRATUM

In the Data Loss Incident – be aware article on page 24 of Issue 123 we stated that TLS stood for "Transfer Layer Security". This should have read "Transport Layer Security".

MONEY LAUNDERING UPDATE

Updated sanctions list

HM Treasury has released an updated list of financial sanctions targets for the UK.

The list is available at: **http://hmt-sanctions.s3.amazonaws.com/sanctionsconlist.pdf**.

JMLSG – Further amendments to 2007 guidance

The Joint Money Laundering Steering Group (JMLSG) has issued amended 2007 Anti Money Laundering guidance. The amendments were made in response to comments received on the consultation amendments which were issued in July 2013. The updated guidance has been submitted to HM Treasury for Ministerial approval.

More information can be obtained at: **www.jmlsg.org.uk/industry-guidance/article/further-amendments-to-2007-guidance1**.

Serious Organised Crime Agency replaced by National Crime Agency

The Serious Organised Crime Agency (SOCA) has now been replaced by the National Crime Agency (NCA). The NCA will essentially perform the same role as SOCA, with it being made up of 5 distinct "commands":

- Border Policing Command
- Economic Crime Command
- Organised Crime Command
- National Cyber Crime Unit
- Child Exploitation and Online Protection Command

Information on the Economic Crime Command and its work can be found at: **www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime**.

SAR online operates as previously and can be found at: **https://www.ukciu.gov.uk/(oyrtgvr4vcuati45ptbvypfw)/saronline.aspx**.

Information and guidance on making a SAR can be found at: **www.nationalcrimeagency.gov.uk/publications/27-reporting-via-sar-online/file**.

Other news

Russia is now considered an equivalent jurisdiction for anti money laundering purposes.

RESULTS OF ICAS MEMBERS' SUSTAINABILITY SURVEY RELEASED

The ICAS Sustainability survey 2013 results have been received and a summary of results prepared. Main headlines from the survey are:

- 821 respondents
- 42% of respondents from within industry
- 66% of respondents agreed that sustainability is an accounting issue
- A very large number of respondents had no exposure to some of the sustainability topics listed
- Few respondents had heard of some of the terms and organisations associated with sustainability
- Mandatory reporting was seen as the most important area for future training
- Environmental taxes and CSR Reporting were also seen as important areas.

Congratulations to Campbell Black from BDO in Manchester who was the winner of the prize draw for an Amazon Kindle.

APPENDIX 1

TAX TABLES 2014/15

These tables reflect announcements made in December 2013.

Income tax, capital gains tax and inheritance tax – personal and age-related allowances

Per year	2014/15	2013/14
Personal allowance		
Born after 5 April 1948	£10,000	£9,440
Born between 6 April 1938 and 5 April 1948	£10,500	£10,500
Born before 6 April 1938	£10,660	£10,660
Married couple's allowance (born before 6 April 1935)		
Maximum amount	£8,165	£7,915
Minimum amount	£3,140	£3,040
Income limit for personal allowance		
Born before 6 April 1948	£27,000	£26,100
Regardless of date of birth or age	£100,000	£100,000
Blind person's allowance		
Individual	£2,230	£2,160
Inheritance tax allowance		
Individual allowance	£325,000	£325,000
Annual exempt amount (any gifts)	£3,000	£3,000
Pension schemes allowances		
Annual	£40,000	£50,000
Lifetime	£1,250,000	£1,500,000

Income tax – taxable bands

	2014/15	2013/14
Savings starting rate*: 10%	0-£2,880	0-£2,790
Basic rate: 20%	0-£31,865	0-£32,010
Higher rate: 40%	£31,866-£150,000	£32,011-£150,000
Additional rate : 45%	Over £150,000	Over £150,000

* *Only available if non savings income is less than this amount*

Capital gains tax

	2014/15	2013/14
Annual exemption	£11,100	£10,900
Most trustees	£5,550	£5,450
Standard rate of CGT	18%	18%
Rate for higher/additional rate income tax payers	28%	28%
Rate for entrepreneurs' relief	10%	10%

Corporation tax on profits

	2014/15	2013/14
£0-£300,000	20%	20%
£300,001-£1,500,000	Marginal rate	Marginal rate
£1,500,001 or more	21%	23%
Marginal rate fraction	1/400	3/400

National insurance contributions

Per week (unless stated)	2014/15	2013/14
Class 1 primary NIC (employees (EE))		
Lower earnings limit	£111	£109
Upper earnings limit	£805	£797
Upper accruals point	£770	£770
Primary threshold	£153	£149
Employees' primary Class 1 rate between primary threshold and upper earnings limit	12%	12%
Employees' primary Class 1 rate above upper earnings limit	2%	2%
Employees' contracted-out rebate – salary-related schemes	1.4%	1.4%
Married women's reduced rate between primary threshold and upper earnings limit	5.85%	5.85%
Married women's rate above upper earnings limit	2%	2%
Class 1 Secondary NIC (employers)		
Secondary threshold	£153	£148
Employers' secondary Class 1 rate above secondary threshold	13.8%	13.8%
Employer's contracted-out rebate – salary related schemes	3.4%	3.4%
Class 2 NIC (self employed)		
Class 2 rate	£2.75	£2.70
Class 2 small earnings exception (per year)	£5,885	£5,725
Special Class 2 rate for share fishermen	£3.40	£3.35
Special Class 2 rate for volunteer development workers	£5.55	£5.45
Class 3 (voluntary)		
Class 3 rate	£13.90	£13.55
Class 4 NIC (self employed)		
Class 4 lower profits limit (per year)	£7,956	£7,755
Class 4 upper profits limit (per year)	£41,865	£41,450
Class 4 rate between lower profits limit and upper profits limit	9%	9%
Class 4 rate above upper profits limit	2%	2%

Working and child tax credits rates

£ per year (unless stated)	2014/15	2013/14
Working tax credit		
Basic element	£1,940	£1,920
Couple and lone parent element	£1,990	£1,970
30 hour element	£800	£790
Disabled worker element	£2,935	£2,855
Severe disability element	£1,255	£1,220
Childcare element of the working tax credit		
Maximum eligible cost for one child	£175pw	£175pw
Maximum eligible cost for two or more children	£300pw	£300pw
Percentage of eligible costs covered	70%	70%
Child tax credit		
Family element	£545	£545
Child element	£2,750	£2,720
Disabled child element	£3,100	£3,015
Severely disabled child element	£1,255	£1,220

Working and child tax credits rates continued

Income thresholds and withdrawal rates	2014/15	2013/14
First income threshold	£6,420	£6,420
First withdrawal rate	41%	41%
First threshold for those entitled to child tax credit only	£16,010	£15,910
Income rise disregard	£5,000	£5,000
Income fall disregard	£2,500	£2,500

Individual Savings Account (ISA)

Annual ISA subscription limit	2014/15	2013/14
Overall limit	£11,880	£11,520
of which cash	£5,940	£5,760
of which stocks & shares	£11,880	£11,520
Junior ISA subscription limit	£3,840	£3,720

Stamp duty land tax

Transfers of land and buildings (consideration paid) 2014/15 & 2013/14

Rate	Non residential	Residential
	Total value of consideration	
Zero	£0-150,000	£0-£125,000
1%	£150,001-£250,000	£125,001-£250,000
3%	£250,001-£500,000	£250,001-£500,000
4%	£500,001-£1m	£500,001-£1m
5%	£1,000,001-£2m	£1,000,001-£2m
7%	Over £2m	Over £2m

VAT thresholds and rates

Registration threshold	£79,000
Deregistration threshold	£77,000
Standard rate	20%
Reduced rate	5%

Company car tax tables

Taxable percentage of P11D value

Vehicle CO_2 g/km	2014/15 %BIK rate		2013/14 %BIK rate	
	Petrol	Diesel	Petrol	Diesel
0	0	0	0	0
1-50	5	5	5	5
51-75	5	5	5	5
76-94	11	14	10	13
95-99	12	15	11	14
100-104	13	16	12	15
105-109	14	17	13	16
110-114	15	18	14	17

Company car tax tables - Continued

Taxable percentage of P11D value - Continued

Vehicle CO2 g/km	2014/15 %BIK rate		2013/14 %BIK rate	
	Petrol	Diesel	Petrol	Diesel
115-119	16	19	15	18
120-124	17	20	16	19
125-129	18	21	17	20
130-134	19	22	18	21
135-139	20	23	19	22
140-144	21	24	20	23
145-149	22	25	21	24
150-154	23	26	22	25
155-159	24	27	23	26
160-164	25	28	24	27
165-169	26	29	25	28
170-174	27	30	26	29
175-179	28	31	27	30
180-184	29	32	28	31
185-189	30	33	29	32
190-194	31	34	30	33
195-199	32	35	31	34
200-204	33	35	32	35
205-209	34	35	33	35
210-214	35	35	34	35
215-219	35	35	35	35
220 or above	35	35	35	35

Changes in company car tax to note

Zero carbon/ultra-low emissions cars. From April 2015, zero carbon car five-year benefit in kind exemption ends and the lower company car tax rate for ultra-low emissions company cars ends. From the 2015/16 tax year zero and ultra-low emission cars will have two new bands: 0-50g/km (5%, diesels 8%) and 51-75g/km (9%, diesels 12%).

From April 2016 3% diesel surcharge abolished.

From 2015 a new top rate of company car tax allowance for those cars with the highest CO2 emissions rises from 35 per cent of the list price to 37 per cent.

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