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BREXIT – POST TRANSITION PERIOD ACCOUNTING FRAMEWORK

The UK left the European Union (EU) on 31 January 2020. Following the end of the Transition Period at 2300 hrs on 31 December 2020, the UK will have left the EU Customs Union and Single Market.

Many businesses, especially small and medium-sized enterprises (SMEs), may not be aware of the changes that they will need to make to prepare for the end of the Transition Period.

EU-adopted IFRS replaced by UK-adopted IFRS

For financial years beginning on or after 1 January 2021, UK incorporated companies who currently use EU-adopted International Financial Reporting Standards (IFRS) will need to use UK-adopted international accounting standards. The UK Accounting Standards Endorsement Board will be established to endorse new or amended IFRS issued by the International Accounting Standards Board. These standards will be the same on 1 January 2021, but the UK will make its own decisions on adoption of IFRS from that date. Where new or amended IFRS are adopted by the UK after the Transition Period, but before those companies file their accounts for the relevant financial years (i.e. those financial years that straddle the end of the Transition Period), a company can choose to apply any new IFRS adopted by the UK on top of EU-adopted IFRS as they exist at the end of the Transition Period.

The UK has granted equivalence status to EU-adopted IFRS for the purposes of preparing financial statements under the Financial Conduct Authority's Disclosure Guidance and Transparency Rules which will also preserve certain exemptions under the Companies Act 2006. If a company is listed on an European Economic Area (EEA) regulated market it will need to check the reporting requirements in the

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relevant jurisdiction. For instance, it may need to state that its accounts comply with both UK-adopted international accounting standards and IFRS as issued by the IASB.

UK GAAP users

Companies that use UK Generally Accepted Accounting Practice (UK GAAP) to prepare their accounts, and that do not have an EEA parent or subsidiary, and are not listed in the EEA, will face no change to their reporting requirements. However, companies that are currently using UK GAAP to list securities in the EEA, from 1 January 2021 may need to prepare an additional set of accounts that comply with the requirements in the relevant EU Member State.

Change to certain filing exemptions

An intermediate parent company in the UK with an EEA parent where the parent uses EU-adopted IFRS can benefit from the exemption contained in section 401 of the Companies Act 2006 from the requirement to produce consolidated accounts at the UK group level because the UK has granted equivalence to EU-adopted IFRS. If an EEA parent produces group accounts that are equivalent to those required by UK law, then the UK company will also be able to benefit from the s401 exemption for financial years that begin on or after 1 January 2021.

Removal of certain exemptions

A UK incorporated subsidiary with an EEA parent:

- Can no longer rely on its parent's non-financial information statement. If a company is within the scope of producing a non-financial information statement, it will need to produce its own for financial years that begin on or after 1 January 2021 and include it in its strategic report.
- Will only be able to extend its accounting reference period once every five years. It will no longer be permitted to align its accounting reference date with their EEA parent.

A dormant UK registered subsidiary with an immediate EEA parent, will need to prepare and file individual annual accounts with Companies House for financial years that begin on or after 1 January 2021. The preparation and filing exemptions will no longer be available.

The accounts of a UK registered large or medium sized subsidiary with an immediate EEA parent, will need to be audited for financial years that begin on or after 1 January 2021. The subsidiaries audit exemption will no longer be available.

Companies with cross border listing

EEA companies with a UK listing and who use EU-adopted IFRS, do not have to do anything. The UK has granted equivalence to EU-adopted IFRS for the purposes of preparing financial statements under the FCA's Disclosure Guidance and Transparency Rules. For financial years beginning on or after 1 January 2021, an EEA company with a UK listing that uses Member State GAAP will need to prepare its accounts for the UK using UK-adopted international accounting standards or an equivalent standard. UK issuers of shares or debt securities that are only admitted to trading on EEA regulated markets will no longer be subject to Disclosure Guidance and Transparency Rules issued by the Financial Conduct Authority (FCA) from 1 January 2021.

Third country companies with EEA listing

A non-UK, non-EEA incorporated company which currently has the FCA in the UK as its home competent authority for the purposes of the Transparency Directive, will need to select a new home competent authority for the purposes of being admitted to trading on a regulated market in the EEA and comply with the rules of that relevant EEA competent authority.

EEA companies with UK parent

An intermediate EEA parent owned by a UK parent may need to produce consolidated group accounts for its EEA sub-group, as well as individual accounts. Companies are urged to check with the relevant EEA State to understand what the local position is and whether they can continue to rely on being exempt from producing group accounts as a result of its results being included within the consolidated group accounts of its UK parent.

WRONGFUL TRADING

The Corporate Insolvency and Governance Act 2020 (CIGA 2020) came into force on 26 June 2020.

Section 12 of CIGA 2020 (and section 13 in relation to Northern Ireland) had the effect of temporarily suspending liability for wrongful trading for company directors, a change made with a view to assisting them keep their businesses going without the threat of personal liability. A previous article looked at the effect of the change in more detail.

Recently enacted Regulations prolong the period within which certain temporary provisions in CIGA 2020 are to have effect.

However, the temporary provision regarding the suspension of liability for wrongful trading was not extended and therefore expired automatically on 30 September 2020.

The expiry of that provision provides an opportune moment to revisit the wrongful trading provisions, to outline the action that directors should be taking (and advising accountants should be recommending that they take) to be able to demonstrate a defence to accusations of wrongful trading.

Definition

In trading conditions where the company's solvency is not in doubt, the directors are acting for the benefit of the company and its shareholders.

However, where it becomes apparent that the company is insolvent or at serious risk of insolvency, the focus of the directors' duties switches and their overriding responsibility is to act in the best interests of the creditors of the company.

If a company is insolvent and its directors know (or ought reasonably to conclude) that it cannot avoid insolvent liquidation or administration, they are under a duty to take every step a reasonably diligent person would take to minimise potential loss to the company's creditors.

Failing that, they risk personal liability for any worsening of the company's financial position. This is what is known as 'wrongful trading', as per sections 214 and 246ZB of the Insolvency Act 1986 (IA86). If a wrongful trading action is successful, the directors may be required to contribute to the company's assets.

Fraudulent trading

Wrongful trading should not be confused with fraudulent trading – its more serious neighbour.

Fraudulent trading is a criminal, as opposed to civil, offence and requires intent on the part of the directors. As set out at sections 213 and 246ZA of IA86, the business of the company must have been carried on with the intent to defraud creditors of the company, or creditors of any other person, or for any fraudulent purpose.

Due to the nature of the offence, there was never any prospect of a suspension of liability for fraudulent trading to be introduced by CIGA 2020.

Wrongful trading test

Wrongful trading cases remain relatively rare due to the high standard of proof required, which may be further raised by the complicating factor of coronavirus.

Previous cases, such as Re Ralls Builders Ltd (in Liquidation) [2016] EWHC 1812(Ch) demonstrate that liability will not be imposed simply due to a company trading while in financial difficulties. Potential for liability arises at the point that the directors know or ought to know that there is no reasonable prospect of avoiding insolvent liquidation or administration based on both the company's current position and its realistic prospects. This should be judged without the application of hindsight.

What the directors ought to have concluded is assessed by reference to the knowledge, skills and experience that a reasonably diligent person in that person's position may reasonably be expected to have, and the actual knowledge, skills and experience that the defendant director did, in fact, have.

For example, a director who is a chartered accountant is expected to have greater skill and experience in relation to the finances of the company than a director who is a tradesman. That does not mean to say that the tradesman would not be able to be assessed on responsibility of financial decisions, just that the standard by which they may be judged may be at a lower level. There is no requirement for dishonesty by the director when it comes to assessment of wrongful trading.

Further, there must have been a material increase in the company's net deficiency as regards individual unsecured creditors as a result of continued trading.

Coronavirus

The decision to keep trading during the pandemic will be a difficult one for a lot of directors who face rapidly

changing circumstances in an unprecedented time of financial difficulty.

The recent decision of Cineworld to close all its cinemas across the UK and Ireland from 9 October until further notice provides a pertinent recent example of such a situation.

With the release of the latest James Bond film postponed until Easter next year, the cinema chain's board clearly felt that was the final straw following a significant period with very little trading activity. The revenue generated by the release of the film was clearly predicted to maintain Cineworld's cashflow and viability, at least in the short term, but with its cancellation (and no prospect of further releases or a sustained period of trading), the board were left with no option but to close the doors.

It should be stressed that there is no indication that Cineworld directors decisions were driven by concerns about wrongful trading, but similar decisions will currently be faced by directors up and down the country, with the uncertainty caused by the pandemic making forecasting more difficult than ever.

However, what should be at the forefront of directors' minds is that government intervention will eventually stop, loan repayments will need to be made, deferred VAT will have to be paid, business rates will resume and landlords will expect their quarterly rent. There must still be a reasonable prospect of a business recovering post-crisis and directors should be considering whether even their 'best-case scenario' projections would be enough to avoid insolvency.

Considerations for directors

Directors of struggling companies must attempt to strike a balance between two courses of action. If they conclude that an insolvency process is required, they must start that process early enough to both protect creditors so far as possible and to avoid the risk of personal liability. However, they must allow time to explore the options for the company's survival as exhaustively as possible. Directors' responsiveness to events will be important in determining whether liability arises, as will whether their assessment of the company's prospects is ultimately considered credible.

Directors should take care to gather all relevant information and continually re-evaluate their options considering professional advice and experience. Some key considerations are:

- is the company 'insolvent', whether on:
  - ✓ a cash flow basis – i.e. it cannot pay its debts as they fall due; or
  - ✓ on a balance sheet basis – i.e. its liabilities exceed its assets.
- if the company is insolvent, is there a reasonable prospect of avoiding an insolvent liquidation or administration?
- is there funding available or arrangements that have a reasonable prospect of being agreed with stakeholders or other third parties which will prevent insolvency?

Practical steps

Some basic practical steps to consider:

- Discussions with stakeholders and consideration of the various Government initiatives designed to assist companies when faced with business disruption caused by coronavirus.
- Regular board meetings to continually assess the viability of the business and impact of coronavirus.
- Ensure there is a paper trail evidencing all key business decisions which impact creditors. It is vitally important that all decision-making is fully documented.
- Back up with financial information and forecasts. Cashflow forecasts should focus on the medium to longer term backed up by separate short-term forecasts where the cashflow situation is more critical.
- Take professional advice – from an insolvency practitioner if necessary. The advice that directors receive at the time will be of significance in assessing whether they could properly have taken the view that insolvent liquidation or administration could be averted.

ACCOUNTING FOR GOVERNMENT GRANTS – SMALL BUSINESS GRANT FUND & RETAIL, HOSPITALITY AND LEISURE GRANT FUND

The COVID-19 pandemic led to both the UK and the various UK devolved governments introducing a package of unprecedented business support measures to provide necessary financial assistance for those businesses affected by the pandemic.

On 17 March 2020, the Chancellor announced an increase in the grants available to small businesses in England eligible for Small Business Rate Relief from £3,000 to £10,000. In addition, grants of £25,000 were made available to businesses operating in the retail, hospitality and leisure sectors occupying smaller premises with a rateable value over £15,000 and below £51,000. A similar package was introduced in Scotland shortly later.

Eligibility for the Small Business Grant Fund

Under the small business support scheme, businesses in England were eligible for these grants if:

- their business was based in England;
- their business occupied property;
- they were eligible for small business rate relief (including tapered relief) or rural rate relief on 11 March 2020.

In Scotland, businesses on the Non-Domestic Rates register were eligible for these grants if their business premises were occupied on 17 March 2020 and:

- they received the Small Business Bonus Scheme (SBBS);
- they received Rural Relief; or
- they qualified for the SBBS but were in receipt of Nursery Relief, Disabled Relief, Fresh Start Relief, Business Growth Accelerator Relief, Enterprise Areas Relief, Discretionary Sports Relief or Charitable Rate Relief.

Similar grants were also made available in Wales and Northern Ireland.

The responsibility for the administration of these grants was given to the relevant local authorities. The grants available under this scheme are subject to tax.

Eligibility for the Retail, Hospitality and Leisure Grant Fund

In England, businesses in the Retail, Hospitality and Leisure Sectors were eligible for grants of £25,000 if the business had a property with rateable value of over £15,000 but less than £51,000 and:

- the business was based in England;
- the business was in the retail, hospitality, or leisure sector;
- the business had a property with a rateable value of under £51,000 on 11 March 2020.

In Scotland, businesses were eligible for these grants if:

- the business was based in Scotland;
- the business was in the retail, hospitality, or leisure sector;
- the business occupied a property with a rateable value of between £18,001 and £51,000.

Similar grants were also available in Wales and Northern Ireland.

As with the Small Business Grant Fund, these grants were administered by the relevant local authorities. Once again, the grants available under this scheme are subject to tax.

Accounting treatment of Grants received under the Small Business Fund and the Retail, Hospitality and Leisure Grant Fund

When applying UK GAAP, the relevant guidance on accounting for Government Grants can be found in section 24 of FRS 102, The Financial Reporting Standard applicable in the UK and Ireland.

Sections 24.3A and 24.4 of FRS 102 require that:

- 24.3A Government grants, including non-monetary grants shall not be recognised until there is reasonable assurance that:
  - a) the entity will comply with the conditions attaching to them; and
  - b) the grants will be received.
- 24.4 An entity shall recognise grants either based on the performance model or the accrual model. This policy choice shall be applied on a class-by-class basis.

Determining the point at which these grants should be recognised as income within the financial statements will be a matter for professional judgement and will need to be considered on an entity by entity basis, bearing in mind the different jurisdictions and local

authorities responsible for administering the grants who may introduce different application processes and apply additional eligibility criteria.

It is our understanding that there are no specific performance conditions attached to these grants and that they were made available to provide immediate financial support to eligible businesses during the pandemic.

Therefore, the assessment of when to recognise the grants, and how to account for them will require consideration of the matters listed below. Only when there is reasonable assurance that the grant will be received, or receivable, should it be recognised in income.

Steps to consider when determining the date of recognition of the grant

Step 1 - Is the entity eligible for the grant?

The eligibility criteria above should be considered. When an entity considers it is eligible to apply for the grant, it should move to Step 2 of the recognition process.

Step 2 - Does the entity intend to participate in the scheme?

The date on which the entity takes the decision to participate in the scheme, which is likely to be the date of application, will be a key factor in determining the date of recognition of the grant. It would be difficult to justify recognition of the grant before this decision has been made.

In some cases, this date may represent the point or date on which the grant should be recognised in the accounts. Therefore, recognition in the accounts should occur on the date when it is confirmed that:

a. the eligibility criteria in Step 1 above are satisfied; and
b. the entity has made the decision to apply for the grant; and
c. there are no further eligibility criteria; and
d. it is clear that the local authority does not intend to issue any confirmation that the grant will be awarded. If this has not been confirmed, move to Step 3.

Step 3 – Situations where the local authority intends to issue confirmation of eligibility for the grant

We understand that some local authorities are contacting entities either by telephone, or in writing, to confirm that they have been deemed to be eligible for the grants. If an entity has received such a confirmation, then the date on which this confirmation is received would be considered to provide reasonable assurance that the grant is receivable and therefore it should be recognised at that point.

It must be emphasised that it is not clear whether all local authorities are issuing such a confirmation before a grant is paid out although the Department of Business, Energy and Industrial Strategy (BEIS) has issued guidance advising them to do so.

Specific issues for entities with 31 March 2020 year ends

The date of recognition may vary from entity to entity. For some entities, they may have taken the decision to apply for the grant as soon as it was announced based on the rateable value of the property they occupy and the other eligibility criteria. Reports indicate that the number of applications received for these schemes was significant as at 1 April 2020.

Entities with accounting periods ending on 31 March 2020 who applied for grant funding prior to the year end

For those entities with a 31 March 2020 year end, who had applied for the grants before the year end, and had been deemed by that date to meet the eligibility criteria, then recognition of the income in the accounts for the year ended 31 March 2020 may be appropriate regardless of when the money was actually paid into the business bank account. If an entity with a year-end date of 31 March 2020 receives the grant before that date, then it should be recognised in its accounts for the year ended 31 March 2020.

Entities with accounting periods ending on 31 March 2020 who applied for grant funding after the year end

With regard to entities with a 31 March 2020 year end who had not decided whether to apply for the grant funding by the year end, the position is less clear. If an entity decided to make the application on 5 April 2020, then it may be difficult to justify that the post year end receipt was indicative of a condition that existed at the balance sheet when applying FRS 102 Section 32, Events after the End of the Reporting Period.

The eligibility criteria may have been satisfied at the year-end date, indicating entitlement to the grant, but there had been no steps taken to participate in the scheme at that date. In such instances, some judgement will be necessary when determining the appropriate date of recognition.

In these situations, the entity should agree an accounting policy in support of their decision on when to recognise the grant and this should be included

within the accounting policies section of the accounts. It may be appropriate, depending on the materiality of the grant, and the date on which the accounts are approved, to include disclosure of the post-year end grant receipt as a non-adjusting event in the 31 March 2020 accounts with sufficient disclosures around the nature and the financial effect of the grant and the rationale behind the choice of accounting policy.

The two situations above assume that the local authority does not intend to issue a confirmation of the entity's eligibility for the grant and that the eligibility criteria and the decision to participate in the scheme are the only conditions that need to be satisfied. Each situation has to be assessed based on the specific facts and circumstances.

Further practical implications around the recognition of the grants in question

It should be acknowledged that we are in unknown territory at the moment and that many of the government support measures were introduced in some haste to make the financial support available as quickly as possible.

As a result, the supporting information and guidance was not written with the resulting financial reporting implications in mind. Hence, the need for some judgement in relation to the associated accounting treatment based on the individual circumstances of the entity.

1. Whether to apply the performance or accrual method of accounting for the grants

We understand that there are no performance measures attached to these grants although this may vary according to the local authority administering the schemes. According to section 24 of FRS 102, if no performance conditions exist, under the performance method, the grant should be recognised when received or receivable.

If an entity chooses to adopt the accrual method of accounting for grants as its accounting policy, FRS 102, Section 24, paragraphs 24.5D and 24.5E state:

- 24.5D Grants relating to revenue shall be recognised in income on a systematic basis over the periods in which the entity recognises the related costs for which the grant is intended to compensate.
- 24.5E A grant that becomes receivable as compensation for expenses or losses already incurred or for the purpose of giving immediate financial support to the entity with no future related costs shall be recognised in income in the period in which it becomes receivable.

The absence of any conditions associated with these grants would indicate that, under the accrual method, it should be recognised when it is received or receivable. This is consistent with paragraph 24.5E above as they were intended to provide immediate financial support to those entities affected by the pandemic.

In practice, therefore, these grants are likely to be treated in the same way regardless of whether the performance or accrual method is adopted.

However, there may be an argument under the accrual method that these grants were made available to compensate businesses during the restricted lockdown period and therefore an entity with a 31 March 2020 year end might consider adopting a policy of spreading part, or all, of the grant received across the accounting periods when the financial effects of COVID-19, and the loss of income, would be most severely impacted.

Once again, some judgement will be required. If applying the accrual method in this way, an entity should carefully consider the appropriateness of that policy and gather and produce all the information and supporting documentation necessary to support their choice of accounting policy.

It should be noted that FRS 105, The Financial Reporting Standard applicable to the Micro-entities Regime, only permits the adoption of the accrual method for those entities preparing their accounts in accordance with this standard. IAS 20, Accounting for Government Grants and Disclosure of Government Assistance also requires this approach for those entities preparing their accounts in accordance with IFRS.

2. Tax implications of the date of recognition of the grant

The general principle is that the tax treatment of individual items in the accounts will follow the accounting treatment. This principle becomes extremely relevant in relation to the recognition of these grants as early recognition will most likely accelerate the date on which the tax due on such grants falls due.

If an entity recognises the grant income in its accounts for the year ended 31 March 2020, then, for self-employed individuals, the related tax will be due on 31 January 2021. Entities should ensure that they have sufficient cash resources to meet the additional tax when it falls due and this should be reflected in their budgetary and forecasting exercises.

It is possible that, because of the size of some of the grants, up to £25,000 is available in some cases, that the additional income could push these individuals into a higher tax bracket therefore this should also be reflected in cash forecasts and budgets being produced.

Ultimately, however, the decision around when to recognise the grant income should be based on the eligibility criteria and the individual circumstances of the entity.

THE PERENNIAL ISSUE OF IR35 AND EMPLOYMENT STATUS

Eamonn Holmes (Red, White & Green Ltd) and Kaye Adams (Atholl House) IR35 cases

The ICAS tax team is awaiting the outcomes of two major IR35 cases which were due to be heard in November 2020 at the Upper Tier Tribunal (UTT) – however the coronavirus has delayed matters and they are still listed for hearing at the time of writing. The cases are important because they add to the recent litany of cases which have been heard on the subject of IR35 and employment status, and employers, agents and individual workers need to understand the implications of the case law more than ever with the forthcoming off-payroll legislation coming into force from April 2021 – a year's delay from the original planned launch date.

Red, White and Green Ltd is the intermediary business owned by the TV presenter Eamonn Holmes. In early 2020 Mr Holmes was defeated by HMRC when he was deemed to be subject to sufficient control within the workplace (ITV) that his contract fell within IR35. He has appealed the ruling which left him facing a quarter of a million pound tax bill.

The other case, Atholl House Productions Ltd concerns itself with the relationship between Kaye Adams and ITV. Ms Adams was successful in her appeal to the First Tier Tribunal (FTT) back in 2019. However, HMRC has been given leave to appeal to the Upper Tribunal and the case was due to be heard between 9 and 11 November. Around £125,000 is at stake.

Whilst the two FTT cases had different outcomes for the taxpayers, it should be noted that the fundamental principles being examined in each of the cases is the same, which are:

- Mutuality of obligation
- Control
- Personal service
- Being in business on one's own account.

To recap on the two cases, the following were the key contractual elements for each of the presenters:

Red, White & Green Ltd (EH)	Atholl House Productions Ltd (KA)
EH was prohibited from carrying out conflicting work.	Although the BBC had first call on her services, KA was not exclusively contracted to them and evidence showed this to be the case.
Dates and place of work were fixed in accordance with ITV discretion.	The BBC did not attempt to restrict KA's work with other broadcasters, she did not seek permission, and the BBC accommodated this by changing the location of the workplace. Unlike in the Christa Ackroyd case, the requirement for her to attend training courses was not enforced.
A fixed fee was to be paid for each show performed.	KA committed to a minimum 160 programmes in return for a minimum fee of £155,000. Evidence in fact showed that KA had not fulfilled the agreed commitment at one stage and her fee was reduced accordingly.

Red, White & Green Ltd (EH)	Atholl House Productions Ltd (KA)
ITV provided: ✓ a car for EH to travel to and from the studio; ✓ clothing for his TV appearances; ✓ reimbursement of some travel expenses; and insurance cover	
EH was prohibited from wearing branded products/ promoting commercially available products during the show.	
ITV had full discretion and control over research and editorial content and was responsible for deciding who EH would interview. EH did not attend production meetings.	The BBC had the last word on editorial control of its content – however KA wrote her own scripts, had control over the mic, chose the callers she wished to interact with, decided on the questions, and could ignore suggestions as to the direction of each show.
If RWG could not send a substitute and should EH become unavailable, ITV was responsible for obtaining a suitable replacement host.	

The FTT found for HMRC in RWG, as it considered that there was mutuality of obligation as well as sufficient control over the work done by Mr Holmes. Conversely, Atholl was decided in favour of Ms Adams due to the perception of her having overall control of her role and the independent nature of its execution – ruling out mutuality of obligation.

The two upcoming case hearings will most likely concentrate once again on the key issues of mutuality of obligation, control and substitution and be decided on that basis.

A point on the new IR35 legislation which takes effect from 6 April 2021

The IR35 Forum has been making representations to HMRC policy about the wider implications of certain aspects of the new legislation and, in particular, Income Tax (Earnings and Pensions) Act 2003 Part 2 Chapter 10 section 61O, which concerns itself with the definition of an intermediary which is a company.

On 12 November 2020, the following statement was released by HMRC to IR35 Forum members:

"In our meeting on 14 October and subsequent stakeholder update note regarding the unintended widening of the definition of a company intermediary, we committed to provide further reassurance and certainty to you and your members on how HMRC would correct this unintended consequence.

Having considered this issue in detail, we agree that a change to the legislation is required. As part of today's tax legislation announcements, the Government has confirmed that a technical change to the off payroll working rules will be included in Finance Bill 2021. This will ensure the legislation operates as intended from 6 April 2021 for engagements where an intermediary is a company. A corresponding amendment will be made to the NICs regulations once the Finance Bill has been introduced to Parliament and before 6 April 2021.

The announcement can be found in the Financial Secretary to the Treasury's Written Ministerial Statement.

Businesses and individuals should continue to prepare on the basis that Chapter 10 will not apply where an individual performs services for a client and that individual is already engaged under a contract of employment and their earnings are subject to PAYE by another party, other than that individual's intermediary, in that supply chain.

For example, if a worker is employed by an Umbrella Company that operates PAYE on the payment to the worker and that worker performs services to a client, Chapter 10 should not be applied. Similarly, the secondment of employees to other organisations would not be in scope of Chapter 10.

We hope this provides further reassurance and certainty to you and your members that the off payroll working rules will apply as intended from 6 April 2021, and businesses should prepare on that basis. "

ACCOUNTANTS & INFORMATION TECHNOLOGY – THE BIG SURVEY

Written by Lugo Limited, ICAS IT Partner

During August and September of 2020 Lugo Limited, video interviewed a variety of accountancy firms across Scotland to discuss their views on IT for accountants. These firms were not existing customers of Lugo and the individuals interviewed were in a leadership role with responsibility for the firm's IT. The findings of the interviews were collated with the aim of taking a deeper dive into the key themes over the coming months.

In this month's issue we provide an overview of the areas covered by the quantitative research and share with you some interesting top-level statistics.

For context, the average size of firm interviewed had 105 staff, 3 offices, 2,700 clients (including personal tax) and an average turnover of £6.8m. On average, 6% of turnover was allocated to an annual IT budget, which equates to £34,000 per month or £323 per employee per month.

Interestingly, when firms were then asked for an estimated cost to cover IT spend per employee, this averaged at £186 per employee p/m, which is £137 less per head. Furthermore, not many respondents knew by how much their IT-related expenditure would increase if they were to take on a new member of staff.

IT pain points and wish-lists

Participants were asked to discuss their ongoing pain points regarding IT and to imagine they had a magic wand to describe their wish-list that would transform their current IT solution. The main findings were as follows:

Main pain points

1. The responsibility of IT falling to them, as an accountant.
2. Staff lacking IT skills and confidence, with knowledge held by a few people rather than spread over the team.
3. Keeping up to date with the pace of change, whether it is hardware, software, or technology as a whole.
4. Being held back from moving to a fully cloud-based solution as vendors are still predominately developing desktop-based solutions.
5. Remote access.
6. Connectivity.
7. Lack of a centralised, unified database, lack of synchronisation and automation.
8. Cyber security.
9. Too many daily emails.

Wish-list

1. Replicating the same user experience no matter where you are and what you are working on.
2. Working on a fully cloud-based, integrated solution, no matter the supplier.
3. Document management solution resulting in a paperless office.
4. Innovative, proactive IT support.
5. Robust system security and more cyber education.
6. Fast, consistent broadband and system speed.
7. Staff and clients better educated on technology.

Communication

Regarding communication, we analysed the ways in which firms communicated prior to and during the current COVID-19 pandemic. We also discussed how they would like to communicate in the future, both internally and externally.

As you would expect, in-person communication fell dramatically during the pandemic with respondents expecting it never to return to previous levels. The same was true of communication via phone and email, with Microsoft Teams seeing an increase of 25% for internal and 14% for external communication, respectively.

Efficiency

In 60% of firms, employees utilise multiple or widescreen monitors. With home working continuing to be the norm during the COVID-19 pandemic, firms should ensure that their employees are set up properly to ensure productivity levels do not drop. For example, if they do not already, how feasible is it to set up employees with multiple monitors at home.

Ideas of future advancements to make their firm more efficient included:

- Automation/robotic process automation
- Integration
- Microsoft 365
- Cloud solutions
- Remote working
- Mobile device usage

Accountancy services & software

- 95% of firms still do time and fees, with the same percentage still accepting payment by cheque.
- 90% have taken advantage of software automation with the most used solution being AutoEntry.
- 85% of firms have chosen one cloud bookkeeping package as their preferred solution for clients.
- 70% of firms said their relationship with clients has changed since moving onto cloud bookkeeping due to having more insightful and frequent communication with clients, resulting in closer relationships.
- Many advised that software integration has increased efficiency with less out of date data.
- None of the interviewees used cloud software for audit, which may suggest a gap in the market, or no demand?

IT strategy & cyber security

55% of firms stated their IT strategy had changed since the impact of COVID-19, mainly in speeding up longer-term plans such as Microsoft Teams usage and more flexible remote working. 85% see themselves and their colleagues working from home more going forward.

Looking at cost and cyber threats – as many as 70% of firms said they felt secure enough, although 25% stated they do not have a communication plan in place if they do suffer a cyber breach. The majority rated themselves highly at 8 out of 10 for their awareness of cyber threats and how secure they are.

60% of those interviewed outsource their IT support. 40% of respondents continually review, revise, and streamline the software they use and 70% said technology meets their current expectations. IT is valued by most firms with 70% feeling they have enough awareness to make knowledgeable IT decisions.

Training

On average, 84% of people attend training, with ICAS being the most popular source of up to date compliance information. 60% of firms are part of a peer learning group such as Innovation 2020 and Accelerate.

The future

In terms of the future, most respondents agree that the biggest opportunity for accountants lay in adopting new technology. For those that do not, will simply be left behind. Firms embracing the new digital era will be able to provide a more personal, tailored service to their clients. Real-time scenario-based tax planning and on the spot projections from their trusted advisor will bolster client retention. Automation will allow firms to take on more new clients without having to increase staff resource. What COVID-19 has shown, is that you are no longer limited to servicing clients within your local geographical area, so the world is your oyster!

Look out for more detailed insights into the key themes from Lugo's research in future issues of the Technical Bulletin.

If you would like to discuss any element of this research, please email Liz Smith at liz.smith@lugoit.co.uk

SELF ASSESSMENT TAX RETURN – NO EXTENSION LIKELY BUT MORE TIME TO PAY

Next steps – paying tax bills which have been deferred

Many clients may have delayed payment of March to June VAT, or income tax self-assessment first instalment from July. But. what are their options now for these and other tax liabilities?

Winter Economy Plan

The UK Government's Winter Economy Plan at the end of September announced further provisions to help businesses pay tax liabilities.

There were two key announcements in terms of paying tax, the VAT Deferral New Payment Scheme, and enhancement payment plans for income tax self-assessment.

VAT

The VAT Deferral New Payment Scheme applies to clients who deferred their VAT which was due between March and June 2020. Under the original arrangements, the VAT was all due to be paid by 31 March 2021. Under the new VAT Deferral New

Payment Scheme clients can opt to make pay the VAT due in up to eleven small repayments up to 31 March 2022.

This is a welcome development and provides for automatic time to pay. Clients can choose a period of repayment to match expected income flows. HMRC is expected to release details of how to access the scheme early in 2021.

Income tax self-assessment

Clients had the option of deferring payment of their July 2020 second payment on account for 2019-20. This tax would then have been due for payment in full by 31 January 2021.

Under the new arrangements, tax due by 31 January 2021, including the July 2020 instalment, can now be settled over 12 months until 31 January 2022. The new arrangements come with conditions. The 2019-20 income tax self-assessment return must be filed before the client can apply for time to pay. This ensures that the tax liability is known.

Application can be made by a simplified process and online, so long as self-assessment liabilities are no more than £30,000 in total. If the bill exceeds £30,000, application can still be made, but it will involve a phone call to HMRC, and is likely to require more supporting evidence, such as cashflow projections.

Note than while interest was waived for deferral of the July payment on account, it will be due for the 12-month deferral from 31 January 2021.

Normal rules apply on late payment – late payment penalties are normally waived where a time to pay agreement is in place before the penalty date.

HMRC and time to pay

Historically HMRC has been known for a somewhat rigid framework with time to pay, including maximum repayment periods. With coronavirus the circumstances are so exceptional that HMRC is starting to change.

HMRC has recently published a policy statement on paying tax, and clients can expect a move towards time to pay based on what they can reasonable afford, including possible repayment holidays (for example where national or local restrictions mean the business is unable to trade).

A significant amount of guidance has published or updated recently. There is a step by step guide on time to pay - Find out how to pay a debt to HMRC with a time to pay arrangement; and two recent policy papers How HMRC treats customers who have a tax debt and How HMRC supports customers who have a tax debt.

For HMRC's approach to specific issues, consult HMRC Debt Management and Banking Manual.

ALTERNATIVE RESOLUTION DISPUTE REVISTED

Recent changes to Alternative Dispute Resolution (ADR) were highlighted in issue 153. This covered the Covid-19 options including online meeting options and the extension of ADR to any stage of the dispute process. But what is ADR and why and how would you opt for it?

What is ADR?

In outline, ADR is a confidential method of tackling disputes which avoids going to court. There are a number of different types of ADR, including conciliation and mediation, arbitration, and adjudication. The approach taken by HMRC for tax disputes is a form of mediation.

The aim is a consensual agreement, where both sides move their position, without prejudice to any possible legal proceeding issues which might happen later. This process of accommodation means that flexibility on both sides is essential. There must be a willingness to change and accept constructive challenge.

Why choose ADR?

ADR is not necessarily a fit for every dispute. Its advantages are, as compared to Tribunal, the potential for faster resolution, giving manoeuvring room for both sides to back down from entrenched positions - 'losing gracefully' - and so avoiding the win or lose cliff-edge that often comes at Tribunal. Unlike the Tax Tribunal, ADR results are not published, making confidentiality another key feature of ADR.

ADR has a further advantage in that it is 'standalone'. Unlike, for example the First Tier Tax Tribunal, it is not a 'first step' which the other party could appeal to a higher court – potentially giving the unwelcome choice of accepting an unsatisfactory outcome or incurring significant additional costs.

According to the HMRC Annual Report and Accounts for 2019-20, in financial year 2019 to 2020, there were 1,066 ADR applications made through the online system. According to the report, 90% of disputes were resolved through ADR.

How ADR works

The initial application is online. Large businesses with an HMRC Customer Compliance Manager should contact them first to discuss ADR.

And there is also guidance on gov.uk. This sets out the type of cases which are within and outside the remit. For example, ADR cannot be used for complaints, debt recovery / tax debt, High Income Child Benefit Charge, surcharges and penalties, or National Minimum Wage.

The factsheet on ADR CC/FS21, sets out the stages of ADR and highlights the need for a written statement early on. According to the factsheet, this should be no more than two sides of A4. The aim of the summary is not to provide a history of the dispute, rather it should clearly set out the facts and how the law applies to those facts.

This is critical if the meeting is to be effective. It will help to highlight whether the dispute centres on a different understanding of the facts, or of the law, or how the law should be applied.

There are different styles of mediation. The starting point is an informal facilitation where the mediator tries to bring about constructive dialogue. These involve meetings which are usually held independently with each side.

A more formal approach may be used in other cases. Here structured meetings are arranged and there is a degree of constructive challenge. In some complex cases, independent experts may be involved and provide a challenge to both parties' view.

Will ADR work for my client?

The key here is to understand HMRC's Litigation and Settlement Strategy. It can also be helpful to review HMRC's understanding of the process in the Compliance Handbook, particularly the page on working collaboratively at CH40720.

The starting point, as set out in the litigation strategy, is that there needs to be a dispute, as distinct from say, a complaint. A 'dispute' according to the strategy, is where '*HMRC needs more information to enable it to form a considered opinion on the correct tax treatment of a transaction'* or HMRC and the taxpayer or their agent, have differing views on what the 'legally due tax at the right time' is.

The strategy goes on to outline a number of essential principles, which practitioners should keep in mind both when applying for ADR, and when looking for outcomes.

Returns to the Exchequer

One principle is that 'HMRC seeks to secure the best practicable return for the Exchequer'. This highlights that HMRC is no ordinary litigant – it always keeps in view the possible impact of any decision on the generality of taxpayers and the potential impact of a decision on the public purse.

As a result, '*in general, HMRC will not take up a tax dispute unless it is likely to secure the best practicable return for the Exchequer'.*

For example, losing a case at Upper Tribunal would set a legal precedent which could cost large amounts of lost tax revenue, as taxpayers in similar situations avail themselves of the published ruling. Even a loss at First Tier Tribunal is likely to encourage other taxpayers to follow an approach similar to the successful litigant's, which could result in significant lost tax revenue.

HMRC might therefore prefer to 'fail in private' during ADR, where decisions are unpublished, rather than risk setting a binding precedent publicly.

ADR or Tribunal?

On the other hand, where HMRC considers that the actions of a specific taxpayer are incorrect by the law, and that it has a strong case, it may prefer to go to court 'pour encourager les autres'. In other words, on the basis that a win would, on balance, bring the larger return to Treasury in the long term, by encouraging the generality of taxpayers to comply with HMRC's view of the law.

The deciding factors when looking at whether to place a client within ADR could be, for instance: 'My client's example is specific to the facts, so even though the legal position is finely balanced, it wouldn't make a useful precedent'. Or 'My client's legal case is so strong, and the facts capable of such general application, that if HMRC took it to Tribunal, rather than resolving it in ADR, there is a significant risk of it setting precedent'.

ADR often works best where the basic facts have been misunderstood or have not been fully communicated, and therefore the law is being applied to the wrong circumstances.

All or nothing

Many tax issues are 'a line in the sand' – all or nothing. Other issues, particularly where valuations are involved, may involve a range of options.

This is significant in ADR, and it is perhaps more suited to cases where there are a range of possible outcomes.

'HMRC will always consider whether something that initially appears to be an 'all or nothing' issue is in reality 'all or nothing' or is a case where there is a range of possible figures for tax due.'

HMRC also has regard to the potential impact on taxpayer behaviour – both of the taxpayer directly engaged in the dispute, and other taxpayers who may be in similar situations.

This means that a positive effect on the taxpayer's future compliance may be factored in.

There are some examples given in the Strategy guidance.

'At the simplest level, for example, if HMRC believes that the law requires income tax of £125,000 to be due, and not income tax of £100,000, it cannot settle for income tax of £100,000'.

By contrast, in some cases there will be no unique answer. An example HMRC cites is '*compliance check cases where the true figure of turnover, recoverable inputs, taxable profit and so on is genuinely uncertain, for example due to incomplete or missing records'.*

In this case, the conclusion might be a figure 'somewhere between the two'.

In other cases, there will be a variety of possible answers, but from a 'fixed menu' – for example, the tax due is either A, B or C. In such a case, HMRC's strategy would be to accept one of the three, but not anything in between.

Conclusion

ADR is not a panacea, and in some cases could simply delay a solution. But a careful review of the Litigation and Settlement Strategy will pay dividends in terms of selecting the right cases for ADR, optimising preparation and achieving optimal outcomes.

HOW TO NAVIGATE HMRC'S CRACKDOWN ON FURLOUGH FRAUD

Written by Markel Tax, Evolve Partner

The Coronavirus Job Retention Scheme (CJRS) has been a vital support to many businesses and employees over the course of the last few months, and we now know that the scheme has been extended for a further 6 months. HMRC is now ramping up its compliance activities with a view to taking action against those who have made erroneous claims.

Given the vast sums of money at stake and strong public opinion for it to take action against those abusing the system, HMRC are now under pressure to act promptly to recover amounts over-claimed and penalise the abusers.

What does the legislation say?

FA2020 Section 16(8) gives HMRC the power to raise Income or Corporation Tax assessments to recover CJRS (& Self Employed Income Support Scheme) grants to which the claimant was not entitled or where CJRS grants were not used to pay furloughed workers. Sections 8 and 9 of the Act provide more detail about the consequences of making incorrect, erroneous or fraudulent claims.

It determines that if HMRC considers that a person or organisation has received grants to which they are not entitled, it can issue assessments to recover as 'tax' the amount of the grant they were not entitled to receive. Entitlement includes situations where eligibility ceased part-way through and where CJRS grants were not paid to employees within a 'reasonable period'.

Care needs to be taken that HMRC's target-driven officers clearly differentiate between those making honest mistakes and those genuinely abusing the system. It is therefore vital that evidence in support of CJRS grants is available and that clients have the appropriate advice and support.

In raising such assessments, no losses, deficits, expenses or any other allowances can be used to reduce the amounts assessed and no deductions are allowed against Corporation Tax profits.

The legislation did allow employers to correct erroneous claims, without fear of penalty, provided these are corrected within certain time limits - this is the latest of 90 days after receipt of a grant the employer was not entitled to, or 90 days after any change of circumstances following which the employer

was no longer entitled to the grant, up to 20 October 2020. Outside of this, legislation potentially allows HMRC to treat the claiming behaviour as deliberate and concealed. Claimants would then not only have to pay back the over-claimed amounts but may also be facing a penalty charge of 50% - 100% of the over-claimed amount.

In the case of partnerships, if only one partner knew that a claim was incorrect, all other partners are treated as if they also knew. The position is similar for companies, but if any of the directors/company officers are considered culpable and the company is unable to pay the tax and penalties due, HMRC can, subject to certain conditions, recover the amounts directly from the directors/company officers.

How can businesses navigate HMRC compliance activity?

Markel has repeatedly advocated that a thorough review of claims is undertaken to ensure any errors are picked up and corrected, ideally within the penalty-free window allowed by the legislation. Though the initial opportunity to correct historic claims penalty-free has passed, it is still nonetheless good practice to review the claims rather than wait for an HMRC intervention.

HMRC's interventions may be more severe and Markel has already started to see evidence of HMRC's targeted letters sent to those taxpayers whose claims are considered likely to be erroneous or fraudulent.

It appears that letters are being issued in tranches of 3,000 with the first issued in mid-August. HMRC previously said it had identified around 27,000 high-risk claims and that it had already commenced enquiries into around 40% of this number. These cases are likely to have been identified through HMRC's own risk analysis using RTI data, together with the substantial number of calls made to its CJRS Fraud Hotline, which stood at 8,000 in early September.

It is inevitable that many more letters will be issued over the coming weeks, especially given that the 20 October deadline has now passed. Unlike the scatter-gun approach seen in other 'nudge' letter campaigns by HMRC in the past, in view of the data available to HMRC, there is good reason to believe that there is a risk, rather than the likelihood of one.

The letters typically suggest that based on information held, the taxpayers CJRS claims may be erroneous and come with a clear warning that a failure to respond within 30 days may result in a formal compliance check. If this happens, these checks have the potential to extend beyond specific CJRS claims.

The letters seen so far by Markel Tax have been issued by the Customer Care Group, under the umbrella of HMRC's Campaigns & Projects banner, entitled 'CJRS Post Payment Compliance'. This suggests that HMRC are not assuming from the outset that all erroneous claims are fraudulent, but equally it does not mean to say that HMRC's Fraud Investigation Service (FIS) will not be involved in other cases, or that appropriate cases will not be escalated to that team if necessary. We already know from earlier press reports that some serious cases were taken up by HMRC's criminal investigations teams.

These letters should not be ignored. Many clients may ask: "If we're content that our original claim is correct, should we reply at all?". The answer is yes - if HMRC find themselves in possession of some information that troubles them enough to cause them to put pen to paper, until that trouble is resolved to their satisfaction, the matter cannot be closed. Half-hearted responses or the absence of any response will not halt HMRC's compliance machinery.

Accordingly, it is certain that taxpayers who ignore HMRC's 'invitation' will only find themselves under more intense scrutiny, not only leaving themselves open to formal assessments for the amounts that need to be paid back, penalty charges and interest, but also to the additional stress and uncertainty brought about by a formal compliance review. Such a review is likely to be far more disruptive for the business, at a time when businesses and especially those that have needed to rely on CJRS grants, can't afford any further disruption.

Markel Tax can help

Whether or not your clients are in receipt of a letter from HMRC, a check of CJRS claims is a wise investment of time. Those in receipt of an HMRC CJRS compliance letter should not delay and would be well advised to seek the appropriate advice to ensure they provide the right response.

Jacqui Mann and Steve Price, Senior Tax Consultants at Markel Tax, are both ex tax inspectors with a wealth of knowledge in handling HMRC enquiries and negotiating on behalf of clients and their advisors.

For guidance on Coronavirus Job Retention Scheme issues, they can be contacted on 0370 218 5278.

IMPROVEMENTS NEEDED IN REPORTING ON LEASES AND REVENUE

Ahead of the next reporting cycle for financial statements, the Financial Reporting Council (FRC) has published two reviews into the reporting of revenue and leases identifying several critical areas where companies need to improve their reporting.

These reviews covered current reporting on IFRS 15 Revenue from Contracts with Customers and IFRS 16 Leases following the first year of its application. This follows an FRC review last year into the quality of the transitional disclosures in a sample of annual (IFRS 15) and interim (IFRS 16) reports. The reports published today indicate several areas where further improvement is required.

IFRS 15 'Revenue from Contracts with Customers'

This is the third review on the application of IFRS 15 and focuses on those areas that have previously provided the greatest cause for concern. Although there has been some progress, the FRC continues to identify disclosures by many companies that do not meet the FRC's quality threshold. Companies should critically review their revenue-related disclosures to ensure they provide a clear understanding of how they have applied the requirements of the standard to their own circumstances.

In particular, the FRC expects companies to:

- provide clear descriptions of performance obligations, the timing of revenue recognition and explanations of any significant judgements made by management;
- identify, and explain significant movements in, contract balances;
  - ensure there is consistency between revenue-related information in the strategic report and information in the financial statements, including, for example, details about significant contracts and disclosures of disaggregated revenue; and
  - specify the types of any variable consideration that exist within contracts and how they are both estimated and constrained.

The FRC's report includes examples of both inadequate and better disclosures against which companies can benchmark their own draft disclosures. The FRC will challenge companies whose future disclosures do not meet its expectations.

IFRS 16 'Leases'

The FRC found that most companies provided a good explanation of the impact of adopting IFRS 16, which applies for the first time this year. However, the quality of their disclosures should improve in future reporting.

The FRC expects companies to:

- tailor the descriptions of their leasing accounting policies to match their particular circumstances and to cover all material areas;
- provide detailed information about the significant judgements affecting their accounting for leases; and
- include sufficient detail to enable a good understanding of the financial reporting effects of their leasing arrangements on their financial position, financial performance and cash flows.

IFRS 15 sets the principles to apply when a company reports information about the nature, amount, timing and uncertainty of revenue or cash flows from a contract with a customer.

IFRS 16 introduces a single lessee accounting model and requires a lessee to recognise assets and liabilities for all leases with a term of more than 12 months, unless the underlying asset is of low value.

DE FACTO DIRECTORSHIP

In the recent case of Secretary of State for Business, Energy and Industrial Strategy v Rahman [2020] EWHC 2213 (Ch) the court held that there was insufficient evidence, on the balance of probabilities, to indicate that the defendant was a de facto director of a restaurant although "there might be something further to look into", essentially criticising the extent of the claimant's investigations.

Notwithstanding the outcome of that case, in view of the changed or extended roles members or their clients might have been asked to take on to cover for absent or furloughed or staff, or colleagues made

redundant, this represents an apposite moment to take a look at de facto directorship in more detail.

What is a de facto director?

A de facto director (meaning a director in fact or in reality) is someone who has not been properly appointed and notified to Companies House as a director, but who nevertheless acts as a director and holds themselves out to third parties as a director.

This is in contrast to a de jure director (meaning a director from law) who is properly appointed to the board and registered with Companies House.

Determining whether a person is a de facto director

A de facto director will usually carry out all the duties of a director, make the decisions of a director, sign company documents and be treated as a director by de jure directors. It is the role assumed by the individual, rather than the title used that determines whether an individual is a director or not.

In Re UKLI Ltd Secretary of State for Business, Innovation and Skills v Chohan and others [2013] EWHC 680 Ch the following ten characteristics were cited as being relevant in establishing whether a person is a de facto director, though not all characteristics need to be established:

1) A de facto director must presume to act as if he were a director.
2) He must be or have been, in point of fact, part of the corporate governing structure and participated in directing the affairs of the company in relation to the acts or conduct complained of.
3) He must be either the sole person directing the affairs of the company or a substantial or predominant influence and force in so doing as regards the matters of which complaint is made. Influence is not otherwise likely to be sufficient.
4) I am not myself persuaded that an "equality of footing" test is required: I prefer the looser fact-based approach advocated by Jacob J, and consider the indicia to be whether the person concerned has undertaken acts or functions such as to suggest that his remit to act in relation to the management of the company is the same as if he were a de jure director
5) The functions he performs, and the acts of which complaint is made, must be such as could only be undertaken by a director, not ones which could properly be performed by a manager or other employee below board level.
6) It is relevant whether the person was held out as a director or claimed or purported to act as such: but that, and/or use of the title, is not a necessary requirement, and even that may not always be sufficient.
7) His role may relate to part of the affairs of the company only, so long as that part is the part of which complaint is made.
8) Lack of accountability to others may be an indicator; so also may the fact of involvement in major decisions.
9) The power to intervene to prevent some act on behalf of the company may suffice.
10) The person concerned must be someone who was more than a mere agent, employee, or advisor.

Duties, responsibilities, potential liabilities, and risk

A de facto director is subject to the same legal duties, responsibilities and potential liabilities as de jure directors and will be treated as such by the courts in the case of a dispute.

These include:

- the general duties of directors set out within sections 171 to 177 of the Companies Act 2006;
- the potential penalties for unfit conduct set out by the Company Directors Disqualification Act 1986; and
- the various offences set out within the Insolvency Act 1986.

Breaches of these duties and responsibilities can result in fines, disqualification, liability to personally contribute to the assets of the company and, in the most serious cases, imprisonment.

There may also be reputational risks to consider if there is a perception that someone is acting as a de facto director in order to avoid the formalities of appointment and being disclosed on the company's register of directors.

Managing the risks

Members and their clients need to recognise when they are at risk of becoming a de facto director and, if they do assume that role, to ensure they comply with all relevant duties and obligations imposed on them.

It may be worth considering becoming formally appointed or, alternatively, the risk of being found to be a de facto director may be mitigated by ceasing to act in the ways described in Re UKLI Ltd Secretary of

State for Business, Innovation and Skills v Chohan and others [2013] EWHC 680 Ch and by following these suggestions:

- Keeping out of the company's corporate governance structure - for example, away from decision-making on corporate policy and implementation.
- If they do get involved, making sure it is clear that they are not equal with the other directors and not exercising a real influence.
- Making sure it is clear that they are always acting only on instructions from the appointed directors, and are monitored and reviewed. This may be achieved through proper job descriptions, performance appraisals, regular reporting/monitoring and limiting financial controls.
- Avoiding their job titles including the word ‘director’ or implying that they are a director if they are not.
- Avoiding any involvement with confidential board information.
- If in doubt, taking specialist legal advice.

LOOKING BEYOND THE NUMBERS – HOW NON-FINANCIAL INFORMATION IS BECOMING MAINSTREAM

Until recently, the reporting of non-financial information was viewed as the domain of the ever-increasing number of initiatives, frameworks, and standards, referred to by some as the ‘alphabet soup’ of non-financial reporting frameworks. These initiatives sit outside of the main financial reporting frameworks and accounting standard-setting bodies and there was little appetite from bodies such as the International Accounting Standards Board (IASB) to enter the non-financial reporting space.

In last few months, however, that position has changed. The International Financial Reporting Standards (IFRS) Foundation Trustees issued a consultation on a future approach to sustainability reporting standards with a suggestion that a sustainability standard board should be established under the auspices of the IFRS Foundation.

Responding to public expectations

Why the change of heart? Much of this shift has been driven by investor demand for more consistent and better quality non-financial reporting. There is increasing public awareness of sustainability as a societal issue and the need for businesses to be accountable for their actions and decisions. In essence, more people want to know where their money is being invested, be that in their pension schemes or other forms of investment. This demand for greater visibility and transparency has prompted investors to place greater emphasis on the non-financial information reported by businesses.

Current non-financial reporting landscape

At the moment, in the UK, this information is required for those entities producing a strategic report. That means that small and micro-entities are not obliged to produce such information. However, the strategic report requirements, which are derived from the EU Non-financial Reporting Directive (NFRD), Directive 2014/95/EU, are often minimal and there is limited guidance on the amount or nature of the information that should be reported. Hence the inconsistency and lack of comparability in annual reports.

The European Commission recently consulted on changes to the NFRD to address the issues of poor quality, inconsistency, and a lack of comparability in non-financial reporting. The results of that consultation are not yet in the public domain, but there is an expectation that the requirements will be much clearer and extensive in the revised Directive. It is also possible that enhanced disclosure requirements may apply to some certain types of entity, for example, financial institutions.

Here in the UK, the Financial Reporting Council (FRC) has issued a discussion paper on the Future of Corporate Reporting. The FRC vision also reflects the multi-stakeholder perspective and the increasing emphasis on, and relevance of, non-financial information for decision-makers.

It is becoming clear that financial information will not be the sole basis for assessing an entity’s performance in the future.

Challenges ahead

The main challenge in attempting to integrate financial and non-financial information is that there is no single recognised framework for non-financial reporting with the same level of authority as that which currently exists in financial reporting.

The 'alphabet soup' of non-financial reporting frameworks and initiatives previously mentioned have been accused of crowding the environment and creating confusion.

However, in September, five of these bodies signed a statement of intent to work together towards the creation of a more connected non-financing reporting system. The reason that each of them exists is because they all provide their own unique guidance in this evolving space. The five bodies concerned are:

1. The Global Reporting Initiative (GRI)
2. The Sustainability Accounting Standards Board (SASB)
3. The International Integrated Reporting Council (IIRC)
4. The Climate Disclosure Standards Board (CDSB)
5. The Carbon Disclosure Project (CDP)

Whilst GRI is the most commonly used framework, they all have their merits and serve a specific purpose. Therefore, their commitment to work towards a more integrated reporting system has been widely welcomed.

Pace of change

There is certainly significant momentum behind the integration of financial and non-financial information and the level of activity within the standard setting bodies has increased recently. The International Federation of Accountants (IFAC) recently issued their own vision for enhanced corporate reporting which included their suggestion for the establishment of an International Sustainability Standards Board (ISSB) to sit alongside the IASB.

However, these new sustainability standards will take time to develop and evolve and therefore the approach may be an incremental one, over time, before non-financial becomes fully mainstream with the same level of authority and adoption as financial reporting.

SELF EMPLOYMENT INCOME SUPPORT SCHEME (SEISS) COMPLIANCE

HMRC is starting compliance activity on SEISS coronavirus support. What should you look out for?

Why the concern?

It is a feature of SEISS that it is possible to claim and be paid grants, despite being ineligible. This is because claimants had to confirm aspects of their eligibility during the claims process, but this meant nuanced decisions where errors were possible.

SEISS relied on clients making these judgement calls when making the claim, as agents could not make claims on their behalf.

Add to this, that penalties can be 100% of any grant claimed, where HMRC considers the claimant knew they were ineligible when making the claim, and there is potentially a large problem. Clients who knowingly made incorrect claims, could therefore face repayment of up to twice the amount claimed.

Even where mistakes are innocent, unless a claimant has evidence to support eligibility, they are open to HMRC challenge that they knew they were not entitled to claim. The position on penalties and notification is complex and is considered in more detail below.

Now is the time to take action by reviewing claims and evidence.

Types of error

There are two main reasons for errors. One source of error is that the system relied on the claimant to correctly understand and confirm that the trading conditions for SEISS eligibility were met. In some cases, claimants may have made mistakes.

A second reason for error is that in a small number of cases, HMRC systems have incorrectly calculated the amount of the grant, or incorrectly assessed the eligibility.

Compliance activity

HMRC compliance activity started from 20 October and will continue until the enquiry window for 2020-21 returns closes on 31 January 2023.

The initial phase of compliance activity from HMRC in respect of SEISS has involved HMRC emailing claimants where evidence held by HMRC indicates that the claimant could be ineligible. Claimants are

then directed to a webpage to confirm that they met the conditions for the grant.

The HMRC focus here is on the trading conditions, and it starts with a review of 2018-19 returns. Where a business cessation was reported on the 2018-19 return, but a SEISS grant was claimed, claimants are likely to be contacted.

A key issue here is that a business cessation in 2018-19 does not necessarily mean that a SEISS claim was invalid. Clients need to be aware that trading does not need to be through the same business. Where a client has ceased trading, they may still qualify if they started a new business in the same tax year, or had another business interest, as sole trader or partnership, which was continuing.

Compliance activity will continue as 2019-20 and 2020-21 returns are filed. Given the time period affected, it would be wise to review client claims now, so appropriate evidence can be gathered to support claims, or alternatively, incorrectly claimed amounts can be repaid.

The trading conditions

The trading conditions for SEISS are that the individual was in business trading as a sole trader or partnership in 2018-19 and 2019-20 (per Treasury direction para4.2 (c)), and that the business intended to trade in 2020-21 (para4.2 (d)).

For the first two phases of SEISS, the business also needed to be 'adversely affected' by coronavirus.

For the SEISS grant extension from 1 November, the conditions, according to initial published guidance, are (a) that the individual would have been eligible to claim SEISS phases one and two, even if they did not actually make a claim; and (b) that they are currently actively trading but are impacted by reduced demand due to coronavirus, or were previously trading but are temporarily unable to do so due to coronavirus.

At the time of writing, the Treasury direction has yet to be published, so the details could change.

This test for the SEISS grant extension differs from the 'requirement for SEISS phases one and two. The 'reduced demand' test can be viewed as a sub-set of being adversely affected'. This restricts the definition is some scenarios. In particular, where an increase in costs qualified as 'adversely affected' for the first two grants, it would not be 'reduced demand' for the SEISS grant extension.

In all cases, the impact on the business both 'adverse affect' and 'reduced demand' (grant extension) should be linked to coronavirus.

Trading via a company

To qualify, trading must be as a sole trader or partnership. There is particular risk where a business was incorporated after 5 April 2018. In such circumstances, it would be possible to pass the income conditions for SEISS using data already on HMRC systems, but fail the trading conditions.

But if the claimant does not realise that trading as a company does not meet the conditions, they could apply for and be paid a grant in error.

Example:

A and B trade as a partnership A&B during 2017-18 and 2018-19. Partnership A&B incorporates in September 2018, becoming A&B Ltd.

Each partner had £40,000 of taxable profits from the partnership in the tax year 2017-18 and £32,000 in taxable profits in 2018-19, before incorporation of the business. Following incorporation, the new shareholder directors have remuneration (salary and dividends) totalling £30,000 each during 2018-19.

This passes the SEISS tests for both partners of having partnership income of not more than £50,000 in 2018-19, and passes the additional test of partnership income being at least half total income. It also passes the trading condition for 2018-19.

The amount of the grant would be based on average trading profits for the partnership for the years 2017-18 and 2018-19 – the years during which it traded - £36,000 each (50% of £32,000 plus £40,000).

But the trading conditions of having trading income as a partner or sole trader would not be met in 2019-20, neither would the intention to trade test be met in 2020-21.

The full amount of any grants received would need to be repaid.

Problem areas

1. Amendments to returns

As an anti-fraud measure HMRC decided to reject amendments to returns after 6pm on 26 March 2020 for returns already submitted.

It permitted late filing of 2018-19 returns until 23 April 2020, but these were subject to additional compliance checks.

Adjustments to profits, such as averaging for farmers or creative artists, are ignored for SEISS.

The 'no adjustments' rule applies even where amendments would affect eligibility and where returns are under enquiry.

A client who claimed SEISS, might therefore appear to be ineligible based on up to date information; but would in fact have correctly claimed the grant based on the information at the time, and would not need to repay the grant.

2. Childcare responsibilities for a new child

SEISS was amended to include those who, due to parental responsibilities for a new child, either did not trade in 2018-19 (but did in other years), or failed to qualify based on 2018-19, due to reduced profits as a result of parental responsibilities. The amendment to the rules was to ignore the 2018-19 year.

Note that those who did qualify, but were eligible for only a very small grant, are not covered by the amendment of the rules.

HMRC was not able to identify people who belonged to this group, so there may still be clients who are eligible, but are unaware of the change in rules.

3. Repaying grants

There is a lot of pressure to get things right and repay grants claimed in error. This is in part due to the penalties regime, which is a modified version of the usual failure to notify self-assessment rules (see below). But take care, as any grant repaid cannot then be reclaimed.

HMRC lists the reasons for repaying a grant as receiving more than it said you were entitled to, failing the 'adversely affected' condition (the page has yet to be updated for the grant extension 'reduced demand' condition), and being ineligible due to failing the trading conditions (including incorporation).

Claimants may also repay part or all of a grant simply because they feel the amount received was more than they needed.

Advise clients to double check that they meet the conditions, and that the amounts received agree with those advised by HMRC.

4. Unusual circumstances

Watch out for different circumstances that affect the Self-Employment Income Support Scheme rules. This includes those on the remittance basis, who received contractor loans, and military reservists as well as the cases outlined above.

5. HMRC error

Be aware also of the possibility of HMRC error - particularly in phase one, when the systems were new. There have been errors in HMRC's calculations in a relatively small number of cases.

HMRC would not normally expect repayment where it has made a payment in error, unless the error was very conspicuous – such as where someone was advised they were entitled to a much smaller grant than the one they actually received.

When checking errors, distinguish between eligibility which is based initially on 2018-19 alone, and only where this fails, on 2016-2019; and the amount of the grant, which is based on an average of trading profits for the years for which the business owner was trading.

It is apparent that early on there were cases where HMRC software incorrectly looked only at 2018-19 for both eligibility and when calculating the size of the grant. This could result in an incorrect claim.

6. Taxation of SEISS and Partnerships

According to para 3 (3) sch 16 FA 2020, the default is that SEISS grants are taxed in 2020-21.

The position with partnerships is potentially complex. Where a partner claims SEISS and the amount is retained by the individual partner, then, as with SEISS payments to sole traders, this should be taxed on the individual partner in 2020-21.

But para 3 (4) sch 16 FA 2020 applies where SEISS is *"distributed amongst the partners (rather than being retained by the partner)"* and the amount of SEISS then falls to be included as partnership income according to the usual basis periods.

We await detailed guidance from HMRC on this point. There is an additional issue to be resolved if grant extension payments are received after 5 April 2021 – as the scheme is due to run until 30 April 2021. Further details are awaited here.

Penalties

Penalties are based on the self-assessment failure to notify rules, but with some modification. The position is set out in compliance fact sheet CC/FS47 and the legislation is in schedule 16, Finance Act 2020 (FA 2020), especially paras 8 and 9.

Broadly, no penalties were charged before 20 October 2020 (90 days after approval of Finance Act 2020). Since then, penalties can apply where an error is not notified within 90 days of receipt of the grant.

But HMRC states in the fact sheet:

"if you did not know you were ineligible for the grant when you received it, we will only charge you a penalty if you have not repaid the grant by 31 January 2022"

31 January 2022 is the normal income tax self-assessment filing deadline for 2020-21 tax returns and gives a final cut-off date for 'penalty free' amendments. There will be a box on the 2020-21 income tax return to repay any errors discovered at the last minute.

Where the claimant knew at the time of claiming that they were not entitled to the grant, then paras 13 and 14 of schedule 16 FA 2020 provide that this is automatically treated as a deliberate and concealed error and higher (50 – 100%) penalties apply.

The stakes are therefore quite high. If HMRC makes enquiries, it is likely that this will be done based on information it already holds and the higher 'deliberate and concealed' penalties will be hard to avoid.

Conclusion

SEISS was rolled out at high speed. It is complex and it is possible clients may have made errors, or have insufficient evidence to justify a claim.

Reviewing claims as soon as possible is likely to reduce the likelihood of significant problems further down the line.

CLIMATE-RELATED RISKS IN AN AUDIT OF FINANCIAL STATEMENTS

The issue of climate change is at the forefront of the minds of many investors and other stakeholders as its impacts are becoming increasingly apparent. The International Auditing and Assurance Standards Board (IAASB) has recognised that climate change is likely to have some impact on most, if not all, entities and, as a result, has implications for auditors.

As a result, they have issued guidance, in the form of a Staff Audit Practice Alert, to assist auditors in understanding what already exists in the current International Standards on Auditing (ISAs) and how that relates to auditors' considerations of climate-related risks in an audit of financial statements.

Background

The IAASB guidance acknowledges that the term climate change does not feature within the current ISAs. However, it emphasises that auditors are required to identify and assess the risks of material misstatement of the financial statements, to perform audit procedures in response to those risks and to obtain audit evidence that is sufficient and appropriate to provide a basis for opinion in the auditor's report. For certain entities, climate-related events and conditions may contribute to the susceptibility to misstatement of certain amounts and disclosures in an entity's financial statements.

The auditor's responsibility in an audit of financial statements is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement to enable the auditor to report on whether the financial statements are prepared, in all material respects, in accordance with the applicable financial reporting framework. If climate change impacts the entity, then the auditor should consider whether the financial statements appropriately reflect this.

In addition, auditors need to be aware of how climate-related risks relate to their responsibilities under professional standards, and applicable law and regulation. The guidance therefore highlights some of the current ISAs that may be relevant as part of the auditor's consideration of their responsibility in relation to climate-related risks.

The following list contains the ISAs highlighted by the IAASB which may be most relevant to the auditor's consideration of climate-related risks.

ISA 315, (Revised 2019) Identifying and assessing the risks of material misstatement - the auditor may consider the implications of climate-related risks when obtaining an understanding of the entity and its environment, including the entity's business model, industry factors, regulatory factors and other external factors.

ISA 320, Materiality in planning and performing an audit - climate-related risks may affect the auditor's determination of materiality and performance materiality in accordance with ISA 320.

ISA 330, The auditor's response to assessed risks - ISA 330 requires the auditor to design and perform further audit procedures whose nature, timing and extent are based on, and are responsive to, the assessed risks of material misstatement at the assertion level and to conclude whether sufficient appropriate audit evidence has been obtained.

ISA 250 (Revised), Consideration of Laws and Regulations in an Audit of Financial Statements – with regard to climate-related risks, other laws and regulations may include environmental regulations. A breach of such regulations may have a material effect on the financial statements.

ISA 450, Evaluation of Misstatements Identified during the Audit – the auditor is required to accumulate misstatements identified during the audit and determine whether these are material individually or in aggregate. Circumstances which may affect the evaluation include:

- the omission of information that, although not required by the applicable financial reporting framework, may be important to user's understanding of the financial statements; and
- other information to be included in the entity's annual report that may reasonably be expected to influence the economic decisions of the users of the financial statements.

ISA 540 (Revised), Auditing Accounting Estimates and Related Disclosures - for some entities, climate-related risks may have an impact on their accounting estimates. These may include impairment of property plant and equipment or goodwill, fair value estimates, provisions and contingent liabilities and mineral reserves.

The auditor may consider a variety of factors when auditing accounting estimates including:

- regulatory factors;
- the appropriateness of the assumptions, methods and data used by management;
- the degree to which the accounting estimate is subject to estimation uncertainty and may be impacted because of climate change;
- the degree to which climate change affects the complexity of the accounting estimate; and
- the degree to which climate change affects the subjectivity of the accounting estimate.

Disclosures (various ISAs, including ISA 330 and ISA 540 (Revised)) - it is expected that more and more climate-related disclosures will be included in the financial statements because of the increasing impact of climate-related risks on entities' financial statements and the interest of investors therein.

The IASB's publication '[IFRS Standards and climate-related disclosures]' highlights, among other matters, requirements that may be relevant to climate-related disclosures.

ISA 620, Using the Work of an Auditor's Expert - auditors of entities that are affected by climate-related risks may determine that the engagement team requires specialised skills or knowledge to appropriately identify and assess the risks of material misstatement or to respond to assessed risks. If expertise in a field other than accounting or auditing is necessary to obtain sufficient appropriate audit evidence, the auditor is required to determine whether to use the work of an auditor's expert.

ISA 570 (Revised), Going Concern - there may be certain instances when a climate-related risk could give rise to an event or condition that may cast significant doubt on the entity's ability to continue as a going concern, for example, extreme weather events.

ISA 260 (Revised), Communication with Those Charged with Governance - communication with those charged with governance should include, among other matters, the auditor's views about significant qualitative aspects of the entity's accounting practices, including accounting policies, accounting estimates and financial statement disclosures. For entities affected by climate change, this may include the effects of climate-related risks on these aspects.

ISA 700 (Revised), Forming an Opinion and Reporting on Financial Statements - the auditor is required, when forming an opinion, to conclude whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, taking into account, among other matters, the auditor's conclusion, in accordance with ISA 450, whether uncorrected misstatements are material, individually or in aggregate.

Climate-related risks that could give rise to material misstatements (if uncorrected), may relate to the appropriateness or adequacy of disclosures or the application of the entity's accounting policies. If the auditor concludes that, based on the audit evidence obtained, the financial statements as a whole are not free from material misstatement, the auditor is required to modify the opinion in the auditor's report in accordance with ISA 705 (Revised).

ISA 701, Communicating Key Audit Matters in the Independent Auditor's Report - when ISA 701 applies, the auditor is required to determine key audit matters to be communicated in the auditor's report. The degree to which climate-related risks require auditor attention in performing the audit, may result in determining such a matter to be a key audit matter. This determination may be affected by significant auditor judgements or specific events and transactions.

ISA 720 (Revised), The Auditor's Responsibilities Relating to Other Information – because the majority of climate-related information is currently disclosed in other information, when reading the annual report, the auditor is required to consider whether there is a material inconsistency between:

- the other information, including any climate-related information contained therein, and the financial statements; and
- the other information, including any climate-related information contained therein, and the auditor's knowledge obtained in the audit.

The auditor is also required to remain alert for indications that the other information, not related to the financial statements or the auditor's knowledge obtained in the audit, appears to be materially misstated.

COMPANIES HOUSE UPDATES

Measures to protect businesses from insolvency extended

Measures from the Corporate Insolvency and Governance Act were due to expire on 30 September 2020 but have been extended to relieve pressures on businesses dealing with coronavirus.

The extension to the temporary measures includes:

- Flexibility to hold AGMs virtually until 30 December 2020
- Statutory demands and winding-up petitions will continue to be restricted until 31 December 2020
- Termination clauses are still prohibited, stopping suppliers from ceasing their supply or asking for additional payments while a company is going through a rescue process.
- Modifications to the new moratorium procedure will also be extended until 30 March 2021.

You can read more about the regulations here.

Online filing options for second filing and advice about correcting errors made on company incorporation documents

You can now file your second filing online to correct an error made on CS01 Confirmation Statement (only errors made on share capital or shareholders), SH01 Return on allotment of shares, and AP01 Appointment of Director.

For further details visit GOV.UK.

Companies urged to sign up for email reminders

From Monday 9 November 2020, Companies House will be contacting all companies who are currently receiving paper reminders.

Companies are being asked to sign up to the email reminder service for annual accounts and confirmation statement as they will no longer be sending paper reminders by post.

The service is free, and the company can choose up to 4 people to receive a reminder (including an agent). Companies will also be able to file their document immediately from a link within the email.

TAX AND HMRC UPDATES

Transformation of HMRC's VAT services

From March 2021 HMRC intend to migrate all their remaining VAT customers from the VAT Mainframe (VMF) on to their Enterprise Tax Management Platform (ETMP).

Customers who have already signed up to Making Tax Digital (MTD) are not affected by this change and do not need to take any action since their records are already stored on ETMP.

Some VAT businesses and their agents will need to take action before **28 February 2021**.

Following migration to ETMP, agents will be unable to use the agent online service for their VAT clients who are not yet signed up to MTD VAT.

This will impact a large number of businesses as well as agents. Further information has been provided by the Chartered Institute of Taxation (CIOT) and HMRC.

HMRC urges traders to act now to prepare for 1 January 2021

With less than 30 days until the transition period with the EU ends, HMRC has sent 25,000 letters and emails to VAT-registered traders urging them to act now to avoid disruption to their business.

The government explained in the Border Operating Model that new customs and tax rules will come into effect at the end of the transition period, whether or not a Free Trade Agreement is negotiated.

Some customs processes are complicated and can take several weeks to set up, so businesses are being urged to act now to make sure they are ready.

Visit GOV.UK for further information.

Just over 60 days left for Self-Assessment

HMRC is reminding Self-Assessment customers that there are less than 60 days left to complete their tax return ahead of the deadline on 31 January 2021.

Completing 2019-20 tax return early will make sure clients have time to pay or to set up a payment plan to spread the cost of their tax liabilities. If completed online via the Personal Tax Account, taxpayers will be provided with an immediate calculation of any tax due.

Paper tax returns were due by 31 October 2020.

Paper Tax Statements for 2019/20

HMRC has provided the following confirmation about 2019/20 paper statements:

'*We can confirm that customers will receive paper tax statements for 2019/20 in December/January unless they have specifically opted for paperless communications. As part of an ongoing HMRC initiative to encourage more people to file online, it remains our ambition to move to a fully digital service as soon as circumstances allow."*

Publication of Statement of Practice and updated Disguised Remuneration settlement terms 2020

HMRC have published a Statement of Practice on 19 November.

This Statement of Practice sets out how HMRC will use its discretionary power to accept late elections – that is elections by the taxpayer to spread their outstanding loan charge balance over three tax years. Late elections are those made after 30 September 2020.

To ensure that taxpayers who wish to make an election can do so, HMRC have decided that any late election made up to 31 December 2020 will be automatically accepted.

Any elections made on or after 1 January 2021 will be considered on a case-by-case basis.

There is no change to the previous process in terms of submitting the election; it is still done through the loan charge reporting form, which needs to be completed, with loan information too if not already provided on a previous form.

The settlement terms and the guidance on spreading elections have also been updated in the light of the SP.

Working from home? Wear a uniform?

HMRC announced the launch of a new claims portal facility on 13 October 2020 in a bid to allow employees to make claims and cut out High Volume Claims Businesses who make claims on behalf of workers and take a high commission, leaving the employee with relatively little at the end:

"HM Revenue and Customs (HMRC) has received more than 54,800 claims from customers using a new online portal which allows workers to claim tax relief for working at home.

Launched on 1 October 2020, the online portal is simple to use and has been set up to process tax relief on additional expenses for employed workers who have been told to work from home by their employer to help stop the spread of coronavirus (COVID-19).

From 6 April 2020, employers have been able to pay employees up to £6 a week tax-free to cover additional costs if they have had to work from home. Employees who have not received the working from home expenses payment direct from their employer can apply to receive the tax relief from HMRC.

HMRC is encouraging customers claiming tax relief for working from home to apply directly through GOV.UK.

Once the application has been approved, the online portal will adjust an individual's tax code for the 2020 to 2021 tax year. The employee will receive the tax relief directly through their salary and will continue to receive the adjustment until March 2021.

HMRC is also reminding employed workers, for example healthcare workers and care home staff, that they can also claim tax relief on work-related expenses, including cleaning their work uniforms."

Note that agents will not be able to use the new service to apply for the relief on a client's behalf. It is hoped that employees will have a go at claiming these allowances and relief for themselves.

Grants to help businesses with customs declarations

Grants have been made available to help businesses with customs declarations. Funding is available for recruitment, training, IT, and co-funded training project to help complete customs declarations. Applications can also be made for trader-training to understand customs.

Refer to the guidance for funding available and how to apply.

ICAS writes to HMRC regarding coronavirus impacts on agents and tax compliance

ICAS has written to HMRC to request that it announces an automatic waiver of late filing penalties for any annual returns filed up to three months late, for returns due between now and 30 June 2021.

For many accountancy and tax agent firms, particularly those where there are significant numbers of income tax returns to be completed, it is always the case that the build up to 31 January is a peak period of work. This year the pressures have been compounded by the coronavirus pandemic. The following have aggravated pressures arising from an already intense work period:

- When coronavirus struck some clients stopped sending in their accounts; clients now face the ongoing pressures of refocusing their businesses, whilst subject to significant operating challenges and restrictions.
- Accountancy and tax agent firms have also had to transfer to 'work from home' with all the associated pressures that this brings.
- Many smaller firms are assisting their clients with the CJRS and SEISS claims; often it is the same staff in the tax agent firms who prepare the business tax returns.
- Agents' staff are already working long hours and their senior partners are concerned that they cannot be asked to do even longer hours.
- Companies House extending the filing deadlines by 3 months has meant that clients are now working to this deadline; and questions around whether businesses remain 'going concerns' can also cause delays.

As a result of the coronavirus pandemic impacts described above, some firms report being significantly behind compared with prior years in the number of tax returns progressed or completed. The option of making an individual appeal in each late filing case (on the basis of a reasonable excuse due to coronavirus) is neither feasible nor an efficient use of taxpayers, agents or HMRC's time.

This is all happening as many businesses are implementing changes arising from Brexit and seeking assistance from agent firms around this as well. ICAS has therefore written to HMRC – we would like HMRC to announce that penalties will be waived for up to any three-month delay in an annual tax return filing for those returns due between now and 30 June 2021. Read the letter here.

Making Tax Digital – case studies & update for agents

HMRC has published a number of case studies from businesses on how Making Tax Digital (MTD) has worked for them. Including testimonies from accountancy firms, consultants, and many businesses in a range of industries, the case studies highlight their experience of MTD and the benefits they have encountered.

The November edition of Making Tax Digital (MTD) Update for Agents (issue 14) is also now available on ICAS.com.

Annual Investment Allowance extension

The Government has extended the current temporary level of the Annual Investment Allowance (AIA) of £1 million by one year covering 1 January to 31 December 2021. The legislation will be introduced before the end of the financial year.

The extension gives enhanced tax relief and simplifies taxes on plant and machinery expenditure, as well as providing businesses with upfront cashflow support during continuing COVID-related uncertainty.

From 1 January 2022, the AIA will revert to £200k per annum. Find out more about AIA on GOV.UK.

Business Tax Account

The HMRC's business tax account shows a summary of a business's tax position for taxes that they have registered for. Some clients might therefore benefit from having such an account to manage certain taxes by themselves.

The online account brings together all a taxpayer's business taxes in one place. New guidance is now available on GOV.UK which provides more detail on who can use the Business Tax Account, what it can be used for and how to sign up.

The page is a useful guide that can be shared with clients for awareness and to monitor what is happening in their account.

EMPLOYMENT CORNER

Latest on CJRS, JRB and JSS

We now know as a result of the announcement made by the Chancellor on 5 November that the Job Support Scheme and Job Retention Bonus are being mothballed in favour of an extension to the CJRS scheme until the end of March 2021.

The extended scheme runs from 1 November 2020 to 31 March 2021 and for much of the detail its back to the August 2020 regime:

- Flexible furlough;
- 80% of wages for the hours furloughed employees do not work, up to a cap of £2,500 per month;
- Employers to pay all employer NICs and pension contributions;
- Employers can choose to top up to 100% of reference pay when employee is not working, but not obliged;
- Full pay for hours worked;
- Employer and employee must agree the terms in writing; and
- Employers can view/print/download previously submitted claims via CJRS service on GOV.UK.

Eligibility – Employers

- All employers "with a UK bank account and UK PAYE scheme";
- No need to have previously claimed under CJRS – re-setting the clock for those previously ineligible;
- Must have been affected by Coronavirus to claim; and
- Publicly funded organisations expected not to claim – must still pay employees in full, per funding allocation.

Eligibility – employees

- Must have been on an RTI return by 23:59 on 30 October 2020;
- All employees on any type of contract of employment including agency workers who are employees for Income Tax purposes;
- Each claim must cover a minimum period of seven consecutive calendar days; and
- Any changes to be agreed between employee and employer in writing and the written record to be retained for 5 years.

Redundant workers

Employers who re-employ employees whose employment was terminated can claim for them, providing:

- Employee was on payroll on 23 September 2020;
- An RTI submission which includes that employee was submitted on/before 23 September 2020; and
- Employee's employment was terminated after this date.

Links to the announcement and subsequent guidance and information are available.

The Government has also set up a dedicated support page where businesses can find the right support, advice and information to help with the impact of coronavirus (COVID-19).

Antigen testing paid for by employer

The following Statutory instrument was released in relation to antigen testing paid for by the employer:

SI 2020/1293 The Income Tax (Exemption of Minor Benefits) (Coronavirus) Regulations 2020

This instrument provides for a new temporary income tax exemption for the 2020-21 tax year, to ensure that employees who are provided with a coronavirus antigen test by their employer, will not be liable to an income tax benefit in kind charge.

TECHNICAL BULLETIN

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