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ICAS RESPONDS TO AUTUMN STATEMENT 2022

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ICAS has responded to the Autumn Statement, announced on Thursday 17 December, and is calling for action in key areas. This includes action on simplifying Capital Gains Tax, visibility of spending and tax decisions, and a commitment to greater overall tax simplification.

On the key announcements in the Autumn Statement, ICAS experts said:

Corporation tax

ICAS welcomes confirmation of UK Corporation Tax rates in the Chancellor's Autumn Statement. Chancellor Jeremy Hunt has confirmed that the Corporation Tax rates announced in the March 2021 Budget (and briefly reversed in the September 2022 Mini Budget) will still apply, meaning that the main rate of Corporation Tax will increase to 25% from April 2023 for companies with taxable profits above £250,000.

ICAS believes that the government needs to ensure that the UK is a competitive and attractive place to be located, and invest in particularly post-Brexit. A key part of this should be a stable and consistent tax system, which allows both corporates and individuals to plan for the long term with certainty. Tax should certainly not be a disincentive – tax administrative systems must work and HMRC needs to provide an effective service to all businesses, large and small.

Chris Campbell, Head of Tax (Tax Practice and Owner Managed Business Taxes) at ICAS said:

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"Our Members tell us that companies seek certainty and stability in Corporation Tax rates and take account of those when making investment decisions. This has an impact on the strength of the overall UK economy.

Companies will welcome the clarity that there will be no further changes in the 25% main rate of Corporation Tax. This will help plan their cash flows at a time of economic uncertainty.

The new Corporation Tax rates do of course bring a level of complexity, with the Corporation Tax rate for companies with taxable profits below £50,000 remaining at 19% (an effective marginal rate of 26.5% applying for taxable profits between £50,000 and £250,000). These limits are of course affected by the reintroduction of the associated companies rules from April 2023, so the £50,000 and £250,000 thresholds will be shared between companies under common control as opposed to only between companies in a 51% group."

Capital gains tax

ICAS is disappointed that the Annual Exempt Amount (AEA) for capital gains tax (CGT) will be significantly reduced from its current level of £12,300, firstly to £6,000 next year and then to £3,000 from April 2024, and that an opportunity to simplify CGT by introducing a single rate has been missed.

Chris Campbell said:

"Business owners throughout the UK will be monitoring the reduction in the AEA, which will impact the tax payable on the sale of their business. Increased CGT payable could have an impact on the attractiveness of the UK as a place to invest. ICAS supports opportunities for entrepreneurs to invest and, notwithstanding the lessons the Government needed to learn from the Mini Budget, additional barriers to investment could have a long-term impact on growth."

Susan Cattell, ICAS Head of Tax Technical Policy, said:

“The AEA is a straightforward, simple and comprehensible way of removing the need to report small capital gains. These significant reductions in the AEA will mean that many more taxpayers will have to engage with the complexities of the CGT regime – and HMRC will need to devote more resources to dealing with returns that produce very small amounts of tax.

“Multiple rates of CGT cause complexity and uncertainty. For example, there are practical problems with reporting and paying the tax on residential property gains within 60 days, where the reporting date falls before the end of the tax year, due to the link to the BR and HR income tax thresholds.

“Ideally, ICAS believes there should be a single rate of CGT – as was briefly the case in 2008/09 and 2009/10. The lower rates of CGT (linked to the basic rate income tax band) could have been regarded as unnecessary if the AEA had remained at a realistic level, similar to the income tax Personal Allowance. Having one fixed rate of CGT, set at an appropriate level, could also have limited the scope for manipulation through shifting income out of the year in which a gain is realised.

“An opportunity for simplifying CGT has been missed – and due to the significant reductions in the AEA, many more taxpayers will now have to engage with the CGT regime.”

Freezes to tax allowances and thresholds

ICAS is disappointed that one of the Chancellor's important revenue-raising decisions has been to impose an extended freeze in the levels of some key tax allowances and thresholds, rather than taking a more open and transparent approach.

Susan Cattell said:

“There should be more public discussion about the role of tax in supporting public services and contributing to the common good. The government could promote this by being open and transparent about the need to raise revenues and the role of tax in paying for public services.

“Instead, the Chancellor has decided to increase tax receipts in less obvious ways, through an extended freezing of some key allowances and thresholds, including the Personal Allowance, the higher rate threshold and the IHT threshold. This contrasts with the cancelled Health and Social Care Levy – where an increase in taxation was clearly linked to the need to raise more revenues to pay for social care. The Chancellor also reduced the threshold for paying the additional rate of income tax from £150,000 to £125,140.

“In recent years governments have been unwilling or unable to increase the main revenue-raising taxes but have still needed to raise money. The result has been opaque tax changes and a lack of transparency about revenue raising. ICAS believes that the Chancellor should have tried to improve the visibility of spending and tax decisions – and the link between them – rather than adopting a less obvious approach to raising additional tax revenues, through an extended freeze for some important allowances and thresholds."

Income tax rate bands

Justine Riccomini, Head of Tax (Employment & devolved taxes) at ICAS said: "The freeze in the UK Personal Allowance until 2028 will have a knock-on effect on Scottish taxpayers. It will bring more of those

on low earnings, who may previously have been exempt, into income tax - assuming the income tax rates and bands which are set by the Scottish Government are maintained at current levels - and income from wages and taxable welfare payments rise. The Scottish Government has autonomy over income tax rates and bands and has diversified from the rest of the UK by introducing a five rates and bands system. The rates and bands in Wales remain the same as those of England and Northern Ireland currently.

Taxpayers in Scotland will need to await the Scottish Budget on 15 December 2022, when the rates for the 2023/24 tax year will be confirmed."

45p tax rate band

Justine Riccomini said: "ICAS notes that the 45p additional rate band for Income Tax will apply at £125,140 from 6 April 2023, instead of the current level of £150,000. This will not apply to Scottish taxpayers in respect of earned income, but will apply to interest income as tax rates are set at a UK wide level.

It will be interesting to see whether The Scottish Government will decide to follow suit with the reduction in the additional rate band, as a 46% rate currently applies for Scottish taxpayers with earned income above £150,000."

Making tax digital

ICAS is disappointed that the Chancellor did not use the opportunity in the Autumn Statement to delay the roll out of both Making Tax Digital for Income Tax Self-Assessment (MTD ITSA) and basis period reform.

Chris Campbell said:

"At a time when the smallest of businesses are coping with issues such as increased costs and supply chain issues, a further delay to MTD ITSA and basis period reform would have been welcomed. Our Members regularly give us feedback that they are concerned about the impact MTD ITSA will have on their clients and neither businesses nor HMRC would appear to be fully ready so that they can be compliant from April 2024.

Basis period reform will also affect those businesses who do not have a 31 March or 5 April year end as tax will move from a 'current year basis' (based on accounting year ends which land in a tax year) to a tax year basis. This will impact on tax payable in the 2023/24 tax year and, whilst it is possible to spread the effect of basis period reform over a period of up to five years, those businesses could see an increase in their tax bills at a time when the UK is facing a cost-of-living crisis."

National Living Wage

David Menzies, Director of Practice at ICAS said:

"The increase in National Living Wage to £10.42 will be welcomed by the lowest paid members of society at a time when day to day living costs are increasing substantially. This represents an approximate 10% increase on the current top rate.

For many businesses however, particularly in sectors such as hospitality and tourism or where profit margins are already small, the above inflation increase at the same time as general staff shortages, rising direct costs and supply chain issues, could make all the difference to the business ongoing viability. Business owners should be taking steps to forecast through the impact of all such factors and take professional advice at an early stage."

Freezing of the Employer's NICs threshold

Justine Riccomini said: "The cost of employment for employers who have an employer NICs bill of more than £5,000 per annum will be likely to rise as salaries and wages increase between now and April 2028 and the employer's NICs threshold is frozen at the current rate of £9,100pa.

"The Employment Allowance was increased to £5,000 from the previous £4,000 per annum in April 2022 but it is also being retained at the current figure. However, the Employment Allowance only helps the smallest employers as only those with employer's Class 1 NICs liabilities of less than £100,000 per annum are eligible for the reduction."

VAT

ICAS notes with concern the announcement that the VAT registration threshold will remain at £85,000 until April 2026. This will extend the obligations of being VAT registered on more small businesses, who will need to register for VAT and submit VAT returns using software compliant with Making Tax Digital.

Chris Campbell said:

"The VAT registration threshold has been at its current level since April 2017 and, as such, this means that more small businesses in the UK are required to register for VAT. Our Members are telling us about the challenges with HMRC's new VAT Registration Service, but being VAT registered also creates an additional admin burden on small businesses. By having to charge VAT, those businesses will have to pass on an additional 20% cost to their customers at a

time when the UK is facing a cost-of-living crisis. Those same small businesses will have to comply with the requirements of Making Tax Digital for VAT, something which would have been avoided if the VAT registration had been increased."

Office of Tax Simplification

ICAS is disappointed that the Chancellor appears to have decided not to reverse his predecessor's decision to abolish the Office of Tax Simplification (OTS).

Susan Cattell said:

"ICAS is a strong supporter of tax simplification. Complexity in tax law is reflected in tax administration systems that are difficult to use and do not help taxpayers to meet their tax obligations. Trust in HMRC and the tax system is undermined because many individuals and small businesses cannot understand their basic tax obligations. Complexity also gives rise to uncertainty which deters business investment.

"The OTS has had some notable successes, including the cash basis (introduced following the OTS small business review) but its effectiveness has been limited by government reluctance to adopt its recommendations, or to use the valuable OTS research and reports to develop alternative proposals to tackle complexity. We would have liked to see the government make better use of its work.

"As an independent body the OTS has had a valuable role as a bridge between government and a wide range of representative bodies, academics, advisers, taxpayers, and businesses – including many who would not otherwise have engaged with consultations on tax matters.

"There was no mention of a reprieve for the OTS in the Chancellor's speech, so it seems that HMRC will now be expected to undertake any work on tax simplification, in addition to its core role of administering the tax system. ICAS is concerned that unless HMRC is given additional resources specifically for this work, it is unlikely to happen. Tax simplification will not, therefore, make any progress, especially as HMRC is already struggling to provide acceptable service levels to taxpayers and will also need to provide support to businesses affected by the next stages of Making Tax Digital."

Annual Investment Allowance

ICAS welcomes the continued £1 million Annual Investment Allowance (AIA) limit. Chancellor Jeremy Hunt has confirmed that the permanent AIA limit of £1 million announced in the Mini Budget will continue to be available.

Chris Campbell said:

"Since its introduction in 2008, AIA has provided businesses with an upfront incentive to invest in qualifying plant and machinery, the most notable exception being expenditure on cars. AIA is particularly useful for smaller businesses – for many SMEs setting the AIA limit at £1 million will mean that all capital expenditure in a year on eligible plant and machinery will be covered. Putting an end to changes to the level of AIA (which have been relatively frequent in the past) also removes the need for businesses whose accounting periods straddle the date of any change to pay careful attention to the timing of expenditure, to avoid losing out on relief.

The retention of AIA limit at £1 million may also be helpful to companies that have been able to take advantage of the current super-deduction regime or would have liked to claim a super-deduction but did not have the capacity to bring forward substantial expenditure. From April 2023, companies with taxable profits above £250,000 should still receive 25% Corporation Tax relief on qualifying additions up to the £1 million AIA limit (both thresholds having to be shared between companies under common control). Taking a long-term view, retaining the higher level of AIA (available to all businesses) may be more successful at encouraging additional expenditure over time."

Dividend rates

It was announced that the Dividend Allowance will be reduced from the current £2,000 to £1,000 from April 2023 and to £500 from April 2024. The Dividend Allowance operates by charging Income Tax at a rate of 0% on dividend income covered by allowance. Introduced in April 2016, the Dividend Allowance was initially £5,000 but reduced to £2,000 from April 2018, so reducing this further will erode the value of the allowance over time.

Taxpayers with dividend income have also been impacted on the change to dividend tax rates from April 2022, which increased by 1.25% to deter taxpayers from using dividends to avoid the increased National Insurance rates and anticipated Health and Social Care Levy. Although the National Insurance increase was reversed and Health and Social Care Levy abandoned, those increased Income Tax rates for dividend income will still apply. For those dividends not covered by the Dividend Allowance, Income Tax rates on dividends will continue to be 8.75% for dividends within the UK basic rate band, 33.75% for dividends within the UK higher rate band and 39.35%

for dividends within the UK additional rate band. The taxation of dividends is not devolved, so the UK dividend rates apply throughout the UK.

ICAS believes that a key component of the UK being a competitive and attractive place to be located is a stable and consistent tax system, which allows both corporates and individuals to plan for the long term with certainty. Tax should certainly not be a disincentive – tax administrative systems must work and HMRC needs to provide an effective service to all businesses, large and small.

Chris Campbell said:

"Aside from the giving of tax relief, the Dividend Allowance has been an effective tool in simplifying the tax system and many taxpayers with dividends covered by the allowance may not currently require to pay tax on those dividends via Self-Assessment. Many more taxpayers will need to pay tax on their dividend income going forward, which is likely to increase the burden on HMRC at a time when our Members relay concerns about HMRC service levels.

In addition to the increased rates of tax on dividend income from April 2022, reducing the Dividend Allowance in future tax years also increases the tax burden on Owner Managed Businesses, as the Income Tax payable on extracting the profits from limited companies will be higher going forward. In some cases, this could impact the decisions businesses make on their operating structure, but this will depend on the circumstances and is something on which they should seek professional advice."

Energy windfall tax

ICAS notes the expansion of the Energy Profits Levy, which will increase to 35% from January 2023 and will now continue to March 2028. A separate Electricity Generator Levy will charge a temporary 45% tax on what is considered extraordinary returns from low-carbon UK electricity generation.

Chris Campbell said:

"In general terms, ICAS believes that windfall taxes have a limited purpose as successful businesses will generate larger profits and pay more tax; they are also likely to take on additional employees (who will pay tax and National Insurance) and pay larger dividends (with investors paying more tax). There are specific issues with the taxation of multinational businesses (particularly in the digital sector) because the international tax system has not kept pace with economic and technological developments.

These are however unique times, both politically and economically for the UK, given the current cost of living crisis and unprecedented energy bills for consumers. Whilst the tax burden for companies paying the levy has increased, the government has retained incentives for decarbonisation expenditure, which will encourage companies to take steps to move towards achieving net zero."

Vehicle Excise Duty on Electric Vehicles

Justine Riccomini said: “The increase in Vehicle Excise Duty on electric vehicles from April 2025 will not only impact private householder owners of electric cars, but will also create an additional cost burden for employers who provide electric vehicle fleets to their employees.

With electric vehicles still significantly higher in price than their combustion engine equivalent, the increase in VED is unlikely to accelerate the switch to Net Zero alternatives.”

Share schemes (CGT)

Justine Riccomini said:

"Share schemes which incentivise employees by way of a crystallisation of a Capital Gain on exit as opposed to an income tax charge may be likely to become less attractive if the individual making the gain has either used up their annual CGT exemption elsewhere already or is affected by the reduction in the CGT exempt amount on the sale of their shares.

Typically, such schemes are used in high growth and technically innovative organisations which can contribute to economic growth in the UK economy. An unintended consequence of the CGT annual exemption allowance reduction may be to limit the attractiveness of the UK to such businesses and the necessary talent for their success."

Share for share exchanges for "Non doms"

Justine Riccomini, said: "The chancellor has brought in a measure which ensures that non-domiciled individuals pay tax on value built up on UK company securities in the UK, even when those securities are exchanged for securities in an offshore holding company. This is a valuable anti-avoidance mechanism which has been missing for some time and will hopefully be perceived by the public as a positive move as awareness of non-dom tax avoidance has been in the headlines recently."

CHANGES TO MTD FOR VAT & THE NEW VAT REGISTRATION SERVICE

What is changing with Making Tax Digital for VAT?

As a significant milestone in the move to Making Tax Digital (MTD), all VAT registered businesses will now need to register for MTD and submit their VAT returns using MTD compatible software going forward. From 1 November 2022, most VAT registered businesses will no longer be able to use their existing VAT online account to submit returns.

Special rules will apply for VAT registered businesses with turnover below the £85,000 VAT registration threshold with a VAT return due for submission before 7 November 2022. Those businesses can continue to use their existing VAT online account for their November VAT return only, thereafter they will also be required to comply with the MTD regime. It will still be possible for VAT registered businesses filing annual VAT returns to do so via their existing VAT online account until 15 May 2023.

Unless exempt, HMRC will thereafter expect VAT registered businesses to submit MTD compliant returns or they may be subject to a penalty. HMRC has issued guidance on MTD compatible software.

How may a business be exempt from MTD for VAT?

HMRC has published detailed guidance on MTD exemptions in VAT notice 700/22. This will affect VAT registered businesses where it is not reasonable or practical to use computers, software or the internet in order to submit VAT returns under MTD. Details of how to apply for an exemption for MTD for VAT can be found on the HMRC website.

Examples of potential grounds for an exemption include age, disability or location, as well as VAT registered businesses that are run entirely by practising members of a religious society (or order) whose beliefs are incompatible with using electronic communications or keeping electronic records.

There will be cases where the location of a business may entitle them to an exemption, in particular where there is no internet access available at the home or business premises and it is not reasonable to obtain access at another location. Internet access and poor broadband connectivity has been highlighted by ICAS Members as a concern in our recent 2022 Practice Survey, so this may be particularly relevant for businesses in rural areas.

HMRC will consider all applications for an exemption on an individual basis and will take account of all the relevant circumstances. VAT registered businesses who are already exempt from filing their VAT returns online and those subject to an insolvency procedure should automatically be exempt from filing their VAT returns under MTD.

What penalties will be charged for non compliance with MTD for VAT?

Aside from the usual penalties for late submission of VAT returns or late payment of VAT, there are specific penalties in respect of non compliance with MTD for VAT. HMRC has produced a fact sheet stressing the importance of using MTD compliant software, the need to maintain digital accounting records, and the use of 'digital links' to transfer or exchange data.

Where a return is not submitted using MTD compliant software, HMRC will be able to charge a penalty of up to £400 per return. In addition, HMRC will be able to charge daily penalties of between £5 and £15 per day where digital accounting records have not been maintained or where 'digital links' have not been used to transfer or exchange data between software. Further penalties of up to 100% of the tax due can be charged where there are errors included in the VAT return.

How has HMRC changed the process of registering for VAT?

HMRC changed the VAT registration process from 1 August 2022, with the introduction of the new VAT Registration Service (VRS) for businesses and agents. New agents can follow the process of registering as an agent using separate guidance on the HMRC website.

A key change is that new businesses will be registered for MTD automatically as part of the VRS. Applications for a MTD exemption can then be made in the usual way, where applicable. From our ongoing contact with HMRC, ICAS understands that exemption applications are currently being prioritised based on the due date of VAT returns.

An agent accessing the VRS on behalf of clients will need either:

- an Agent Services Account (ASA) ID and password
- a HMRC Online Services account ID and password

HMRC has advised that the quickest and most straight forward way to register a client for VAT is to follow the steps to register for VAT online using Agent Services Account (ASA) credentials. For applications via the ASA, HMRC will ask agents to provide their name, phone number and email address in case of queries regarding the application.

If an agent uses their old HMRC Online Services account, they may be asked for details to verify their identity such as their National Insurance number, date of birth and passport or driving licence.

To complete a VAT registration, an agent will need:

- client's name
- client's date of birth
- client's National Insurance number
- a form of ID from the client, such as their passport or driving licence
- details of turnover and nature of business.
- client's bank account details (or a reason if no bank account details are provided)
- Unique Tax Reference (UTR) number, where available

VAT registrations for companies will require the company's UTR. It is possible to register an individual for VAT without a UTR, but this must be supplied if the individual is already in Income Tax Self Assessment.

Where all the relevant information is not available immediately, it is possible to save an application in the VRS for 28 days, so that it can be revisited and completed at a later date.

HMRC has advised that agents will be given the option to register for an EORI number as part of the VRS application. This information is then sent automatically to the EORI team who will begin the process of setting up an EORI number and contact the client directly.

HMRC has already made some improvements to the new VRS, following feedback from stakeholders, including ICAS. Others are in the pipeline and HMRC has made clear that it intends to keep the operation of the VRS under review, so there may be further improvements in future.

NEW VAT PENALTIES FROM JANUARY 2023

Alongside the move to Making Tax Digital (MTD) and the need for VAT registered businesses to submit VAT returns using MTD compliant software from November 2022, HMRC is introducing a new penalty regime from January 2023 where VAT returns are submitted late or VAT is not paid by the due date. The new penalty regime will apply for VAT return periods starting on or after 1 January 2023.

The new penalty system will adopt a penalty point approach for both late submission and late payment in an apparent attempt to apply a level of penalty that is proportionate to the extent of the non-compliance with the VAT legislation.

Penalties for late VAT returns

Under the new scheme, a VAT registered business will receive a penalty point for each occasion that it submits a VAT return late. Once the business reaches a set number of penalty points (determined by the frequency of VAT return submissions), penalties will be charged by HMRC once the penalty thresholds have been reached as follows:

Annual VAT returns	2 points
Quarterly VAT returns	4 points
Monthly VAT returns	5 points

After the relevant penalty threshold above has been reached, the VAT registered business will receive a £200 penalty. Although no further penalty points will be added, an additional £200 penalty will be charged for each subsequent late submission until the business resets its penalty points tally.

Where a business changes their VAT return stagger, it will be necessary to look at making an adjustment to the number of points in the penalty points tally of the business as per Paragraph 10, Schedule 24 Part 2, Finance Act 2021. No adjustment is needed for a business with zero points, which reflects the fact that it has complied with its VAT obligations on time.

VAT registered businesses who have already received penalty points will see their penalty point tally adjusted as follows:

Change in VAT return reporting period	Adjustment to penalty points
Annual to quarterly	Plus 2 points
Annual to monthly	Plus 3 points
Quarterly to annual	Minus 2 points
Quarterly to monthly	Plus 1 point
Monthly to quarterly	Minus 1 point
Monthly to annual	Minus 3 points

It will be possible for a VAT registered business to reset its penalty points tally and reduce its accrued penalty points to zero. However, this will only happen if HMRC has received all outstanding VAT returns (and have been submitted on time) for the previous 24 months in the case of businesses submitting VAT returns annually, 12 months for businesses submitting VAT returns quarterly or 6 months for businesses submitting VAT returns monthly.

Interest and penalties for late payment of VAT

For VAT return periods starting on or after 1 January 2023, late VAT payments will attract both interest and penalties.

HMRC will charge interest from the day the VAT payment is due up to the date of payment in full at a rate of interest of Bank of England base rate plus 2.5%, even where the business has a Time To Pay (TTP) arrangement in place.

No late payment penalty will be charged where the VAT is paid within 14 days of the due date. Thereafter, a penalty will be charged at 2% of the VAT outstanding at day 15 and a further 2% of the VAT outstanding at day 30. Daily penalties at a rate of 4% per annum will then be charged from day 31 until the VAT is paid in full.

Where the VAT registered business applies for a TTP arrangement by day 15, this will have the effect of there being no late payment penalty charged. It is important to stress that it is the application that needs to be made by day 15, as opposed to the approval by HMRC.

The suspension of a penalty where there is a TTP arrangement will only remain as long as the business adheres to the conditions of the TTP arrangement.

As such, the importance of ensuring that payments made under a TTP arrangement are made in line with the agreement cannot be understated. Missing even one agreed payment under the TTP arrangement could result in full penalties being charged, even where all previous instalments have been paid on time.

Period of familiarisation

To allow VAT registered businesses to become familiar with the new regime, HMRC has advised that it will not charge a first late payment penalty during 2023, provided that businesses pay in full within 30 days of the payment due date.

In times of increasing interest rates, this may be welcome by VAT registered businesses as they manage their cash flow. But it is important to remember that late payment interest is payable from day 1, at a rate of interest linked to the Bank of England base rate.

Changes to repayment supplement

Alongside the above changes, HMRC will also be withdrawing repayment supplement for VAT return periods beginning on or after 1 January 2023. HMRC will instead pay repayment interest from the day after the due date or the date of submission (whichever date is later) until the repayment is made. This will be at a rate of the Bank of England base rate minus 1%, subject to a minimum rate of 0.5%. Unless interest rates increase significantly, those businesses receiving repayments are likely to receive less in repayment interest than they would have done in repayment supplement previously.

Let us know your views

ICAS welcomes Members' input to inform our work on consultations or other tax-related matters – email tax@icas.com to share your insights and feedback.

ICAS responds to many tax calls for evidence and consultations, as well as producing tax policy papers and reports. We also regularly attend meetings with HMRC at which service levels, delays and other issues are discussed, and we raise problems being encountered by Members.

SME THRESHOLDS

Currently, small businesses are presumed to be exempt from certain regulations. However, many medium sized businesses – those with between 50 and 249 employees - still report that they are spending over 22 staff days per month on average dealing with regulation.

To seek to address this, on 3 October 2022 the previous Prime Minister announced plans to widen the definition of an SME to those with fewer than 500 employees for the purposes of future and reviewed regulations. This change applies prospectively and therefore does not impact extant financial reporting and auditing requirements but could in the future.

It is intended that the exemption will be applied in a proportionate way to ensure workers' rights and other standards will be protected, while at the same time reducing the burden for growing businesses. Regulatory exemptions are often granted for SMEs, which the EU defines at below 250 employees. Having left the EU the UK is free to take its own approach and exempt more businesses and has thus increased this to those with under 500 employees.

The revised threshold came into force on Monday 3 October 2022 and applies to all new regulations under development as well as those under current and future review, including retained EU laws. The government also intends to look at plans to consult in the future on potentially extending the threshold to businesses with 1,000 employees, once the impact on the current extension is known.

These are not blanket exemptions, and they can be overridden in appropriate cases as a result of the policy development process including any consultations that may be undertaken if there is a justifiable reason for doing so.

Whether there will be any change to the above policy following the appointment of the new Prime Minister and new Business Secretary remains to be seen.

HOW TO BUILD TRUST IN YOUR TECHNOLOGY PLATFORMS SO YOU CAN CONFIDENTLY RECOMMEND TO CLIENTS

Written by Joiin, ICAS Evolve Partner

When you recommend a technology platform to your clients, you're placing utmost trust in it and vouching for its effectiveness. Any tech platforms you recommend have likely proven able to fill a gap at your practice, hopefully bringing new ways of working and delivering efficiencies.

Often there is a specific need not being met by software packages already in use, leaving room for a new platform. For example, Joiin solves the problem of how to consolidate multi-entity data, bringing a wealth of powerful features to ease this very specific, highly complex, time-consuming, and potentially error-prone task.

Any new technology is undoubtedly a big decision for a practice and the stakeholders involved, which you will want to get right. But how do you get to a position where you're comfortable recommending a new platform to your clients, safe in the knowledge that they'll reap the benefits it can deliver? Afterall, it's your reputation and your practice on the line.

This article provides a straightforward overview of what to look out for when assessing a tech platform's trustworthiness so you can confidently recommend platforms to your clients. It includes sections on data protection, security measures, collaborative features, added-value reporting, and supplier ethos.

Data protection from the get-go

The initial connection to a new technology platform is an excellent place to start.

Trusted platforms, like Xero, use something called Oauth2 to establish a highly secure link between their software and another – it is an industry standard and something to look for in technology you can trust.

The Joiin platform uses Oauth2 as it needs to first connect with your accounting software, such as Xero, to access, and then consolidate, your data.

With Joiin and Xero as an example: using the Oauth2 workflow, the platform would request access to your software and its data – the extent you would need to approve before anything goes further. The workflow involves authorisation via time-limited codes and would result in Joiin being able to access some of your Xero data.

One of the trust-building initiatives at Joiin is always to stress that the platform only requests 'read only' access, which means we only take the required amount of data to perform the consolidation task. We cannot change your data at its source.

Questions to consider: How would any new platform establish a secure connection with our existing software, and what data access would it require?

What to look out for: Standards like Oauth2 authorisation and 'read only' access.

Best practice security measures

Platforms like Xero are 'multi-tenant apps' – meaning multiple people will use the software. Their data exists within its single system but is partitioned into different accounts. An underlying infrastructure pulls the single system together as one.

Think of it as a plush apartment block where lots of people live. There's top-notch security at the entrance (as we've already described above with Oauth2). But once in, everyone has an apartment with secure access, while communal facilities make the property more desirable, such as premium safety systems.

Joiin is also a multi-tenant app. It uses a two-factor authentication (2FA) process when you want to get into your account – the kind of sign-in you likely trust elsewhere.

The Joiin platform sits on rock-solid Amazon Web Service (AWS) servers – a global leader in the market – with an underlying infrastructure that includes a wealth of shared security layers that are built-in to AWS, meeting thousands of global compliance initiatives.

Questions to consider: How has the platform been built, and what kind of security does it have?

What to look out for: Layers of security such as 2FA and trusted hosting like AWS.

Collaborative features

While data security remains a top consideration, you don't always want to lock everyone out.

There will be instances when you want to let people in – such as colleagues and clients you want to share information with across a technology platform used in your practice.

Being able to share information builds trust between you and your clients, but what should you expect from today's technology platforms?

Most modern-day platforms should let you define and manage permissions and access levels, such as who can look at specific information on a platform and what they can then do with that information. Often found in a platform's settings, permissions and access levels add a basic extra layer of teamwork.

But suppose you require a richer experience that encourages a greater sense of partnership between you and your clients and that your clients could benefit from this. In that case, you should look for specific features which support that level of collaboration.

The Joiin platform includes a multi-client feature – which lets you manage multiple distinct clients under one Joiin subscription. With the feature enabled, your clients can access and see data and reports in a secure area accessible only to them and you. Access to data and information is protected – Joiin will only pull data as authorised by an authenticated user at your end.

Questions to consider: What collaborative features are in place, and how will these benefit our clients?

What to look out for: Basic permissions and access, as well as advanced features such as multi-client.

Added-value reporting

Regular, robust, and accurate real-time digital reporting breeds confidence between a practice and its clients. And because new technology platforms treat data as a dynamic asset – and not statically confined to spreadsheet fields – you can automate the delivery of quick update reports or more comprehensive report packs, so these continuously flow and add value to your clients.

As well as automation, the Joiin platform offers a robust suite of digital reporting that includes pre-built templates which you can easily use with existing data. Such templates take the strain out of monthly consolidated group reporting while clawing back vital time to focus on more advisory work with your clients.

These reports can also form an integral part of Joiin's multi-client feature.

Using digital reporting to build a deeper rapport with your clients and encourage collaboration is a compelling strategic argument for implementing any new technology platform.

Questions to consider: How can digital reporting add value to our client relationships and help us to build a stronger bond with them?

What to look out for: Digital reporting capabilities, such as report packs and pre-built templates, as well as automation features.

Supplier ethos

At Joiin, we take pride in being a team that works with our customers to deliver what they need and achieve mutual success.

Here's an example: we proactively ask people what features they want and how the experience can be improved. We gather feedback via customer support initiatives such as support tickets, emails, chats, and webinars. We then work closely with customers to deliver a product that has their needs at its core. To date, we have delivered nearly 300+ product updates – driven purely by customer requests.

We believe a collaborative and partnership ethos should be at the core of any new technology platform. How else could a platform survive?

Questions to consider: What's the ethos behind the platform and its team, and how will they work with us?

What to look out for: Proactive collaboration, such as customer support and webinars, and a product roadmap involving you.

Conclusion

At Joiin, we appreciate the complexities of the B2B2C market in which we operate. We must meet your needs and build confidence in us, encouraging you to trust us and our platform. At the same time, we aim to give you the tools to convince your clients that our platform is right for them also, but only when you're ready to do so.

We hope this article has gone some way to start convincing you. Please don't hesitate to contact us if you'd like to discuss anything further with one of the team.

Joiin are an ICAS Evolve partner, who can help you to manage your multi-entity and multi-currency group consolidations, creating great looking financial reports and management reporting packs from your Xero, Quickbooks, Sage, and Excel Data. ICAS member firms can try Joiin for free by clicking here.

ENTREPRENEURS RELIEF WAS AVAILABLE TO TRUSTEES

**Entrepreneurs Relief is now known as Business Asset Disposal Relief (from 6 April 2020)*

In Quentin Skinner 2015 Settlement L&Ors v R&Commrs (2022) BTC 27 the Court of Appeal overturned the Upper Tribunal's decision and held that entrepreneurs relief was available in circumstances where the qualifying beneficiary of a trust did not have an interest in possession for a period of at least one year (now two years for business asset disposal relief).

There were three separate interest in possession settlements, one for each of the settlor's sons. The disposal of shares by the trusts were made within one year from the date of creation of the settlements.

The shares disposed of were shares of a company which was the personal company of each beneficiary, as each also held shares in the company in his own right, for longer than the requisite one year.

The point in dispute was whether each trust beneficiary also had to satisfy the one year requirement, as a beneficiary, in order for entrepreneurs relief to be available.

Sir Launcelot Henderson gave the leading judgement, with which the other two judges agreed.

The company was a trading company and the sons had all been officers of the company for the required period.

Sir Launcelot Henderson considered section 169I TCGA 1992, and for the conditions required for there to be a material disposal of business assets. The particular disposals fell within section 169I(2)(c) which covers shares and condition A which he referred to as the "necessary entrepreneurial connection" between the individual and the company, which had to be satisfied for at least one year.

In paragraph 21 of his judgement, Sir Launcelot Henderson said that "importantly, however there is no minimum period of ownership of the relevant shares which the individual must satisfy. Provided that the necessary entrepreneurial connection has existed between the individual and the company for the year ending with the date of disposal, it does not matter if the shares disposed of were acquired immediately before, and in contemplation of, the disposal.

This means, for example, that a considerable degree of latitude is permitted to an individual making a disposal of shares in his personal company to assemble the shareholding for the purposes of the disposal in whatever is the most advantageous way and without any minimum period ownership being required. What matters, for the purposes of obtaining relief, is simply that the requirements of condition A have been satisfied throughout the period of one year ending with the date of the disposal".

At paragraph 28 of his judgement, he goes on to say in connection with the trust shareholding that "at that stage, the focus switches to establishing the necessary entrepreneurial connection between the qualifying beneficiary (who has already been identified) and the relevant company. The conditions set out in sub sections 4 and 5 (of section 169J) are exclusively concerned with the relationship between the qualifying beneficiary and the company, and the period during which that relationship must be shown to subsist. There is nothing in the wording of either sub section which expressly requires the qualifying beneficiary to have had an interest in possession under the settlement throughout the one year period during which the … relevant condition has to be satisfied".

The taxpayer's appeal was unanimously allowed.

This is an interesting case in that it considered the position where beneficiaries each qualify for entrepreneurs relief in respect of their own personal shareholdings in the company and, because these "entrepreneurial conditions" had been met, then if they had interests in possession in trusts holding shares in the same company, it was not necessary for the trusts to have held the shares for one year.

In his judgement, Sir Launcelot Henderson made the point that had the shares been gifted directly by their father to his sons, they would not have had to have held the shares for a year in order to qualify for entrepreneurs relief.

ICAS

ANNUAL INVESTMENT ALLOWANCE CHANGES

The Annual Investment Allowance (AIA) was introduced in 2008 to provide a 100% tax deduction for expenditure on qualifying capital expenditure in the year of purchase, the most notable exception being expenditure on cars. Prior to the, then Chancellor Kwasi Kwarteng's, statement in the Mini Budget the AIA limit was expected to reduce from the 'temporary' £1 million to the previous 'permanent' £200,000 at the end of March 2023 – but the Chancellor announced a new 'permanent' level of £1 million.

Companies may have been able to take advantage of the 130% super deduction since April 2021 (although not for used or some leased assets), but AIA has remained the only route over the last few years for unincorporated businesses to receive any element of upfront tax relief on qualifying additions in the year of purchase. Despite the various "U turns" and subsequent announcements from new Chancellor, Jeremy Hunt, the AIA decision is one of the few tax announcements from the Mini Budget to remain unaltered.

Before the AIA announcement, businesses with an accounting year end other than 31 March 2023 would have been expected to apply transitional rules to calculate the AIA limit for a particular period straddling 31 March 2023.

Using the example of a business with a 30 June 2023 year end, the maximum AIA limit for the year would be £800,548 (being 274 days at £1 million plus 91 days at £200,000), although the maximum for a particular business would depend on the timing of expenditure. If that business had bought a £700,000 used machine in September 2021, full AIA would have been available. Whereas, under the transitional rules, only £49,863 of AIA would have been available if the same machine was bought in May 2023 (being the 91 days at £200,000).

Making the £1 million limit permanent will avoid the need to apply AIA transitional rules, which may accelerate the AIA available for qualifying plant and machinery expenditure in the coming months as it will no longer matter whether the expenditure has been incurred before 31 March 2023. This will simplify tax computations and will also be helpful for businesses in terms of giving them certainty over the allowances that may be available in respect of any planned capital expenditure. It will also be beneficial to businesses with long lead times for the delivery of assets, as adherence to the 31 March 2023 deadline will no longer be an issue.

The importance of the timing of expenditure

Although the AIA limit is remaining unchanged at £1 million, for limited companies the rules in Section 5 CAA 2001 on the timing of expenditure are particularly relevant, as this will affect whether expenditure can be treated as having been incurred before the removal of the capital allowances super deduction on 31 March 2023.

The normal rule in Section 5 CAA 2001 is that expenditure is treated as incurred when there is an unconditional obligation to pay it, even when all or part of the expenditure does not require to be paid until a later date. HMRC often considers delivery date to give rise to an unconditional obligation, however this is not specified in the legislation.

As ever, there are exceptions where the unconditional obligation is contingent on the receipt of a certificate or the occurrence of an event and that occurs within the period of one month after the end of a chargeable period and the expenditure is to be treated as incurred immediately before the end of that chargeable period. There is a separate exception where payment is not required to be paid until more than four months after the unconditional obligation exists, in which case the expenditure is treated as incurred on the payment date.

Section 5 CAA 2001 also has anti avoidance provisions to prevent the creation of an unconditional obligation for an earlier date than would reflect normal commercial usage. Further rules apply in respect of assets bought under hire purchase, given the requirement of Section 67 CAA 2001 for the asset to be brought into use before Capital Allowances can be claimed.

Wider AIA and super deduction considerations

Maintaining the £1 million AIA limit will mean that the vast majority of UK businesses should receive up front tax relief on all of their qualifying expenditure. Nevertheless, it should be borne in mind that claiming AIA can give rise to balancing charges when assets are sold in future, and this is something that tax practitioners should be mindful of when advising their clients.

DEFERRED TAX RATE – A REMINDER

The various changes, and proposed changes, in the rates of Corporation Tax have certainly had an impact on the recognition of Deferred Tax over recent years. No more so as where future Corporation Tax rates have been enacted, then in some cases changed before they take effect.

Back in the March 2021 Budget, Rishi Sunak, the then Chancellor of the Exchequer, announced the main rate of Corporation Tax would increase to 25% from April 2023 for companies with taxable profits above £250,000, with the Corporation Tax rate for companies with taxable profits below £50,000 remaining at 19% (an effective marginal rate of 26.5% applying for taxable profits between £50,000 and £250,000). He also announced the reintroduction of the associated companies rules, so the £50,000 and £250,000 thresholds will be shared between companies under common control as opposed to only between companies in a 51% group.

For a brief period, this was to be abandoned following the Mini Budget on 23 September 2022, as the Chancellor at that point, Kwasi Kwarteng, advocated the retention of the 19% Corporation Tax rate. That was before his successor, Jeremy Hunt, then reverted to the original plan.

In so far as Deferred Tax rates are concerned, FRS 102 Section 29.12 requires Deferred Tax to be recognised based on the law that has been enacted or substantively enacted by the reporting date and there are disclosure provisions where tax rates have been announced but not substantively enacted as at the reporting date.

In a UK context, substantively enacted is considered to be when a Finance Bill has passed its third reading in the House of Commons (in recognition that the House of Lords does not amend Finance Bills) or where the House of Commons passes a resolution under the Provisional Collection of Taxes Act 1968 so that a change in tax rate can have statutory effect.

In this case, the 25% rate of Corporation Tax was enacted in Finance Act 2021, which passed its third reading in the House of Commons on 24 May 2021. As the September 2022 Mini Budget did not give rise to any enacted changes in tax legislation nor were any resolutions under the Provisional Collection of Taxes Act 1968 necessary, this means that the Deferred Tax position is unchanged.

Companies should therefore continue to use the tax rates included in Finance Act 2021 for Deferred Tax purposes for accounting year ends ending on or after 24 May 2021. Companies with expected future taxable profits of below £50,000 should still use 19%, companies with expected future taxable profits between £50,000 and £250,000 should use the marginal rate and companies with expected future taxable profits above £250,000 should use the new main rate of 25%. The £50,000 and £250,000 thresholds should be divided by the number of associated companies, as mentioned above.

It is possible that the Chancellor may announce further changes to the future rates of Corporation Tax in the Autumn Statement on 17 November 2022. But any such changes will only be reflected in Deferred Tax calculations at such times as outlined in FRS102 as above.

PROFESSIONAL STANDARDS, ADVISING ON TAX AND PCRT

The related topics of professional standards and potential regulation of the tax profession have been on the radar for some considerable time – so you may well ask, why write (or read) about them now?

Introduction

There has been considerable focus on professional standards in the tax profession over the past few years from Government, HMRC, the media, and the public in general. Under the 'Raising Standards' banner, HMRC is undertaking various workstreams, including the recent consultation on repayment agents (see ICAS response). HMRC's 'Standard for Agents' is currently being reviewed, and a further consultation is also expected about how to improve standards in tax advice, with the possibility of oversight and formal regulation of tax advisers.

In summary, concerns can arise on two broad fronts:

- Ethics – is it right to be doing a particular thing? And, no doubt, there are examples of more egregious tax avoidance (such as rogue R&D claims) where one wonders if it could possibly be right to be either undertaking the course of action or advising on it (unless it's to say 'don't do it').
- Competence – providing good, timely advice, in a professional manner.

So where do members of ICAS fit in?

Part of being a member of a professional body is about achieving, and maintaining, standards – both technical and professional. When it comes to advising on tax, there has long been professional body guidance Professional Conduct in Relation to Taxation (PCRT), which sets out the fundamental principles and standards of behaviours that all members, affiliates and students must follow.

Tax advisers operate in a complex business and financial environment and a core purpose of the tax system is to fund public services and to ensure the good health of our economy and society. Tax advisers therefore have a responsibility to serve their clients' interests whilst upholding the profession's reputation and the need to take account of the wider public interest.

PCRT suite of guidance

PCRT has been revised over the years to take account of changing circumstances; it now consists of

- The Core PCRT document, which is mandatory
- Helpsheets which provide guidance in how to apply the PCRT; they are designed to be practical and to offer best practice in relation to:
  - PCRT Help sheet A – Submission of tax information and 'tax filings'
  - PCRT Help sheet B – Tax Advice
  - PCRT Help sheet C – Dealing with errors
  - PCRT Help sheet C2 - Dealing with errors - members in business
  - PCRT Help sheet D – Request for data by HMRC
  - PCRT Help sheet E – Members' Personal Tax Affairs
- And topical guidance - Topical guidance covering the application of professional standards to the provision of R&D tax credit services.

HMRC acknowledges that PCRT is an acceptable basis for dealings between members and HMRC; and HMRC has reflected some of the contents of PCRT into its own Standard for Agents (published in January 2018). At the very least, following PCRT requirements and guidance should support members in their work and help to protect them from complaints – from either clients or HMRC. On a more positive note, PCRT is intended to guide members in their behaviour, to assist them and to ensure that they undertake work effectively and appropriately.

The core PCRT document, which is mandatory, comprises 5 Fundamental Principles and 5 standards for tax planning. These are noted below.

The Fundamental Principals

A member must comply with the following Fundamental Principles.

- Integrity

To be straightforward and honest in all professional and business relationships.

- Objectivity

To not allow bias, conflict of interest or undue influence of others to override professional or business judgements.

- Professional competence and due care

To maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.

- Confidentiality

To respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the member or third parties.

- Professional behaviour

To comply with relevant laws and regulations and avoid any action that discredits the profession.

The ICAS tax team receives tax queries from members, often when something has gone wrong. The most common features of these queries are issues of professional competence and due care. Maintaining technical standards requires keeping abreast of changes in the legislation in the areas in which the adviser specialises; equally important is being able to recognise when a matter is outwith the adviser's specialisms, knowing when not to advise, and being willing to say as much.

The standards for tax planning

A member must observe these standards when advising on UK tax planning

- Client Specific

Tax planning must be specific to the particular client's facts and circumstances. Clients must be alerted to the wider risks and the implications of any courses of action.

- Lawful

At all times members must act lawfully and with integrity and expect the same from their clients. Tax planning should be based on a realistic assessment of the facts and on a credible view of the law. Members should draw their clients' attention to where the law is materially uncertain, for example because HMRC is known to take a different view of the law. Members should consider taking further advice appropriate to the risks and circumstances of the particular case, for example, where litigation is likely.

- Disclosure and transparency

Tax advice must not rely for its effectiveness on HMRC having less than the relevant facts. Any disclosure must fairly represent all relevant facts.

- Advising on tax planning arrangements

Members must not create, encourage or promote tax planning arrangements or structures that: (i) set out to achieve results that are contrary to the clear intention of Parliament in enacting relevant legislation; and/or (ii) are highly artificial or highly contrived and seek to exploit shortcomings within the relevant legislation.

- Professional judgement and appropriate documentation

Applying these requirements to particular client advisory situations requires members to exercise professional judgement on a number of matters. Members should keep notes on a timely basis of the rationale for the judgments exercised in seeking to adhere to these requirements.

Keeping 'Professional Conduct in Relation to Taxation' guidance current

ICAS is a member of the group of representatives from the seven professional bodies that author the guidance 'Professional Conduct in Relation to Taxation' (PCRT) and who meet regularly to keep the guidance current, and to refresh it when necessary. Much thought and pro-active work has gone into this since 2015 when the outgoing Coalition Government called upon "the regulatory bodies who police professional standards to take on a greater lead and responsibility in setting and enforcing clear professional standards around the facilitation and promotion of avoidance". This work is ongoing, as is contributing to the work being undertaken by HMRC as part of its 'Raising Standards' agenda into how to improve standards in tax advice, and the possibility of oversight and formal regulation of tax advisers.

Maintaining standards

ICAS members are asked to be mindful of PCRT in all their work; further discussion of the fundamental principles and standards for tax planning is in the PCRT, and in the helpsheets. Should you have queries regarding PCRT, contact the query helpdesk at ICAS.

MET POLICE CASE TESTS BASIC PAYE PRINCIPALS

The case of HMRC v Keith Murphy was heard in July 2022 and the decision handed down less than three weeks later, in August 2022. Lady Justice Andrews, who delivered the decision, wasted no time in coming to the nub of the issue facing the judiciary – in this case, the meaning of the words “from” and “profit” within ITEPA 2003 s.62 – the section of the act which defines what counts as earnings from employment.

Background

Mr Murphy was amongst a group of police officers working for the Metropolitan Police (“The Met”) who took legal action against The Met in 2014 via the High Court. That case concerned itself with arrears of overtime and other allowances to which they believed they were entitled by way of statutory debt under the Police Regulations 2003, whilst they were employed by The Met. To pay for the legal costs the claimants entered into a damages-based agreement and insurance policy, the former including a success fee should the courts find in favour of the claimants or an out of court settlement be reached with The Met.

In May 2016, a settlement was reached with The Met on the basis of no admission of liability. The settlement did not include funds ring-fenced for the success fee or insurance, but did include legal costs of the claimants. Indeed, Clause 8.1 of the settlement stated: "Other than the Agreed Costs, the Parties shall each bear their own legal costs in relation to the Dispute and this agreement."

The Met agreed a form of making payment to the claimants under clause 3.3 of the settlement agreement, which included them being invoiced for the success fee by the solicitors and paying this sum and the insurance premium directly to the creditors. Both amounts would be deducted from the total sum payable to the claimants prior to payment.

Clearly, any payments made to the claimants in respect of arrears of pay and allowances were taxable under PAYE. However, The Met also applied PAYE to the costs too – in other words, applying PAYE to the whole amount paid directly to and also on behalf of each claimant. This approach contradicted the amount declared as taxable income by Mr Murphy on his tax return. He had treated the success fee and insurance premium as not taxable on him personally as they were not earnings and he had not received them directly. HMRC issued discovery assessments and Mr Murphy appealed.

Court decisions

The decision taken by the First-Tier Tribunal (FTT) was that the whole amount should indeed be treated as taxable on Mr Murphy as earnings “from” an employment. The Upper Tribunal (UT) disagreed, but this decision was then overturned by the Court of Appeal – who considered the deliberations made by the Upper Tribunal and then decided they agreed with the FTT.

What was the Upper Tribunal’s view?

The UT concluded that something could only be regarded as "earnings" within s.62 of ITEPA if it fell within the expression "any other profit… obtained by the employee" in s.62(2)(b) of ITEPA.

Two words requiring clarification were noted by the UT – and this led them to conclude that the FTT had erred by only considering the word “from”:

i. “Whether the alleged profit was derived from the employment as required by the definition of general earnings in s.9 (2) of ITEPA (the "from" issue); and

ii. What is the meaning of "profit" in s.62(2)(b); in particular, whether it refers to 'gross' profit or 'net' profit and, if the latter, what items can be taken into account in computing the net profit for these purposes? (the "profit" issue).”

The UT considered that the insurance premium and conditional success fees were costs/potential costs which had to be incurred to enable the appeal process to happen at all, and that they did not represent a profit, nor earnings under s.62 ITEPA 2003. The UT cited the case of Eagles (Inspector of Taxes) v Levy [1934] 19 TC 23, opining that it supported the view that if a taxpayer has an outlay to achieve a legitimate aim then it should not count as income from the employment.

Court of Appeal

The Court of Appeal disagreed with this viewpoint and upheld HMRC’s appeal on the grounds that the term “profit” did not confer an automatic assumption of net profit and the normal rules for expenses must be observed – namely that the expenses in question did not qualify for a tax deduction because they had not

been incurred 'wholly, exclusively and necessarily' in the performance of the officers' employment duties.

In terms of the "from" question, the Court of Appeal confirmed that the correct way to determine whether a payment meets the definition is to refer to Hochstrasser (Inspector of Taxes) v Mayes [1960] AC 376, which concludes that an amount has to not only be derived from the employment, but also to be a reward for services at the same time. The Court of Appeal thus concluded at para 59 of the judgement that: "The Met was right to deduct PAYE from the whole of Mr Murphy's share of the Principal Settlement Sum".

Conclusion

The case reflects the fact that if one strips back the layers of the onion, the facts should point one to the basic principles of the law – and in this case, that is exactly what happened.

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

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Or contact the ICAS tax team at tax@icas.com.

CAN LATE FILING PENALTIES APPLY TO RETURNS FILED EARLY?

In the summer of 2022 the case of Quayviews Limited v HMRC served as an interesting reminder that instead of catching a worm, the early bird can instead receive a late filing penalty.

How early is "early"?

By way of background, the employer in question reacted to a previous reprimand from HMRC for late filing its RTI returns by batch-filing its RTI returns for 2020-21 in a single submission, three months in advance. The guidance says that RTI must be completed "on or before the payment date", but fails to define how far in advance "before" is.

Readers may wonder how an employer might be able to calculate payroll so far in advance of payday, but if the employer knows what the pay figures are going to be for future pay periods and has up to date tax codes, it is reasonable to assume they can carry out the calculations well in advance. However, in this case, the early batch filing threw up problems with the HMRC computer systems. The employer received a note to say the submissions had been sent successfully, but it appears they were not processed correctly once received. As a result, we now know that it is not in fact possible to make early RTI returns earlier than the beginning of the particular tax month to which the pay relates.

What happened next

The employer received three £100 late filing penalties and HMRC denied having received the returns – a stance which they changed at the Tribunal hearing. However, HMRC stood their ground that the returns had been received 'too early' and were thus not received 'at the right time'. HMRC denied that the employer had a "reasonable excuse" which would extinguish the penalties altogether because they had previously received (and were therefore assumed to have read) the so-called "education letter" associated with the previous incidence of late filing penalties, which demonstrates how to file an RTI return correctly.

It was therefore for the First-tier Tribunal (FTT) to establish whether the employer had acted reasonably, and whether the employer had a sufficient degree of ignorance to be unaware that early filing was not permitted.

The Tribunal's deliberations

The FTT reviewed the education letter, as well as other correspondence, and determined that there was nothing in any of the correspondence which clearly explained early filing such as this employer had carried out was not acceptable. The guidance is clear on the latest accepted date of submission, but not clear on the earliest date, stating only that returns must be submitted "on or before the payment date", except in the case of making an RTI submission in one tax year that belongs in the next tax year, which is prohibited. The FTT therefore concluded that 'HMRC's own guidance would indicate to a reasonable taxpayer that it is possible to file returns early'.

Reasonable excuse: upheld

The Tribunal decided that the lack of clear guidance, together with the mixed-up notion that a successful submission is only successful because it has been received by HMRC but not been processed, was sufficient to uphold the grounds of reasonable excuse by the employer, and thus the penalties were dismissed.

Inconsistent wording – the twist in the tale

There are in fact two different references to when RTI returns must be submitted. One is the well-known "on or before the payment date" in legislation and guidance, which most employment tax and payroll professionals are very familiar with. The other, less well-known reference is in terms of application of penalties, which is not in guidance (other than in the Compliance Handbook at CH62820) but in legislation at Finance Act 2009, Schedule 55 Para 6C.

The wording "If P fails during a tax month to make a return on or before the filing date, P is liable to a penalty under this paragraph in respect of that month" appears to infer that a return can be made during any tax month which precedes the payment date.

This might mean that, in fact, the question of reasonable excuse was not even in point.

Conclusion

Apart from wondering how this case got as far as the FTT, there has to be concern around the HMRC internal processes and the initial denial that the returns had even been received. Why was the education letter not sufficiently well worded so as to eliminate any possible areas for misunderstanding? And why did HMRC not consider the wording of its own legislative provisions and guidance before proceeding to the Tribunal?

STATUTORY REVIEW – WHEN YOU DISAGREE WITH A HMRC DECISION

As part of our ongoing dialogue with HMRC, ICAS has been liaising with HMRC regarding the Statutory Review process. The Statutory Review process is an important tool for ICAS Members where there is an area of disagreement with HMRC regarding their client, whether in respect of a tax decision or a penalty decision.

What is a Statutory Review?

In all cases of disagreement with a HMRC decision, the first step is to raise a formal appeal against that decision. This would either be using an appeal form (enclosed with the decision) or by writing to the relevant HMRC office explaining the grounds for appeal. This would normally need to happen within 30 days of the letter. The HMRC officer involved with the original decision would then review the decision before deciding on whether the appeal was successful.

If the appeal is unsuccessful and the agent/client is still unsatisfied, HMRC could offer a Statutory Review which may be worthwhile in order to reach a resolution. There is nothing to prevent a direct appeal to the tax tribunal, however the Statutory Review route may lead to a more prompt response and this would normally be within 45 days.

A Statutory Review will be a review of the decision by a HMRC officer who was not involved with the original decision. If the outcome of that review maintains that the original decision is unaltered, the agent/client still has the option appeal to the tax tribunal. This must be within 30 days of the review decision.

What other action can be taken to reach a resolution?

Once an appeal has been accepted by the tax tribunal, consideration should also be given to Alternative Dispute Resolution (ADR) process.

This process will involve a HMRC mediator, who has been specifically trained in mediation skills and techniques and will work with the parties in an attempt to reach a resolution. The mediator would not take over responsibility for the dispute as such but would focus on the areas that need to be resolved and seek to identify areas where agreement can be reached.

RUSSIAN SANCTIONS: AUDIT SERVICES

On 30 September 2022, Foreign Secretary James Cleverly announced the UK Government's intention to prohibit the provision of audit services to Russia as a response to the illegal annexation of a number of Ukraine regions.

While the UK Government has made this announcement, no details have yet been released on the full scope or extent of the prohibition. Legislation will require to be put in place for the prohibition to have legal effect.

Prohibitions on auditing services are already in force through EU sanctions (Regulation (EU) 2022/879) and US sanction (Executive Order 14071).

The UK previously introduced a prohibition on 'accounting services' under The Russia (Sanctions) (EU Exit) (Amendment) (No.14) Regulations 2022 (the 14th Amendment Regulations) which came into force on 21 July 2022. The definition of 'accounting services' specifically excluded auditing services. Those regulations also prohibited certain 'business and management consulting services' which included management auditing.

ICAS are seeking clarification from the Department of Business, Energy and Industrial Strategy (BEIS) on the scope and definition of 'auditing services' to be applied as part of UK sanctions.

Steps to be taken

Firms dealing with Russian companies and individuals must be alert to ensure that they comply with all relevant sanction regimes and legislation in the jurisdictions in which they operate.

Accountancy firms have already been reviewing their business relationships and often disengaging with businesses and individuals connected to Russia. Firms should now consider whether a further review of their audit client base is required to ensure they are prepared, as well as they can be, once the scope and definitions are clarified.

CHANGES TO AML HIGH RISK THIRD COUNTRIES

The Money Laundering and Terrorist Financing (High-Risk Countries) (Amendment) (No. 3) Regulations 2022 were laid in Parliament on 14 November and came into effect on 15 November.

Nicaragua and Pakistan have been removed from the list of High Risk Third Countries while Democratic Republic of Congo, Mozambique and Tanzania have been added to the list.

Enhanced CDD and monitoring must be carried out where business relationship are identified with persons established in a high risk third country.

ICAS COMMENTS ON PROPOSALS FOR HMRC TO COLLECT MORE DATA

'Improving' the data collected by HMRC

ICAS has responded to HMRC's consultation - Improving the data HMRC collects from its customers. The title could be viewed as slightly misleading, as the proposals would involve HMRC collecting more data and sharing it widely with other government departments. The additional data would be required from the self employed, employers/employees and shareholders of owner managed businesses – details of the data HMRC wants (and why) were set out in an earlier article. Some of the suggested benefits relate to HMRC use of the extra data – but others would involve sharing with other government departments.

The ICAS response raised some general concerns about the proposals – and commented on some of the specific extra information to be collected.

HMRC's role and resources

HMRC's core role is to administer the tax system and to ensure that, as far as possible, the right amount of tax is paid. However, in recent years its functions have expanded well beyond this core remit, so that it now has a role in a range of other areas, including student loans, minimum wage enforcement, benefits, money laundering regulation and most recently Covid support. Another recent consultation 'Digitalising Business Rates' also proposed that it should take on a role in the business rates system.

ICAS is concerned that HMRC's resources have not kept up with its expanding responsibilities – with adverse effects on its service levels over a number of years. There is also a perception that it has not 'bounced back' from the pandemic as quickly as other organisations: poor HMRC service levels continue to be a significant issue.

ICAS does not believe that HMRC should undertake the collection of additional data (for other government departments), or the proposed role in the business rates system, as it is unlikely that the necessary additional resources will be available on an ongoing basis. The consequence will therefore be a further deterioration in HMRC's service levels, which will undermine confidence in HMRC and the tax system.

Beyond the issue of resources, ICAS also questions whether HMRC should take on further responsibilities that are not part of its core role. Whilst some of the data mentioned in this consultation could be useful to HMRC in its work, much of the data would be collected on behalf of other departments. We believe this would be inappropriate and would bring with it considerable risk. GDPR issues would also need to be considered and addressed.

It is important that the tax system functions properly and that taxpayers trust HMRC to run the system fairly and effectively. Most taxpayers accept that HMRC requires data from them to do this, to establish the correct tax position. However, asking HMRC to collect and process large amounts of data that have little to do with its core role – and to pass on the data to other government departments – risks undermining trust and voluntary compliance.

It would be preferable to ask other bodies, for example the Office for National Statistics, to collect data for non-tax purposes and other government departments, in a transparent and open way – setting out exactly what any data collected would be used for. HMRC should dedicate its resources to running the tax system efficiently and maintaining acceptable service levels.

Administrative burdens for businesses

The proposals that employers should provide significant amounts of extra data about employees will impose additional administrative burdens and costs on businesses. It is difficult to identify any benefits for businesses from providing the additional data.

Large businesses are already subject to significant tax administrative burdens – and are currently having to devote resources to a range of other new tax-related issues (on top of ongoing work), including compliance with environmental tax and reporting requirements, and dealing with implementation of international tax reform.

Post-Brexit it is important to ensure that the UK remains an attractive location for multinational companies to do business – both to attract new investment and to retain businesses already located here. An efficient tax administration system, which minimises the administrative burdens placed on multinational enterprises is important.

Other comments

The ICAS response also included comments on some of the specific additional data to be collected, including

comments on some of the practical issues that would be faced by employers in collecting the proposed data about employees.

This information may be held in different departments in a business (typically HR and Payroll) and in a number of different systems. Pulling it together to report to HMRC would not be straightforward. For large entities, with thousands of employees and operating from multiple sites, there would be an initial huge manual exercise (to collect and input the base data) – with frequent updates required as changes occur.

Costs will be incurred for updated software and altering business systems. Larger entities will be able to manage this – at a cost – but smaller employers may struggle. Many employers outsource their payroll function – adding another layer of cost and complexity because the additional data will need to be collected and transferred.

HMRC & COMPANIES HOUSE UPDATES

Tax agents informing HMRC of changes

Your tax agent firm is a legal entity if it has any legal rights and responsibilities, including tax filings. If your business is changing legal entity for any reason, such as changing from a sole trader to a limited company, there are some things you must do.

Guidance has been provided if you're using an agent services account or HMRC online services for agents. There is also guidance if your agency firm is merging with another one or if it is de-merging from another one.

HMRC app – new employment details

The HMRC app has been updated to include new and improved employment details. Users of the app can quickly and easily get their:

- Income and employment history (going back 5 years)
- National Insurance number
- Tax codes

App users can also print and download their information and share it with their tax agent if needed, avoiding calling HMRC or waiting for the information to arrive via post.

Other improvements include being able to pay their Self Assessment via their own bank. There are a number of 'how to use the app' videos on YouTube which you can share with your clients.

The HMRC app is free to download from the App Store or Google Play.

Income Record Viewer (IRV)

HMRC is opening up a new digital service to all agents enabling them to view income data that HMRC holds for client's pay and tax details, employment history and latest tax code.

This will be available through the Agent Services Account and agents will need to get authorisation from their client before they can view this information.

Corporation Tax repayments

HMRC will now aim to respond to all progress chasing call for Corporation Tax repayments within 1 working day where the client has waited more than 8 weeks since submitting their claim. Corporation Tax advisors will escalate these cases to a technical adviser in real time. Where a technical adviser is not available, the client will be added to a list to be worked on by an adviser within 1 working day.

HMRC's Talking Points (webinars)

HMRC's regular Talking Points provide information, guidance and tips to help you (and your clients) understand tax issues.

With a mix of live and recorded webinars on a range of topics it might prove a useful resource for your teams. Topics include:

- Making Tax Digital for VAT
- How to apply the VAT reverse charge for construction services
- How to register for VAT using the VAT1 form
- Basis periods
- Capital allowances and vehicles
- Trade losses
- Off-payroll working rules from April 2021
- Plus many more…..

Errors on VAT returns – new digital G-Form

The new G-form is an online form and will be the default option landing page of Tell HMRC about any errors in your VAT return page on GOV.UK.

This is for all anyone who wishes to submit a VAT Error Correction Notice (ECN). There will be no change to the way HMRC currently process VAT ECNs.

The new form will streamline the current process for clients and will enable them to upload supporting documentation, provide explanatory notes, save the form to complete later and receive a confirmation of submission with reference number.

ICAS

Companies House publishes guidance on reporting a discrepancy about a beneficial owner on the PSC register

Companies House has published guidance that helps obliged entities report a discrepancy about a beneficial owner on the people with significant control (PSC) register.

A discrepancy is when the information that an obliged entity holds about a beneficial owner is different to the PSC information recorded by Companies House.

The guidance includes information on:

- What an obliged entity is;
- What a PSC is;
- What a discrepancy is;
- Why you need to report a discrepancy;
- What is not a discrepancy;
- When to make a discretionary report;
- How to make a discretionary report; and
- What happens after the report is submitted.

ICAS UPDATES

Anti-money laundering – ICAS Supervision report 2021/22

ICAS has issued its anti-money laundering (AML) supervision report for 2021/22. The report provides stakeholders and interested parties with a better understanding of the actions that ICAS undertakes as an AML supervisor, with the aim of increasing transparency and providing reassurance as to the robust nature of its activities.

Additionally, it provides a breakdown of the AML monitoring outcomes and most common findings across the firms reviewed by ICAS in 2021/22.

It also summarises ICAS' regulatory action and discipline procedures, and information regarding the channels for whistleblowing and the support available from ICAS to assist with AML compliance.

'Audit Special' Technical Bulletin

In October, a special edition of Technical Bulletin was published focusing on audit related news which is now available in the Technical Bulletin archive.

The edition includes articles on the following:

- FRC Quality Management Standards
- ISA (UK) 240 – The Auditor's Responsibilities Relating to Fraud in an Audit of the Financial Statements
- ISA (UK) 315 – Identifying and Assessing the Risks of Material Misstatement

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