CAPS TECHNICAL BULLETIN

ISSUE No 135
DECEMBER 2015

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AUTUMN STATEMENT PROVIDES SOME CHEER

The Chancellor's Autumn Statement included a number of surprises, the most notable of which was his unexpected U-turn on cuts to tax credits. For those of us involved with taxation on a daily basis, some of the Chancellor's surprises were pleasant, while others were decidedly not..

Bye-bye to Let?

Non-company residential landlords now seem to be held by the Chancellor in the same low esteem as bankers. Not content with his Summer Budget proposal to reduce progressively the availability of income tax relief on the cost of borrowings to purchase such properties, he has proposed in the Autumn Statement to increase Stamp Duty Land Tax (SDLT) on buy-to-let purchases by individuals, and on purchases of second homes, in both cases where the cost of the property exceeds £40,000. There will be a relatively low number of such properties to which the increase of SDLT will not apply. The increase in the rates of SDLT will be 3% across the board.

For those of us north of the border, it remains to be seen whether the Scottish government follows suit or leaves the Land and Buildings Transaction Tax rates the same.

Company purchasers will remain unaffected. It is likely that a number of buy-to-let landlords, who are adding to their portfolios with the aid of borrowings, will opt to do this through a limited company, thereby maintaining full relief for interest on borrowings and staying outside the increase in the SDLT rates.

The stated aim is to address the imbalance in the current housing market by discouraging buy-to-let and making more housing stock available for purchase by first-time buyers and families who wish to buy their own home rather than individuals who wish to own two or more properties. It is therefore curious that company landlords will remain unaffected by both of the provisions mentioned. If the Chancellor's intentions are genuinely as stated, might he attack corporate landlords next?

Inheritance Tax

Having spread some gloom and despondency, he did however announce that he is proposing no restrictions on deeds of variation for inheritance tax purposes. This will mean that it will still be possible to effect changes to the will of a deceased person within two years of the date of death to redirect bequests. This facility will continue to be of great benefit to those who have not updated their wills regularly or been poorly advised in the past.

None good, three bad!

With apologies to Match of the Day 2, three pieces of not so good news are that:

- The 3% diesel supplement which applies to car benefits was due to be removed after April 2016 but this is now being postponed until April 2021. Having originally encouraged motorists to drive diesel cars, within the last year the government has performed a complete U-turn and it now appears that diesel car drivers, along with residential landlords, are to be reviled.

- There will be a cap on tax free sporting testimonials of £50,000. This is still very generous when the recipient is a highly paid premier league footballer. It is however a great shame for lower league footballers and indeed other sportsmen who are not highly paid and whose career is cut short by injury.
- The third change, for which there will be little sympathy, is that tax relief for childcare vouchers will not be available to employees earning over £100,000 per annum after 5 April 2016.

Avoidance

In the 'even more reviled' corner are the 'tax avoiders' against whom a number of provisions were announced.

As a comment aside, unfortunately it is much easier to hit someone with the fiscal stick than to sort out the complex mess which has been a feature of UK tax legislation for many years now. Some legislation was inadequately thought through, while most was inadequately scrutinised by Parliament, leaving loopholes which many taxpayers have used legitimately. The sheer volume of tax legislation has made the situation even worse: apparently we had 759 pages of tax legislation in 1965/66 but there are now more than 17,000 pages! Apart from anything else, it must have been a scoosh to pass your CA exams 50 years ago compared to today. In his memoir "Wind, Sand and Stars", the French aristocrat and writer Antoine de Saint-Exupery (the author of "The Little Prince") concluded by saying "*perfection is achieved not when there is nothing more to add, but when there is nothing left to take away*". By gum, should successive UK governments have paid attention to this! On a more serious note, it makes it extremely difficult to 'pay the right amount of tax' when there is such a volume of complex legislation and it is little wonder that much of it is open to differing interpretations. Basic human nature is to pay as little as possible for anything and paying tax is no different, with many regarding tax as being legal robbery!

The Chancellor's proposals include:

- Further funding for the fight against tax evasion and non-compliance. This is interesting against a background of further staff cuts and centralisation within HM Revenue & Customs (HMRC).
- It will no longer be necessary for HMRC to have to prove that a taxpayer failed to declare offshore income or gains intentionally as there will be a new criminal offence and penalties for offshore tax evasion, based on the value of the offshore assets; penalties for enabling offshore evasion; and a new criminal offence where companies fail to prevent evasion.
- Serial tax avoiders will have to comply with a new reporting requirement and HMRC will be able to publish the names of serial avoiders.
- Certain tax reliefs will be denied to those who persistently abuse reliefs.
- Where it transpires that a Tax Return is incorrect following the use of a tax scheme which fails, a surcharge is to be levied. Generally, prior to this proposal, where a taxpayer had used a scheme which did not work, they reached a settlement with HMRC based on tax and interest only.
- A further 60% penalty is to be introduced, which will be based on the tax which has been 'saved' where a scheme is challenged under the General Anti Abuse Rule and the challenge is successful.
- Promoters of schemes which fail regularly are to be covered by new legislation.

Most of the measures above will become clearer when the 2016 Finance Bill is published but, in the meantime, we have been warned.

EMPLOYER LIABILITY – WHEN YOU BECOME LIABLE FOR YOUR EMPLOYEE'S TAX BILL

Anyone who has read the HM Revenue & Customs (HMRC) consultation '*Employment Intermediaries and Tax Relief for Travel and Subsistence*', which closed for comments on 30 September, will be aware of the proposed power to take effect from April 2016 which would transfer the liability for underpaid PAYE on travel and subsistence expenses from the employment intermediary to the engager of the worker. What is perhaps not so obvious is that HMRC already have powers to transfer PAYE liabilities in more run of the mill circumstances.

Unders and overs

Real Time Information (RTI) gives HMRC information straight away, but this is not always enough to prevent underpayments of tax arising in respect of individual employees. The system has a long way to go before real-time error correction eliminates the need for the annual P800 PAYE reconciliation exercise which throws up under and overpayments of tax for PAYE taxpayers. Employees are unlikely to complain about a refund, but if there is tax underpaid, the big argument is who should make good the shortfall?

The options are HMRC, the employee, or the employer. Historically, where HMRC have made an error or delayed in notifying the employee, HMRC have allowed the underpaid tax to be written off under Extra Statutory Concession (ESC) A19. But the hurdle is high, and in many cases the time limit of 12 months from the end of the tax year in which the error arose is sufficient to get HMRC off the hook. So, by default, the employee is left with the bill.

A change of target

But what about the employer? With employer error, there is no need for a 12 month wait.

The employer is responsible for operating PAYE correctly. For example, Reg 20 (3) (Income Tax (Pay As You Earn) Regulations 2003 (SI 2003/2682)) insists that, where HMRC issue an amended PAYE code, "*the employer **must** deduct or repay tax by reference to the amended code*" when making any subsequent relevant payments to the employee (emphasis added).

So if PAYE is under-deducted due to a failure by the employer, such as failing to operate the PAYE code correctly, then, *prima facie*, the employer is liable to pay, even though the employee has received the benefit of higher net pay.

HMRC public guidance on this point is limited, though the HMRC PAYE manual at page PAYE95011 which can be found at: **http://www.hmrc.gov.uk/manuals/pommanual/PAYE95011.htm** does mention, in the context of ESC A19, that where "*underpaid tax has occurred because of an employer error and not because of HMRC failure to make proper and timely use of information, then the employer should be pursued for payment of the tax.*"

It goes on to list occasions where this might happen, such as:

- Using an incorrect tax code
- Failure to follow the P45/P46 procedure (now the starter checklist)
- Incorrect deduction due to incorrect use of tax tables
- Incorrectly considering an individual's tax status
- Payment of gross pay without operating a code

So what are the defences?

Risks and defences

This is why Regulation 72 of the Income Tax (Pay As You Earn) Regulations 2003 SI 2003/2682 (Reg 72) can be an unwelcome surprise. Reg 72 permits HMRC to transfer liability for the underpayment of tax to the employee, or to leave it with the employer.

Per Reg 72 (3), HMRC will relieve the employer of responsibility where "Condition A" is met:

- The employer took reasonable care to comply with the PAYE Regulations, and
- The failure to deduct the excess was due to an error made in good faith.

Notice the 'and' in meeting "Condition A", which has two limbs for its fulfilment.

In the recent case of **Chapter Trading Ltd (TC04626)** (**http://www.financeandtaxtribunals.gov.uk/Aspx/view.aspx?id=8610**) the Tribunal accepted that the employer had acted in good faith, but did not accept that there had been reasonable care. So the employer effectively paid the employee's tax underpayment. The decision was swayed by an exception report produced by the payroll software listing the employee concerned. The report was made because the tax due to be deducted on implementing a revised PAYE code would have exceeded the employee's wage for that pay day.* The payroll software appears to have suspended the use of the code from then on, resulting in a significant underpayment of tax, while continuing to produce exception reports. The employer's failure to act on the exception reports has been taken as a lack of reasonable care.

Alternatively, the employee will be held responsible for the underpayment if "Condition B" provided under Reg 72(4) is met. "Condition B" is that HMRC are 'of the opinion that the employee has received relevant payments ***knowing that*** the employer wilfully failed to deduct the amount of tax which should have been deducted from those payments' (emphasis added).

Taking reasonable care

Employers' awareness of this issue is probably low. Payroll departments and employers need to be aware that 'failing to operate PAYE correctly' can result in liability for the employer. Systems need to be in place to demonstrate 'reasonable care' has been taken to operate PAYE correctly. Otherwise, there could be an unwelcome and unexpected demand from HMRC.

*In the Chapter Trading case, applying the tax code would have taken all the employee's pay. Tax deduction is now restricted to 50% on all PAYE codes from 6 April 2015 (The Income Tax (Pay As You Earn) (Amendment No. 4) Regulations 2014: SI 2014/2689).

PENSIONS AUTO-ENROLMENT – PENALTY REGIME

By now most of your clients should be aware of their obligations for pension auto-enrolment. But are they aware of The Pensions Regulator's (TPR's) approach to enforcement and the penalty regime which backs it up?

Enforcement and penalties

TPR's enforcement role in auto-enrolment is derived from the Pensions Act 2008. There are further powers in relation to employers who delay, or fail to make contribution payments under the Pensions Schemes Act 1993, the Pensions Act 1995 and the Pensions Act 2004. While the initial approach is one of education and guidance, followed up with informal notices requesting information or action, there are also significant powers vested with TPR, which include:

- Formal requests for information (s72 Pensions Act 2004);
- Inspection powers (ss73-77 Pensions Act 2004);
- Compliance Notices (s35 Pensions Act 2008), including third party Compliance Notices (under s36 Pensions Act 2008), which specify actions to be undertaken by the employer or third party. These notices can be extended to require payment of unpaid contributions, or even estimated unpaid contributions (ss37-38 PA 2008);
- Improvement Notices and Third Party Improvement Notices (ss13-14 Pensions Act 2004). These require detailed actions to be completed within a specified timeframe. (Warning Notices, under s96 Pensions Act 2004, will be issued prior to an Improvement Notice or Third Party Improvement Notice).

Furthermore, these powers are underpinned by a penalty regime:

- A **Fixed Penalty** of £400 can be imposed (under s40 Pensions Act 2008) for failure to comply with Statutory Notices such as those listed above, or for breaches of employer obligations under auto enrolment.
- An **Escalating Penalty** can be incurred for continuing failure to comply with Statutory Notices. These range from £50 a day on one end of the spectrum for the smallest employers (1-4 employees) to £10,000 a day at the highest end of the spectrum for employers with over 500 employees. The penalty scale for the different categories of employers in between is as follows: 5-49 employees at £500 a day; 50-249 employees at £2,500 a day; 250-499 employees at £5,000 a day). These penalties are not automatic. An escalating penalty notice will specify what action should be taken, and by when, in order to avoid the penalty.
- A **Third Party Daily Penalty** of £200 a day may be charged for failure to comply with a Third Party Notice.
- A **Prohibited Recruitment Conduct Penalty** (under ss50-52 Pensions Act 2008) can be imposed for failure to act on a Compliance Notice, or where there is evidence of a breach of the employer duties. The penalty is levied on a sliding scale - £1,000 for employers with 1-4 employees; £1,500 for 5 to 49 employees; £2,500 for 50 to 249 employees; £5,000 for 250 or more employees. [Visit **http://www.thepensionsregulator.gov.uk/docs/detailed-guidance-8.pdf** for what TPR considers to be Prohibited Recruitment Conduct]
- A **Civil Penalty** may be levied where an employer fails to pay contributions due and for failure to act on Improvement Notices. The amount is decided by the Determinations Panel or someone directly authorised by the TPR, in the range of up to £5,000 for an individual (such as a director, manager or other officer holder) and up to £50,000 for a body corporate. (See sections 13, 14 and 228 of 2004 Act, s111A 1993 Act; s88 of 1995 Act.) In the case of Scottish partnerships, the penalty may be levied against the partnership, or against individual partners.
- **Criminal Prosecution** will be considered for cases of 'wilful non-compliance' with employer responsibilities under any Statutory Notice mentioned above.

There is a right of appeal to First-tier Tribunal, General Regulatory Chamber, for fixed or escalating penalties (s44 Pensions Act 2008). Civil penalties, Improvement Notices, and Third Party Improvement Notices can also be appealed (s103 Pensions Act 2004). In the case of trust-based schemes, TPR also has powers to suspend, prohibit and replace the trustees (ss3,4 and 7 Pensions Act 1995) where trustees are in serious or persistent breach of any of their duties or have become unfit to act due to disqualification, bankruptcy or dishonesty proceedings.

The adviser's role

It is particularly important that practitioners ensure that all their employer clients – including those with only one employee – are aware of their duties. Failure to comply with employer duties opens the door to penalties.

The Pensions Regulator has published two documents:

- the Compliance and enforcement strategy document which can be found at: **http://www.thepensionsregulator.gov.uk/docs/pensions-reform-compliance-and-enforcement-strategy.pdf**; and
- the Compliance and enforcement policy document which can be found at: **http://www.thepensionsregulator.gov.uk/docs/pensions-reform-compliance-and-enforcement-policy.pdf**.

The strategy document sets out TPR's overall approach, while the policy document is the action plan covering such issues as challenging decisions and prosecution policy.

There is a useful introduction, suitable for clients, on TPR website page 'what happens if I don't comply' which can be found at: **http://www.thepensionsregulator.gov.uk/en/employers/what-happens-if-i-dont-comply/**.

A reminder of employer duties and timescales

Timetable for change

Some large employers have been involved in auto-enrolment since 2012, but we are now entering the final phase for smaller employers – those with under 50 employees. January 2016 sees the scheme rolled out to employers with under 30 employees.

Employer duties

These employer duties include:

- Automatically enrolling eligible workers into a work-place pension scheme;
- Enrolling workers who wish to be included, but for whom enrolment is not automatic (eg those earning below the earnings threshold);
- Making a declaration of compliance to the Pensions Regulator;
- Providing employees with appropriate information, including details of how to opt out.

In addition, employers must not:

- Induce workers to opt out or cease membership of a qualifying pension scheme;
- During recruitment, do anything to indicate a prospective worker's decision about pension enrolment might affect the chances of being a successful candidate;
- Do anything which might lead to an employee ceasing to be an active member of a qualifying scheme.

Clients who are unsure of their employer duties may be directed to **http://www.thepensionsregulator.gov.uk/en/employers/duties-checker/**.

Conclusion

There is a lot of guidance available on auto-enrolment. Making sure that clients are aware of their responsibilities now is likely to avoid significant complications later.

A summary table of basic enforcement routes can be found at Appendix 1 on page 21.

AUTO ENROLMENT – TIME TO DECIDE!!

In case the fact that over 1.8 million small and medium sized employers ("SMEs") are due to start operating their workplace pension schemes in the next 18 months has passed you by, here is another reminder! Many of these SMEs will turn to their accountants or payroll bureaux for advice on setting up their scheme, and if you already operate payrolls for clients, you will inevitably become involved in pension administration to some degree.

Providing a service in relation to automatic enrolment involves two distinct activities, namely:

1. advising a client on setting up their scheme, and
2. performing ongoing routine administrative tasks as part of processing a client's payroll for them once the scheme is up and running.

With certain provisos, whether you offer the first service is a matter of choice, and we will look at some considerations in making that decision below. If you offer a payroll service to clients, you will inevitably have to undertake some processing work in relation to 'pension contribution' as part of the payroll service, though there is some flexibility whereby you can choose the extent you will be responsible for processing pension contributions.

In both cases, being very clear about what work you will and will not be doing for your client is extremely important, and ensuring that your client understands the boundaries and respective responsibilities is critical. This point is very well made on The Pensions Regulator's website: "*Legal responsibility for automatic enrolment lies with the employers but they may ask you to help them. It is important your client knows exactly what services you will be offering and that you are both clear who will be undertaking particular tasks.*" Having a signed up-to-date letter of engagement which accurately records both your and the client's responsibilities is the only way to achieve this.

Advising clients on their choice of Scheme

One frequently asked question is "*Can I do this?*" The answer to this is unfortunately both very straightforward and somewhat tricky.

From a regulatory standpoint, it is straight forward - if you are advising a BUSINESS on its choice of scheme, you DO NOT need a Financial Conduct Authority (FCA) licence or a Designated Professional Body (DPB) licence. This activity is unregulated, and anyone can do it. However, if you are advising an EMPLOYEE, even a sole director, in relation to any scheme, you DO need FCA authorisation. This activity is regulated, and a DPB licence is not sufficient. If you do not have an FCA authorisation, you should NOT give ANY advice, and simply refer the employee to an Independent Financial Adviser (IFA).

However from a practical and ethical perspective, you should consider whether you have the knowledge and experience required to advise your client (ie: the Business) properly even on the choice of a scheme. The Pension Regulator (TPR) helpfully sets out eleven steps that need to be taken to set up auto enrolment, from "Checking your client's staging date" through to "Re-enrolment" in approximately three years' time. These can be found at: **http://www.thepensionsregulator.gov.uk/what-you-need-to-do-and-by-when.aspx**.

The one that most accountants have reservations about is Number 6 "Choosing a Pension Scheme". Guidance from TPR on this can be found at: **http://www.thepensionsregulator.gov.uk/what-to-consider-when-choosing-a-scheme.aspx** and there is a useful video at: **https://www.youtube.com/watch?v=oid9pp0OOMg** that also gives an idea of the process involved.

It has to be said that the work involved in taking a client through the 11 steps is substantial, and other considerations will therefore be whether (a) you have the capacity to do the work, (b) the client will be prepared to pay for it, and (c) you will be able to make a profit.

One final factor is the risk involved. A recent headline in the financial services newspaper "Financial Adviser" warned "*AE lawsuits beckon for employers' advisers*'" and commented that "*it is vital that employers choose pension arrangements for their workers that are designed and managed in members' interests*". It is conceivable that, if schemes fail to perform, employees will question why their employers chose that particular scheme, and that the employers in turn may ask questions of those who advised them in selecting their scheme.

If, having considered professional ethics, capacity, fee, profit, and risk questions, you decide that you do not want to provide a "scheme selection" service to your clients, then your best course of action would be to refer the client to a trusted IFA. However, you can still assist the client with the other steps an employer needs to take to set up a scheme. If you choose to recommend that the client gets an IFA to handle the scheme selection, or indeed the whole preparation process, bear in mind that you might well be asked to provide a lot of the required information, and it may be more economical to at least do the non-selection work yourself.

Whichever option you choose, a carefully worded Letter of Engagement is essential. This should include clear statements that while you can support the client in their selection of a pension provider by providing factual information, the ultimate responsibility remains with the employer, and that any advice to an employer is provided to them in their capacity as an employer and not as an individual.

Pension administration processing as part of a payroll bureau service

It is self-evident that if every employer has to set up and operate a workplace pension scheme, then every payroll system, whether computerised or manual, will have to be able, at the very least, to make appropriate deductions correctly, and to give a report of what has to be paid over to the pension provider. However, there is a massive amount of administration required, so if you are going to offer a more comprehensive ongoing auto enrolment processing service as part of your payroll service, you should consider whether your system can:

- Accommodate the required number of employers or employees?
- Link with all your clients' chosen Auto Enrolment pension scheme providers?
- Assess your client's employees' qualifying earnings and ages?
- Provide each employee with relevant information about the auto enrolment process, and also with appropriate and timely information about their ongoing options?
- Cope with postponement and the related communications?
- Monitor changes to an employee's qualifying earnings and age and automatically alert you if your client has any new Auto Enrolment duties regarding a specific employee?
- Process contributions and deductions and maintain a record of their contributions every pay period?
- Produce the mandatory and other bespoke reports?

Most importantly, you should also ask whether the additional processing functions can be provided at a reasonable cost that you can recharge to your client at a profit? In this regard, the more automated the process, the better your profit margin – any manual input and processing would involve labour hours and raise the costs for you and your client, making turning a profit more difficult.

Once you have evaluated what your system can and cannot do, you need to agree who will do what with your client; in other words, the exact extent of your remit, and then get an appropriate Letter of Engagement in place recording the agreed responsibilities.

There are example wordings for Auto Enrolment in the General Practice Procedures Manual (GPPM) at A1.25 and A10.16. These are very similar to each other and, as with all template letters, you should NOT use them "out of the box", but should carefully tailor them to reflect properly what you have agreed with your client.

Conclusion

For practices that are already providing payroll services to clients, providing some ongoing auto enrolment administration is almost certainly inescapable. The primary decision is a matter of how much you do, how efficiently you can do it, and how to get your clients to pay for it. The secondary decision is whether you want to assist them with their preparation and scheme selection. Some practices may wish to pass the whole process on to an IFA, others may want to assist the client with everything but the scheme selection; others again may choose to deliver an all-encompassing service. It may not be an easy decision, but it is one that has to be taken soon, if you haven't already done so.

For those practices that don't provide payroll services, with both RTI and auto enrolment, the decision may be a little easier!

REMINDING YOUR CLIENTS WHAT AND HOW TO PAY

Due to changes in HM Revenue & Customs (HMRC) policy around the issue of reminders and payslips for income tax self-assessment, you may want to contact clients to confirm what and how they are to pay their January 2016 tax bills.

Reminders and payslips

Agent Update 48 has stated the change in HMRC's practice as: "*Following on from a pilot in December 2014 HMRC do not propose to issue paper reminders to Self-Assessment customers in December 2015 to remind them of the approaching Self Assessment filing and payment dates. HMRC do intend to continue to provide electronic reminders for those customers that interact with us digitally.*"

What it means for you and your clients

Particularly where returns are filed in the run up to the 31 January filing deadline, clients may not receive payslips or reminders of what is due for payment. Interest will run on unpaid tax from 1 February 2016 and a late payment penalty of 5% of the tax due (excluding 2015/16 payments on account) applies from 30 days from the due date, ie from 2 March as 2016 is a leap year.

To ensure that payments reach HMRC before the deadline, it may be necessary to remind clients:

- of what to pay by 31 January 2016; and
- of how to pay

If clients need to pay by instalments, they should contact the HMRC Business Payments Support Service on 0300 200 3835 before the payment deadline. Agreeing time to pay before 2 March will mean that late payment penalties can be avoided. Clients contacting HMRC about payment after the 31 January deadline should phone Self Assessment Payment Helpline on 0300 200 3822.

Digital payment

As part of HMRC's drive towards digital payment methods, the use of Bank Giro Credit payslips is being discouraged. Gov.uk 'Pay your Self Assessment tax bill' says: "*If you don't have a paying-in slip, you'll need to pay by another method instead*". This would include on-line payment by debit card or credit card (subject to a 1.4% surcharge), using on-line or telephone banking, or payment by direct debit.

Clients who have normally paid by cheque may need to consider alternative payment methods, although they can still pay by posting a cheque (**https://www.gov.uk/pay-self-assessment-tax-bill/by-post**). It is unlikely that payslips will be sent to any clients who file in the month before the deadline, but one can be created and downloaded from the HMRC website at: **http://www.hmrc.gov.uk/gds/payinghmrc/payslip-sa1.htm**.

GETTING INFORMATION FROM HMRC – THE NEW 'HELP-YOURSELF' ROUTE FOR TAX AGENTS

HM Revenue & Customs (HMRC) are uploading information it holds about your clients onto a suitable platform, so that it can be viewed through the Self-Assessment for Agents Online Service. The aim is for this to be available from the middle of November – to help with submission of Self-Assessment returns for 2014/15 tax year.

What's new?

When it comes to income tax self-assessment returns, problems can arise when clients have lost paperwork, especially P60s and P11Ds, and the filing deadline is approaching. Obtaining this information can be time consuming, made all the more annoying because HMRC already hold a lot of the data. For some boxes on the return, agents are merely reporting back to HMRC the information which is already on their system.

From this autumn, HMRC aim to upload more details to be viewed through the Self-Assessment for Agents Online Service. The new details are:

- UK pensions – income and tax paid
- UK state benefits – such as Jobseeker's Allowance
- Employment income – details of each employment, gross income and tax paid
- Taxable benefits in kind – P11D details

How to view the data – step-by-step guide

To view the data you will need to be registered for the Self-Assessment for Agents Online Service.

To register go to **https://www.gov.uk/guidance/self-assessment-for-agents-online-service**.

Once logged on to the service you should:

- From the 'At a Glance' page, select 'view clients'
- Select the client you want to view from the list
- From the 'your current client' page, select 'Tax return options'
- On the tax return options page, choose the year 2015. (Previous years' data have not been uploaded)
- You should now reach a page headed 'Additional Information'

The Additional Information page should have an introductory sentence: "*HMRC currently hold the following information* *which may be useful when you are completing your tax return for the year ending 5 Apr 2015.*" From this page, you should be able to access the information held by HMRC.

If there is no information available, you will see an error message: "No information is currently held on your client". It is possible that this is simply due to a delay in uploading details, and it may be that the details will be available later.

What to watch for

HMRC data are only as good as the source. There have been significant concerns over the information flow into HMRC, particularly from DWP. Wherever possible, you should double check the information shown in Self-Assessment for Agents Online Service. By now, it is to be hoped that PAYE data in the HMRC system are reliable – and that any late adjustments submitted by employers have been processed.

Next steps

Initially, the information is only available to view, or it can be uploaded to HMRC's free filing software. From Spring 2016 it should be possible to upload the information shown into commercial software packages.

If it doesn't work?

Unfortunately, if it hasn't worked, it's back to the phone, and the Intelligent Telephony Automation ("ITA") system. If you need light relief, take heart from the HMRC's Behavioural Evidence & Insight Team's "Intelligent Telephony Automation Customer Testing Survey Report" from May 2013. Apparently the ITA system was tested by 'Wizard of Oz' methodology: "In the 'Wizard of Oz' methodology … a person interacts with a computer system that they believe to be autonomous, but which is actually being operated by an unseen human being." So remember that there is just a chance, that when you think you are dealing with a machine, you could be dealing with human being pretending to be a machine.

Since this article was written, HMRC have admitted that the system will not be ready before the 31 January 2016 deadline. In reply to a query from ICAEW they said that 'T*he run-up to the SA deadline is a particularly busy and important period. We cannot introduce a new system unless we are absolutely confident it will not cause any disruption to SA filing. We continue to work on pre-population and will make this available well ahead of next year*.'

SCOTTISH RATE OF INCOME TAX AND SCOTTISH TAXPAYERS

Scottish Taxpayers will be liable to pay the Scottish Rate of Income Tax (SRIT) which was introduced by the Scotland Act 2012, and which will be charged on non-savings and non-dividend income from 6 April 2016.

The definition of a Scottish Taxpayer is included in sections 80D-80F of the Scotland Act 1998. For those who are employed and paid through PAYE, the task of establishing whether they are Scottish Taxpayers is the responsibility of HM Revenue & Customs (HMRC), not the employer or the taxpayer, although taxpayers can appeal if they think the decision is wrong. But for the self-employed or those who have to file a Self Assessment return, the responsibility is the taxpayer's and there is a box to complete on the tax return.

You'd think determining whether someone is a Scottish Taxpayer would be fairly straightforward. In the majority of cases this is so, but for those who are more mobile, it may not be.

Two tests are worth setting out at the outset. The **First Test** asks: "*Is the individual UK resident for tax purposes?*" – at a very basic level, you can't be a Scottish Taxpayer if you're not a UK tax payer! If so, the **Second Test** is whether the individual has a "close connection" with Scotland. In many cases, establishing whether the individual does will be simple, but in others it could be rather more complicated. And just to make them special, MSPs, or MPs and MEPs for Scottish constituencies are automatically Scottish Taxpayers, regardless of where they live.

Take three old friends, Paddy Irishman, Paddy Scotsman, and Paddy Englishman, who meet up in a pub in Glasgow one evening after work. Only one of them is a Scottish taxpayer – but which one is it?

- Paddy Irishman is a confirmed bachelor and lives in Paisley, but works for a haulage company based in Newcastle and drives all over the UK for them.
- Paddy Scotsman lives with his wife and two children in Newcastle, but is a subcontractor for an engineering company and works in Grangemouth where he stays Monday to Friday, travelling home to be with his family at the weekend.
- Paddy Englishman is married to a Scot, but lives in Berwick upon Tweed and commutes to work at a bank in Edinburgh.

Some things which you might think might indicate a "close connection" with Scotland are totally irrelevant. For example, one's "national identity" such as being born in Scotland, or having Scottish parents, doesn't come into the equation. Neither does the geographical location where you work – if you work in Glasgow, Belfast, or London, you could still be a Scottish Taxpayer! The location of the employer (or pension company) that pays you is also completely unimportant.

The acid test, while somewhat unhelpfully called having a "close connection", is essentially a **residence test**. However case law on residence, in relation to capital gains tax, which relates to an exemption from tax rather than to establishing the taxing rights of a part of the UK, is not tied to the 'close connection' test. HMRC guidance refers to the Capital Gains Tax (CGT) residence test and doesn't highlight this pertinent distinction.

In the case of our three friends, the only Scottish Taxpayer is, in fact, Paddy Irishman. If an individual only has one residence, the answer is easy. He lives in Scotland – end of! The facts that he is Irish, that his employer is based in Newcastle, and that he travels throughout the UK are unimportant. He has one residence, which is in Scotland, and he is therefore a Scottish Taxpayer.

Paddy Englishman's case is the exact opposite. Because he only has one residence, which is in England, he is NOT a Scottish Taxpayer. The fact that he works in Edinburgh for a Scottish based bank has no bearing on the matter at all.

These two cases illustrate the **Second Test**: "*If you only have one place of residence, if it's in Scotland, you're a Scottish taxpayer; if it isn't, you're not.*"

Paddy Scotsman's case is the tricky one. He lives in TWO places, where he works in Grangemouth, and with his family in Newcastle. So which is his residence? The **Third Test** is whether their "***main place of residence*** *is in Scotland for at least as much of the tax year as it has been in any* <u>*one*</u> *other part of the UK?*" The two key factors underlined in the Third Test are crucial.

First of all, what is a "main residence"? This is a matter of fact, and depends on the particular circumstances of each individual's case. It is not necessarily where someone spends the majority of their time. It is where they have "*the greatest degree of connection*". The factors to be considered include, but are not restricted to:

- If the individual is married, where does the family spend its time?
- If the individual has children, where do they go to school?
- Where are the majority of the individual's possessions kept?
- Where is the individual registered with a dentist/doctor/optician?
- Where does the individual receive correspondence such as bank statements, credit card bills and utility bills?
- Where is the individual's car registered and insured?
- Where does the individual pay council tax?
- Where is the individual registered to vote?

Based on the above, despite being born in Scotland and spending five days a week there, Paddy Scotsman is not a Scottish Taxpayer. His family life means his main residence is in England, and he does not have a "close connection" with Scotland.

But what if an individual and their family move several times in a year, perhaps because they are in the armed forces? If someone's main residence is in Stirling for 130 days, in York for 125 days and in Belfast for 110 days, they will still be a Scottish Taxpayer for the whole tax year, as their main residence was in Scotland for longer than anywhere else in the UK, even though it was not in Scotland for the majority of the year.

Of course, at the risk of offending someone, we shouldn't forget Paddy Welshman. She (being Patricia) is married, has no children, and runs a multi-national business with her husband. They spend a lot of time abroad on business, have several houses, numerous bank accounts but are still UK resident for tax purposes, although they don't spend long periods of time in any one place. If they spend more days in any tax year in Scotland than in the rest of the UK, they will be Scottish Taxpayers. For example, in the course of the tax year Patricia spends 120 days in Scotland, 100 days in England, 50 days in Wales and 10 days in Northern Ireland. Since the 120 "days" she spent in Scotland is less than the 160 "days" she spent in another part of the UK, she is not a Scottish taxpayer. Had the number of days Patricia spent in another part of the UK stayed the same but the number of days he spent in Scotland increased to 160 days or more – she would have been a Scottish taxpayer. Note that this time, it is aggregated days in the rest of the UK, not in each separate country as before! This is the **Fourth Test** – "*If there is no 'close connection' to Scotland or any other part of the UK, either through it being not possible to identify any place of residence or a main residence, the Scottish Taxpayer status is determined though 'day counting'.*"

As can be seen from the foregoing examples, it is not going to be that straightforward, and each individual's case must be determined on their particular circumstances. HMRC have issued Technical Guidance on 27 October 2015 and this can be found at: **https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470009/Scottish_Taxpayer_Technical_Guidance_151020.pdf**. The Guidance gives a much fuller explanation of what to consider when determining who is a Scottish Taxpayer, and it is worth reading in detail, as clients are likely to expect you to be able to explain the definition of a Scottish taxpayer to them once the SRIT comes into force early next year.

BEWARE WHEN HMRC GUIDANCE IS UPDATED ON THEIR WEBSITE

The ICAS tax team has encountered difficulties recently in tracing changes to HM Revenue & Customs (HMRC) guidance. This arose in relation to charities and gift aid, but it is not the first time we have experienced problems. In short, if guidance is updated on the .gov website, there does not appear to be any way to access previous versions.

As a reminder, advice regarding best practice in the tax profession has always been to save, either electronically or in hard copy, any HMRC guidance and other sources on which reliance is being placed, so that it can be produced as evidence later. A hard copy normally has the added merit of having the date of access printed on the document, which will prove valuable in pinpointing the time when the particular version of guidance is being consulted.

Similar issues may also arise in relation to some electronic libraries, which may offer a 'dynamic' folder – ie if a user searches using the product, they have the option of saving their search results in a nominated folder and, if they come back to refer to it at any later time, all material saved in that folder will have updated itself automatically for any intervening changes to tax law, guidance, practice etc. This may sound very helpful when undertaking preliminary research for advising a client or preparing to write an article. But it could be disastrous if the adviser should need an audit trail of the sources relied upon at a particular point in time.

Both these issues highlight the need for advisers to create and retain an offline copy of any materials relied upon, at the time the reliance was placed on those materials.

RESEARCH & DEVELOPMENT TAX RELIEF – ARE YOU MISSING OUT?

Research and Development ("R&D") tax credit is a company tax relief that can either reduce a company's tax bill or, for some small or medium-sized ("SME") companies, provide a cash sum. It is based on the company's expenditure on R&D.

R&D is described as activities that take place within a qualifying project.

- Research is experimental work that seeks a scientific or technological advance.
- Development is the application of knowledge to produce or considerably improve products, materials, devices or services.

Despite the government actively encouraging claims, figures published have indicated that 90% of eligible SMEs have not made a claim, the reason being that many do not realise that they qualify for this relief.

To raise awareness and to encourage claims by small companies the government has just launched a two-year publicity strategy. Featuring in this strategy is a voluntary advance assurance scheme whereby first-time claimants will be able to apply to HM Revenue & Customs (HMRC) for a "clearance" decision on whether a project qualifies for R&D relief. If granted, clearance will apply for three years, provided there are no material changes to the project within that period. The government will also publish specifically written stand-alone guidance for small companies.

Is it worth claiming?

The growing number of R&D Specialists targeting companies on a 'no win no fee' basis reinforces that this is a valuable form of tax relief. Figures produced indicate that for SMEs that qualify, the average claim made is in the region of £40,000.

The R&D tax regime is constantly being improved, with rates of relief increasing over the years since introduction. There is no longer a minimum spend on R&D activities, so even the smallest amount can qualify for relief.

The relief applies to an SME in conjunction with the 'super deduction' relief for corporation tax purposes. For every £1 of qualifying R&D expenditure reflected in an SME's Profit and Loss Account, an additional £1.30 is allowed in its corporation tax computation as a 'super deduction'. The combined effect of the R&D relief together with the 'super deduction' relief means the reliefs equal to 230% of actual R&D expenditure is available (225% prior to 1 April 2015).

For loss making SMEs, it is possible to surrender the losses derived from the R&D tax relief to HMRC for a cash repayment. For expenditure incurred after 1 April 2014, the rate of repayment is 14.5%. The company does not have to have paid tax previously to qualify. It is it simply a surrender of tax losses for cash eg £100k losses could be surrendered for £14,500 cash.

Who is eligible?

R&D relief is available on any project that seeks an advance in any field of science or technology, through the resolution of scientific or technological uncertainties. The advance must be in overall knowledge in that field (overall knowledge that is publicly available or readily deducible by a competent professional).

Whether or not a project achieves its objectives is irrelevant, hence costs of an abortive project are allowable.

To qualify for relief, costs must be:

- revenue rather than capital.
- relevant to the trade.
- related to the cost of qualifying staff, software and consumables, subcontractor cost (65% restriction) and costs of externally provided workers.

Making a claim

A R&D claim must be included in a company's Corporation Tax return and has to be made within 2 years of the end of the relevant accounting period in which the R&D expenditure was incurred. If a company has already filed its return for the period in question, an amended return, including the R&D claim, can be submitted within the same 2 year period.

For more information, see the R&D Help Sheet at Appendix 2 on page 22.

NEW IMMIGRATION LAWS - WHY THEY MATTER TO YOUR CLIENTS

The UK Government announced in early August that the forthcoming Immigration Bill will contain additional clauses, designed to target illegal immigration. The Government are also introducing a new Points-Based System, similar to that in place in Australia, for non-European workers as part of its mission to reduce net migration.

The Points-Based System (PBS)

First announced in 2006, the PBS aims to highlight those individuals who can add the most value to the UK economy and labour market. The system should also de-clutter the process of applying to live and work in the UK and reduce the incidence of abuse and non-compliance.

The PBS covers most non-EU nationals with some notable exceptions, including EEA nationals, family reunifications, ancestry connections and short-term visitors (business and non-business), who will be dealt with under the old scheme.

There are 5 categories of applicants under the PBS, each corresponding to a skill-set level. It is envisaged that most employers will need to be concerned primarily with levels 1 and 2, which are for "Highly Skilled Individuals and Entrepreneurs" and "Skilled workers with a job offer". These are set out below. Notably, level 1 and 2 workers will represent skills and experience which the Government considers to be required by the UK economy and of which there is a shortage within the existing UK labour market. This "skills gaps" and the PBS are to be reviewed in line with labour market changes.

Tier 1 applicants cover the following:

- Entrepreneurs
- Investors
- Post-study workers
- Exceptional Talent

Tier 2 applicants cover the following:

- Those coming to fill jobs that have been advertised under the Resident Labour Market Test (RMLT)
- Those taking up jobs on the Government's shortage occupation list
- Intra-company transfers
- Ministers of religion
- Sportspersons

Concentrating on Tier 2 applicants, who are most likely to be employed within the SME market, the primary conditions are that the individual must have a job offer from an employer who has a Certificate of Sponsorship (COS).

Points are then awarded to the individual for the categories of age, earnings, work experience, qualifications, personal funds, English language proficiency and previous compliance with UK immigration regulations.

It should be noted that the COS is only valid for that sponsor. If the applicant wishes to change employers, or the nature of the role "changes significantly", the whole process must be redone with the new sponsor, or the existing sponsor where the role has changed. To what extent it is necessary to deem the role has changed has yet to be determined and may be the subject of tribunal/court action where employers and the Immigration Service have different opinions.

It is vital that the Sponsoring Employer and the 'migrating' employee understand their joint obligation to comply with the legislation, which is underpinned by no less than 19 different codes of practice setting out the numerous conditions under which migrant workers can be employed.

The Sponsoring Employer must qualify under all aspects of the scheme, be registered with the Home Office, and accept responsibility for some aspects of the employee's immigration status. A form of contract is set up between the Sponsor and the Home Office under which the employer has to carry out specific duties which have been categorised as "generic" and "tier-specific". Generic duties include record-keeping, reporting, complying with UK law and co-operating with the Home Office. Tier-specific duties are set out in the codes of practice.

Sponsors will be rated by the Home Office as "A" or "B". "A" rated represents the model compliant employer who can reasonably expect their applications to be accepted. "B" rated means that the employer requires improvement and may be turned down on application. Failing Sponsors may be de-registered, penalised or prosecuted.

Whilst it is acknowledged that the Home Office does not have the resources to send inspectors out to every applicant, it is apparent that significant numbers of inspections will be carried out and that the inspectors have the power to review HR files and interview staff, including the migrant workers themselves, under the UK Borders Act 2007. Any discrepancies discovered during these inspections may result in the application being refused or withdrawn, and a "B" rating applied, followed by further action as deemed necessary.

Two consultation documents were issued by the Migration Advisory Committee in the summer of 2015 in relation to certain aspects of Tier 2 workers, and employers would be well advised to read these and comment on them if they are affected by the changes.

Multi-site employers, changes to employer structure and TUPE implications

To mitigate liabilities tactically and control the recruitment/immigration process locally, it is possible for employers with numerous sites and subsidiary companies to be independently licensed sponsors so as to separate events and place responsibility for absorbing costs, inspections and potential penalties to that area of the business without affecting the other parts.

Sponsors must inform the Home Office of any "significant change" in ownership or structure. Additionally, the Home Office has also clarified the position on TUPE transfers under The Transfer of Undertakings (Protection of Employment) Regulations 2006, as sponsor licences are non-transferrable.

- Where a sponsor (or part of a sponsor) organisation transfers to another organisation, and that transfer includes sponsored workers, the new organisation must obtain a sponsor licence for those employees. The transferring business must notify the Home Office of the transfer within 20 working days.
- Where a licensed sponsor is taken over by an unregistered organisation, the existing sponsor must notify the Home Office within 20 working days. The new organisation must make a valid application for a sponsor license within 20 working days. If it fails to do this, the Home Office will restrict the leave to remain in the UK of all sponsored migrants to 60 calendar days.
- If an unregistered business is taken over by a company that is registered, the licensed sponsor must notify the Home Office of the takeover within 20 working days.
- Where both organisations are licensed, each organisation must notify the Home Office that it has been taken over/has taken over as applicable, within 20 working days.

Enforcement

Under the Immigration, Asylum and Nationality Act 2006 discussed further below, enforcement was poor and resulted in cases taking a long time to be determined in the court system as a result of a lack of clarity in the legislation concerning the principles of negligence, wilful default and persistent default. A statutory defence was also fairly easy to establish if the employer could prove he had examined all records as prescribed by the Home Office prior to employing the individual, even if these records turned out to be false.

Sections 15 to 25 of the Immigration, Asylum and Nationality Act 2006, in force from 29 February 2008, set out the new law on illegal working. This Act has now been amended by the Immigration Act 2014. There are two discrete breaches: civil and criminal, and they apply only to employment which commenced on or after 29 February 2008.

By clarifying the acts of negligence, wilful default, and setting out provisions to require employers to be continuously vigilant of their compliance, the new regime offers less opportunity for employers to claim the statutory defence as applicable to them.

Section 15 of the 2006 Act imposes a maximum fine of £20,000 per illegal worker as a civil penalty, and Section 21 imposes criminal penalties in the form of an unlimited fine or up to 2 years of imprisonment for knowingly employing an immigrant who is not entitled to work in the UK. The statutory defence under Section 19 is quashed where Section 21 can be proven.

Key provisions of the 2014 Act are as follows:

- raising the maximum fine on an employer to £20,000 per illegal worker
- fast-tracked collection of civil penalties from employers
- reduction of the number of appealable immigration decisions from 17 to 4.
- facilitation of pre-hearing expulsion from the UK of individuals the Government considers especially dangerous
- clarification of Article 8 of the European Convention on Human Rights ("right to a family life") in immigration/migrant worker cases
- requiring that employers must make a payment to NHS funds for migrants with time-limited status (see "IHS" below)
- stipulating private landlords must check the immigration status of tenants
- giving immigration officers increased powers to access and search premises

- mandating the use of biometric documents (with digital photographs and fingerprints)

A new Immigration Bill was introduced in the Queen's Speech of 2015 but at the time of writing this article, this has yet to be introduced as legislation.

Discrimination

Employers should also note that a revised Code of Practice was issued in 2014 to assist employers in avoiding discriminatory recruitment practices. The Code of Practice is regarded with gravitas by the Employment Tribunal and employers should be aware of its content.

Immigration Health Surcharge (IHS) and Visitors Rules

Finally, in April 2015, two further changes were introduced. Firstly, a mandatory Immigration Health Surcharge for all non-EU migrants arriving in the UK for more than six months, or whilst in the UK if applying to stay for any length of time. The charge is £150 per person per year for students and £200 per person per year for all other applicants. The fee must be paid before making an application and IHS does not need to be paid if applying for Indefinite Leave to Remain in the UK.

Secondly, a consolidation of the Visitors Rules means there is now only one category of leave to remain in the UK as a "visitor". This covers tourism, business, private medical treatment, etc. whereas previously there had been separate categories for each of these. The original qualifying requirements mostly remain in force, and applicants will still need to prove they meet the qualifying criteria for the purpose of their visit.

HMRC TASKFORCE

On 4 December 2015, HM Revenue & Customs (HMRC) announced the creation of a Taskforce to look into the "adult entertainment industry". This will target "adult club" owners such as saunas, strip clubs, and escort agencies, together with adult entertainers who don't pay their taxes.

As far back as 2010, HMRC estimated that the adult entertainment industry could be worth up to £5 billion, and much of that is in the hidden "black economy". The rise of the internet has caused a significant increase in online escort agencies and some entertainers earn thousands of pounds a day. Those who continue to operate in the hidden economy and not register with HMRC for VAT, Income Tax and PAYE are being targeted.

Jim Stevenson, Head of HMRC Taskforces, observed that "*Large numbers of people working in this industry are paying the tax they owe and they don't have anything to worry about. The people being targeted by this taskforce have no intention of playing by the rules, and we won't tolerate this.*"

Although this is the first time HMRC have set up a formal Taskforce to target the adult industry, they have been enquiring into individuals' affairs for many years with a degree of success, recovering not only unpaid tax and national insurance contributions, but often benefits which have been falsely claimed as well.

And yes… the jokes have already started in the accountancy media and forums about how HMRC are gathering their information!

VAT: MINI-ONE-STOP-SHOP (MOSS) PRACTICAL PROBLEMS

The MOSS was introduced from 1 January 2015 as an EU wide measure designed to avoid multiple VAT registrations in EU member states for businesses that sell digital products to non-business customers in member states other than their own.

As described in previous editions of Technical Bulletin (Issues 126, 127 and 131), the place of supply rules for the sale of digital services (essentially broadcasting, telecommunications and electronic services) changed on 1 January 2015 such that the place of supply became that of the location of the customer. This would result in a business selling such services across the EU having to register for VAT in the member state of every customer to whom a supply is made. To avoid this, such a business must register for VAT under MOSS, resulting in all of the VAT due to each member state being declared on a single return and submitted to HM Revenue & Customs (HMRC) on a calendar quarterly basis. Such an ambitious system however, has some practical complications.

One of these was the problem faced by small UK businesses trading below the VAT registration threshold (and not voluntarily VAT registered) but supplying digital services to customers in other EU member states. In order to apply for MOSS, it is necessary to have a "normal" UK VAT registration. HMRC addressed this issue in advance of 1 January 2015 (just), by allowing such businesses to register for VAT and access the MOSS whilst not having to account for VAT on their domestic supplies. This is described in detail in Revenue and Customs Brief (RCB) 46/14.

This is clearly an unusual change in practice announced by HMRC, which effectively waived the legislation with respect to the VAT treatment of otherwise taxable (likely at the standard rate) sales made in the UK. Given that HMRC's duty is to properly maximise the tax due to the Treasury, this change in treatment would certainly not result in that duty being fulfilled. But without this change in procedure, small businesses would be discriminated against as they are effectively forced to register and account for VAT when they are not otherwise obliged to do so.

Supplies that fall into this new category (taxable but not taxed) are effectively treated as exempt from VAT (although not exempt in law). No VAT is accounted for on this category of supplies, nor is any input tax recoverable associated with such supplies. The validity of this view may well be tested in the Tribunal at some point in the future. Clearly, as these supplies are not exempt from VAT in law, and are in fact, taxable supplies, there may be a valid argument to say that attributable input tax is fully recoverable.

Another question that might arise relates to a business which is VAT registered under MOSS and has traded above the VAT registration threshold but later falls below the threshold. At which point might the business cease to account for UK VAT on domestic supplies?

Other practical problems include the complexity of having to identify the location of each customer. HMRC have provided detailed guidance on this point but it is only to be expected that in practice, unforeseen complexities, including fraud, are likely to arise.

Despite the intention of this scheme, which is to simplify VAT accounting and administration for sales of digital services to non-business customers in other EU member states, a trader who files a MOSS VAT return (and pays the relevant VAT) late will be faced with multiple penalties from each of the relevant member states, with their different penalty regimes. It is not unreasonable to accord a Moss trader with due sympathy for having to enter these multi-layered complexities as a result of the change in taxing digital supplies at the place of consumption.

The MOSS scheme is still very much in its infancy. It is probable that not all the practical problems have yet been identified. The above are perhaps the more obvious issues. It will be interesting to watch how the scheme evolves as it deals with these practical issues.

Detailed guidance from HMRC on the scheme is available at: **https://www.gov.uk/government/publications/vat-supplying-digital-services-to-private-consumers/vat-businesses-supplying-digital-services-to-private-consumers**.

HMRC VAT TOOLKITS UPDATED

In Technical Bulletin Issue 133 we looked at the benefits of using HM Revenue & Customs (HMRC) toolkits. These toolkits have been developed with agents' input, and they focus on the areas of errors that HMRC most frequently come across, and provide guidance to address and reduce these common mistakes. Three VAT Toolkits have been updated recently, and they are:

VAT Input Tax Toolkit which can be found at: **https://www.gov.uk/government/publications/hmrc-vat-input-tax-toolkit**.

VAT Output Tax Toolkit which can be found at: **https://www.gov.uk/government/publications/hmrc-vat-output-tax-toolkit**.

VAT Partial Exemption Toolkit which can be found at: **https://www.gov.uk/government/publications/hmrc-vat-partial-exemption-toolkit--2**.

TAX QUERY

Query: *One of our clients, a profitable trading company owned by four unrelated shareholders, has amassed some cash, not all of which is likely to be required as working capital. With the rate of deposit account interest being fairly derisory, one of the directors has suggested that the company purchases a holiday house, either in the USA or France, which could be used by the directors, certain members of staff, certain customers or let out to third parties through a letting agent. Is this a better idea than the company paying a dividend which, after paying their income tax, the directors could utilise in purchasing the house?*

Answer: There are a number of tax implications here and, in no particular order:

Inheritance Tax

If the company has surplus cash then, on the death of a shareholder, it is likely that HM Revenue & Customs (HMRC) would take the view that the surplus cash was an excepted asset and not all of the value of the shareholding of the deceased would qualify for business property relief at 100%. The purchase of a property may improve the position if either the company were to commence a holiday letting business while still remaining mainly a trading company or if the property were used for the purposes of the trade as part of a director and employee remuneration package.

Capital Gains Tax

If the property was sold, then a capital gain is likely to arise within the company although indexation allowance would be available. The rate of tax would be 20%, although this will fall to 18%, as announced in the summer budget. A further tax liability would accrue if the shareholders wished to withdraw the funds following a sale.

If the shareholders decided to sell the shares in the company then the existence of an asset not used in the trade could impact on the availability of entrepreneurs' relief. Will the company be a trading company carrying on no more than 20% non-trading activities?

Corporation Tax

To the extent that the property was used by directors and employees then the company should obtain corporation tax relief in respect of the running costs of the house. Similarly, to the extent that the house is used for a property letting business, the costs attributable will be deducted from the rental income. If corporate clients were allowed to use the property at no cost, then part of the running costs of the house ought to be disallowed as entertainment expenditure.

Income Tax

A benefit in kind will arise in respect of the use made by directors and employees of the property based on the cost of the property and also any running expenses incurred by the company. It is assumed that the directors and employees will be able to use the property at no cost to them and that the cost of the property will exceed £75,000.

In respect of the first £75,000 of the cost of the property, the measure of the benefit in kind for a whole year is the difference between the 'rental value' of the accommodation and any amount made good by the employee. The rental value is defined as the rent which would have been payable for the period if the property had been let to the employee at an annual rent equal to the annual value. The annual value is the rent which might reasonably be expected to be obtained on a letting from year to year if the tenant undertook to pay all taxes and charges normally paid by a tenant and a landlord undertook to bear the costs of repairs, insurance and other expenses to maintain the property. Whereas, for UK properties, this is based on rateable values, it will be necessary to obtain some reasonable basis in respect of an overseas property.

Where the property cost more than £75,000 there is a second element to the benefit in kind calculation and that is to deduct £75,000 from the cost of the property and multiply the difference by the official rate of interest on 6 April in the tax year. This is then added to the amount calculated in respect of the annual value as described above.

Where, as in this case, the property will be used by a number of directors and employees, the benefit in kind will have to be allocated among them on a just and reasonable basis. This will be complicated further by the fact that the property may also be used by corporate clients and/or let out to third parties. The optimum course of action would probably be the following:

1. The company should provide written notification to each person eligible to use the house, stating the period it will be available for his or her use. Employees will have a limited amount of annual holidays and this may extend to two or three weeks each per annum.
2. The periods during which the property will be available for use by corporate clients should then be established.
3. The remaining weeks should be put in the hands of a letting agent for let to third parties.

In this way, the taxable benefit in kind on each director and employee should be restricted to their actual period of usage. HMRC may however seek to allocate the measure of the benefit over the period during which the property was actually used rather than 52 weeks.

There will also be employers' NIC on the benefits.

As a rough example, the benefit in kind for a full year of a property costing £300,000 would be calculated as:

1. The annual value (say £2,000) in respect of the first £75,000.
2. £300,000 - £75,000 multiplied by the official rate of interest (currently 3%), that is £6,750.

If the property was used by directors and employees exclusively then a total benefit of £8,750 is likely to be assessed. Assuming a 40% rate of tax then the annual cost among the employees would be £3,500.

If the company paid dividends to the four shareholders/directors and if this was all subject to higher rate income tax then the effective cost, provided the dividend was paid by 5 April 2016 would be £400,000 to the company to leave the individuals with £300,000 in their hands. To a certain degree, the choice is between the individuals suffering income tax of £3,500 per annum indefinitely, plus the company suffering employers national insurance each year and the directors/shareholders suffering a total income tax liability of £100,000 upfront.

The idea of a company owning a house is fine if all of the directors are happy to spend at least some of their holidays there each year, and they can agree what should happen when someone retires. It should also be borne in mind that, with historically low rates of interest, the official rate of interest is also very low at present.

VAT

There will be no VAT implications with respect to the letting of a property in the USA as any such supply is outwith the EU VAT regime. It would be wise to seek local advice, however, as there maybe sales tax issues.

If a property is purchased by the company in France, again, local advice should be sought. However, as the EU member states should operate VAT regimes in a similar way, it is very likely that the company will be required to register for VAT (or TVA) in France as the place of supply of the holiday lettings is in France (in the reverse situation, a French company would be obliged to register for VAT in the UK). TVA would then be accounted for to the French tax authorities on all holiday lets (and associated French input tax on running costs would be recoverable).

Irrespective of location, any UK VAT incurred with respect to any holiday lettings will be recoverable, (unless the directors make use of the property, the implications of which are referred to below).

If the directors use the property without paying a full market rent, any VAT incurred will be deemed to have been incurred for both business and non-business purposes and so will need to be apportioned between those two activities and only the element relating to business activity may be reclaimed. Any pro-rating should be done on a fair and reasonable basis. If employees are allowed to use the property for no, or little charge, then under UK VAT rules, this would be treated as a gift of services by the company to the staff member and have no VAT implications. There would be a business reason for the gift, presumably (reward or incentive) and therefore there would be no input tax recovery restriction associated with the gift. As regards the element of input tax borne on expenses incurred in France, the corresponding treatment for TVA may differ, and as recommended above in relation to holiday lettings element, advice should be sought from a French practitioner with respect to a property purchased in France.

If some of the directors purchased the property (instead of the company purchasing the property), under UK rules, they would be acting as a partnership, and the VAT rules referred to above would apply equally to the partnership as to the company. Again, French rules may again differ in this respect, so local advice should be sought if the directors purchased a property in France.

ACCOUNTING AND AUDITING QUERIES

Query: *I am a partner in a small firm of chartered accountants.*

I have a client which is a small private family owned company. The company will be applying Financial Reporting Standard (FRS) 102 in preparing its accounts for accounting periods commencing on or after 1 January 2015. The first set of accounts being prepared is for the year to 31 December 2015.

During that year, one of the company's three directors introduced funds into his business via his director's loan account and the company is being charged interest at normal commercial rates. What will be the accounting implications of this transaction under FRS 102? Does it matter that the company is being charged a market rate of interest on the funds advanced by the director? There are no details as to the term of the loan, therefore, we intend to treat this as an amount due on demand.

Answer: A director's loan to a company falls within the requirements of FRS 102 Section 11 "Basic Financial Instruments", or Section 12 "Other Financial Instruments" if it is a more complex arrangement. Most such loans are likely to fall into the former category but the terms and conditions should be reviewed to ensure that this is indeed the correct categorisation.

The Financial Reporting Council (FRC) issued Staff Education Note 2 (SEN 02) "Debt Instruments – Amortised Cost" which provides guidance on accounting for financial assets and liabilities measured at amortised cost using the effective interest method that arise from a lending arrangement (which does not constitute a financing transaction). This is available at: **https://frc.org.uk/Our-Work/Codes-Standards/Accounting-and-Reporting-Policy/New-UK-GAAP/Staff-Education-Notes.aspx** and was updated in October 2015.

Financial assets and liabilities bearing a market rate of interest

The company is being charged normal commercial rates on the loan from the director. Page 5 of SEN 02 and the section entitled "*Financial assets and liabilities bearing a market rate of interest*" states the following:

"Paragraph 11.13 of FRS 102 requires that financial assets and liabilities are initially recorded at the transaction price (unless it is a financing transaction as described in paragraph 11.13 of FRS 102, see Staff Education Note 16 for more detail). Financial assets and liabilities bearing a market rate of interest will therefore be recognised at the initial value exchanged (i.e. the amount of the cash lent or received) including transaction costs.

Loans that meet the conditions of a basic debt instrument set out in paragraphs 11.8(b) and 11.9 of FRS 102 are measured at amortised cost after initial recognition. <u>Provided no transaction costs have been incurred or premiums/discounts have been paid/received, for loans bearing a market rate of interest, the effective interest rate is equal to their market rate of interest at the date of initial recognition</u>.

It is not expected that accounting differences will arise in respect of loans bearing a market rate of interest when transitioning to FRS 102."

The amount advanced by the director represents a financial liability of the company. This liability bears a market rate of interest and therefore should be recognised at the transaction price ie the amount advanced. This does not represent a financing transaction, however, information on such transactions is included below as many loans from directors do not carry interest charges.

Financing transactions

Section 11 of FRS 102 sets out specific measurement requirements for financial assets and liabilities where the arrangement constitutes a "financing transaction".

Para 11.13 of FRS 102 describes a financing transaction as follows:

"*A financing transaction may take place in connection with the sale of goods or services, for example, if payment is deferred beyond normal business terms or is financed at a rate of interest that is not the market rate.*"

Inter-company loans, or directors' loans, that are interest free, or charged interest at below market rates, are classed as "financing transactions." However, It should be noted that the present value of a financial asset or financial liability that is repayable on demand is equal to the undiscounted cash amount payable reflecting the lender's right to demand immediate repayment. Therefore, directors' loans which are repayable on demand should normally be reflected at the undiscounted cash amount. That said, consideration needs to be given as to whether the loan could be repaid if such a demand was made i.e. what is the actual substance of the loan.

Para 11.13 of FRS 102 states: "*If the arrangement is a financing transaction, the entity shall measure the debt instrument at the present value of the future payments discounted at a market rate of interest for a similar debt instrument.*"

As described in SEN 16 a measurement difference will arise in such situations under FRS 102 because there will be a difference between the amounts of cash received or advanced and the initial carrying value of the loan (discounted amount).

SEN 16 states:

"*Fixed term loans with no interest or a below market rate of interest*

A loan provided or received at no or a below market rate of interest constitutes a financing transaction. Paragraph 11.13 of FRS 102 requires that such a loan is measured at the present value of the future cash receipts or payments discounted at a market rate of interest of a similar financial asset or financial liability. The present value calculated in accordance with paragraph 11.13 of FRS 102 reflects the value of a similar loan with a market rate of interest.

For loans other than those repayable on demand, a difference arises between the amount of cash received or advanced and the present value of the loan. This difference reflects that the lender has made a loan at a lower than market rate of interest and thereby has provided an additional benefit to the borrower.

FRS 102 does not set out specific accounting requirements for that difference. Where FRS 102 does not specifically address the accounting for a transaction, an entity applies judgement to determine the accounting treatment that meets the requirements of paragraph 10.4 of FRS 102, ie an entity selects an accounting policy that results in relevant and reliable information. Paragraph 10.5 (of SEN 16) sets out the sources an entity should consider for that analysis.

To determine the accounting treatment for the difference, an entity should assess the particular facts and circumstances of each arrangement. In that regard it is particularly important to establish the reasons a lender decided to make a loan at a non-market rate of interest. For example a lender may make the loan because of an ownership interest in the borrower. If so, the lender is, in its capacity as the owner, effectively making an additional investment in the entity when making a loan at a below market rate of interest. In other instances there may be related transactions to consider, for example the lender may be compensated by obtaining goods or services from the borrower at below market prices. Where a loan is made at a non-market rate of interest and the lender and the borrower are related parties because one owns the other or the lender and borrower are owned by the same entity or person, the difference arising on initial recognition of the loan would generally be accounted for as a distribution or capital contribution.

FRS 102 sets out accounting requirements for distributions. For the entity making a distribution it represents a decrease of economic benefits that results in a decrease in equity. A distribution is not an expense and is therefore recorded as a reduction of equity (paragraphs 2.23(b) and 22.17 of FRS 102). It should be noted that in some cases a distribution may be recorded in the financial statements in accordance with FRS 102, although it may not be a distribution as a matter of law and vice versa. An entity that is subject to company law should consider whether the distribution recorded in the financial statements for reporting purposes is also a distribution as a matter of the law and if so, should assess whether it has sufficient distributable profits to make the distribution. The entity receiving a distribution records it as an income, since it represents an increase in economic benefits that results in an increase of equity that is not related to a capital contribution from an equity investor (paragraph 2.23(a) of FRS 102). Income is recorded in total comprehensive income, either in profit or loss or in other comprehensive income.

Company law prohibits the inclusion of unrealised profits within profit or loss, *except where an unrealised revaluation gain arises from the application of fair value accounting. If the distribution is considered a realised profit it is recorded in profit or loss, otherwise it is recorded in other comprehensive income. An entity that is a company should assess whether the distribution received is a realised profit within the meaning of company law. The determination of realised and distributable profits in accordance with company law is a complex area where accounting and legal requirements interface. This Education Note does not address company law issues that may be relevant in this regard. An entity may refer to Staff Education Note 16: Financing transactions Page | 6 Technical Release 02/10 Guidance on realised and distributable profits under the Companies Act 2006 (Technical Release 02/10) issued by ICAS/ICAEW (work has commenced on new guidance). An entity may also wish to take specialist legal advice on these matters. Capital contributions from equity investors do not meet the definition of income (see paragraph 2.23(a) of FRS 102). A capital contribution is therefore recorded by the receiving entity as an increase in equity. The entity making a capital contribution records it as an increase in its investment in the entity receiving the capital contribution."*

FRS 102 is available via the FRC website at: **https://frc.org.uk/Our-Work/Publications/Accounting-and-Reporting-Policy/FRS-102-The-Financial-Reporting-Standard-applicab.pdf**.

Query: *I am a partner in a small firm of chartered accountants.*

My query relates to the specific application of new United Kingdom (UK) Generally Accepted Accounting Principles (GAAP) to my client which is an entity that was created by Royal Charter. Its accounts are primarily prepared for taxation purposes. When accounts are prepared for tax purposes the starting point for the determination of taxable profit is an entity's accounting profit which requires to be determined in accordance with UK GAAP. The entity meets all of the criteria for being a 'micro-entity' except that it is not company.

The question is what will be the applicable UK GAAP for the entity in question for accounting periods commencing on or after 1 January 2015?

Answer: For accounting periods commencing on or after 1 January 2015 the entity in question will for practical purposes have two options open to it. It is assumed that the entity is not a charity and subject to any specific accounting requirements. The entity could of course apply EU endorsed IFRS but it is assumed that this would not be proportionate for the entity's needs. That, therefore, leaves the entity with the following choices:

(i) Financial Reporting Standard (FRS) 102

As the entity satisfies the financial criteria for being a micro entity it must then also meet the small entity criteria. It would also be able to take advantage of the presentation and disclosure concessions that are contained in section 1A of FRS 102. It is assumed that the accounts of the entity are required to provide a true and fair view. Therefore, consideration will need to be given as to the extent to which the use of any concessions will be appropriate in the entity's circumstances.

(ii) FRS 105

FRS 105 is the FRC's standard specifically designed for micro-entities. It is expected that more eligible entities will take advantage of the micro-entity regime post the withdrawal of the Financial Reporting Standard for Smaller Entities (FRSSE) for accounting periods commencing on or after 1 January 2016. The micro-entity regime was introduced via regulations that amended the Companies Act 2006. These regulations were published in late 2013 and became applicable for the accounts of eligible entities filed with Companies House on or after 1 December 2013. Entities that are excluded from the small companies regime cannot qualify as a micro-entity. There is also a detailed list of other entities which are specifically not allowed to take advantage of the micro entity regime. This includes charities, LLPs, investment undertakings, financial holding and insurance undertakings, credit institutions, qualifying partnerships, overseas companies, unregistered companies and companies authorised to register pursuant to s1040 of the Companies Act 2006.

The FRC published FRS 105 in July 2015. This can be viewed at: **https://frc.org.uk/Our-Work/Publications/Accounting-and-Reporting-Policy/FRS-105-The-Financial-Reporting-Standard-applicab.pdf**.

The standard applies to accounting periods beginning on or after 1 January 2016 although early application is permitted. The scope of the standard states that: "*This FRS applies to the financial statements of a micro-entity.*"

Further detail on this matter is contained at the back of the standard. This states:

"*FRS 105 is an accounting standard applicable to the preparation of the financial statements of a micro-entity which are presumed in law to give a true and fair view in accordance with the micro-entities regime. During its deliberations, the Accounting Council was requested to consider whether FRS 105 could be applied to financial statements prepared for the purpose of submission to the tax authorities by unincorporated businesses and individuals that, if they were companies, would be eligible to apply the micro-entities regime.*

The Accounting Council notes that the form and content of financial statements prepared for tax purposes is a matter for the relevant tax authorities to determine *and believes it is therefore not possible for the FRC to explicitly permit or prohibit the application of FRS 105 for such purpose. The Accounting Council notes that compliance with FRS 105 by businesses incorporated as companies that meet the conditions to apply the micro entities regime will result in financial statements that in law are presumed to give a true and fair view.*

The availability of the micro-entities regime is restricted to the smallest of companies and some types of entities are excluded. For example, charities and financial institutions are ineligible to report under this regime. For that reason, in contrast to FRS 102, FRS 105 does not contain any specific requirements that only apply to these entities.

The micro-entities regime is not available to entities that are required or choose to prepare consolidated financial statements. FRS 105 therefore does not contain accounting requirements that are relevant for the preparation of consolidated financial statements."

In light of the above HM Revenue & Customs have now considered this matter and concluded that it will accept calculations of profit for unincorporated entities prepared under FRS 105.

Therefore, the entity in question will be able to use FRS 105 for the preparation of its accounts (it can early adopt), subject to any other requirements that may be imposed on the entity.

AML REPORTING - IMPORTANT CLARIFICATION

If you work in a "regulated sector", of which accountancy is one, and have knowledge or suspicion (or reasonable grounds for suspicion) that money laundering is occurring or has occurred, you have a statutory obligation under the Proceeds of Crime Act 2002 ("POCA") to disclose the circumstances to the appropriate authorities.

Your firm will have an individual who undertakes the role of the firm's Money Laundering Reporting Officer (MLRO). If you are an individual working in practice, the correct course of action is to make an internal report to your MLRO, who will decide whether it is appropriate to make a Suspicious Activity Report (SAR) to the National Crime Agency (NCA). Once you have made an internal report to your MLRO, you have discharged your responsibilities under POCA.

If you are the MLRO, and decide that a SAR should be made, please note that the SAR must be made to the NCA and nobody else. Details of how to do this can be found at: **http://www.nationalcrimeagency.gov.uk/about-us/what-we-do/economic-crime/ukfiu/how-to-report-sars**.

Some pages on the NCA website make reference to Action Fraud, which is only for individuals and charities that come across issues of fraud. It is NOT for professional firms. MLROs should NOT make reports using the Action Fraud helpline or website. Making a report to Action Fraud does not discharge an individual's obligations under POCA.

ALL Suspicious Activity Reports must be sent to the National Crime Agency.

ASK RON ABOUT IT – SECURITY OF DATA

***Query**: I read with great interest your recent article in Issue 134 on cyber security and I'm keen to find out more about what data I should be encrypting and how to go about it?*

Answer: Thank you for your very topical question and it does seem logical to delve into the world of encryption, especially in light of the amount of high profile businesses having customer data hacked.

What is encryption?

In simplest terms this phrase refers to the creation of 'locked' data which can only be viewed once 'unlocked' or decrypted with a 'key'. Without the key you cannot access the data, so encryption keeps the information secure from access by anyone except the intended recipient, or 'keyholder'.

The changing world of encryption

Encryption is far more prevalent than ever before. As we carry on with our day-to-day lives we are blissfully unaware that information is being encrypted and decrypted all the time. Back in the early days of the World Wide Web, most websites were prefixed with "http://". There is a difference to most of the prefixes nowadays, in case you have not yet noticed. If you look carefully, most prefixes have progressed to using "https://" which simply means the data between you and the website you are visiting is encrypted.

What information should be encrypted?

Simply ask yourself, what data do you want to protect? The top priority has to be personal data. Not only your own personal data, but that of your clients, your employees and anyone you hold or process personal data for. Not encrypting data can put an accountant in a very vulnerable position, as you process personal data for clients and staff on a daily basis.

How do you encrypt information?

You'll be pleased to know that there are many ways you can protect this important personal data.

Assuming that you have data stored

on a local PC or file server, the easiest way to protect the data is by cutting all ties with the outside world – disconnect the internet and do not allow any electronic data across the business threshold. How does that sound? Not that practical? Businesses cannot really function in the digital era without internet access. With our heavy reliance on emails, access to various cloud applications, internet submissions to HM Revenue & Customs and Companies House, to name but a few, we need a way to secure data which will let us get on with our business activities.

How you protect your data depends on where it is located. If all your data is stored in your office premises, it is easier to identify the boundaries, being the internet gateway, email communications, physical disk storage, and the means by which you transfer data to and from clients.

If remote access is not required, then all inbound communications can come through a physical firewall device. If some people require remote access, make sure this is limited to as few methods as possible to restrict where the access can be achieved.

The next thing to protect is email. Email is potentially how most personal information finds its way across the internet, which is generally not encrypted. There are a few simple solutions out there to encrypt email, however clients usually complain at the complexity of receiving something encrypted. By the nature of encryption though, the person intended for the data must have the key to unlock it and there is a setup process involved.

The next step is the data transferred on external disk drives and USB flash drives. Again, protecting these are relatively simple by using a password or even a physical pin that needs typed into the device before you can access the data. Laptops also fall under this category and should also be encrypted and as the latest operating systems offer this functionality for free, there is no excuse for not encrypting the hard drive. Larger firms may wish to invest in a third party solution which covers all devices for simplified management.

Is cloud data encrypted?

Having taken care of the encryption in your physical office, you then need to consider other data you use. As mentioned, most people now have data stored in the cloud, so it is equally important that you make sure cloud data is secure. Your cloud provider has probably taken care of the encryption for you and will have more sophisticated equipment than your practice could reasonably afford. The very last thing you should do is to use a simple password which could be easily guessed to unlock and decrypt the data leaving it extremely vulnerable. Make sure you use a complex password consisting of random numbers, letters, and if allowed by the software, other characters such as @ and #.

Are there any other threats to personal data?

Potentially one of the biggest threats to your data is not people directly targeting your physical or virtual environment, but the hijacking of legitimate websites that you access on a regular basis, through which you can inadvertently download malware or ransomware. Another threat is 'phishing' emails which, at first glance, seem legitimate, but are sent fraudulently with the aim of collecting personal data! It is vital that, if you have a firewall, you ensure that it can scan the encrypted traffic from the webserver to your PC to prevent these unwanted attacks. These firewalls are widely referred to as UTMs or a Unified Threat Management devices. Be careful that you pick the correct device though, as by default, some of these devices just let data through if they cannot decrypt it. While travelling round practices I often see Draytek routers installed which cost around £180 and which offer an effective defence. You can add on various services to filter data traffic at a reasonable cost. From around £400 you could look at a Dell Sonicwall TZ UTM. In my opinion this is a very cost effective way to quickly increase the security for your practice.

I hope this information answers your question. The best line of defence is simply to put as much protection in as you can afford and make sure your users are aware of the sensitivity of the data they handle from day to day.

APPENDIX 1 - SUMMARY TABLE OF BASIC ENFORCEMENT ROUTES

Default – failure to comply with:	Initial action		Follow up action							
	Guidance/ instructions by phone, email, letter or face to face	Warning letter	Compliance Notice	Improvement Notice (preceded by warning notice)	Fixed Penalty Notice	Third Party Daily penalties (preceded by warning notice)	Escalating Penalty Notice	Civil penalties	Prohibited Recruitment Conduct Notice	Prosecution (for wilful non-compliance)
Basic Employer Duties	√	√	√	√						
Third party Notices						√				√ (if employer duties involved
Formal Request for Information					√		√			√
Inspection Powers										√
Statutory Notice – for breach of employer duties, or Compliance Notice, or Unpaid Contributions Notice					√		√	√ (where non payment of contributions)	√	√

APPENDIX 2 - RESEARCH AND DEVELOPMENT (R&D) SUMMARY HELP SHEET

R&D Tax Relief is available for Small Medium Enterprises (SMEs) and Large Companies. This help sheet focuses on SMEs.

The R&D legislation is complex. However, in summary, if your company is attempting to develop a new technology, is trying to significantly improve the design and implementation of its products/processes or uses its staff to solve challenging technical problems, then it may be possible to claim R&D relief.

SME thresholds:	No of Employees	Less than 500
		and
	Annual Turnover	not greater than €100 million
		OR
	Balance Sheet Value	not greater than €86 million

Criteria	Qualifying Expenditure	Tax Reliefs	Compliance
Only organisations liable to Corporation Tax are able to claim for R&D. 1. What was the scientific or technological advance? *Not enough that product is commercially innovative. Focus on project's aim for an advance.* 2. What were the scientific or technological uncertainties? *Knowledge was not readily deductible by competent professional working in that field. What were the uncertainties, where and when did they start and finish?* 3. How and when were the uncertainties solved? *Describe the methods adopted to overcome the uncertainties and the investigations and analysis undertaken.* 4. Why was the knowledge sought not readily deductible by a competent professional? *Why are the uncertainties scientific/ technological as opposed to routine uncertainties?* The R&D must be related to the organisation's trade.	Actual expenditure incurred on: • Employee costs • Staff providers • Materials • Clinical trial volunteers • Utilities • Software • Contracted out R&D • Capital Expenditure (100% Capital Allowances may be available) No 'de minimis' expenditure level.	1. Basic Relief • 230% deduction for qualifying expenditure. (225% prior to 1 April 2015) • Allowable trading losses increased by 125%. 2. Pre-trading R&D expenditure can be treated as allowable trading losses. 3. Tax credits instead of loss relief. (Maximum repayment 14.5% of the surrenderable loss in respect of expenditure incurred on or after 1 April 2014)	Claim is made on CT600 and must be made within 2 years of the end of the relevant accounting period. Claim must be supported with a detailed report outlining how the expense incurred qualifies for R&D. In particular the report must outline the technological uncertainties and how they were resolved. There must also be a calculation of the relief due to the company.*

*** R & D Technical Report – summarising Qualifying Projects/Technological Advance/Technological Uncertainties/ Calculation of Relief Claimed**

TECHNICAL BULLETIN

EDITORIAL BOARD

ICAS

CA House 21 Haymarket Yards Edinburgh EH12 5BH
practicesupport@icas.com +44 (0) 0131 347 0249 icas.com