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THE NATIONAL SECURITY AND INVESTMENT (NSI) ACT 2021

The National Security and Investment (NSI) Act 2021 came into effect on 4 January 2022 and the government has published various pieces of guidance on its requirements. This guidance includes: 'Check if you need to tell the government about an acquisition that could harm the UK's national security'.

The Act modernises the government's powers to investigate and intervene in mergers, acquisitions and other deals that could threaten the UK's national security. While most acquisitions will be unaffected by this legislation, acquisitions of 'qualifying entities' that meet certain criteria, in 17 sensitive areas of the economy (called 'notifiable acquisitions') must be notified to government prior to completion. These areas are as follows:

- Advanced Materials
- Advanced Robotics
- Artificial Intelligence
- Civil Nuclear
- Communications
- Computing Hardware
- Critical Suppliers to government
- Cryptographic Authentication
- Data Infrastructure
- Defence
- Energy
- Military and Dual-Use
- Quantum Technologies
- Satellite and Space Technologies
- Suppliers to the Emergency Services
- Synthetic Biology
- Transport

Guidance on notifiable acquisitions produced by the government contains more detail on what is deemed to fall within the above categories.

Businesses, investors, and advisers should check the respective sets of guidance to understand:

- What types of acquisitions are covered by the new rules?
- Which areas of the economy require mandatory notification.
- Whether you need to tell the government about an acquisition.
- How to submit a notification form and what to expect when you have submitted a notification.

The Act gives the government powers to scrutinise and intervene in acquisitions that may pose national security risks. It also provides businesses and investors with predictable, legally defined timelines and processes for decisions on acquisitions. The Act requires particularly sensitive acquisitions to be approved by the government before they are completed. The government will be able to impose certain conditions on an acquisition and, in rare instances, the government may unwind or block an acquisition completely.

The government has also produced a flowchart to assist in determining whether you must or may wish to notify the government of an acquisition from 4 Jan 2022. Such notifications should be made via the online portal. Guidance on completing and registering a notification form is also available.

The Section 3 Statement sets out how the Secretary of State expects to exercise the power to give a call-in notice, as set out in Section 3 of the NSI Act. It was laid in the UK Parliament and published on 2 November 2021 to help businesses and investors understand whether their acquisitions are likely to be called in. The statement also includes the areas of the economy in which the government believes qualifying acquisitions are most likely to be called in, particularly the areas of the economy defined by regulations under Section 6 of the Act and the risk factors that the government will consider when assessing an acquisition. These risk factors are the ‘target risk,’ the ‘acquirer risk’ and the ‘control risk’.

FRC ISSUES DRAFT PLAN FOR THE TRANSITION TO ARGA

On 18 January 2022, the Financial Reporting Council (FRC) published its draft 3-year Plan for 2022-25. This acknowledges the FRC’s continued commitment to being an effective and transparent regulator as it prepares to transition to the Audit, Reporting and Governance Authority (ARGA).

In 2022/23 overall costs are expected to increase by £9.1m (17.7%) from £51.5m to £60.6m. Similarly, the FRC’s headcount is expected to increase 17% to 489 by March 2023. The FRC anticipates similar growth in 2023/24, being the year in which it expects ARGA will be created and the first year of statutory funding, followed by a period of stability and consolidation from 2025 onwards.

The FRC’s objectives remain the same for 2022-25, however it has adapted its audit market objective slightly to recognise ARGA’s expected competition objective, and choice, both of which are important elements of a resilient audit market.

2022/23 priorities and deliverables

In 2022/23, the FRC/ARGA plans to focus on those areas where it anticipates either an increased volume of work to meet its statutory obligations or where investment in new capacity is justified. These include:

(i) Regulatory Standards and Codes

- The periodic review of FRS 102, adoption of ISA (UK) 500 ‘Audit Evidence’ and ISA (UK) 600 ‘Group Audits’.
- Alignment of its Corporate Governance & Stewardship monitoring and evaluation programme
- International influencing of auditing and ethical standards, and significant contribution to non-financial reporting developments in the UK and internationally.
- Preparation for ARGA’s local audit systems leader role.
- Activities focused on improvements and innovation to support high-quality reporting and audit quality including establishment of a new ‘Audit Sandbox’.
- Promoting the use of technology throughout its policy areas.

- Increased stakeholder engagement with impact and influence, including an overhaul of planned publications focused on collective impact.

(ii) Supervision

- Deliver a full programme of high-quality Audit Quality Review inspections, Corporate Reporting reviews and professional oversight visits and publish associated reporting, including thematic reviews.
- Carry out ISQC inspection work and prepare for ISQM1 taking effect.
- Increase supervision of audit firm culture.
- Assess audit firms' adoption of operational separation principles.
- Implement PIE audit registration decision-making.
- Increase intensity of forward-looking supervision of audit firms, with more 'joined up' regulation of firms' actions on quality.
- Negotiate mutual recognition agreements resulting from the UK's EU exit.
- Perform equivalence and adequacy assessments.

(iii) Enforcement

- Fair, robust, and timely case closures or conclusion through focus of investigations, prioritisation, training, and recruitment.
- Upskilling and training to respond to changes in the Audit Enforcement Procedure from January 2022 and implement future powers arising from regulatory reform.
- Publication of the Annual Enforcement Review, driving improved behaviours through messaging case outcomes.

(iv) Corporate Services

- Develop a statutory funding model for ARGA.
- Develop and implement an integrated information management strategy, including a medium-term IT strategy and enhanced data analytics and reporting.
- Enhance cybersecurity risk management.
- Appropriate workforce planning, aligned with the FRC's business planning cycle and designed to incentivise, reward, and retain key skills.
- Strengthen its support infrastructure, including in finance and procurement systems, internal controls, and IT.
- Legal support for regulatory reform and legal and operational support for the UK Endorsement Board.

Sustainability

The FRC's ESG and Climate Group utilises cross-FRC collaboration to deliver a multi-faceted work plan. The data gathered from this work will help inform the FRC's policymaking, its understanding of the regulatory landscape, baseline appropriate measures of improvement, international influencing and a co-ordinated approach to working with other regulators on issues of sustainability. The FRC has a centralised, co-ordinated ESG and Climate strategy intended to ensure that all its ESG and climate-related activities link back to its overall purpose to help it achieve the following desired outcomes:

- Improved corporate governance of ESG and climate-related matters;
- Enhanced consistency and comparability of corporate reporting;
- Enhanced confidence in the disclosures of ESG and climate information, and
- Improved investor engagement on ESG and climate-related matters.

The FRC's 2022/23 Strategy and Plan & Budget consultation will run until Tuesday, 1 March 2022. Comments can be submitted to FRC.Plan.Budget@frc.org.uk.

AUDIT SAMPLING – ISA (UK) 530

The justification of audit samples has always been a difficult subject, with issues commonly arising around:

insufficient documentation of the sample size basis;

- using 'judgmental sampling', with no justification of the judgments taken, in particular where a 'standard' sample size has been used;
- sample 'capping' and 'flooring';
- a lack of support of the risk assessment as a contributing factor; and
- selecting items within a population due to accessibility.

In a number of instances these matters can be easily addressed by effectively using sampling plans or methodologies within a firm's audit programmes; ensuring that the samples are based on appropriate criteria and in line with the auditor's risk assessment; and recording this in sufficient detail on the audit file.

Inappropriate reliance on controls or substantive analytical review to reduce sample sizes

There are often issues where firms have reduced sample sizes due to their placing reliance on controls, where tests of controls have not actually been completed or sufficiently carried out; or placing reliance on substantive analytical review, where the extent of the analytical review is not sufficient to justify such an approach. Often it is the case that this work has simply not been completed, often through a misunderstanding of when and how an auditor can rely on controls; and the definition and process of substantive analytical review under ISA (UK) 520. In more marked cases, this has resulted in ICAS Audit Monitors concluding that there is a lack of evidence over a particular balance or assertion, often impacting significant areas of testing such as completeness of income; and existence and validity of purchases.

Reliance on internal controls

Substantive testing may be reduced in some areas by placing reliance on internal controls. However, to achieve this, the auditor must perform an appropriate test to assess the operating effectiveness of the relevant control and determine whether the control has been properly designed to prevent or detect a material misstatement in the financial statements.

The more common types of controls selected for testing include authorisation of transactions; reconciliation procedures; and assessment of segregation of duties. ISA (UK) 530 provides a significant level of guidance regarding the determination of sample sizes, and the consideration of the impact of reliance from other areas of the audit engagement, including determination of tolerable misstatement; and the consideration of risk in determining whether a smaller or greater sample size is required.

Put simply:

- There must be a formal control in place to test.
- It must relate to a specific assertion over a balance or transaction stream being tested.
- It must be tested sufficiently (i.e.; using an appropriate sample)

As noted, the control must be attributable to the assertion being tested. This has sometimes caused issues, for example, where a firm has assumed a control designed to safeguard authorisation of a transaction also provides comfort or evidence over completeness of that transaction stream. Often, where controls testing has been utilised, testing of one control is used to inappropriately reduce the sample size across all assertions relating to that balance.

Reliance on substantive analytical review

Analytical review can be a valuable substantive audit procedure. However, reviews are often not sufficient to meet the definition of substantive procedures and, as such, should not be relied upon for the purpose of reducing sample sizes.

As a brief reminder, for a review to be robust, there are considerations that must be addressed by the audit team, and a well performed analytical review will focus on the following key steps:

- Ensuring the substantive analytical procedure planned is suitable for the specific assertions that are being tested.
- Building an expectation – this should be based on reliable data and therefore if last year's figures are used, you should justify why you consider doing so to be reasonable in light of any potential fluctuations
- Comparing with actual values – this will enable levels of variance to be determined and, if material, whether these should be investigated.
- Corroboration of explanations – once the difference has been quantified, these should be independently verified, including corroboration of management's explanations.

Without these steps the analytical review does not meet the definition of 'substantive' under the standard.

Note that substantive analytical review, by its nature requires a significant amount of corroboration of management explanations, often by way of detailed testing which must be documented fully in line with ISA (UK) 230.

Standardised sample sizes – including sample capping and flooring

There are a number of internal and off-the-shelf sample methodologies which advocate standard sample sizes. These are most commonly:

- Use of a single standard number
- Setting a minimum sample for all tests (typically 10-15)
- Setting a maximum sample for all tests (typically 50-60)

Under ISA (UK) 530, sample size is affected by sample risk – basically the lower the risk the auditor is willing to accept, the higher the sample size will be. There is therefore a clear link with the risk assessment process.

Use of a single number is often noted within firm's own methodologies. Using one number across all tests is risky, as it assumes a standard level of risk across all populations, and often the Audit Monitors have raised an issue where the same number is used to test a low-risk balance as a high-risk balance in the same set of financial statements.

Sample caps are noted frequently in off-the-shelf audit procedures. In a risk-based process, the use of sample caps can be difficult to justify where the auditor's risk assessment, including the assessment of material misstatement or risk of error within a population indicates a higher sample is required than the sample cap applied.

Sample floors are similarly not in line with a risk-based approach. However, it has been noted by the monitoring team that the sample floor or minimum test policy applied by some firms has actually been a factor in ensuring that representative samples have been tested. The most common issue by far is where the sample has been calculated incorrectly in the first place (usually due to the controls and substantive AR issues noted above) leading to an artificially low number, but the test has been 'saved' by the sample floor applied.

As with all sample methodologies, as well as following a risk-based approach, auditors should consider a "stand back" review of samples to consider whether these are sufficient or appropriate, even where a sample calculator has been used.

Sample not representative of an entire population

Issues can occur where a sample has been calculated for a specific test, but the auditor has either (a) omitted one or more material balances within that population for testing; or (b) focussed on higher value items only within a specific population.

In the case of example (a), happens most often in the directional testing of sales / income and purchase / expenditure, and specifically where the audit team has focussed on a prominent balance within that area of the financial statements.

In the case of example (b), issues arise where testing has been restricted to high value items in a population without consideration of the characteristics of the population from which that sample has been drawn. In most cases this has been where the auditor has restricted testing to a sample of key items or high value transactions. It's worth remembering that under ISA (UK) 530, the auditor must select items for the sample in such a way that each sampling unit in the population has a chance of selection.

The end result is sample bias has resulted in a lack of testing or evidence over entire categories of sales and purchases.

Splitting a sample across one or more assertions

Sometimes a sample has been calculated appropriately but has then been split across assertions. For example, where a sample to test completeness of turnover is calculated of 30, and the auditor goes on to test 10 items for completeness; 10 items for cut-off; and 10 for existence / occurrence. In these instances, ICAS Audit Monitors will often conclude that a lack of evidence has been obtained over one or more assertions, and it is therefore important to ensure the calculated sample is applied appropriately.

The importance of the review process

The most important consideration in ensuring adequate sample sizes, is the review process. In particular, where the original sample calculation has been made by a more junior member of the audit team, the RI and manager review processes should be robust enough to identify inappropriate sample calculation or justification at the planning stage. The process should also identify, in a timely manner, where an insufficient sample size has been used during fieldwork, to allow further testing to be completed before signing the audit report

PROFESSIONAL INDEMNITY INSURANCE: TOP THREE TIPS FOR YOUR 2022 RENEWAL

Written by Marsh, Evolve practice support programme Partner

In recent years, we've seen the professional indemnity (PI) insurance market begin to change. After more than a decade of soft market conditions, the accountancy PI market has hardened.

Insurance markets cycle from hard to soft, which in turn impacts commercial businesses in different ways. In a soft market, there is more competition between insurers for the same risk. Insurers will try to increase their market share by adopting an aggressive pricing approach and offering enhanced policy coverages. Supply outweighs demand, driving premiums down and resulting in a buyer's market.

In a hard market, insurers have less desire to grow and will be evaluating their book of business, appetite for risk and presence in the marketplace. Supply falls short of demand pushing premiums up – and businesses are often subject to stricter standards or policy terms.

The market has been hardening because of several global issues. The Lloyd's Thematic Review of 2020 was a strong influence of some of the changes we're seeing today. Lloyds of London is an insurance and reinsurance market located in London. Its network of insurance brokers, underwriters and agents is the largest in the world.[1] Lloyd's established that some members of their network were not charging enough premium to cover claims. In fact, this was a result of the insurance market softening too much. Lloyd's mandated that its members needed to increase premiums to charge a sensible and economically sound premium otherwise it would not renew its capacity to trade in the Lloyd's market. This caused a ripple effect across the market, with even insurers outside Lloyd's market reviewing their premiums and adjusting accordingly.

Currently, fewer insurers are prepared to offer accountancy PI. This has resulted in reduced capacity in the market, limited policy coverage and those insurers still operating in the market becoming selective about who and what they choose to insure. No matter how long you've been purchasing PI cover, our advice is that you prepare yourself for what you might experience at your 2022 renewal.

Here are our top three tips for approaching your renewal in 2022

1. Choose a leading professional indemnity insurance broker Your broker's strong insurer relationships are vital in securing the cover you need at the best possible price. With all the changes occurring in the PI market, it's never been more important to work with a specialist PI insurance broker for accountants.

Your broker is there to provide advice and clearly explain the extent of your insurance cover. They act on your behalf and have a legal duty of care in the advice and products they recommend. Using a broker will help you avoid duplication of cover and paying twice, as well as making sure you're not over or under-insured.

2. Start preparing for your renewal early. In a hard market, you cannot afford to wait until the last minute if you want to secure the best cover at the best price. Be sure to engage in your renewal as early as possible. This will give you plenty of time to gather any documentation required by your broker. Insurers will likely have questions about your business operations, so you need to factor in time to respond.

3. Be prepared to provide more detailed information than usual. Insurers are likely to ask for more detailed information about your business operations, supply chain processes and current risk-management methods. Requests like this significantly impact the amount of time it takes to generate renewal terms. Be prepared and engage with your broker early.

Marsh Commercial is the exclusive, appointed insurance broker for ICAS member firms. For more information on the PI insurance market, or your 2022 PI renewal, contact the team at Marsh Commercial on 0330 175 5876 or by email. .

LEGAL FEES INCURRED DEFENDING CRIMINAL CHARGE - WHOLLY AND EXCLUSIVELY?

In the recent first tier tribunal case of TR, SP and SR Rogers (2021 UKFTT 0458(TC)) it was held that legal fees in excess of £600,000 in defending two of the partners, but one in particular, against criminal charges were incurred wholly and exclusively for the purposes of the trade.

The background facts were:

1. The partnership of TR Rogers & Son dealt in scrap metal and was a partnership between Mr Simon Rogers and his parents.
2. Thames Valley police conducted an operation where undercover officers attempted to sell and, in some cases, sold, property which the police implied was stolen, but which in fact was not stolen. The police already owned the property.
3. As a result, criminal charges were brought against Simon Rogers, his father, and several employees. While Simon Rogers was found guilty of one count of attempting to conceal, disguise or convert criminal property, his father was found not guilty at the first trial.
4. Simon Rogers appealed against this conviction and was successful at the Court of Appeal. The cost of his defence was claimed as a deduction in the partnership accounts in respect of the two years to 5 April 2015, as being wholly and exclusively for the purposes of the trade.
5. Following their enquiry into the tax returns of the business, HMRC issued a closure notice disallowing the expenses.

The tribunal had to decide whether HMRC were correct to disallow the expenses in the partnership returns, whether they were correct in their interpretation of section 34 ITTOIA 2005 that the expenses were not wholly and exclusively incurred for the purposes of the trade and whether HMRC were correct in not apportioning the costs to allow some of the expenses incurred.

Section 34 ITTOIA 2005 states that:

1) In calculating the profits of a trade, no deduction is allowed for –

   a. expenses not incurred wholly and exclusively for the purposes of the trade, or
   b. losses not connected with or arising out of the trade.

2) If an expense is incurred for more than one purpose, this section does not prohibit a deduction for any identifiable part … which is incurred wholly and exclusively for the purpose of the trade.”

The tribunal considered several cases including the leading case of Mallalieu v Drummond (1983 BTC380) where a Barrister claimed the cost of Court clothing as being incurred wholly and exclusively to practice her profession. The taxpayer lost her appeal on the grounds that her object in purchasing the clothes was both to serve the purposes of her profession but also to serve her personal purposes of warmth and decency.

Mr Rogers presented his own case and made the following points:

1. The scrap metal trade is highly regulated, requiring not only a scrap metal licence from the local authority but other licences from the environment agency as well as correct planning permission for the land from which the business is carried out.
2. An application for a scrap metal licence requires disclosure of any relevant offence. Mr Rogers was in no doubt that had the conviction stood, he would not have been granted a scrap metal licence. Simon Rogers' father had set the business up fifty years ago and both father and son were extremely proud of its reputation.
3. On the day, the police operation on the business was covered by local news. On the following day, the landlord's agent phoned Simon Rogers and went through clauses in the lease which would allow the landlord to terminate the lease on a conviction. Mr Rogers produced a letter from the landlord's agent confirming that the lease would have been terminated had the conviction stood.
4. Shortly thereafter, Barclays Bank requested a meeting with Mr Rogers who was advised that the business assets could be frozen, and the bank account closed.

5. The business required insurance and there were a limited number of providers. The insurers agreed to keep the business cover in place pending the outcome of the court case and subsequent appeal. It was clear that a conviction would make the business uninsurable. Mr Rogers produced a letter from the insurance company showing that a conviction would have made it extremely difficult to obtain cover and that it may not have been possible.
6. Some long-standing suppliers of scrap metal also ceased to deal with the business after they became aware of the police operation.
7. It was immediately clear to the partnership that from the day after the police operation, a conviction would lead to a loss of its scrap metal licence, the loss of its site, the loss of its bank account and the inability to obtain insurance. Simon Rogers was clear that this would have meant the end of the business.
8. The business managed to continue operating during the period between the police operation and the final overturning of the conviction by the Court of Appeal. This was only possible on the basis that the conviction was being appealed and on account of the goodwill and reputation that the business had built up.
9. Mr Rogers was advised throughout by his legal team that he was likely to win the case. Initially, they did not consider that the case would be brought to Court and then that it would be dropped. He hadn't a clear estimate of the costs of the defence from the outset and the only way of keeping the business going was to continue the defence and pay the legal fees.
10. Mr Rogers accepted that HMRC's view was that there was a duality of purpose in that he had a personal interest in his own reputation. He did not however see that the Court of Appeal case would go very far to change his reputation as the police operation had been covered widely in local press from the beginning. It was very clear to him however that it mattered very much for the business due to the customer and supplier relationships, including licence providers, that would be affected by the conviction.

HMRC's case was that, for the expenses to be deductible, they must be incurred wholly and exclusively for the purposes of the trade. They made the following points:

1. The costs had a duality of purpose and there were three reasons:
   - To avoid the possibility of Simon Rogers going to prison.
   - The defence of personal reputation.
   - For the benefit of the trade.
2. For there to be a duality of purpose, the motives can be both conscious and unconscious.
3. There was the possibility of a prison sentence for Simon Rogers.
4. Simon Rogers' conviction was overturned, and his father had been acquitted. Both had therefore been accused of crimes that they did not commit and HMRC said that it is a natural human instinct to defend yourself against a charge where you are innocent.
5. It was not possible to split personal and professional reputation and the expenses were incurred in defence of both. Mr Rogers' view was that the damage to his reputation had been done and would not be repaired by the conviction being overturned but HMRC disagreed. Their view was that Mr Rogers' personal reputation would be improved by the overturning of the conviction.
6. HMRC did not believe that a custodial sentence was not a concern of Mr Rogers as the legislation clearly provides that this was a possibility.
7. HMRC did not believe that a scrap metal licence would be denied to a person with a conviction, the statutory guidance to local authority being to this effect and that the local police force should be consulted for further details of the seriousness and date of the 0ffence.
8. Finally, HMRC said that it was far from being a foregone conclusion that the business would lose its licence and that little evidence had been produced to show that the business would not be able to continue.

In considering its decision to allow the partnership's appeal, the tribunal considered several points:

1. As neither party had asked it to consider "wholly" the tribunal had to consider "exclusively" only.
2. It disagreed with HMRC's contention that the defence of Simon Rogers' liberty was ever a concern. He had been fined £1,500 on conviction and they thought it extremely unlikely that he would have gone to prison, accepting that his lawyers had advised him that he had a strong case.

3. It disagreed with HMRC that a conviction would not have had a significant impact on the business accepting the evidence that the lease would have been terminated and that it would have been extremely difficult to find new premises. It also disagreed that it was likely that a scrap metal dealer's licence would have been granted had the conviction not been overturned and it accepted that the police would have been consulted by the local authority on this point.
4. The tribunal therefore concluded that the purpose of incurring the expenses was defence of the trade. It then went on to consider whether this was the exclusive reason or whether there was a subsidiary reason of the defence of personal reputation.
5. The tribunal agreed with HMRC that the Court of Appeal decision had an effect on Mr Rogers' personal reputation and that it was better to be found innocent rather than to be found guilty. It was important to distinguish that this was an effect of the expenditure being incurred rather than the reason for it.
6. The Judge in the first case, where Mr Rogers was found guilty commented that "… you are regarded as an extremely good person. I take into account that during this operation there was no actual loss, there were no stolen goods and I also accept very much in your case that the damage done to the business is a great burden for you to bear." The tribunal considered that, while Mr Rogers' reputation had been damaged it was not significant. Mr Rogers had also made clear from the outset that the reputation of the business was paramount.
7. The Court of Appeal overturned Mr Rogers' conviction as the items in question were not in fact stolen. Despite Mr Rogers' conviction being overturned, there could nevertheless have remained a negative opinion of him as, had the goods in fact been stolen, he would knowingly have bought them. This was not the tribunal's belief.
8. The tribunal agreed that the damage had been done to Mr Rogers' personal reputation at the time of the police operation and the coverage in the local news.
9. A person who thought well of Mr Rogers may have considered that his first conviction was unfair as the goods which he purchased were not stolen. A person who thought badly of him on the other hand may have considered that the only reason that the conviction was overturned was that the goods were not in fact stolen and said nothing about what he would have done had they been.

   If there was no conviction however, then there were no barriers to the business in respect of insurance, continuation of the lease or obtaining licences.
10. The tribunal considered that personal reputation was not relevant in deciding whether to incur the legal fees. It found that the purpose of incurring the legal expenses was wholly and exclusively for the purposes of the trade as, within twenty-four hours of the police operation, several important trading parties were making it clear to the partnership that they were taking the situation very seriously and that a conviction would lead to the withdrawal of the lease, the insurance, the banking services, and various licences, as well as the loss of customers and suppliers.

The question arises as to whether the purposes of the general body of taxpayers was best served by HMRC sticking to its dogmatic "all or nothing" litigation approach rather than perhaps agreeing a partial allowance of the total expense as envisaged by section 34(2) ITTOIA 2005.

TAXPAYER SUCCEEDS IN HIS CLAIM FOR ENTREPRENEURS' RELIEF ON DISPOSAL OF PARTNERSHIP PROPERTY

The facts in the recent first tier tribunal decision in Christopher Thomson (2021) UK FTT 0453 (TC) were slightly unusual in that he retired as a partner in the accountancy firm of Voisey & Co over a period of some twenty-two years.

Mr Thomson's appeal concerned the availability of entrepreneurs' relief on the disposal of the office premises held by the partnership in which he was a partner. The facts were not in dispute and were as follows:

1. Voisey & Co disposed of its office premises in Warrington on 31 October 2017 to Mr Thomson's pension scheme.
2. Mr Thomson claimed entrepreneurs' relief in his 2017/18 return and, after investigation, HMRC issued a closure notice rejecting the claim. Entrepreneurs' relief has been succeeded by business asset disposal relief, but the principles remain the same.
3. Mr Thomson became a partner at Voisey & Co in 1970. His partner retired around 1989 and Mr Thomson bought out his share. Through the partnership, Mr Thomson became entitled to 99.9% of the business premises with the other 0.1% being acquired by a new partner, Philip Urmston.
4. In 1996, Mr Thomson started to consider retirement and succession and considered that Mr Urmston and Leigh Warburton, who also became a partner, were suitable to take over from him. They were at the time, 31 and 29 respectively. Mr Thomson had many clients who were personal to him and with whom he had worked for several years. He also held several executorships, trusteeships and directorships and there were 65 such appointments in 1991.
5. It was verbally agreed that, to affect the transition:
   - The new partners would each pay Mr Thomson £20,000 per annum in respect of the then £434,000 of work in progress, leaving Mr Thomson with a token 1%.
   - Mr Thomson would transfer clients to the new partners, starting with audit and compliance matters to be followed by the more difficult and long-standing clients.
   - As matters were transferred to the new partners, Mr Thomson's profit share gradually reduced.
   - Mr Thomson reduced his hours to match.
   - The reduction in profit entitlement was not linear, depending instead upon transfers of clients and the related fees. Mr Thomson fell from 99.9% in 1996 to 20% by 2017/18 with an 8% reduction in that year. By this time, he had disposed of 99% of goodwill and old work in progress but still retained his 99% interest in the business property through the partnership.
6. The transfer did not happen as quickly as Mr Thomson had originally envisaged as:
   - Two clients for whom he was an executor had died in 2005 and 2006, the estates being very difficult with one involving legal claims.
   - In 2012 there was threatened litigation in respect of a trustee position which involved referrals to the police and death threats.
   - The new partners did not want to take on these trust issues, so Mr Thomson retained responsibility for them.
   - It was not until 2021 that Mr Thomson was finally able to hand over his last personal client.
7. There had been no specific agreement in 1996 about the business premises but it was understood by all partners that there would need to be some arrangement. There were discussions from 2010 and in October 2017, the premises were sold to Mr Thomson's pension scheme.

HMRC accepted that Mr Thomson satisfied the conditions for entrepreneurs' relief except they did not agree that the condition in section 169I(1)(a) TCGA 1992 was satisfied. There must be a material disposal of business assets and section 169I(1) says that "there is a material disposal of business assets where –

an individual makes a disposal of business assets (see sub section (2)) …"

Section 169I (2) says that there is a disposal of business assets where there is –

a disposal of the whole or part of a business.

a disposal of (or interests in) one or more assets in use at the time at which the business ceases to be carried on.

It had been agreed by Mr Thomson and HMRC that the conditions in section 169K for associated disposals were not satisfied.

HMRC's case was that there had to be the disposal of the whole or part of a business and that, in Mr Thomson's case, there had only been the disposal of an asset, that is the business premises.

HMRC accepted that there may have been separate disposals in different tax years which, taken together, could constitute the disposal of the whole or part of a business but evidence was required. In the current circumstances, the process had taken twenty-two years from 1996 and that the facts did not justify treating the process as part of the same transaction.

Mr Thomson's case was that section 169I(1)(a) was satisfied because he, through the partnership, had sold the premises as part of his retirement. All assets previously held by him in the partnership had been disposed of, his retirement process which had started in 1996 took longer than anticipated but the delay was for good commercial reasons, enabling him to pass on a thriving practice to the new partners. Despite the delay, the sale of the premises was part of the wider arrangements. He considered that it was artificial to look just at the partnership assets treated as assets for capital gains tax purposes as these did not include the other assets transferred to the new partners. Even in the 2017/18 tax year, he had reduced his profit share in the partnership.

In its decision, the tribunal stated that the point in the appeal was a very short one and that:

- Section 169I(1)(a) does not have any hard delineations limiting its application. Whether it applies depends upon a realistic view of the facts and artificial limits should not be read into the legislation that are not there.
- They did not accept HMRC's argument that the application of section 169I(1)(a) applies depending upon looking only at assets being disposed of which were subject to capital gains tax.
- The disposal of a single partnership asset without the disposal of other assets would not satisfy section 169I(1)(a).
- There was support in this point following Gilbert (T/A United Foods v Revenue & Customs (2011 UKFTT 705) and in Dilip Amin v Commissioners for HMRC (2016 UKFTT 5151) which concerned the disposal of property by a partner in an accountancy firm to his pension scheme. In that case however it was held that there was only a disposal of an asset of the business rather than an interest in the business and that entrepreneurs' relief was not therefore available.
- The tribunal accepted Mr Thomson's evidence as to the history of his role in Voisey & Co and his relationship with the new partners. HMRC had not challenged this, and the tribunal accepted that Mr Thomson had been trying to transfer the ownership of his practice to the new partners but was hampered by his long-standing relationships with key clients.
- The tribunal accepted that the disposal of the premises was part and parcel of the wider disposal of his share in the assets of the partnership, which he was still affecting in 2017/18.
- The tribunal was aware that the twenty-two-year period over which the events took place was extreme but accepted Mr Thomson's appeal that the gain on disposal of the business premises qualified for entrepreneurs' relief as it was part and parcel of the disposal of his share in all the assets in the partnership, and to enable his exit.
- It accepted that the time period was extreme but decided the appeal on its own peculiar facts and that Mr Thomson was still trying to dispose of the assets of the partnership at the time when the property sale took place.

Mr Thomson's appeal was allowed.

PRIVATE RESIDENCE? "I DON'T BELIEVE IT"

As Victor Meldrew often said and, in the case of Hussain ((2022) TC 08366), so did the tribunal.

Mr Hussain owned several properties including the White House which he and his wife occupied as their main residence. In July 1994, he purchased Mansfield General Hospital, which was no longer in use, and sold it in July 2013 at a gain. None of his properties had been nominated as his wife's and his main residence, but Mr Hussain claimed that the 150,000 square foot former hospital had been his main residence for a year and therefore that year, together with his final three years of ownership was exempt.

Mr Hussain had put a bed, sofa and television into the hospital but provided no other documentary evidence

that it was his main residence. He had intended to renovate the hospital and said that he intended it to become the family seat for his descendants. His wife continued to live in the White House throughout, never visited the hospital and was unaware of her husband's intentions.

Mr Hussain appeared to consider that sleeping in the hospital more frequently than in any other of his properties was sufficient to claim principal private residence relief but the tribunal, in dismissing his appeal, did not consider that the nature, quality, length and circumstances of his occupation, was sufficient to be able to show that the hospital was his main residence.

ETHICS BUDDY SERVICE

The ICAS Ethics Buddy Service will enable a CA with an ethical dilemma, where deemed appropriate, to have confidential, informal, discussions with an experienced ICAS Member – a 'sounding board' – to explore their issue and assist them in considering how they might approach their dilemma.

Often people caught in a dilemma don't have perspective – it is difficult for them to see the wood for the trees. If a CA has an issue which is troubling them, the ICAS Ethics Buddy Service enables them to have access to constructive input early in the process to help them delineate the issues and prevent matters from escalating. The ethics buddy's role is to listen, to encourage a dialogue, and to help as part of the thinking process. They might ask questions like, "Have you thought about …?", to aid CAs to consider alternatives, but they will not be party to all the information and so are not there to offer solutions. The Ethics Buddy Service provides an opportunity to talk, but it does not provide advice. CAs will also need to seek any legal advice independently. Ultimately it will be up to the CA to reach their own decision on a way forward.

The nature of ethical issues is that they might take several weeks or months to resolve but then an individual might not encounter any again for years. The ICAS Ethics Buddy Service – which could be limited to a one-off call or a series of chats but in a more time-limited way – essentially sits between the ICAS Ethics Helpline Service, which tends to address more specific questions at a particular point in time, and ICAS' mentoring options, where on-going relationships are developed between two individuals over a longer period of time. The Ethics Buddy Service is therefore a supplement to the ICAS Ethics Helpline Service as well as access to the confidential helpline of Protect, the independent whistleblowing charity.

If you would like to access the ICAS Ethics Buddy Service, please contact James Barbour (Director, ICAS Policy Leadership) in the first instance either by email (ethics@icas.com) or call 0131 347 0234.

CONSTRUCTION INDUSTRY SCHEME - GROSS PAYMENT STATUS

in Bagri Services Ltd ((2022) TC 08357), The first-tier tribunal allowed the company's appeal against HMRC's decision to cancel its construction industry scheme gross payment status.

HHRC's case was that the company had provided false information by not notifying Companies House of the existence of a shadow director.

The 2006 Companies Act does not place an obligation on a company to include shadow directors in the register of directors, nor to notify Companies House of their appointment, removal or change of details. The 1985 Companies Act had imposed an obligation to include shadow directors in the register of members.

Having removed the company's gross payment status with immediate effect, and having accepted the tribunal's analysis that false information had not been provided to Companies House, HMRC asked the tribunal to allow the company's appeal and reinstated its gross payment status with immediate effect.

This is probably not something that any reader of this bulletin will ever experience, but you will know what to do if you ever do.

FRC ISSUES NEW CONSOLIDATED VERSIONS OF FRSs

The FRC has issued new consolidated January 2022 editions of UK and Ireland accounting standards. These editions reflect the amendments made to the respective documents since the previous editions were issued in 2018, as well as changes in Irish company law, resulting in a single up-to-date reference point for each standard.

In addition, the FRC has issued revised editions of the Foreword to Accounting Standards and Overview of the financial reporting framework that reflect developments in accounting standards, legislation and regulation.

The documents issued are:

- Foreword to Accounting Standards;
- Overview of the financial reporting framework;
- FRS 101 Reduced Disclosure Framework;
- FRS 102 The Financial Reporting Standard applicable in the UK and Republic of Ireland;
- FRS 103 Insurance Contracts
- Implementation Guidance to accompany FRS 103 Insurance Contracts
- FRS 104 Interim Reporting
- FRS 105 The Financial Reporting Standard applicable to the Micro-entities Regime

The newly issued version of FRS 102 incorporates the following changes made since the last version of FRS 102 was issued in March 2018:

- Amendments to FRS 102 – Multi-employer defined benefit plans (May 2019)
- Amendments to FRS 102 – Interest rate benchmark reform (December 2019)
- Amendments to FRS 102 – COVID-19-related rent concessions (October 2020)
- Amendments to FRS 102 – Interest rate benchmark reform (Phase 2) (December 2020)
- Amendments to FRS 102 – UK Exit from the European Union (December 2020)
- Amendments to FRS 102 – COVID-19-related rent concessions beyond 30 June 2021 (June 2021)
- Applicable amendments made since March 2018 to the Reduced Disclosure Framework.

The newly issued version of FRS 105 incorporates the following changes made since the last version of FRS 105 was issued in March 2018:

- Amendments to FRS 105 – COVID-19-related rent concessions (October 2020)
- Amendments to FRS 105 – UK Exit from the European Union (December 2020)
- Amendments to FRS 105 – COVID-19-related rent concessions beyond 30 June 2021 (June 2021).

Companies House Direct and Web Check services are closing

Despite some delay, Companies House still intends to close its Companies House Direct and Web Check services. A formal closure date will be set later in 2022. Find and update company information will remain the prime company search function. This includes dissolved company records as well. For companies dissolved before 2010 (up to 20 years) a dissolved company names index is available, providing basic company information and company reports. Copies of documents for these companies will be available on request from CH's

Removing personal information from the charge instrument (Registering a charge (mortgage - MR01) for a company)

Any information sent to Companies House will appear on the public record, including all information on the certified copy of an instrument. Before a certified copy is sent, you can remove or 'redact' some personal information from it, namely:

- personal information relating to an individual (but not their name)
- the number or identifier of a bank or securities account
- a signature, including a signature certificate

TAX & HMRC UPDATES

Inheritance Tax reporting requirements for non-taxpaying estates

New regulations came into force on 1 January 2022 and have effect for deaths occurring on and after that date. From that date, most non-taxpaying estates will no longer have to complete Inheritance Tax forms for deaths where probate or confirmation is required.

The regulations also update the Inheritance Tax reporting requirements. This clarifies the requirement for estates to submit an Inheritance Tax account where the deceased was never domiciled in the UK but owned indirect interests in UK residential property.

For deaths after 31 December 2021, personal representatives will be required to:

- declare that the estate is an excepted estate
- declare whether they are claiming transfer of unused nil rate band,
- provide 3 estate values for Inheritance Tax purposes on the probate and, or confirmation application.

You can obtain these values by using the Inheritance Tax Checker tool on GOV.UK

Decommissioning of HMRC's Online End of Year Expenses and Benefits service

From 6 April 2022 the interactive PDF known as HMRC's Online End of Year Expenses and Benefits service, used to submit P11D and P11D(b) won't be available. Instead, you should use our PAYE Online service. This allows:

- submissions for up to 500 employees
- online submissions of P46(car) — without the need to download the latest version of Adobe Reader or use a certain web browser to access it

Claims for creative industry tax reliefs

Information on how to provide evidence to support your Company Tax Return if you're claiming creative industry tax reliefs for Corporation Tax can be found by following the link..

Self-Assessment penalty waiver

On 6 January HMRC announced that they will not charge late:

- filing penalties for those who file online by 28 February 2022
- payment penalties for those who pay the tax due in full or set up a payment plan by 1 April 2022

Declare coronavirus grants on company tax returns

Coronavirus grants and payments to support businesses during the pandemic are taxable.

On 21 December 2021, the UK government announced additional support would be available for businesses who've been impacted by the Omicron variant in England. This will also need to be reported in the accounts and Corporation Tax return for the relevant accounting period when the time comes.

For more information on which grants to report, how to report them, and what happens if your client has claimed too much and more, you and your clients can sign up for live webinars about declaring your grants.

Disguised remuneration scheme

The section 'Providing HMRC with settlement information' has been updated with information for employers who want to settle their disguised remuneration scheme

Title here

Agent Update: issue 92 is now available and includes:

Self-Assessment penalty waiver

- Full customs controls now in place
- A reminder to declare coronavirus grants on Company Tax Returns
- Residential Property Developer Tax
- Changes to claiming subcontractor Construction Industry Scheme (CIS) deductions.

The next issue of Agent Update is scheduled for February 2022.

WORKPLACE PARKING AND TOURIST TAX

Background

Back in 2018, the City of Edinburgh Council won the support of all Scottish local authorities to seek powers to raise a tourist tax. At the time of writing, the UK was one of only nine EU member states that was not charging a tourist tax according to COSLA, which published a paper and announced its support for a tax that could be introduced locally in June 2018 with its #stayalittlepayalittle strap line.

Following that, in September 2019, a consultation was issued by the Scottish Government that outlined the proposals for the introduction of a local discretionary Transient Visitor Levy (TVL). A response to the consultation was published by the Scottish Government in March 2020; however, any plans to proceed were put aside due to the pandemic.

The Transport (Scotland) Act 2019 Part 7 introduced a discretionary power to charge workplace parking levy (WPL), and indicated that local authorities would be able to work individually or collectively to impose the WPL on employers who provide car parking spaces free of charge to employees within that local authority area. In June 2021, a consultation on WPL was issued by Transport Scotland concerning regulations and guidance.

The WPL would work by way of the local authority acting as a license issuer. Employers would be issued with a licence, for which they would pay an annual fee based on a charge per qualifying space. It would then be for the employer to decide whether to pass on that cost to the employees – note that where the employer bears the cost, a tax exemption at s.237 ITEPA 2003 prevents the value of that cost burden being passed on to employees by way of a benefit in kind charge on the P11D. Hospices, NHS properties, GP surgeries and disabled spaces would potentially be exempt, and there were discussions around whether car parking for electric vehicles would also be exempt.

2021 Announcements

Following inevitable delays due to COVID, in the announcements on 9 December 2021, the Scottish Budget documents confirmed that the Scottish Government will introduce secondary legislation imminently on a Workplace Parking Levy to enable local authorities to introduce such schemes from 2022, alongside their work on low emissions zones, and will resume work on the Transient Visitor Levy proposal.

National and local governments are to work together to formulate and agree a fiscal framework for collecting, administering and distribution of the receipts.

The resumption of work on the TVL (or "Tourist Tax") was also mentioned in the Framework for Tax 2021 document at page 20, which said: "The Scottish Government very much recognises the overall impact of the pandemic on the tourism and hospitality sector in Scotland. We will therefore carefully review the work paused at the onset of the pandemic to develop legislation that would give Councils the discretionary power to apply an overnight visitor levy and undertake further stakeholder engagement as we consider the next steps".

Different kinds of "devolved taxes" – getting the mix right

In the ICAS/CIOT 'Building a Better Tax System' there is a discussion about the different powers available to the Scottish Government to raise taxes, and whether the right mix of tax powers exists to support the economic recovery.

Whilst the Scottish Government has the power to create new taxes in the form of local taxes, these taxes are unlikely to be significant revenue-raisers. There is also a power to introduce new, Scotland-wide taxes, but this would involve a longer lead time as they require the agreement of the UK Parliament.

Conclusion

It seems as if the Scottish Government wishes to proceed with the TVL and WPL now that the pandemic disruption is smoothing out and national and local government can work towards resuming business as usual.

Once the relevant legislation has been passed it remains to be seen which local authorities will decide to take up the powers and charge the levy – and for those that do decide to take them up, whether a material difference will be made to fund tourist-related expenses and workplace commuting methods, traffic levels and parking solutions from the additional income generated (the revenue is intended to be ring-fenced for those purposes).

In respect of the WPL, it will be particularly interesting to review whether driver behaviours change if the levy is passed on to them by their employers.

HYBRID WORKING: THE WAY AHEAD

According to data from the Office of National Statistics, prior to COVID-19 only around 5% of the workforce worked mainly from home. Research recently undertaken, including a YouGov survey and CIPD research, indicates that a majority of workers now wish to spend at least part of the week working from home, after having experienced it during the pandemic. This trend can be used positively by employers to reconfigure the workplace and recruit talent from much further afield. The introduction of hybrid working practices is nothing new, but employers could benefit from the arrangement if they consider the opportunities and potential pitfalls in the round and adopt a holistic approach.

ICAS Members can take the opportunity to discuss these arrangements with clients to ensure they are aware of what may be possible and where to obtain expert advice. Due to the mixture of workforce planning, payroll and taxes aspects, remuneration planning, logistics, finance, and production all come into it – and due care and attention should be paid to each area – taking advice from the appropriate experts such as employment law and HR management where these are not available in-house.

Hybrid working – the way forward

The available research mentioned above tells us that most employees would prefer a hybrid working arrangement, where they work part of the week in the office and part from home. Hence the increased proliferation of the term "Hybrid working" which is not a new term, but it has never been taken so seriously as it is right now.

After having successfully and productively worked at home for the best part of 18 months, many employees previously based in offices and call centres have a compelling case in asking for more flexible working arrangements.

As such, many employers are now considering how they can accommodate this to maintain goodwill, engagement and productivity and retain staff without losing knowledge and maintain continuity of service. The shift to hybrid working is possible, but it will entail a change of culture, a less hierarchical outlook, and refocused workplace protocols including homeworking, data protection, IT, and performance management.

Going hybrid

Hybrid working provides opportunities for employers to reduce accommodation and business travel-related overheads and at the same time, enhances employee wellbeing and engagement, to provide a better work-life balance and likely fewer sick days. Employees can also benefit from a significant reduction in commuting costs, and with fewer people travelling twice a day and fewer business trips means that there are also environmental benefits, which businesses can count into their carbon neutral calculations.

What to do?

It is likely that organisations will need to develop a process map of short, medium, and long-term strategic decisions, starting with bringing people back into the office safely and communicating reassuring messages to employees about this – not necessarily expecting the same from everyone depending on people's own individual health & wellbeing needs. The CIPD has produced a helpful guide on this. It may be the case that as hybrid working arrangements evolve in each workplace, the policies and protocols in each working environment will also need to develop gradually too.

Myriad employers: Myriad arrangements

No two organisations are the same, and therefore there is no standard approach to implementing hybrid working. However, it does make sense for employers to cover off the legal implications adequately, as well as configuring a strategic plan and protocols which feed into that. Training managers, managing performance, and ensuring that data integrity is maintained are also key to success.

Communication

Communications are key to successfully bringing people back to work, and most employers should consider consulting their employees about their thoughts and preferences in advance. If a Trade Union is recognised by the employer, they should be included in this process also. It goes without saying that workplaces should always follow UK government guidance and legislative requirements relating to health and safety.

Protocols

If employers already have a flexible working policy in place, they can consider adapting this to extend it to hybrid working for all those employees who it considers are eligible for it. Otherwise, a new policy will be needed.

Consideration could be given to some or all the following aspects:

- Which role types/teams are eligible for hybrid working?
- Unless it is being rolled out to all workers automatically, instructions on how to request hybrid working and the considerations that will apply.
- Roles and responsibilities for hybrid workers and people managers.
- How hybrid working dovetails with general flexible working arrangements.

Legal implications of hybrid working

Where an employee formally requests and is granted hybrid working arrangements, this will amount to a change to the terms and conditions of their employment. However, note that Hybrid working (and indeed other forms of flexible working) can also be undertaken on an informal or temporary basis without a contractual change taking place. It is important that everyone involved understands the difference.

To date many employees working arrangements have changed due to the obligations on employers during a global pandemic. This would not lead to any permanent change to employees' contractual terms. In agreeing hybrid working arrangements going forward employers will need to be clear on whether any agreed changes are on a temporary trial basis or are intended to be a permanent contractual change.

Employment contracts should also state a contractual location. This does not necessarily change because of hybrid working, but employees who work permanently from home normally have their home address as their workplace. This is also important for tax purposes (see below).

Organisations should take legal advice where appropriate on their legal implications of hybrid working.

Tax implications of hybrid working – use of home as office, travel costs, benefits in kind

Employees should be advised to discuss any implications of homeworking with their landlord/ mortgage provider/ house insurer/local authority, especially if a room in the home is specifically set aside for work purposes and is not used for any other purpose.

There may also be tax implications for employer and employee if an employee wishes to work some of their remote time outside of the UK.

Depending on whether the employee is contractually based at home for all or part of the time, or there is a pattern to their hybrid working arrangements, the travel costs incurred to go to the office or on business trips may still be treated as taxable or as ordinary commuting costs – HMRC is warning us that the usual arrangements apply, and nothing has changed in that respect – although policy discussions are taking place on this.

The employer is still able to provide equipment and technology for the employee to use at home to tie in with workplace health and safety requirements – and this equipment/furniture etc. remains an asset of the employers. If it is transferred to the employee, the usual transfer of assets rules apply.

Technology and equipment

In addition to technology, considering what other equipment will support effective and healthy remote working, including the provision of office furniture or mobile devices. Data integrity is also vital and due consideration must be given to ensuring a seamless operation for hybrid working practices which does not compromise data integrity, and which is GDPR compliant.

Performance management

Managers will need to adjust their management of individuals from observation of time spent in the office and person to person integration/behaviours to assessment of productivity, outcomes, value, and levels of contribution if they do not already measure performance in this way. This will tend to lead to a more trusting professional relationship between workers and line managers.

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