# TECHNICAL BULLETIN

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## DELAY IN MANDATION FOR MTD ITSA

After much speculation, it was announced on 19 December 2022 that the rollout of MTD ITSA mandation will be delayed until at least April 2026. The news was confirmed in a written statement to Parliament by Victoria Atkins, Financial Secretary to the Treasury.

Before the latest changes were announced, following the completion of the rollout of MTD for VAT in November 2022, the mandation of MTD ITSA was originally expected to take place from April 2024. ICAS considered the practical implications of this in a briefing titled 'Tomorrow's practice – the impact of basis period reform and MTD'.

Whilst there are no changes to the plans for basis period reform, which will go ahead in the 2023/24 tax year, it has been announced that MTD ITSA will now be mandatory for businesses from April 2026. However, this will only apply to those businesses, self-employed individuals and landlords who have income above £50,000. Businesses with income over £30,000 will be mandated to comply with MTD ITSA from April 2027.

It was originally planned that MTD ITSA would apply to partnerships from April 2025. This will no longer happen, but the government intends to introduce MTD ITSA for partnerships at a later date.

For many ICAS Members and their clients, this will have been seen as an early Christmas present. For some time, ICAS has made representations to HMRC that the mandation of MTD ITSA needed to be delayed in order for any perceived lessons to be learned from the rollout of MTD for VAT (which was only completed in Autumn 2022), so the announcement is welcome news.

Our Members regularly give us feedback that they are concerned about the impact MTD ITSA will have on their clients. Whilst many accountancy firms have been very proactive in preparing their clients for MTD ITSA,

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it was clear that neither businesses, nor HMRC, would appear to be fully ready so that they can be compliant from the original mandation date of April 2024. Whilst those businesses who wish to move to MTD ITSA before they are required to should be able to do so, the

delay in mandation until April 2026 will enable businesses to adapt their processes.

ICAS has previously flagged concerns to HMRC about the extent of the MTD ITSA pilot, which had only been available for businesses with a 5 April year end. Delaying the mandation of MTD ITSA will enable HMRC to carry out further testing ahead of April 2026 and it should be possible for businesses to move to MTD ITSA ahead of the date when they will be required to do so by law. More details on how to sign up clients for MTD ITSA early can be found on the HMRC website, although their ability to do so will depend on when their software provider is MTD ITSA compliant.

The government is also carrying out a review on the impact of MTD ITSA on smaller businesses with income below £30,000. Those are the businesses who are likely to find the requirement to maintain digital records and submit tax returns using MTD compliance software most challenging. ICAS has ongoing dialogue with HMRC on a range of issues and looks forward to engaging with HMRC and representing the views of our Members about the practical aspects of MTD ITSA for smaller businesses, as part of this review.

Whilst the changes in the mandation to MTD ITSA are welcome, basis period reform will still affect those unincorporated businesses who do not have a 31 March or 5 April year end, as tax will move from a 'current year basis' (based on accounting year ends which land in a tax year) to a tax year basis. This will impact on tax payable in the 2023/24 tax year and, whilst it is possible to spread the effect of basis period reform over a period of up to five years, those businesses could see an increase in their tax bills at a time when the UK is facing a cost of living crisis. Unincorporated businesses in Scotland will also be affected by the changes announced in the Scottish Budget.

# SOLE PRACTITIONERS AND ALTERNATES – CHANGES TO ICAS REGULATIONS

Do you have plans in place for your practice in case something happens to you? While no one likes thinking or talking about unexpected incapacity or even death, they are both a sad fact of life. The implications for your practice, family and clients can be significant and need to be considered and planned for.

Since the start of Covid we have been contacted a number of times by grieving families who have needed our help to sort out the practice of a deceased Member.

In order to ease the burden on families, support Members and ensure that clients' interests are protected, the ICAS Members in Practice Advisory Board have recommended, and the Regulation Board have approved, a change to the Public Practice Regulations.

**From 1 January 2023 all sole practitioners are required to have written arrangements in place naming an Alternate – and to inform ICAS of who the Alternate is.**

It takes time to find an Alternate, put in place a written arrangement and ensure all relevant matters are considered, so there is a transition period of 12 months in which to implement this. More information on the detailed requirements and how to implement this will be provided as 2023 progresses.

In the meantime, information about making Alternate arrangements is in the General Practice Manual – see Appointing an Alternate and continuity of Practice helpsheet.

**Are you or your firm willing to act as an alternate?**

*ICAS maintains a register to help sole practitioners in the UK find Alternates. To be added to the register your firm must contain at least one ICAS practising certificate holder.*

*To request inclusion in the ICAS Register of Alternates please click here.*

*If you need any assistance or further information then please contact our Practice Support team through the Technical Help Desk.*

# PRE YEAR END TAX CONSIDERATIONS – IS A FRESH LOOK NEEDED?

Tax practitioners will be very well versed in the usual pre year-end tax planning considerations. Factors like accelerating a pension contribution before a year end, accruing bonuses or maximising a Capital Allowances claim to bring down taxable profits is often seen as the best thing to achieve the most desirable tax outcome for clients.

But will this still be the case in 2023? The changing UK and Scottish tax rates may mean that a fresh look to traditional tax planning may be advisable due to frozen tax thresholds and increasing tax rates.

**Limited company**

A limited company may receive tax relief in the form of a super deduction on capital expenditure incurred before 31 March 2023, but that will only be the case if the asset is new and unused. Reliance on the Annual Investment Allowance (AIA) for other qualifying fixed asset additions may mean that tax relief is only available (wholly or partly, depending on the year-end) at 19% and given the £1 million AIA limit has been made permanent it may be the case that the timing of expenditure would receive 25% Corporation Tax relief if it took place after 1 April 2023.

**Unincorporated businesses**

A lower additional rate threshold throughout the UK of £125,140 plus increased Scottish higher and additional rates could mean that higher tax and Class 4 National Insurance relief may be obtained by the expenditure being taxed in 2023/24 rather than 2022/23.

Unincorporated businesses who do not have a 31 March/5 April accounting year end may also benefit from relief against profits in the 2023/24 transitional year of basis period reform, especially where the ability to spread those profits over a five year period does not prevent the profits being taxed in a higher tax band than would ordinarily be the case. Although for unincorporated businesses with year ends early in the tax year, they may effectively already be in their transitional year as they will have started the accounting period that would ordinarily land in the 2023/24 tax year so expenditure now may already affect the profits for the transitional year.

In both limited companies and unincorporated businesses, the timing rules in Section 5 CAA 2001 and Section 67 CAA 2001 (see November Technical Bulletin for more details) will often present a challenge, but in times of delayed deliveries and supply chain difficulties it may not necessarily be the end of the world if expenditure ends up receiving tax relief in a later period. Especially if that later period will receive additional tax relief.

On the income side, increasing tax rates often acts as a catalyst for businesses to complete transactions before the increase tax rate takes effect. Where additional income is taxed in an earlier year, it does of course accelerate the timing of the tax payment in terms of the cash flow of the business.

It is important to bear in mind that there is no ‘one size fits all’ approach and tax practitioners will need to make a judgement as to what is best for their client. Clients may have other sources of income not related to their business that will have an impact on overall planning. And very often there will be non-tax considerations that are more important than the level of tax relief available.

With the trade-off between tax rates and payment dates, the combination of changing tax rates and (in the case of unincorporated businesses) basis period reform will certainly make pre year-end tax planning interesting for the foreseeable future.

# CORPORATION TAX ASSOCIATED COMPANY RULES CHANGES – APRIL 2023

**How are Corporation Tax rates changing from April 2023?**

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

Where a company's year-end does not coincide with the 31 March Corporation Tax financial year, Section 8 CTA 2009 requires profits to be pro-rated between the two Corporation Tax financial years.

For a brief period, the move to the 25% main Corporation Tax rate was to be abandoned following the Mini Budget on 23 September 2022, as the Chancellor at that point, Kwasi Kwarteng, advocated the retention of the 19% Corporation Tax rate. That was before his successor, Jeremy Hunt, then reverted back to the original plan.

As April 2023 approaches, tax practitioners will be considering how the changes will affect them and their clients.

**How will associated companies affect the Corporation Tax rate?**

Whilst Corporation Tax thresholds are currently divided between the number of 51% group companies, the April 2023 changes will reintroduce the concept of associated companies. In short, this means that Corporation Tax thresholds will be divided between companies under common control, not just companies in a 51% group. Whilst overseas companies are included in the number of associated companies, dormant companies are not.

Section 18E CTA 2010 provides that companies will be associated if one company controls the other or both companies are under the control of the same person. Companies will be treated as associated for the whole of an accounting period if they are associated for any part of that accounting period, even if they are associated for different parts of the accounting period.

The definition of control follows the normal rules within Sections 450 and 451 CTA 2010 in that it is necessary to consider ownership of share capital, voting rights, entitlement to distributable profits and entitlement to assets on a winding up. When determining whether control exists, it may be necessary to consider the rights and powers of a person's "associates" when applying the criteria.

**How are the rights and powers of "associates" treated?**

Where there is substantial commercial interdependence, Section 451 CTA 2010 includes the rights and powers of "associates" of a person when determining whether companies are associated.

The legislation refers to a person (defined as "P") and states that P is attributed the rights and powers of:

- any company which P, or P and associates of P, controls
- any two or more companies controlled by P, or P and associates of P
- any associate of P
- any two or more associates of P

Section 448 CTA 2010 gives a very broad definition of what is considered an associate. This includes any relative or partner of P; the trustees of any settlement in relation to which P is a settlor; the trustees of any settlement in relation to which any relative of P (living or dead) is or was a settlor; and if P has an interest in any shares or obligations of a company which are subject to any trust, the trustees of any settlement concerned.

For this purpose, "relative" is defined as a spouse or civil partner, a parent or remoter forebear, a child or remoter issue, or a brother or sister.

Where P is a company and has an interest in any shares or obligations of a company which are subject to any trust, any other company which has an interest in those shares or obligations is treated as an associate. There are also provisions where the estate of a deceased person is concerned. Where P is a company and has an interest in any shares or obligations of a company which are part of the estate of a deceased person, any other company which has

an interest in those shares or obligations is treated as an associate.

In cases where P has an interest in any shares or obligations of a company which are part of the estate of a deceased person, the personal representatives of the deceased are treated as associates.

It is important to note that even where the rights and powers of associates make the difference between control existing and it not, those rights and powers are only included where there is *substantial commercial interdependence.*

**What is meant by substantial commercial interdependence?**

The Corporation Tax Act 2010 (Factors Determining Substantial Commercial Interdependence) Regulations 2022 uses the same definition for commercial interdependence as for Employment Allowance purposes. Tax practitioners who are used to dealing with Employment Allowance calculations will therefore be familiar with the tests involved.

In deciding whether there is substantial commercial interdependence, it is necessary to consider three aspects: the extent to which there is financial, economic and organisational interdependence.

- Financial interdependence covers the situation where one company gives financial support (directly or indirectly) to the other, or each has (directly or indirectly) a financial interest in the other's activities.
- Economic interdependence considers situations where companies seek to realise the same economic objective. Normally, the activities of one benefits the other or their activities involve common customers.
- Organisational interdependence considers the existence of common management, common employees, common premises, and common control.

In most cases, it will be obvious whether businesses are interlinked, which will often be the case in many family businesses. But in other cases, it will be necessary to review the criteria more closely before reaching a conclusion.

**How are dormant companies considered?**

Companies do not need to be counted as associated companies where there is no active trade or business being carried out. Special rules apply for holding companies.

A holding company need not be included per Section 18F CTA 2010 if it carries on no trade, has one or more 51% subsidiaries and its only assets are shares in those 51% subsidiaries. To be disregarded as an associated company, it is also necessary for the holding company to have no income or gains, other than dividends fully paid out to shareholders, and have no management expenses or charitable donations.

***Let us know your views***

*The new Corporation Tax rates will present tax practitioners with several technical challenges over the coming months and we encourage Members to let us know where these cause issues.*

*We welcome Members' input to inform our work on consultations or other tax-related matters – email tax@icas.com to share your insights and feedback. ICAS responds to many tax calls for evidence and consultations, as well as producing tax policy papers and reports. We also regularly attend meetings with HMRC at which service levels, delays and other issues are discussed, and we raise problems being encountered by Members.*

# WHEN CUTTING YOUR COSTS INCREASES YOUR RISKS

*Written by Marsh, ICAS Evolve Partner*

It's been a tough time out there for professional services. The repercussions of the pandemic, the energy crisis, rising inflation and the impact on the economy collectively continue to impact businesses operationally and financially. But while reviewing and slashing non-essential spending is necessary, cutting back on insurance can be a dangerous option, as it can leave your business exposed to additional risk.

During the pandemic, many small businesses had no option but to scale back, reduce staff numbers and generally change how they work. Exchanging working environments from offices to homes meant less reliance on commercial premises and more dependence on technology. Significant changes, some of which have become the new way of operating for many.

The post-pandemic comeback is an ongoing process of rebuilding, evolving, diversifying, and embracing new opportunities – sometimes growth. Expansion may result in recruiting new team members, working with different suppliers, or acquiring new premises. All of these factors present risks to a business.

**Feeling the inflation pinch**

Citi, one of the world's biggest banks, had predicted that inflation in the UK would hit 18% early this year. Although this presents prolonged financial uncertainty, now is not the time to close your eyes to the increased exposure to risk. It's time to look at ways to manage these risks and ensure you have insurance that offers the best protection for you and your business.

**The risks of being underinsured**

Whether your business has evolved, adapted, or reverted back to pre-pandemic operations, a range of external factors can impact the cover your business needs. The insurance that was appropriate for you six months ago may no longer be providing sufficient protection. Rising inflation and increased costs can mean some insurers don't offer the cover you need. Your business could be dangerously uninsured, for example not covering the cost of rebuilding, repairing or replacing insured items following a claim. Rising material costs may mean the cost of re-instating a property could now exceed the price declared in your property insurance policy.

Another consideration is the value of an insured asset rising beyond the value declared in your insurance policy, creating an underinsurance risk.

As costs increase, staff numbers expand, and suppliers change, so does the risk of claims against you and your business. Professional indemnity (PI) insurance, employers' liability Insurance, and directors' and officers' insurance are essential to protect against these claims.

**How your insurance broker can help**

There is a temptation to limit your expenditure by arranging insurance through budget providers. The danger here is they don't always thoroughly understand your business. Money saved on premiums in the short-term can result in devastating consequences for your business in the longer term when you find you don't have adequate protection. This problem may not come to light until you need to make a claim, by which point it is too late.

A specialist insurance broker will take the time to understand your company and search the market for you. They're accountable for protecting you and your business by exploring your risks and by shopping around different providers, they can arrange the appropriate insurance. They will offer advice and guidance from finding cover to supporting you should you need to make a claim.

Using a broker also means that you do not need to shop around yourself. Shopping around every year but staying with your current provider can cause you problems in the future. Over time, fewer insurers will be willing to offer you a quote at renewal which will reduce the number of options open to you.

It is also important to remember that price isn't everything when it comes to professional indemnity insurance. More important is the coverage and protection that is provided by your policy.

**Now is the time to review risk in your business**

If you are concerned about underinsurance and would like help and support reassessing your needs, Marsh Commercial are here to help. Contact the team, to discuss your PI, and wider business insurance requirements.

# HOW EMPLOYER ATTEMPTS TO ADDRESS THE COST OF LIVING CRISIS CAN FAIL TO DELIVER

*Written by Meredith McCammond CTA, Technical Officer at LITRG (September 2022)*

As the cost of living crisis encourages employers to think creatively about how to support their staff, we examine how this support can fail to deliver.

You may remember the furore a few years ago when Greggs announced that a £300 bonus would be paid to all staff, linked into the success of the company's vegan sausage rolls. The furore wasn't because of the gesture per se. It was because it transpired that some workers who were on universal credit would keep just £75 of the £300 pay-outs because universal credit is a means-tested benefit.

The cost of living crisis has seen an explosion of suggestions as to how to employers can support employees. If you are an adviser with employer clients that are investigating some of the main options, this article will help you by looking at the reality of marginal deduction rates and the other weird and wonderful universal credit interactions that you need to be aware of.

**First things first: how does universal credit work?**

Universal credit is a monthly payment. Broadly, the amount of universal credit a person is entitled to is based on their personal circumstances, their capital and other income, and importantly their net pay in a monthly assessment period. Every time an employer pays someone, a copy of the Real Time Information payroll data is sent to HMRC. This Real Time Information data is shared by HMRC with the DWP for universal credit purposes.

Further detail about how UC works, aimed at employers, can be found here.

**Giving a pay rise or offering overtime or additional hours**

Boosting incomes is perhaps the most obvious way in which employers can support employees, and will likely have the most immediate impact.

From an employee's perspective, earning more means that things like tax and National Insurance might increase, as well as sometimes paying more in pension contributions. But it may also impact on the amount of universal credit they receive, as the higher their wages, the less universal credit they get.

For universal credit purposes, there is a 55% withdrawal rate on net pay. Some claimants are entitled to a work allowance of up to £573 per month before universal credit starts to be progressively withdrawn. See below for a basic illustration of how this works in practice.

**Impact of a pay rise on universal credit**

Jenny, 35, is a lone parent. She usually works around 25 hours a week in a pub, at the minimum wage. At £9.50 per hour there is no tax or NIC (earnings of £237.50 per week). Because Jenny is on a low income, in a month where there are five pay days in the universal credit assessment period she receives universal credit of £286.93.

If Jenny's employer were to give her a pay rise or increase her hours such that she received an extra £25 per week, based on current rates, her award would be £236.91 per universal credit assessment period. There is also tax and NIC at 33.25% on her earnings above £242 per week (£6.81 per week).

So, of her £125 increase in terms of gross earnings during her universal credit assessment period (assuming there are five pay days in that period), the true value of the £125 increase to Jenny is only £40.93. The Treasury receives the remaining amount (£84.07) in reduced welfare payments (£50.02) and increased income tax and NIC revenue (£34.05).

The marginal deduction rate on the £125 is 67%. And this is before we consider whether Jenny might lose any passported benefits.

**A one-off bonus**

Some employers may not be able to afford an ongoing increase in pay or hours but may prefer to top up an employee's pay with a one-off cost of living payment. However, for some lower paid employees who are near the edge of eligibility for universal credit, a one-off bonus could mean that their income in the universal credit assessment period is high enough to leave a nil universal credit award and close down the claim, requiring another claim to cover the next assessment

period. Our understanding is that there is a rapid re-claim process in such cases.

If someone receives a very large bonus or earns much more than usual in one month, this may also affect their universal credit payments in later months. This is known as surplus earnings and is outside the scope of this article; however, more information is available on LITRG's Revenue Benefits website.

**Changing pay frequencies**

An employer's response to the cost of living crisis does not have to just be about increasing an employee's income directly. Many people these days are paid monthly, as this saves quite a lot of payroll administration for employers. However, this often does not match an employee's cash flow needs. Some employers may be considering changing their pay frequency to weekly instead of monthly and so allow employees to access their earnings more regularly.

Providing that this isn't done mid pay period, the transition should be smooth for payroll purposes. However, there might be universal credit issues. If employees are paid monthly, then one month's net pay should fall into each assessment period, and as a broad rule their universal credit payments should not vary significantly from month to month if their net pay remains broadly the same. (There can be exceptions to this where the payday is close to the beginning or end of an assessment period.)

However, if employees are paid weekly, then they should be aware that some assessment periods are likely to have four weeks net pay in them and some will have five weeks net pay in them. This means that their monthly universal credit payment will change according to whether there are four or five wage payments in the assessment period.

Employees may need to take care to budget for these peaks and troughs in the payment cycle. Indeed, it may be the case that in five week periods, the extra amount means they receive no universal credit payment at all. There is further information about this on GOV.UK which can help employees to understand when they might see changes to their universal credit award as a result of their pay frequency.

**Salary advance**

As an alternative to changing pay frequencies, some employers may be minded to offer a salary advance; for example, to help employees deal with an emergency without accruing debt.

For payroll purposes – strictly, where there is an advance of wages (essentially a payment on account of earnings, which is money the employee has earned but which is not yet due for payment) – this is reportable by the employer and taxable on the employee at the time the payment is made. There is, however, an easement for 'ad hoc' payments outside the normal payroll run, which may sometimes apply. Please refer to further HMRC guidance on advances and on the difference between a salary advance and a loan.

Where an employee is advanced some money (where the easement doesn't apply and it is not structured as a loan), this could place a reporting obligation on the employer and in turn effect the employee's universal credit. If someone receives their employment income early, it can fall into a different assessment period, so it can look to DWP as though they have received more salary in that assessment period than they really have, causing some of the same universal credit fluctuation/cessation issues described above.

Some employers may be considering using a salary advance scheme rather than paying a salary advance themselves. In a salary advance scheme, a third party salary advance company works with an employer to let employees access part of their salary as they earn it, rather than having to wait until their payday.

In terms of how we understand the schemes operate (and given what we say above about the tax treatment of advances), it is interesting that the schemes seem to say that payment of an advance does not impact on the employer's payroll processes. The Financial Conduct Authority has highlighted other risks of using salary advance schemes - for both employees and employers.

**Beneficial loans and other benefits**

A cheap or interest free loan could help employees to buy season tickets or help them consolidate expensive debt. For tax purposes, there may be a taxable benefit if the amount of the loan exceeds £10,000 in the tax year. This is worked out based upon an assumed interest charge at the official rate of interest less any interest the employee has paid.

Benefits in kind that are not taxable, are not treated as income for universal credit, so as well as most beneficial loans, other useful benefits that an employer could provide in the current climate that would not impact on a universal credit award are things like welfare counselling, goods provided at a discount (provided that the amount the employee pays is at least the cost incurred by their employer in making the goods) and free or subsidised meals.

It is of note that ‘employed earnings’ for universal credit are defined as any amounts that HMRC treat as ‘general earnings’ – but leaving out any amounts treated as earnings under the benefits code. This means that benefits in kind which HMRC would normally treat as earnings, are not currently treated as income for universal credit purposes. A full list of benefits in kind not yet treated as earnings can be found in Advice for Decision Making (ADM) Chapter H3 para H3081.

Although we do not cover tax credits in this article, it is worth us pointing out that this is not the same situation as for tax credits, where taxable benefits in kind are generally counted as income.

**Other thoughts**

Other solutions may not leave employees worse off or inconvenienced from a universal credit perspective but may still require careful thought where you have low paid employees. For example, implementing a salary sacrifice scheme to help employees with pension saving can not only save them employee NIC but the reduction in contractual pay can increase their universal credit award. However, remember that strictly those at or near the minimum wage should not participate in salary sacrifice – and some lower paid employees may lose out in other ways which will require careful consideration.

Some employers may want to pay or reimburse employee business mileage at more than the HMRC ‘approved’ amount. As explained in a recent publication, this brings with it an administrative burden for employers as well as tax and National Insurance implications for employees that they may not be aware of – and yes, you guessed it – potential knock-on effects for universal credit.

None of the difficult universal credit interactions mentioned in this article are arguments for employers not to help staff. If anything, they are arguments that the tax and benefits rules for lower paid employees could probably do with being rethought! The point of the article is to raise awareness, so that the issues can be communicated and any impacts can be anticipated and even mitigated.

We appreciate that many employers won’t know whether their employees receive universal credit or not. Even if they do, they’re unlikely to be privy to the personal circumstances that determine how the different options could impact them. One practical suggestion for employers who may have employees on universal credit and who want to help them by implementing one or more of the options covered, is to signpost them to a welfare rights adviser such as Citizens Advice for advice on how their universal credit could be impacted.

# PRACTICAL INSIGHTS & TIPS ON ISQM (UK) 1

ICAS has issued videos and implementation guidance to assist members in the design and implement a System of Quality Management in accordance with International Standard on Quality Management (ISQM) (UK) 1 ‘ Quality management for firms that perform audits or reviews of financial statements, or other assurance or related services engagement.’ .

There are two videos which highlight some of the key matters to be considered by members when designing and implementing a system of quality management. The videos feature Lesley Byrne CA, Director of Regulatory Monitoring and James Barbour CA, Director, Policy Leadership.

The videos cover:

**ISQM U(K) 1: Unwrapped** – a short summary of the main changes from ISQC (UK) 1 and the main requirements in the new standard.

**ISQM (UK) 1: How to get started**: this contains practical tips on setting up a System of Quality Management.

The guidance is intended to highlight certain key elements of International Standard on Quality Management (ISQM) (UK) 1 and is not a comprehensive discussion of the requirements of the standard. Members are advised to read the standard and may find ‘ISQM 1 First-time Implementation Guide’, non-authoritative guidance produced by the International Auditing and Assurance Standards Board (IAASB) to be useful, although it has to be borne in mind that this is international guidance and that there are additional UK requirements that need to be considered. These additional UK pluses are shown in grey in ISQM (UK) 1.

Further resources on ISQM (UK) 1 can be accessed here.

# TWO RECENT TAX CASES CONCERNING DIVIDENDS

In the case of Jays & Anor (2022) PC08639, the First Tier Tribunal held that no liability for income tax arose on dividends which had been declared but retained by the company.

Mr & Mrs Jays held the single share in issue by Questor Properties Ltd, which was a property management company. Mr Jays was the director and his wife the company secretary.

The company was a successful trading company, but the interest costs of hedging contracts were giving rise to financial difficulties.

The company was seeking to raise equity finance from third party investors and the director felt that this would be made easier if the company had a policy of paying good dividends. The company's bankers however wanted to restrict the level of dividends paid to avoid profits and cash flowing out of it.

In order to satisfy this, the shareholders agreed to giving the bank an undertaking to restrict the level of dividend payments and that any dividends shown in the accounts above this level would be credited to a "blocked shareholder account" and subsequently written back.

The First Tier Tribunal found that dividends credited to the blocked account were final dividends.

Mr & Mrs Jays' position was that the dividends did not fall within section 384(1) ITTOIA 2005 as they had not been paid, as a result of the bank undertaking. Unlike, for example, a credit to a director's loan account in respect of a bonus, there was no enforceable debt.

HMRC took a contrary view stating that the dividends were enforceable as they were final dividends. Even although they were credited to the blocked account, they had been paid for income tax purposes.

The First Tier Tribunal held that Mr & Mrs Jays had no right to enforce payment of a dividend when declared. Otherwise, the covenant with the bank would have been in breach of the undertaking given by the shareholders, with the result that the company's loans could have been called in.

The director's declaration of dividends subject to the terms of the bank undertaking deferred the payment date of the dividends.

The First Tier Tribunal also dismissed HMRC's contention that it was not possible for the dividend on a single share to be effectively split into two parts, with one part being subject to income tax on payment and the other part deferred.

Mr & Mrs Jays' appeals were against discovery assessments and, had HMRC's contention that the dividends credited to the blocked account were taxable, then the discovery assessments would have been valid as there was no entry in Mr Jays tax return indicating that part of the dividend had not been shown on his tax return. In Mrs Jays case, she had not made a tax return and so discovery assessments would also have been valid in her case.

The second case, Gould (2022) TC08647 concerned payment of an interim dividend. Whereas the Jays case involved what were probably very fact specific circumstances, the facts in the Gould case could potentially arise in practice, albeit again it would be fairly unusual.

Regis Group (Holdings) Ltd passed a resolution to pay an interim dividend of £40 million on 31 March 2016. Nicholas Gould received his dividend on 5 April 2016 but the £20 million dividend due to his brother Peter was not paid until 16 December 2016.

The reason for this was that Nicholas Gould's tax rate would be lower in the year to 5 April 2016 and his brother would be non-UK resident in 2016/17. Peter was also finding it difficult to open a bank account where he lived in Jamaica.

The company had share capital consisting of A and B shares and the Board Minutes "resolved that an interim dividend of £40 million be declared on the A and B shares in issue". The Minute was silent regarding the dates of payment albeit did give a reason for the delay in payment.

On enquiry, HMRC amended Peter Gould' 2015/16 self-assessment on the basis that he was entitled to the dividend on 5 April 2016.

It was not disputed that, under section 384(1) ITTOIA 2005 income tax is due when a dividend is "due and payable". Whereas a final dividend is normally due and payable when declared, an interim dividend is only taxable when paid.

The areas of contention were:

1. HMRC said that Peter Gould had an enforceable debt against the company because Nicholas had been paid.
2. Peter said that he and his brother should be treated as varying their rights.
3. Peter also argued that he had given up his right to be paid on 5 April 2016.
4. HMRC said that, despite Peter's arguments, he could have successfully petitioned for unfair prejudice.

The First Tier Tribunal held in favour of Peter Gould on the basis that it did not agree with HMRC that Article 104 of Table A was applicable to interim dividends.

The First Tier Tribunal agreed with the contentions of Peter Gould at 2 and 3 above that, following legal advice taken and the subsequent conduct of the brothers, their actions were such that Peter could not have demanded payment on 5 April 2016 and furthermore that Peter had indeed waived his right to his interim payment on 5 April 2016, prior to the resolution to pay the interim dividend. The subsequent payment to Peter Gould represented consideration for the waiver.

The First Tier Tribunal allowed Peter Gould's appeal holding that his dividend was paid on 16 December 2016.

Although potentially helpful, as First Tier Tribunal decisions, they are perhaps no more than persuasive.

# PAYMENT OF INTEREST ON BENEFICIAL LOANS

Under s175 ITEPA 2003, a benefit in kind, subject to income tax, will generally arise where a “cheap loan” is employment related.

A cheap loan is defined as one where no interest is paid on it for the year, or the amount of interest paid on it is less than that payable at the “official rate”.

Interest payable by the borrower reduces the measure of the benefit in kind (s175(3)(b) ITEPE 2003.

Two points arise from this:

1. The interest must actually be paid.
2. The interest does not need to have been paid in the year of assessment but must be paid for the year of assessment. Accordingly, interest paid after the end of the tax year, for an earlier tax year, is deductible.

Where interest is paid after the particular tax year, the individual’s assessment for that year may have become final and conclusive. The employee can however make a claim for further relief under s191(2) ITEPA 2003.

HMRC’s manuals at EIM 26255 make the point that “the onus is on the employee to claim this relief. He or she can do so at any time up to the end of the general time limits that are applicable to the individuals making claims for repayment of income tax. These time limits are … four years …. for self-assessment taxpayers”.

Also in their manuals, at EIM 26257, HMRC take the view that a claim to deduct interest paid, when calculating the cash equivalent is only possible if a legal obligation to pay the interest existed during the income tax year concerned. Inspectors are instructed to ask for whatever evidence is available regarding the existence of that obligation and, if there is no evidence of such an obligation, not to allow the interest when calculating the cash equivalent.

The first issue noted above, being the actual payment of interest would seem to be a simple matter of fact.

However, the second issue can in some cases be a problem. This is where the interest charged to the employee is not paid by a transfer of money but is capitalised, that is added to the loan principal. In their manuals at EIM 26251, HMRC do not accept that capitalised interest has been paid. This is based on the House of Lords decision in Paton (as Fenton’s Trustee) v CIR (21 TC 626).

The House of Lords judgement was unanimous in favour of the Commissioners of Inland Revenue. HMRC’s manuals quote Lord McMillan who, in his judgement states “*in my opinion this means that the taxpayer must really, and not merely notionally, have paid the interest, there must be payment such as to discharge the debt, the payment must be a fact, not fiction. … the transaction at each half year, it was said, when analysed, involved the following steps – a demand by the bank for the interest due, a request by Mr Fenton for a further advance to enable him to pay the interest, an agreement by the bank to make this further advance and, finally, the application by Mr Fenton of this further advance to the payment of interest, with the result that Mr Fenton was entitled to maintain that he had “paid” the interest.”* Lord McMillan goes on to describe this as an “*agreeable fiction*” and to say that “… *the question is whether the interest in such a case has been “paid” … There must have been a real payment of … interest …”.*

Applying Lord McMillan’s judgement to a practical situation, assuming all other conditions are met, interest will have to actually be paid by the employee to his employer by way of cheque or electronic transfer. It would then be open to the employee to seek a further loan from his employer.

# HELP CLIENTS NAVIGATE UNSETTLING ECONOMIC TIMES WITH FIVE TYPES OF ESSENTIAL DIGITAL REPORTING

*Written by Paul Shipway from Joiin, ICAS Evolve Partner*

The current economic climate is an unsettling period, according to KPMG's recent Global Economic Outlook, which describes the past twelve months as turbulent and uncertain with a constant wave of challenges and threats.

The Outlook report uses the phrase 'without respite' – and many factors will cause concern amongst your clients: armed conflict with far-reaching consequences, supply chain issues and shortages, and rising inflation. At the same time, there is a tight labour market and a looming recession in the UK.

But now is not the time for doom-scrolling. While KPMG's latest Outlook might present a gloomy global picture, it shines a bright light on the path ahead. Similarly, your clients will look to you to reassure and advise them on an increasingly complex journey.

So how can you reassure and advise - and help to increase your clients' financial resilience, achieve sustainable growth, and ease how companies adapt to the new economy? Having a readily available suite of digital reporting tools could be your answer.

**Digital reporting tools**

Modern accountancy platforms can generate dynamic, robust real-time reporting to help you and your clients navigate the most difficult times. Particularly true if you have clients working in multi-entity groups across global regions and navigating multiple business threats and challenges.

A legacy of Covid, undoubtedly one of the biggest challenges we've all experienced recently, is that shifting an organisation to a digital-first mindset is a top priority for 77% of business leaders, according to the Advanced Annual Trends Survey 2021.

Adopting digital tools is now a given. And because new tools see data as a dynamic asset – and not statically confined to spreadsheet fields – digital reporting is one of the most powerful assets you can have.

Joiin works closely with accountants and advisors who have clients requiring powerful reporting, such as business owners, entrepreneurs, investors, and collaborators alike who need to consolidate and report on finances across several companies. These might be across business portfolios, family offices or global operations in multiple countries.

Here, we explore five types of digital reporting that are already driving critical insights into the health of businesses, identifying risks and opportunities, and helping to build robust financial narratives.

1. At-a-glance dashboards

Dynamic data is no more apparent than in a real-time dashboard.

Even if the economy shifts rapidly daily, an on-screen dashboard lets you quickly grasp that day's highlights and instantly make sense of your numbers. If your client has a consolidated portfolio, you will get a clearer real-time picture of performance across all business entities.

Joiin's dashboard delivers a highly visual one-page financial overview presented visually in charts and graphs that are easy on the eye. It looks great on mobile and desktop, meaning you can easily stay up to date with the metrics that matter most to you, wherever you are. A Joiin dashboard can be created for one entity (if you just want to monitor a specific company) or multiple entities for more complex group reporting.

2. Off-the-shelf reports

In these unsettling times, your clients are likely looking for astute advice. In turn, the downward pressure on you to be more efficient with your time and to better utilise this for advisory services is only increasing.

Time-saving initiatives may well be a top agenda item for you right now. If so, many digital accountancy platforms now offer pre-built reporting templates that you can easily use with existing data, taking the strain out of monthly consolidated group reporting while clawing back vital time for use elsewhere in your work.

Simple to integrate with existing cloud accountancy software, the Joiin platform offers five core off-the-shelf reports (profit & loss, balance sheet, cash flow, KPIs, and trial balance). These reports mean you can efficiently run reports as the Joiin platform's readymade automation does all the heavy lifting for you.

Joiin case study: For Joiin customer Great Dental Websites, ready-made reporting means reports can be pulled within seconds and generated automatically (where previously this took days). Every quarter, the company runs around 250+ reports from within Joiin, delivering more substantial financial insights for multiple stakeholders and enabling teams spread across two continents and four countries to share one accurate picture of accounts.

3. Customisable reports

While off-the-shelf reports are ideal for common reporting scenarios, there will be times when you need a tailor-made report, such as a bespoke client presentation or to meet a specific regional accounting requirement.

Many modern platforms will offer a wealth of rich filters and features to help you edit reports and build a financial narrative around any specific economic factors you want to address.

The Joiin platform comes with a complete set of filters and features, meaning you can easily customise reports to meet your clients' needs, changing things like branding and exchange rates. At the same time, automatic conversions simplify reporting across different currencies, and straightforward filtering eliminates the information you don't need in a consolidated group report.

Joiin case study: UK-based chartered accountants Bulley Davey use Joiin largely to consolidate profit and loss reports and balance sheets, enabling their advisors to build an accurate picture for each client. The Bulley Davey team customise Joiin reports so they can drill down to details to assist groups, such as the movement of funds between companies.

4. Report packs

Within Joiin, you can go one step further and use your tailored customisations to create highly professional report packs.

Report packs enable you to create more time for yourself by making it easy to deliver regular in-depth reporting, such as monthly client reports. With just a few clicks in Joiin, you can see everything in one document and export it as a PDF or spreadsheet for easy distribution and keep any created packs for future re-use.

Within Joiin, you can group all of a client's reports into one package that can be quickly sent and then downloaded, as a PDF or Excel spreadsheet. In practice, this means selecting any combination of custom reports, personalising them with relevant branding, and efficiently running off a pack whenever you need to, whether for a client meeting or presentation.

5. Automated reporting

Automation has been a growing trend in accounting, with routine administrative and rules-based tasks often automated. A Deloitte/IMA survey indicated that more than 50% of finance and accounting professionals felt automation would impact how their company performed its work in the coming years.

With reporting such a critical piece of the accountant/client relationship, automated reporting now provides a rock-solid way to distribute reports effectively to your clients. The result: you can build new relationships and cement existing ones based on the regular and accurate reporting required by your clients.

Within Joiin, the multi-client feature has been designed specifically for chartered accountants, so you can create separate areas for managing clients and automating how reports are shared. You get to provide your clients with an individual portal where only their bespoke reports are available, with each client able to view wherever they are.

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

# HOW TO SPEND YOUR IT BUDGET WISELY

*Written by Lugo, ICAS Evolve Partner*

With increased demand and continuing supply chain issues, prices of IT products and services have risen significantly across the globe. We all want good value for money, and when it comes to IT, many of us rely on advice from others on the technology to choose for our organisation. Lugo has been providing systems advice and support to Scottish accountancy firms since 2003. In this article, we will provide practical advice on making the most of your investment in IT, post-pandemic.

**Reviewing your IT Equipment**

The COVID-19 pandemic and global chip shortage saw people working from home on personal devices and panic buying items such as laptops, which in many cases, deviated from the organisation's recommended specifications. As things start to settle, now is a good time to pause and take stock to ensure all your kit is fit for purpose.

IT equipment checklist:

1. Ideally one company-owned and managed device per person

The pandemic saw an increase in personal devices being used for business purposes (BYOD), which can pose a security risk if not well managed. Second devices were being used to remotely connect from home to the user's workstation in the office. The less awareness an organisation has of their attack surface, the slower its response may be to attacks when they happen. We would recommend only one workstation per person, to reduce cost and the threat landscape of your organisation. The more you can standardise and simplify your devices, the easier it is to manage and secure them.

2. Ensure devices are covered by the manufacturer's onsite warranty to cover repair or replacement for manufacturing defects

We recommend at least 3 years warranty for laptops, and 5 years for PCs and servers. Having a warranty removes having to pay for new parts and decreases the amount of time it will take to resolve the problem.

3. Windows 11 Professional operating system, not the Home edition

Pro provides additional security and management features including BitLocker device encryption, so if the device is lost or stolen, BitLocker puts everything on lockdown, so no one else can access your systems or data. Pro also includes Windows Information Protection (WIP) which helps protect enterprise apps and data against accidental data leaks. This reduces the likelihood of data being stolen, which could permanently damage your company's reputation.

4. Create a rolling replacement plan

Old devices can slow down productivity and increase your security risk. Document all the devices that access your corporate data, including PCs, laptops, servers, tablets, and mobile phones. Check if they are still under warranty, check if they are running a supported version of their operating system and ensure all the security updates have been installed. Ensure the devices are rebooted regularly.

Replace the oldest, most vulnerable devices first. Create a rolling replacement plan for all your devices based on these criteria. Newer devices also tend to be more energy efficient.

5. Increase productivity with large/multiple displays

Reduce printing and increase productivity by working with multiple screens. If you are working on laptops, docking monitors replace the need to have a separate docking station. We would recommend a large 34” or dual 27” displays, with integrated USB hub which provides RJ45 for wired ethernet connectivity and USB-C providing power delivery. This single-cable solution charges your laptop, reduces cable clutter and transmits power, data and audio all at once.

6. Remove old equipment

Ask your IT support team to clear out the equipment you no longer use. You'd be surprised how many server cabinets have equipment still plugged in, even though they should have been decommissioned. Also, have a look at multipoint adaptors, wall sockets, and surge protectors to check all the equipment plugged in is still required. Once you have assets to dispose of, Lugo can assist with WEEE-compliant computer recycling.

**Moving to the Cloud**

If the software you use is still installed locally or on your server, the next time your server is due to be replaced, consider moving to a cloud server.

Technology such as Microsoft Azure, allows you to continue using the software you rely on, with it being installed on a cloud server, rather than a physical server in your office.

This reduces your power consumption in the office. You pay for use of the server as a monthly subscription and you can increase or decrease your server specification at different times of the year, based on demand.

**Where to start?**

*With IT being one of the largest areas of your budget, please speak to an expert to help plan your spending.*

*If you are looking for some independent IT advice, please email Liz.Smith@LugoIT.co.uk or click here to book an appointment at a time to suit you.*

# CYBER THREATS AND HOW TO TACKLE THEM

*Written by Lugo, ICAS Evolve Partner*

**Three areas to focus on in February**

As you emerge from another busy tax return season, this is the ideal time to ensure your business is cyber-resilient. Now is as good a time as any in the accountants' calendar to securely safeguard your estate and reputation.

Cyber-attacks come in many shapes and sizes, but the vast majority are very basic in nature and carried out by relatively unskilled individuals. They're the digital equivalent of a thief trying your front door to see if it's unlocked. Our advice is designed to prevent these attacks.

1. Phishing

There is a perception that cyber criminals target specific businesses. However, in reality, they do a mass scan for vulnerabilities, select who is worth the effort and focus in on them. One of the ways they do this en-masse is by creating an email phishing campaign. Due to their success, phishing scams have increased by a massive 6000% since 2019.

The goal of phishing attacks is to trick the recipient into giving away their email credentials. Cyber criminals then sift through inboxes looking for opportunities to make money. The accountancy sector holds very valuable client information. It could be very detrimental to your firm in this information got into the wrong hands.

Criminals can collect data from your inbox. An example could be a cyber-criminal sending your clients fake instructions to pay HMRC. The email looks real, and some clients may pay the money without picking up the phone to verify the request for payment is legitimate. Just a note of caution, that attackers can clone mobile phone SIMs, so it's best to speak to your client on a landline or have an agreed way of verifying requests for payment at genuine.

How can you combat this?

- Educate staff to not click on links in suspicious emails and ask them to report immediately if they do.
- Use Office 365 Business Premium. This comes as standard for Lugo clients and contains Advanced Threat Protection; links in emails are scanned when they are clicked on and attachments are only delivered when Microsoft has deemed them to be safe, while the rest of the email is delivered immediately.
- Enable Multi-Factor Authentication so that attackers would need a separate code even if they did get your password.

2. Remote Access

When the pandemic hit, remote access was hastily enabled to get staff working from home as quickly as possible. The downside of this is that it may not be set up securely. For example, there may be more of your network open to the outside world to allow just one older home device to connect.

How can you combat this?

- Speak to your IT support team and ask them to review your remote access setup.
- Go through Cyber Essentials certification which covers remote access and much more. Lugo clients receive free support through the certification process.

3. Ransomware

Ransomware is still on the rise, where criminals will try and get you to install a piece of software which will encrypt all the files on your network. The files will be inaccessible, and the victim will get pop-ups demanding payment in Bitcoin to get access again.

This has evolved to the point where the criminals run call centres dedicated to assisting people set up Bitcoin wallets and sending the payment.

How can you combat this?

- Administrator rights are needed to run most ransomware. Speak to your software vendors if they insist that their software needs administrator rights to run. Wolters Kluwer and Sage technical support will often refuse to troubleshoot an issue if you don't have administrator rights. Therefore, the more people that push back about this the better.
- Ensure you have backups of your system that are stored offsite.
- Cyber Essentials will also help with this.

**What's next?**

Finally, it's important to note that cyber criminals are always looking for the next opportunity and they manipulate their message to reflect what's happening in the world. Whether it be COVID-19 grants, energy-saving schemes or whatever else is around the corner. It's important to be on the lookout for what can be exploited.

Lugo strongly recommends that your firm works toward Cyber Essentials certification. Cyber Essentials is an effective, Government backed scheme that will help you to protect your organisation, whatever its size, against a whole range of the most common cyber-attacks.

Remember, you don't need to outrun the bear, you just need to outrun the person next to you.

# PRACTICAL GUIDANCE WITH TAX FILINGS – PCRT HELPSHEET A

In the last edition of Technical Bulletin, the core Professional Conduct in Relation to Taxation (PCRT) was discussed. This contains the fundamental principles and standards for tax planning that ICAS members must apply in their work.

There are also 5 PCRT Helpsheets offering practical guidance for those tricky situations where the tax practitioner may be unsure of what to do.

This article is an overview of 'PCRT Helpsheet A: Submission of tax information and tax filings'. It addresses the day-to-day work of filing tax information and completing tax filings, including the issues of responsibilities, materiality, disclosure, and approval. Given that the 31 January tax filing deadline is past, you may think 'skip this until later' – but the Helpsheet is probably of most relevance when dealing with those clients who are late, problematic, or both. An awareness of the guidance in this Helpsheet should assist in the risk management of the tax practice.

**What is a filing?**

It includes any online submission of data, online filing, or other filing, that is prepared on behalf of the client for the purposes of disclosing to any taxing authority details that are to be used in the calculation of tax due by a client, or a refund of tax due to the client, or for other official purposes. It includes all taxes, NIC and duties.

**Responsibilities: In the agent/ client/ HMRC relationships, who is responsible for what?**

The taxpayer has the primary responsibility to submit correct and complete filings to the best of their knowledge and belief; there are plenty tribunal cases that provide a reminder of this (see for example HMRC v M H Katib [2019] UKUT 189).

A member of ICAS has various responsibilities:

- The member is responsible to the client for the accuracy of the filing based on the information provided.
- In dealing with HMRC the member should bear in mind their duty of confidentiality to the client, that they are acting as the agent of their client, and that they have a duty to act in the best interests of their client.
- A member should act in good faith in dealings with HMRC in accordance with the fundamental principle of integrity.
- Where acting as a tax agent, a member is not required to audit the figures in the books and records provided, or to verify information provided by a client or by a third party. However, a member should take care not to be associated with the presentation of facts they know or believe to be incorrect or misleading, nor to assert tax positions in a tax filing which they consider to have no sustainable basis.

The Helpsheet has various points to make about the level of disclosure that may be appropriate, and this may assist the member, and their client, to make a decision in a systematic way. Also, when advocating fuller disclosure than is necessary, the client should be made adequately aware of the issues involved and their potential implications. Fuller disclosure should only be made with the client's consent.

**ICAS Members' Tax Queries**

The ICAS tax department receives queries from members and there are a number of recurring themes – this Helpsheet can provide guidance in relation to these.

*Does the client need to sign the tax return?*

One such topic is the sign-off of tax returns where, for whatever reason, there are problems obtaining it from the client. It is worth quoting the Helpsheet in full here:

- The member should advise the client to review their tax filing before it is submitted.
- The member should draw the client's attention to the responsibility which the client is taking in approving the filing as correct and complete. Attention should be drawn to any judgemental areas or positions reflected in the filing to ensure that the client is aware of these and their implications before they approve the filing.
- A member should obtain evidence of the client's approval of the filing in electronic or non- electronic form.

Where a filing is not reviewed by the client before submission, then, because of the risk to the adviser, the terms of the engagement should make clear that filings are completed on the basis of the information provided by the client and the client is no less

responsible for errors in filings which have been prepared on the basis of that information than if they had approved and signed the filings personally.

A member may approve tax filings in their capacity as liquidator, receiver, or administrator, or under a personal appointment as trustee, executor, attorney or director. If a member is approving a tax return on behalf of a client, the member should carefully consider:

- Their legal authority to do so (for example, is a power of attorney required?);
- The process whereby the client will review and take responsibility for the contents of the return; and
- Any legal implications of approving the return for both the practice and the individual signatory.

### *What taxes should the practice advise on?*

A further area of practice that can lead to difficulties is when a tax practitioner wants to be helpful and assist their client. However, a reminder is given in the Helpsheet that a member needs to be mindful of the Code of Ethics requirement regarding professional competence. For example, a member who generally advises on annual tax compliance but receives a request from a client regarding IHT planning should consider whether they have the relevant skills and knowledge to properly advise the client on that matter. If not, the member should refer the client to another member who is a specialist in this area. Issues around engagement letters may also arise in such a scenario – with the terms, fees, etc. and the work that is to be undertaken set out and agreed.

### *Should the agent include third party advice in a client's tax return?*

Queries are also raised about third-party advice being provided to the client, that affects the return submitted by the main agent if, say, the client has sought separate R&D tax credit advice. What is the position of the member, in their capacity as the agent submitting the client's tax filing, including material supplied by the third party? In terms of the basic guidance in Helpsheet A, the member should satisfy themselves that such third-party advice is reasonable by considering whether the advice is in accordance with their understanding of the law and the person giving the advice is appropriately qualified and a member of a PCRT body or an equivalent regime. What happens if the member is unhappy with the third-party advice? Does it constitute tax advice, with which the member is uncomfortable? In such a case Helpsheet B 'Tax Advice' is relevant, and this particular scenario is outlined in a Frequently Asked Question, FAQ12. In the next Technical Bulletin there will be further discussion of Helpsheet B.

### *Documentation – how much is needed?*

Last, but not least, there is the mundane but important matter of documentation: the Helpsheet has a reminder that a decision may have to be justified at a later date, so the member's files should contain sufficient evidence to support the position taken, including timely notes of discussions with the client and/or with other advisers, copies of any second opinion obtained and the client's final decision. A failure to take reasonable care leaves the door open to future penalties if an error is identified after an enquiry. The helpsheet also discusses the need for supporting documents and reliance on HMRC guidance.

The Helpsheets are updated periodically – please email tax@icas.com to let us know if you think any other points should be addressed in this guidance.

# HMRC PUBLISHES ITS UPDATED STANDARD FOR AGENTS

As part of the ongoing work to improve standards in the tax advice market, HMRC consulted last year on protecting taxpayers claiming repayments.

ICAS responded to the consultation, which put forward proposals to deal with problems identified with some repayment agents.

The outcome of the consultation was published on 11 January 2023: at the same time HMRC also published its updated standard for agents and an updated policy for agents.

### Repayment agents

The main proposals set out in the consultation will be implemented and further work will be undertaken in some areas:

- Legislation will be introduced prohibiting the use of assignments of income tax repayments.
- New transparency requirements will be included in the HMRC standard for agents.
- HMRC will explore introducing mandatory pre-contractual disclosure forms.
- Repayment agents will be required to register with HMRC, as part of wider work on enhancing the tax regulatory framework – further details of the registration requirement for repayment agents will be set out in early 2023.
- HMRC will undertake further work on ensuring that a taxpayer has consented to a claim made on their behalf. It will also review existing agent authorisation processes.

### HMRC's standard for agents

The HMRC standard for agents sets out the behaviour HMRC expects from tax agents and tax advisers – and gives an overview of the way HMRC will tackle the minority of agents who do not meet the standard. It was first published in 2016 – the updated version is part of the ongoing work on raising standards in the tax advice market. The standard applies to all agents – the update brings it into closer alignment with Professional Conduct in Relation to Taxation (PCRT). It now includes detailed transparency requirements.

### HMRC's policy for agents

HMRC's intention in the updated version of its policy for agents is to be more open and transparent about how it works with agents. The policy includes details of how HMRC helps agents to help clients – and sets out how it will tackle the minority of agents who do not comply with the standard for agents.

### ICAS press release

ICAS welcomed the announcement of the new measures to protect consumers who use tax repayment agents and the publication of the updated HMRC standard for agents. However, in the long term, we believe the only fully effective way to protect consumers (both those claiming repayments but also those using tax agents for other reasons), is to introduce a requirement that anyone acting as a tax agent should be qualified and should belong to one of the main professional bodies that subscribe to and enforce PCRT.

ICAS

# HMRC & COMPANIES HOUSE UPDATES

**HMRC campaigns: earnings from selling services online and from creating content on digital platforms**

HMRC is beginning two campaigns in the week commencing 16 January 2023. Two 'one to many' letters will be issued:

Earnings from selling services online: this letter will be sent to individuals HMRC believes have sold services online but have not informed HMRC of their income. The letter tells recipients that HMRC holds third party information that indicates trading activity – and sets out actions to be taken and timelines. HMRC has also created an information sheet about selling online and tax, that includes some examples to help people decide if they might be trading.

Earnings from creating content on digital platforms: this letter will be sent to those where HMRC has information indicating they have earnings from creating content on digital platforms – but have not told HMRC about some, or all, of this income.

In both cases, HMRC states that it will write to an agent (as well as the taxpayer), where it has a record that one is acting. Both letters also suggest that if the recipient has someone who helps them their tax affairs, they may want to show them the letter. If you have any feedback on the letters please let us know by emailing tax@icas.com.

**P87 forms – information requirements**

From 21 December 2022, claim forms for Income Tax relief for employment expenses, known as P87s, must include the following additional information:

- All details requested in Section 1
- Employer PAYE reference number
- Type of industry (if the claim includes flat rate expenses)

Any forms received on or after 21 December 2022 that do not include this information will be rejected. The changes are being introduced to improve taxpayer experience and pay money due as quickly as possible.

**Marginal Relief for Corporation Tax – a new service for companies and agents**

From 1 April 2023, the main rate of Corporation Tax is increasing to 25% for companies with profits over £250,000.

A small profits rate of 19% is being introduced for companies with profits of £50,000 or less.

Marginal Relief will apply for profits greater than £50,000 (the lower limit) up to £500,000 (the upper limit).

Marginal Relief provides a gradual increase in the Corporation Tax rate between the small profits rate and the main rate. A new online service, Calculate Marginal Relief for Corporation Tax is now live.

The service allows companies, and their agents, to accurately calculate the amount of Marginal Relief applicable to a company's profits falling between £50,000 and £250,000.

**Capital Gains Tax (CGT) on UK property account**

HMRC has made significant changes to the CGT on UK property paper return to make it easier for taxpayers to complete.

Paper returns should only be made in certain circumstances. To request a paper return, the taxpayer or agent will need to contact HMRC.

Non-UK resident individuals should continue to use the 'alternate sign in' process to report and pay via the CGT on UK property account, unless the taxpayer is digitally excluded.

**HMRC reminder re. residential property disposals**

Please remember when submitting your client's SA return, if they have disposed of a residential property, and CGT is due, they still need to file a Capital Gains Tax Property Disposal Return. Please note, if the CGT Property Disposal Return is received more than 60 days after the property was sold, late filing penalties will be due.

To submit a CGT property disposal return and for further information please go to: https://www.tax.service.gov.uk/capital-gains-tax-uk-property/start/report-pay-capital-gains-tax-uk-property

**GOV.UK guidance for self-employed**

Guidance for the self-employed has been updated on GOV.UK. This is in line with the previously announced National Insurance threshold changed affecting both the 2022/23 tax year and the 2023/24 tax year.

Read more about the self-employed National Insurance rates.

The following changes were introduced for the self-employed:

- The National Insurance Lower Profits Limit is £11,908 a year for tax year 2022 to 2023;
- Those with profits above the Small Profits Threshold (£6,725) and no more than the Lower Profits Threshold (£11,908) are not liable to pay Class 2 National Insurance contributions (NICs) from April 2022 and will still be entitled to access contributory benefits;
- From 6 November 2022 the headline rates of National Insurance contributions were reduced by 1.25 percentage points;
- From 6 April 2023 the self-employed can earn £12,570 before paying either Class 2 or Class 4 National Insurance contributions.

You may want to remind your Self-Assessment clients that they need to file returns in order to have contributions treated as paid and allocated to accounts, even if they have no National Insurance contributions liabilities because they are earning between the Small Profits Threshold (£6,725) and Lower Profits Threshold (£11,908).

HMRC has asked for assistance in building awareness of these changes among the self-employed, qualifying landlords and self-employed people currently living outside the UK, would be much appreciated.

**Customs Declaration Service exporter deadline extended to 30 November 2023**

HMRC has announced that exporters will now have until 30 November 2023 to move across to the Customs Declaration Service for their export declarations.

This decision was taken in consultation with the border industry and will make sure businesses have enough time to prepare.

HMRC will provide further information in due course. Businesses can provide their preferred email address to receive updates and notifications about the Customs Declaration Service.

**Self-Assessment (SA) return where there is an 'initial overpayment'**

A reminder that when a taxpayer has completed a SA return for the 2021/22 tax year, onwards, which has resulted in an 'initial overpayment' of CGT, this will be automatically offset against other SA charges.

The 'initial overpayment' is based on the original CGT on UK property return made.

Alternatively, the taxpayer has the option to amend their CGT on UK property return prior to the submission of the SA return.

Once the SA return has been submitted, the taxpayer should not attempt to amend their CGT on UK property return for the corresponding tax year.

**Plastic Packaging Tax – submit quarter 3 returns and pay by 31 January 2023**

Plastic Packaging Tax (PPT) was introduced on 1 April 2022. If your clients manufacture or import 10 or more tonnes of plastic packaging within a 12 month period then they must register for PPT on GOV.UK, even if their packaging contains 30% or more recycled plastic.

PPT also applies to plastic packaging that is imported already filled with goods – but your clients only need to account for the weight of the plastic packaging towards the 10-tonne threshold.

If your clients are liable to register or have already registered, from 1 January 2023 they must submit their PPT return and pay any tax due by 31 January 2023.

Read the guidance on Plastic Packaging Tax for further support.

**Reporting crypto asset related gains**

If your client sold or exchanged any crypto assets in the 2021/22 tax year, they may need to report the gains and pay any tax due by 31 January 2023. They may also want to report any losses.

If they have not received a notice to file a tax return, they can register online for self-assessment or use the real time Capital Gains Tax service.

Read how to check if you need to pay tax when you sell crypto assets.

# TECHNICAL BULLETIN

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