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Cloud or server? ……………………......... 1

VAT on takeaways: Hot v's cold. Don't get burnt! ……………………………… 2

Going concern for small and micro entities ………………………………..... 5

ER, no relief for you I'm afraid, Dr. Allam…………………………………. 7

Events after the end of the reporting period – small and micro entities ……. 8

Top tips for digital security when working from home ………………….. 10

Changes in the 2020 ICAS code of ethics – inducements (including gifts and hospitality) …………………… 11

Next to nothing – Capital gains tax 'negligible value claims' ……………. 13

Change in FRC revised ethical standard 2019 – long association of engagement partners ……………………………….. 14

Covid-19 Guidance on pension scheme financial reports and audit…………… 15

Charities update – Summer 2020 ….. 18

Charities SORP information sheet 5.. 20

Carry forward of company trading losses ………………………………… 20

Mandatory disclosure of offshore arrangements (DAC6) - reporting deadlines deferred ………………….. 22

Temporary extensions to Companies House – Accounts filing requirements ……………………………….............. 23

Temporary changes to AGM and other meeting requirements ………………. 26

Framework for the preparation of accounts revised June 2020 ……….. 27

Return to office working – toolkit and guidance ……………………………... 28

Tax corner ……………………..………. 28

Employment corner ………………….. 33

Companies House updates ………. 34

CLOUD OR SERVER?

The big question IT professionals are being asked these days is "I have to invest in my IT, but where should I focus our spend?"

Unfortunately, there is not an easy answer and it really depends on how you want to work and the software you currently use. Some firms now have a 100% cloud focused IT strategy, whilst others feel safer having all their data and information within an office behind a physical firewall. Ultimately, there is nothing wrong with either of these approaches. Due to the current global pandemic and massive shift in how we work and operate our businesses, now is a critical time to consider how your infrastructure will need to change and adapt to facilitate this new normal. Is moving to the Cloud the future for your practice or should you invest in more physical equipment?

The best of both worlds

One of the best examples of cloud delivered software, or software as a service (SaaS), is Microsoft 365. The product is neither fully cloud nor fully on premise. The data may reside in the cloud or be synchronised between the cloud and local IT environment.

Applications like Microsoft Word can run fully in the cloud or be fully installed on a laptop or PC. This is a great example of cloud delivered software because it gives the end user the choice of how they want to work.

The reality of cloud-based software for the accountancy professional

Unfortunately, the complex mix of software that accountancy practices use often does not offer the same flexibility. Every practice has the dilemma of receiving data from clients who use a variety of different pieces of software. Some firms may have clients who still rely heavily on spreadsheets, and others who insist on delivering lots of pieces of paper in a shoe box.

Clients often expect you to be able to retrieve their information from different cloud and on-premise applications and create a set of accounts. Most practices still have on premise or desktop-based practice software for practice management accounts production, time and fees and tax returns. There are some practice software vendors that provide fully online cloud-based practice software for these services, however often the online solutions are unable to deliver the functionality offered by the on-premise software. Therefore, many practices have to weigh up whether the benefits of cloud-based practice software outweigh the loss in functionality.

Part of the problem is that the vendors have been unable to develop the software at a fast-enough pace. They face ongoing demands to update their software to ensure it meets changing regulations and compliance rules, and the last few years have been extremely challenging as vendors work hard to keep up with RTI, auto-enrolment and the newly implemented Scottish Tax rates.

When looking at core applications that produce accounts, tax returns and fees, it is worth considering if you actually need the complex functionality that on-premise solutions offer, or could you deliver the services you offer through cloud-based software if they changed your procedures? In general, practices tend to stick with what they are comfortable with, and value the functionality achieved from on-premise applications, and the decision on whether to change becomes far more complex when you factor in all the sources of client data from their bookkeeping software.

Moving to the cloud, a new option

So, if your practice software is not SaaS and is designed to be installed on a PC how can you move to the cloud?

Microsoft have recently released, as part of their Azure environment, Windows Virtual Machines which is infrastructure as a service (IaaS), so your environment is hosted via your own Microsoft Azure 365 environment. You pay per month for this cloud infrastructure rather than having a physical server, and the software is installed in a traditional desktop environment with the flexibility of working from the cloud. The solution is secured through a single username and password that is strengthened with multi-factor authentication to ensure security.

This option opens up the possibility of migration to the cloud for practices who remain dependant on on-premise practice software. Investing in physical on-premise servers means committing to investment in capital spend every 3-5 years. The IaaS model involves a monthly cost with less capital expenditure and you no longer need to manage the physical space of the server or its power consumption. IaaS also allows for flexibility and scalability in the future as the cost is based on usage.

Security

Often, when people talk about cloud computing versus on premise computing, their first consideration is security. Once you have decided which is the best option your practice you must ensure you protect yourself against cyber-attacks. On premise solutions and cloud solutions each have their own security vulnerabilities – what is important is that these are considered, and solutions put in place to mitigate any risk. A badly configured physical network could be more vulnerable than a well configured cloud network.

ICAS Practice Partner Lugo are also a Microsoft partner, and recommend and offer Microsoft products including both cloud solutions and on-premise solutions. Both options have their own benefits and the decision on which kind of infrastructure to adopt should be based on the specific needs of your practices. You don't need to be in the cloud to be up to date and use the latest of technology, in fact a hybrid approach can deliver the best of both worlds. Whichever structure you choose - keep it simple, as this is easier to secure!

If you or any of your clients need any help along the way, please don't hesitate to call your ICAS IT partner, Lugo, on 03300 242 242 or visit https://lugoit.co.uk for more information.

VAT ON TAKEAWAYS: HOT VS COLD. DON'T GET BURNT!

Rising to the challenge of the Covid-19 pandemic, many businesses have diversified, moving into new areas to keep afloat. From hand sanitisers to online sales, there has been a rush into new markets. This has been especially true of catering and hospitality.

Faced with immediate cessation of normal operations back in March, and a longer-term challenge in terms of social distancing, many restaurant and catering businesses have turned to off sales to salvage some trade. Moving into new areas mean new challenges, particularly in the hair-splitting world of VAT. For those businesses new to takeaway, what are the VAT perils and how can they be managed?

The Chancellor's statement on 8 July 2020

The Chancellor's statement introduced a temporarily reduced VAT rate of 5% between 15 July 2020 and 12 January 2021 for the sale of hot and cold food and hot and cold non-alcoholic drinks served on the premises, and for sale of hot food and hot non-alcoholic drinks served off the premises.

Supplies made off the premises in the course of

catering, are still standard rated (see VAT Notice Catering, takeaway food (VAT Notice 709/1) updated 9 July 2020).

There are therefore potentially three VAT rates applying to restaurants and similar businesses. Broadly these are 0% for cold takeaway food; 5% for hot takeaways; 5% for hot and cold food and drink for consumption on the premises; 20% for alcohol and other items like confectionary and some soft drinks which are excluded from zero-rating; and 20% for catering for events and similar activities.

This presents a significant challenge in terms of accounting and ensuring clients make and record these distinctions accurately.

Nub of the problem

If a supermarket delivers food, the food is generally zero-rated. But if a 'catering business' delivers food under a contract, the supply will generally be standard rated as a supply of catering. Small differences such as supplying to contract can impact the VAT status. In a market that is predominantly business to consumer, and where, even if business to business VAT input recovery by the recipient is likely to be restricted, VAT immediately impacts profitability.

Add in the fact that misclassifications can lead to retrospective VAT bills as well as exposure to penalties, and it can be enough to threaten the existence of the business. Advice that applied before diversification may need to be revisited. Encouraging clients to take bespoke advice now may avoid them making expensive mistakes in altered trading conditions.

So, what are the boundaries?

Exceptions to exceptions

A basic problem is that some of the boundaries are imprecise and others are complex. Complexity stems in no small part from the 'exceptions to exceptions' approach in Group 1, Schedule 8 of the Value Added Tax Act 1994, which covers zero rating for food.

The introduction to Group 1 sets the tone. Food is generally zero rated except for:

a) *a supply in the course of catering; and*
b) *a supply of anything comprised in any of the excepted items set out below, unless it is also comprised in any of the items overriding the exceptions set out below which relates to that excepted item.*

We enter the territory of exceptions to exceptions. To take one example, confectionery is an exception. It is food, but it is standard rated. Except that confectionery is taken as '*not including cakes or biscuits other than biscuits wholly or partly covered with chocolate or some product similar in taste and appearance ….*' No wonder that it took 13 years to resolve the VAT status of Marks and Spencer's marshmallow tea cakes… Anyone wanting to review the details should consult the VAT Notice on Food products (VAT Notice 701/14).

But for businesses already in the catering trade, questions of classification from sports drinks to 'savoury food products obtained by the swelling of cereals' may already be second nature. What could be new, is the home delivery / click and collect arena.

Collection, delivery and catering

The next big question for businesses branching out into takeaway is the boundary between simple delivery of food, and VATable catering. Delivering prepared food does not necessarily mean that the supply is one of catering. There is a long list of cases in the Courts and Tribunals, and no complete consensus. HMRC's starting point (in VAT Notice 709/1 Catering and take-away food, paragraph 2.1) is that:

Catering in its ordinary meaning includes the supply of prepared food and drink. It is characterised by a supply involving a significant element of service.

Clear exclusions

There are some clear boundaries. The supply of food for consumption on the premises, and the supply of hot takeaway food is standard rated (per Group 1, Schedule 8), or liable at the temporary reduced rate (5%).

Though this seems clear enough, there is still a risk area around what is 'hot food'. A food retailer selling prepared food which was kept warm (at above ambient room temperature) for consumption off the premises was considered to be making taxable supplies of takeaway 'hot food', rather than sales of zero-rated food, warm only

because it had just been cooked.

For VAT purposes, 'hot food' includes food that has been kept warm, re-heated, or is advertised as hot food. These questions came up in the Pegasus case (Pegasus (Manchester) Limited TC06382 [2018] UKFTT 01 26 (TC)) which was reviewed in an earlier article VAT in hot water: £114,122 bill for keeping food warm.

The common sense boundary here is between the Cornish pasty which is sold warm simply because it is cooling down after baking, as against food specifically heated to a customer's order, such as the takeaway pizza.

Cold takeaway food is zero-rated by default in Schedule 8 (as confirmed in 2.1 VAT Notice 709/1). So, any business branching out from restaurant service to takeaway, will need to be able to identify and record sales of hot and cold takeaway food separately.

On the premises

Per Schedule 8 Group 1 Note 3, catering includes:

a) *any supply of it for consumption on the premises on which it is supplied; and*
b) *any supply of hot food for consumption off those premises.*

But what are the 'premises'?

October 2012 saw the insertion of paragraph 3A into Schedule 8. This extends the definition of premises. It says: *(3A) 'For the purposes of Note (3), in the case of any supplier, the premises on which food is supplied include any area set aside for the consumption of food by that supplier's customers, whether or not the area may also be used by the customers of other suppliers.'*

This means that shared areas can count as 'premises' for the 'consumption on the premises' test. Hence not only chairs set outside on the pavement, but some communal areas in shopping centres which are intended for use by customers of a number of food outlets could bring takeaway food within the ambit of taxable supplies of catering. We are thinking here of the takeaway sandwich (cold food), which can become VATable catering if consumed in a dedicated seating area.

Examples of what HMRC considers are premises are included in VAT Notice 709/1 section 3.

Significant service

Returning to HMRC's view of catering in Notice 709/1, we saw that HMRC expects catering to include a significant level of service alongside the food. The Tribunals have been busy in this area too. The supermarket 'party tray' has come under scrutiny. Few people would be surprised to find that wedding receptions, parties and conferences are on the catering list. But blanket inclusion by HMRC of '*delivery of cooked ready-to-eat food or meals (with or without crockery or cutlery)*' on the catering list in the VAT notice is more problematic. After all, if someone buys a ready cooked meal from ASDA and has it delivered, it is a supply of zero-rated food, albeit that they would need to have it cold or re-heat the food themselves. An issue here is whether the customer needs to prepare the supplied food themselves before consumption. For example, supply of frozen meals which the customer defrosts, can be zero-rated.

Signs of catering

HMRC VAT manual VFOOD4140 Excepted items: catering: what is catering? has a detailed discussion of caselaw and interpretation of the meaning of 'catering'. It concludes with a checklist of indicators, noting that 't*he list is not exhaustive but if the answers are yes to most of these questions then the supply is likely be in the course of catering'.*

HMRC's list includes the following questions:

- *Is the supply linked to an event, function or social occasion (for example, is it catering at a wedding reception, party or office function)?*
- *Does the trader by his trading name or advertising indicate that he is a caterer?*
- *Is there a menu?*
- *If an invoice is raised is it on a per person basis rather than per item?*
- *Is the supply ready to eat without further preparation of the food?*
- *Is the food presented in a way to make it different from food sold in a supermarket or grocer's shop?*
- *Is the supply to the final consumer or a person receiving it on behalf of the final consumer?*
- *Is the food, whether hot or cold, supplied for immediate consumption?*
- *Does the trader provide facilities, such as tables, chairs, cutlery, plates, napkins, or condiments, for use of the customer?*

- *Does the trader have an arrangement in place for areas of tables and chairs to be made available to their customers (even if they do not own or control the area themselves, some traders may pay rent for, or contribute toward the upkeep of, communal areas of seating and tables that their customers can use)?*
- *Is there an element of service provided to the customer? This could vary from a full waiter / waitress service to simply laying out sandwiches on a platter. The more significant the level of service, the more likely that the supply is that of catering.*
- *If the food is delivered, is there only minimal preparation required by the customer?*

While it is helpful to have a checklist, there are still likely to be some cases close to the border.

Delivery charges

A final word of warning. If delivery is charged separately, then the delivery charge is going to be standard rated - Postage, delivery and direct marketing (VAT Notice 700/24), whatever the nature of the supply.

Conclusion

While most supplies of takeaway food are likely to be standard rated or subject to the temporary reduced rate, businesses close to the boundaries, including those supplying cold takeaway food for consumption off the premises, will need to have accurate recording and appropriate evidence to support zero rating. The temporary reduced rate adds a new complexity particularly as regards supply of drinks with new VAT boundaries between alcoholic and non-alcoholic drinks and between cold drinks supplied on or off the premises.

In this complex area advice specific to the client's new circumstances will pay dividends and help avoid pitfalls.

GOING CONCERN FOR SMALL AND MICRO ENTITIES

COVID-19 has put the issue of going concern at the top of the agenda for most businesses due to the devastating impact it has had on them, which is more noticeable in certain sectors such as leisure, hospitality and some parts of the retail sector. This impact is being felt at all levels of the economy from large multi-nationals to small owner managed businesses.

ICAS recently produced going concern guidance for directors of large private entities and joint guidance with ICAEW on going concern for SMEs. This article summarises the going concern basis of preparation and the reporting requirements for small entities adopting Section 1A of FRS 102 and micro-entities adopting FRS 105. Although it should be noted that many of the same principles apply to all entities regardless of size.

Going concern requirements of FRS 102 Section 1A - Small entities

Although Section 1A of FRS 102 provides small entities with some disclosure and presentation exemptions, management are still required to make an assessment of the ability of a small entity to continue as a going concern. An entity is a going concern unless management either intends to liquidate the entity, or to cease trading, or has no realistic alternative but to do so. It is management who are responsible for undertaking this assessment which should cover a period of not less than 12 months from the date that the accounts are approved for issue – not 12 months from the balance sheet date.

There is no explicit requirement to report on going concern or related material uncertainties within Section 1A. However, it is important to be aware that small companies are required to make such disclosures that are necessary for the financial statements to provide a true and fair view.

Appendix E to Section 1A of FRS 102 encourages the inclusion of disclosures on material uncertainties in order to meet this requirement. Paragraph 1AE.1 (c) states that when relevant to its transactions, other events and conditions, a small entity in the UK is encouraged to provide 'the disclosures relating to material uncertainties related to events or conditions that cast significant doubt upon the small entity's ability to continue as a going concern as set out in paragraph 3.9 of FRS 102.'

It is likely that many entities who previously may never

have had to contemplate such disclosures will now need to give them serious consideration. There is an expectation that more disclosures around going concern will be common as a result of COVID-19. The true and fair view is paramount and that is what will determine whether further information should be reported to explain to readers how the entity has satisfied the requirement that the going concern basis of preparation is appropriate.

This will need to be considered and viewed on an entity by entity basis and judgement will be required. For some entities, there may be very few external parties who have an interest in the accounts. However, based on the current size thresholds for small entities, it is very possible that a number of these entities will have external debt or borrowings, or other stakeholders - for example suppliers, customers and staff - who may be impacted if the going concern of the entity is in some doubt or subject to some level of uncertainty. Therefore, the indi vidual circumstances of the entity, and the needs and expectations of users, should form part of the consideration as to whether additional information and disclosures about the entity's going concern status should be included in the accounts of small entities.

Going concern requirements of FRS 105 – The Financial Reporting Standard applicable to the Micro-entities' regime

The requirement to undertake an assessment on an entity's ability to continue as a going concern applies to all entities and this includes micro-entities. Paragraph 3.3 of FRS 105 states that the management of a micro-entity shall make an assessment of whether the going concern basis of accounting is appropriate. The same basis for determining an entity's going concern status applies, i.e. that the going concern basis remains appropriate unless management either intends to liquidate the micro-entity, or to cease trading, or has no realistic alternative but to do so. Once again, this assessment should cover a period of not less than 12 months from the date that the accounts are approved for issue.

FRS 105 is intended to apply to the very smallest of entities and therefore very limited information and disclosures are required. As a result, micro-entities are not required to make any disclosures about going concern. A micro-entity's accounts are deemed to present a true and fair view if they have been prepared in accordance with the minimum disclosure requirements of FRS 105.

However, as per paragraph 1.3 of FRS 105, these entities are permitted to include additional disclosures over and above minimum requirements. Once again, therefore, the needs of users should be weighed against the ability to take full exemption of the reduced disclosure requirements when considering whether to include additional information. If such additional disclosures relate to going concern then preparers should refer to the relevant section of Section 1A, which is located in Section 1AE.1(c) as previously discussed.

Practical considerations for small and micro-entities

For management of many small and micro-entities, this may be the first time they have had to consider undertaking an assessment of entity's ability to continue as a going concern on such a formal basis and determining whether additional disclosure may be necessary. For those of you acting as advisers, your clients may reach out to you for some support and assistance on how to perform their going concern assessment.

The following paragraphs list some of the procedures that should form part of the going concern assessment. Please note that this is not an exhaustive list.

- As always, cash and cash availability are key, and therefore the preparation of detailed cash flow forecasts to estimate the entity's future cash position, and highlight any potential shortfalls or additional funding requirements, will be necessary.
- Detailed projections that forecast future trading levels, costs and activity will also be required. Some of these projections and forecasts may be difficult to predict as a result of the continued uncertainty around the expected duration of lockdown restrictions and social distancing measures. Therefore, it may be necessary to base these projections and forecasts on a range of different possible scenarios ranging from the most optimistic to the most pessimistic.
- These different scenarios will vary from entity to entity but may include such things as the duration and extent of the reliance on government support measures; changes in consumer behaviour (i.e. will people want to return to pubs, step foot on a plane, or attend large scale events); the extent and duration of social

distancing measures; how adaptable the entity's business model is to new ways of working; and whether any of the entity's activities may need to be scaled down or terminated.

- There may be consequences as a result of disruption to the supply chain. There may be some uncertainty as to whether the necessary supplies can be obtained from the same source, at the same level and within the same timescale. Some of the previous suppliers may no longer exist and this may have a knock-on effect on the entity's ability to generate revenue in the short term if they are forced to find alternative sources of supply.
- There may be evidence of a fall in customer demand for an entity's products. Some of their existing customers may also be experiencing financial difficulties and therefore may request extended credit terms.
- The entity's ability to service its existing and any new debt commitments should also be measured. If the entity has received any additional financial support during COVID-19, they should consider whether they have sufficient cash resources to meet these additional repayments when they fall due.
- Directors will need to give careful consideration as to whether dividend payments should be made. The existence of available profits and cash should be measured both when the dividend is declared and when it is paid. For many entities, COVID-19 may have resulted in stock write downs, increased bad debt provisions and a general loss in revenue. In these situations, it will not be sufficient to base the decision to pay the dividend on the relevant and most up to date accounts. A forecast considering the financial implications of COVID-19 will need to be performed to support the dividend payment and only if the entity has sufficient cash, and is expected to have sufficient available profits, should the dividend payment be made.

Conclusion

While small and micro-entities are provided with some disclosure exemptions within the relevant financial reporting frameworks, these do not extend to any relief for management from undertaking an assessment of a small or micro-entity's ability to continue as a going concern.

As highlighted in this article, whilst disclosures about any material uncertainties relating to an entity's going concern status are not required, they are permitted or encouraged. Therefore, the ability to take advantage of the disclosure exemptions should be balanced against the need for transparency and the needs and expectations of users in relation to the information provided. Inevitably some judgment will be required.

The recently revised ICAS Framework for the Preparation of Accounts also includes some additional guidance for reporting accountants in relation to their responsibilities when evaluating the adequacy of the information included in an entity's accounts about its going concern status.

ER, NO RELIEF FOR YOU I'M AFRAID DR. ALLAM

Dr Allam was unsuccessful, before the First Tier Tribunal (FTT), in his claim for Entrepreneurs Relief after selling the share capital of Allam Developments Ltd (Developments) to Allam Marine Ltd (Marine), the latter being controlled by Dr Allam and his wife.

Those ancient mariners among us, will be sitting up and asking, "what about s460 of the Income and Corporation Taxes Act 1970, the Cleary sisters' case and counteraction notices in respect of transactions in securities and the gaining of a tax advantage?". HMRC had indeed issued a counteraction notice under s698 of the Income Tax Act 2007 but the FTT set this aside. Will HMRC appeal, albeit an FTT decision does not set a precedent, or can we expect a change in the law to put matters back to where we all thought they were in the first place? Watch this space.
As Robert Burns wrote in Tam O'Shanter "But to our tale" of the Entrepreneurs Relief aspects of the case.

The case concerned whether Developments was a trading company and the meaning of "to a substantial extent" at s165A(3) of the Taxation of Chargeable Gains Act 1992 which defines a trading company as "a company carrying on trading activities whose activities do not include to a substantial extent activities other than trading activities".

The main facts are that:

- Dr Allam made his disposal of Developments shares in

2011 when the conditions for Entrepreneurs Relief only had to be met for one year up to the date of disposal.

- HMRC agreed that Developments had some trading but that its other activities were substantial.
- Developments business was holding, developing and leasing properties.
- The financial statements had disclosed the properties as fixed asset investments rather than stock.
- The properties were valued at more than £8.5 million, the largest of which, valued at £4.4 million was rented to Marine.
- Annual rents exceeded £700,000 including £380,000 from Marine.
- Developments had carried out several development activities such as knocking some properties down and creating car parks.
- No property sales had occurred.
- Planning permission had been refused for a number of proposed developments, over a number of years, including residential, where architects had produced plans.
- The 2011 accounts disclosed turnover which was virtually all rent.

The FTT made its decision on the meaning of "to a substantial extent" by giving the words their ordinary and natural meaning in the statutory context. They noted HMRC's guidance and the "20% test", acknowledging that it was useful for their staff but that this was no part of statute. Instead, the FTT view was that "substantial should be taken to mean of material or real importance in the context of the activities of the company as a whole".

In finding for HMRC, the FTT concluded that Developments was carrying on activities other than trading activities to a substantial extent. They based this on Developments income being mainly rent, particularly the major property rented to Marine, which also had the highest value, and also that the rental properties had "material or real importance in the context of the activities of the company as a whole".

HMRC's guidance has been accepted and well understood for a number of years but Dr Allam's case opens up possibilities where a company's fact pattern does not fall neatly within the guidance. It will be interesting to see if the guidance is amended in any way.

EVENTS AFTER THE END OF THE REPORTING PERIOD – SMALL AND MICRO ENTITIES

Determining whether events after the end of the reporting period represent adjusting or non-adjusting events requires a certain amount of judgement in normal times. During the exceptional circumstances associated with COVID-19, the need for the application of judgement will be amplified.

FRS 102 defines adjusting events and non-adjusting events as follows:

a) *Adjusting events are those events that provide evidence of conditions that existed at the end of the reporting period.*

b) *Non-adjusting events are those events that are indicative of conditions that arose after the end of the reporting period.*

A similar definition is included in FRS 105, the Financial Reporting Standard applicable to the Micro-entities Regime. This article highlights some of the matters for consideration by small and micro-entities when determining whether COVID-19 represents an adjusting event or a non-adjusting event and the related disclosure requirements.

Events after the end of the reporting period – 31 December 2019 accounting periods

There is a general consensus that COVID-19 represents a non-adjusting event for accounting periods ending on 31 December 2019 as only a small number of cases were reported at that time.

It is worth noting however, that paragraph 39 of FRS 102, Section 1AC, applicable to small entities, requires that 'The nature and financial effect of material events arising after the reporting date which are not reflected in the income statement or statement of financial position must be stated'. This requirement comes from the Small Companies and Groups (Accounts and Directors' Report) Regulations 2008.

Paragraph 1A.16 of FRS 102 also requires a small entity to present sufficient information in the notes to the accounts to meet the requirement for the accounts to give a true and fair view of the assets, liabilities, financial position and profit or loss of the small

entity for the reporting period. Therefore, as always, the true and fair view requirement is paramount.

A small entity is encouraged under FRS 102 Section 1A, although not required, to consider any disclosures that would be considered relevant to giving a true and fair view. When taking this option, small entities should provide any of those disclosures that are relevant to material transactions, or other events or conditions relating to the small entity, in order to meet the requirement set out in paragraph 1A.16, as detailed above, and the requirements of Section 393 of the Companies Act 2006.

As a result, if any such events are considered to be material and disclosure would be needed to meet the requirements of paragraph 1A. 39 and 1A.16 of FRS 102, then they should be reported, supported by an estimation of the financial effect. The determination of whether such events are material will rely on the application of judgement and will depend on the individual company and the nature of the event and circumstances.

For a small entity producing accounts to 31 December 2019, whose trading activities and income were significantly adversely affected as a result of COVID-19, you might expect to see some form of narrative commentary about COVID-19 and its impact on future periods.

However, there may be some small entities that continued to trade during the lockdown period for whom COVID-19 had little impact, therefore the need for further information about the impact on future periods will be reduced. Arguably, though, a statement to that effect could be considered useful to readers therefore the extent to which external parties use and rely on the accounts will need to be factored into the deliberations around whether to include additional disclosures around events after the end of the reporting period for 31 December 2019 year ends.

With regard to the micro-entity regime, non-adjusting events are defined and explained but no further guidance is provided in terms of expected and required disclosures. Accounts are deemed to present a true and fair view if prepared in accordance with minimum disclosure requirements of FRS 105. However, micro-entities are permitted to include additional disclosures over and above minimum requirements therefore, once again the needs and expectations of users should be weighed against the ability to take full exemption of the reduced disclosure requirements. If a micro-entity includes such additional information, they should refer to any requirement of Section 1A of FRS 102 that relates to that information.

Events after the end of the reporting period – accounting periods ending after 31 December 2019

There is no definitive date beyond which COVID-19 changes from a non-adjusting to an adjusting event and it is likely to vary globally, For many commentators, the date on which the World Health Organisation (WHO) declared Coronavirus a pandemic, 11 March 2020, is likely to be used as the default. This would mean that for 31 March 2020 year ends, and beyond, COVID-19 will represent an adjusting event.

For accounting periods ending after 31 December 2019, but before 31 March 2020, it is probable that COVID-19 will be a non-adjusting event and therefore the guidance in the previous section should be followed. However, that is not definitive for every entity and therefore should be considered on an entity by entity basis depending on the individual circumstances of the entity.

Under both Section 1A of FRS 102, and FRS 105, adjusting events require restatement of the year end balances or the recognition of items not previously recognised. It may also be necessary for a restatement of any related disclosures. Adjustments such as stock write downs, bad debt provisions and asset impairments will result in resta tement of the year end balances if conditions existed at the balance sheet date. For example, if you are preparing accounts to 31 March 2020, and you are aware that your largest debtor became bankrupt on 30 April 2020, that will require an adjustment to the year-end debtor balance.

TOP TIPS FOR DIGITAL SECURITY WHEN WORKING FROM HOME

The last few months have seen an unprecedented change in the way we work and where we work from. The global pandemic has forced a major shift to home working with many practices having to adapt with little to no time to plan. Before the crisis, home working discussions usually focused on employer concerns about productivity, training and the lack of social interaction for employees. It will be interesting to evaluate, once the crisis has passed, whether these concerns were valid.

Working from home has benefits and pitfalls, but one of the most common concerns is the security aspect and how practices can ensure data security for home-based workers.

Home working requirements

When assessing the security of a practice, it is first, necessary to identify where all the assets are, whether that be physical PC's and laptops or digital assets in the cloud. Once the assets in use have been identified, the network can then be simplified to make it as easy as possible to secure. It is important to note that each home network should be considered as part of the IT environment which means the number of networks increases significantly.

Due to the speed with which practices have had to act, many users have been working from home on old PC's with unsupported operating systems and out of date applications. Now that the initial crisis has calmed down, it might be a good time to revisit the arrangements that you have put in place and focus on the security of your home working arrangements to ensure they are fit for purpose.

Top tips to consider on how to work from home securely:

1. ***Make sure devices are running supported operating systems***
   Out of date operating systems are a security vulnerability. Running up to date systems means they can be kept up to date and patched, which is also critical to reducing vulnerabilities.

2. ***Train your employees***
   Now is one of the most important times to update your employees' cyber security training, especially regarding phishing scams and suspicious links. Numerous phishing scams have been circulating since the start of the crisis, so it is important that they are aware of the key warning signs.

3. ***Educate users on suspicious links***
   If a user clicks on something suspicious, make sure they know what to do and how to report it to their IT team immediately. When credentials are captured through phishing, the user will usually not realise until it's too late. Remind employees it is better to be over-cautious and report anything that doesn't seem right.

4. ***Ensure Antivirus is installed and up to date***
   Remember that, when people are working from home, they are not sitting behind a corporate firewall, so make sure you use a multi-layered approach. No one method of security is 100% full proof. Mobile Cloud Security can protect devices both on and off the network.

5. ***Review employees' home-working setup***
   In particular, if users are printing at home, make sure they have the ability to securely dispose of confidential information.

6. ***Turn on Multi Factor Authentication (MFA)***
   Whether you are working at home or in the office – turn on MFA! Gone are the days where a password is sufficient to protect information/data. MFA can frustrate users as it adds complexity to the sign in process. However, it makes it harder for cyber criminals to access your confidential data. It should therefore be turned on, if you have the ability, for any cloud applications.

Do you have home working policies and are your employees aware of these?

One of the biggest concerns of the last few months is that, due to the priority of getting staff up and running with working from home, security has quite often been an afterthought. Now is the time to assess the risks in your current home working environments and takes steps to increase the security of your users. Updating your home working and security policies and sharing these with your employees will also help to educate them on the risks to be aware of.

If you, or any of your clients, need any help implementing secure home working environments please don't hesitate to call your ICAS IT partner, Lugo, on 03300 242 242 or visit https://lugoit.co.uk for more information.

CHANGES IN THE 2020 ICAS CODE OF ETHICS – INDUCEMENTS (INCLUDING GIFTS AND HOSPITALITY)

ICAS adopted a new Revised and Restructured Code of Ethics with effect from 1 January 2020 ("the 2020 Code") which replaced the previous version (applicable from 1 November 2017). The ICAS Code of Ethics is substantively based on the International Ethics Standards Board for Accountants (IESBA) Code of Ethics. Part 3 of the 2020 Code is applicable to Professional Accountants in Public Practice - Sections 300 to 399.

One of the main changes in the 2020 Code was the introduction of new requirements and guidance on inducements, which includes gifts and hospitality. For those in practice, the new provisions pertaining to the offering or accepting of inducements are included within Section 340. The section clarifies the meaning of an "inducement" in the context of the Code and introduces a new "intent test", with the provisions now prohibiting any inducements where there is "intent" to improperly influence behaviour.

Definition of inducement

The term "inducement" is considered by IESBA to be neutral and therefore does not necessarily refer to circumstances where there is intent to improperly influence another individual's behaviour.

"340.4 A1 An inducement is an object, situation, or action that is used as a means to influence another individual's behaviour, but not necessarily with the intent to improperly influence that individual's behaviour. Inducements can range from minor acts of hospitality between professional accountants and existing or prospective clients to acts that result in non-compliance with laws and regulations. An inducement can take many different forms, for example:

- *Gifts*
- *Hospitality*
- *Entertainment*
- *Political or charitable donations*
- *Appeals to friendship and loyalty*
- *Employment or other commercial opportunities*
- *Preferential treatment, rights or privileges."*

Requirement to comply with laws and regulations

There is a requirement for all professional accountants to comply with any laws and regulations that prohibit the offering or accepting of inducements in certain circumstances, such as in relation to bribery and corruption. For example, the UK has the Bribery Act 2010. Additionally, regard would also need to be had to other external legislation that may be applicable e.g. the US Foreign Corrupt Practices Act.

Where a professional accountant in public practice becomes aware of inducements which may result in non-compliance with laws and regulations, they should refer to Section 360 of the Code - "Responding to non-compliance with laws and regulations".

New intent test

There is also a new "intent test" to determine if inducements are made with the intent to improperly influence behaviour.

Inducements with intent to improperly influence behaviour

Some inducements may not be prohibited by laws and regulations but may still create a threat to compliance with the fundamental principles. The new provisions in the Code prohibit any inducements, given or received, where there is, or perceived to be, "intent" to improperly influence behaviour:

- *"R340.7 A professional accountant shall not offer, or encourage others to offer, any inducement that*

is made, or which the accountant considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behaviour of the recipient or of another individual.

- *R340.8 A professional accountant shall not accept, or encourage others to accept, any inducement that the accountant concludes is made, or considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behaviour of the recipient or of another individual."*

The key is whether it is considered that the inducement is offered with the intention of improperly influencing behaviour. The IESBA notes academic research that indicates that even a gift having little intrinsic value might still affect the recipient's behaviour, therefore even inducements which are "trivial and inconsequential" are not permitted if there is improper intent. In summary, if any inducement could improperly influence behaviour then it is not permitted by the Code.

The application material in the Code discusses consideration of the nature, frequency, value, cumulative effect and timing of the inducement. For example, if a gift arrives just before a contract is completed that could be influential, and therefore inappropriate. Similarly, an inducement being offered in advance – but not being given until after the decision has been taken - can also be influential. The outcome of the influence or hospitality is an important consideration.

There is also the need to consider "creeping" influence. For example, if one member of a team receives a gift, that might be considered "trivial and inconsequential" and having no intent to improperly influence behaviour; however, if every member of the team receives a gift, that could potentially be influential, and therefore inappropriate. There is therefore a need to have a broader perspective, and not just to look at events in isolation.

Examples of actions that would be regarded safeguards to help ensure that the threat is at an acceptable level include:

- informing senior management of the firm, or those charged with governance of the client, regarding the offer;
- amending or terminating the business relationship with the client.

Inducements with no intent to improperly influence behaviour

The Code also provides guidance where an inducement is offered or received where it is concluded that there is no intent, or no perceived intent, to improperly influence behaviour. In such circumstances the requirements and application material set out in the conceptual framework apply.

Safeguards regarding other inducements where there is no intent to improperly influence behaviour might include:

- being transparent with senior management of the firm or of the client about offering or accepting an inducement;
- registering the inducement in a log monitored by senior management of the firm or another individual responsible for the firm's ethics compliance, or maintained by the client;
- having an appropriate reviewer, who is not otherwise involved in providing the professional service, review any work performed or decisions made by the professional accountant with respect to the client from which the accountant accepted the inducement;
- donating the inducement to charity after receipt and appropriately disclosing the donation, for example, to a member of senior management of the firm or the individual who offered the inducement;
- reimbursing the cost of the inducement, such as hospitality, received;
- as soon as possible, returning the inducement, such as a gift, after it was initially accepted.

If such an inducement is trivial and inconsequential, any threats created will be at an acceptable level.

Immediate or close family members

The Code also provides guidance when a professional accountant becomes aware of an immediate or close family member offering to, or receiving inducements from, a party with whom the professional accountant has a business relationship. Where the professional accountant believes that there is intent to improperly influence behaviour, they need to advise

the family member not to offer or accept the inducement.

The professional accountant only needs to act upon potential threats that have come to his or her attention and does not need to specifically enquire of immediate or close family members as to their personal business (which may in and of itself breach confidentiality).

Other changes in the 2020 ICAS Code of Ethics

The other main changes in the Revised and Restructured Code of Ethics are in the following areas:

- The structure of the Code
- An enhanced conceptual framework
- Safeguards – a revised definition
- Documentation, including written confirmation of fee arrangements.
- Objectivity – amended requirements in relation to loans and guarantees with clients.

NEXT TO NOTHING – CAPITAL GAINS TAX 'NEGLIGIBLE VALUE CLAIMS'

HMRC provide a list of quoted companies where they accept that shares have become of negligible value. Taxpayers may however hold shares in unquoted companies which may also be of negligible value, and it may be worth making a claim for individuals and companies, under s 24 of the Taxation of Chargeable Gains Act 1992 in appropriate circumstances.

What, however, is "negligible"? As we shall discover, it is next to nothing. It is certainly not as simple as "very much less than the price originally paid". There are not many cases on the point but the First Tier Tribunal decision in Brown ((2014) TC03118) is interesting and well worth a read.

The main facts, quoted extensively from the Tribunal Report of the case, are as follows:

- Mr Brown subscribed for shares in Microsharp Holdings Ltd in 2002.
- The principal director and shareholder of the company (Mr W Johnson) resigned as director in 2003 and Mr Coates, who up to that time was just a minority shareholder in the company, bought out Mr Johnson's shares in October 2003 and became the majority shareholder and principal director of the company. He also made loans to the company. Mr Coates recognised that the company was in serious financial difficulties and that it was his aim to prevent the collapse of the company. It was for that reason he had bought out Mr Johnson and injected new funds into the company.
- The company offered new shares for sale at £1 per share in October 2005, but no one other than Mr Coates subscribed. On 17 November 2005, Mr Coates subscribed for a further 2,100,000 10p shares at £1 each.
- The profit and loss accounts for the company showed that in all years of trading since and including 2001, it made very substantial losses. In 2001, its loss was approximately £2million; for 2002 just over £7million, and for 2003, 2004 and 2005 the loss was around £1million each year. The FTT found that it had always traded at a loss and that it was only able to do so because of substantial investment by shareholders.
- The 2004 accounts show that the company's liabilities exceeded its assets by over £2million.
- Mr Brown had said that he was not prepared to give his shares away and would not consider selling them for less than 10p per share.
- The FTT found that the company only continued to trade because of Mr Coates' continuing investment, and that Mr Coates' investment went beyond what was necessary to stave off liquidation. If his object was solely to avoid insolvent liquidation, he could simply have ensured that his funds were used to pay off the company's creditors and forced it into solvent winding up; instead, he put in enough funds to let the company continue to trade.
- The Tribunal concluded that a prudent purchaser of Mr Brown's shares in April 2006 would have known this: such a purchaser would have known from the documents that Mr Coates was at the end of 2005 continuing to invest enough money in the company to allow it to continue with its one remaining technology project.

In allowing Mr Brown's appeal, the Tribunal Judge reached the following conclusions:

1. The only information relevant in determining whether the claim was effective would be that available to a prospective purchaser.
2. The fact that the company had continued to make losses did not mean that the shares were of negligible value.
3. The high-risk nature of Microsharp Holdings Ltd was not indicative of negligible value.
4. The fact that the company continued to trade did not mean that a prospective purchaser would consider the shares to have value.
5. The fact that Mr Brown would not sell his shares did not mean that they had value.
6. The offer by the company to issue shares at £1 each would only have been an indicator of value had someone other than Mr Coates subscribed for them, and he had his own motives.
7. Both HMRC and Mr Brown agreed that the net present value of the shares' earnings potential had no value, and HMRC's contention that there was "hope value" was dismissed by the Tribunal.
8. Both Mr Brown and HMRC accepted that the shares had fallen in value considerably but, quoting Barker ((2011) TC01487) the Judge said that the test of something being worth 'next to nothing' was an absolute one and the fact that the value of the shares may had fallen considerably was not the determining factor.

The position with regard to what is negligible can be summarised no better than the Judge in Barker, referred to in Brown, who said at paragraph 48 of his judgement "The test of eligibility for a claim under section 24(2) is therefore: does this asset have a market value? If the answer is no, a claim may in principle be made; if the answer is yes, no claim under this provision is appropriate. The draftsman had accordingly no need to specify whether the word 'value' in the phrase 'negligible value' meant 'market value' – or some other type of value - because the reference is to a situation in which there is no objective value.

It was rightly accepted by both parties that 'negligible value' meant 'worth next to nothing'; and although it is at first sight odd for a claim for 'negligible' value to be set at nil, it is quite consistent with an approach to the issue which accepts that nil and negligible are so close as to make no difference".

CHANGE IN FRC REVISED ETHICAL STANDARD 2019 – LONG ASSOCIATION OF ENGAGEMENT PARTNERS

In December 2019, the FRC published its Revised Ethical Standard 2019 which became effective on 15 March 2020 (except for paragraph 5.42 on non-audit services for other entities of public interest which applies to periods commencing on or after 15 December 2020).

The FRC has made a subtle but significant change to requirements in relation to long association for non-public interest entity audit entities once the engagement partner has held the role for a continuous period of ten years.

Paragraph 3.6 of the FRC 2016 Ethical Standard states:

"3.6 Where applicable, once an engagement partner has held this role for a continuous period of ten years, careful consideration is given as to whether it is probable that an objective, reasonable and informed third party would conclude the integrity, objectivity or independence of the firm or covered persons are compromised. Where the individual concerned is not rotated after ten years, it is important that:

(a) safeguards other than rotation, such as those noted in paragraph 3.5, are applied; ***or***

(b) (i) the reasoning as to why the individual continues to participate in the engagement without any safeguards is documented; and
(ii) the facts are communicated to those charged with governance of the entity in accordance with paragraphs 1.61 – 1.71 of Section 1 of Part B of this Ethical Standard."

Paragraph 3.6 of the FRC Revised Ethical Standard 2019 states:

"3.6 Where applicable, once an engagement partner has held this role for a continuous period of ten years, careful consideration is given as to whether it is probable that an objective, reasonable and

informed third party would conclude the integrity, objectivity or independence of the firm or covered persons are compromised. Where that individual is not rotated after ten years, it is important that:

(a) safeguards, such as those noted in paragraph 3.5, are applied; and
(b) the reasoning as to why the individual continues to participate in the engagement is documented, and the facts are communicated to those charged with governance of the entity in accordance with paragraphs 1.54 – 1.62 of this Ethical Standard."

What was previously an "or" in paragraph 3.6 has been replaced by an "and". Therefore, where an audit engagement partner is not rotated after the role has been held for a continuous period of ten years, appropriate safeguards have to be applied; the reasoning as to why the individual continues to participate in the engagement has to be documented; and the facts have to be communicated to those charged with governance of the entity.

An article explaining this and the other main changes from the FRC's 2016 Ethical Standard is available on icas.com.

COVID-19: GUIDANCE ON PENSION SCHEME FINANCIAL REPORTS AND AUDIT

ICAS, ICAEW and the Pensions Research Accountants Group (PRAG) have published new joint guidance on pension scheme reports and financial statements, and related matters in the context of the COVID-19 pandemic. The Guide is intended to support pension scheme auditors navigate the additional challenges they are likely to experience as a result of the COVID-19 pandemic. Pension scheme trustees and accounts preparers will also find the guidance helpful.

Learn more at our upcoming CPD courses on 25 August - **An introduction to the audit of pension schemes** and **Pension Scheme Accounts following FRS 102 and SORP**

The Guide is relevant to private sector occupational defined benefit (DB) and defined contribution (DC) trust-based pension schemes in the UK, including hybrid schemes and DC master trusts, applying "Financial reports of pension schemes: A statement of recommended practice (the Pensions SORP), published by the Pensions Research Accountants Group (PRAG)".

Pension schemes and their auditors should continue to apply existing standards and guidance and keep up to date with new COVID-19 related announcements and guidance from the Financial Reporting Council (FRC) and The Pensions Regulator (TPR).

The Guide covers a wide range of topics including:

- Responsibilities for reporting to TPR
- The impact of the COVID-19 pandemic on the control environment of pension schemes
- The trustees' report and the chair's statement
- Going concern and the trustees' assessment of going concern
- Accounting for scheme investments
- Events after the end of the reporting period
- Audit issues
- The auditor's statement about contributions

TPR reporting deadlines and reporting duties: COVID-19 easements

Due to COVID-19, TPR announced easements in relation to certain reporting deadlines up to 30 June 2020, and to the reporting of breaches in relation to those requirements. Since the Guide was published TPR has revised its stance on easements beyond 30 June.

From 1 July, reporting duties under Code of Practice 01: Reporting breaches of the law will largely resume, for example for:

- Suspended deficit repair contributions (DRCs) where pension trustees will need to submit a revised recovery plan or report missed DRCs.
- Late triennial valuations and failure to agree a recovery plan.
- Failure to prepare audited accounts.

There is one exception to resumption of reporting duties: providers will continue to have 150 days to report the late payment of contributions (other than DRCs); normally

TPR requires information on late payments within 90 days. This easement will be reviewed again at the end of September 2020.

TPR will now accept delays to the preparation of audited financial statements to 30 September 2020. This will give a bit of leeway to trustees, accounts preparers and auditors where 31 December 2019 financial statements have yet to be signed off. However, as referred to above, failure to prepare audited financial statements within seven months of the end of the reporting period will be reportable to TPR from 1 July 2020.

Chairs' Statements received by TPR will not be reviewed until after 30 September. Any Chair's Statement submitted before this date will be returned unread, and this should not be taken as an indication that the statement complies with the requirements.

TPR has no discretion about the imposition of fines where the Chair's Statement has not been prepared on time. However, it is not clear if potential fines for non-compliant Chair's Statements will be avoided or just delayed.

As schemes with deadlines for finalising Chair's Statements prior to 30 September will not be aware of any deficiencies until after 30 September, it is clearly optimal that schemes prepare compliant Chair's Statements by the statutory deadline.

The Chair's Statement must be included within the scheme's annual report, along with the audited financial statements, but it can be prepared and signed off separately.

Notifiable events

There is no relaxation of trustees' responsibilities under the notifiable events regime, and those running DC master trusts must continue to comply with their significant and triggering events duties.

The impact of the COVID-19 pandemic on the control environment of pension schemes

The pension scheme annual reports, including financial statements, will be impacted by changes in the control environment in which schemes operate; the extent of the impact of the COVID-19 pandemic on the control environment of a scheme will depend on its reporting period end date.

For example, a scheme with a period end date of 31 December 2019 may not have experienced any COVID-19-related impacts on its control environment in the period to that date. However, it may have done subsequently, and this may be relevant to elements of its annual report, including the financial statements.

The Trustees' Report and the Chair's Statement

Trustees should reflect on the impact of COVID-19 from a governance perspective on the content of their Trustees' Report and other narrative elements of the annual report, such the Chair's Statement.

The going concern basis of preparation and the trustees' assessment of going concern

Consideration of going concern in the preparation of pension scheme financial statements requires greater focus due to COVID-19. The trustees are responsible for undertaking the going concern assessment and the assessment must meet the requirements of both the Financial Reporting Standard applicable in the UK and Republic of Ireland (FRS 102) and the Pensions SORP.

The specific circumstances which need to exist for pension scheme financial statements not to be prepared on a going concern basis remain unchanged. However, it is likely that more schemes may need to disclose a material uncertainty relating to going concern due to the impact of the COVID-19 pandemic on the scheme.

Accounting for scheme investments

Financial instruments, including investments, must be held at fair value in the scheme's statement of net assets. There are indications that obtaining asset valuations for periods ending on or after 31 March 2020 will be challenging for some asset classes, for example, illiquid assets such as commercial property or private equity investments.

Where reliable valuations cannot be obtained, trustees and the scheme's auditor should be discussing the implications for the scheme's financial statements early in the production process. In these circumstances, the auditor may need to consider alternative audit procedures.

Trading conditions at the reporting date need to be considered to ensure that investments are disclosed appropriately as level 1, 2 or 3. For example, where market data is not available for investments normally classified (and disclosed) as level 2, it may be appropriate to re-categorise these at the

reporting date as level 3. A narrative disclosure should be included to explain the reason for any change in level from the previous year.

Trustees will need to review the nature and extent of risks arising from financial instruments and update the scheme's fair value hierarchy investment risk disclosures, for example, to:

- Emphasise their commitment to taking a long-term rather than short-term approach to the scheme's investment strategy.
- Refer to circumstances where de-risking elements in the scheme's investment strategy have mitigated falls in the value of certain assets.
- Report on any change in approach to investment risk as a consequence of the COVID-19 pandemic.

Events after the end of the reporting period

For pension schemes with accounting periods ending on 31 December 2019, the COVID-19 pandemic in 2020 is likely to be a non-adjusting event.

For subsequent reporting dates, schemes will need to judge how much of the impact of the COVID-19 pandemic should be considered to arise from non-adjusting events. This will be highly dependent on the reporting date, and the specific circumstances of the scheme.

For a pension scheme, a non-adjusting event after the end of the reporting period could be:

- The significant decline in the value of investments.
- The reduction or suspension of deficit recovery contributions or contributions for future service.
- A delay beyond the statutory deadline for completing the triennial actuarial valuation and agreeing a schedule of contributions and, where applicable, a recovery plan based on that valuation.
- The insolvency of the sponsoring employer.

Audit issues

Auditors should be considering the impact of the COVID-19 pandemic on all aspects of the audit and communicating with pension scheme trustees about these as appropriate. The guide highlights some of the key issues scheme auditors will likely need to address in respect of:

- Strategies and plans
- Materiality in planning and performing the audit
- Internal controls, assessing risks of material misstatement and accounting estimates
- Written representations
- Going concern, including the application of the September 2019 revision of ISA 570 (UK)
- Using the work of an auditor's expert
- Subsequent events
- The auditor's report, including the auditor's opinion
- Audit firms' own risk management arrangements over signing auditor's reports
- The auditor' statement about contributions.

Fundamental to the audit is the requirement to obtain sufficient, appropriate audit evidence in order to complete the audit, form an opinion on the financial statements, and issue an auditor's report. Audit evidence, and the documentation of that evidence, is therefore a theme throughout the 'Audit issues' section of the guide.

In addition to applying the ISAs (UK), pension scheme auditors should continue to refer to Practice Note 15 (revised): The Audit of Occupational Pension Schemes in the UK (November 2017) (PN15) as authoritative guidance.

The auditor's statement about contributions

In undertaking work in relation to the auditor's statement about contributions, the auditor will need to know whether contributions to the scheme have been impacted by:

- The reduction or suspension of deficit recovery contributions or future contributions (DB only);
- Changes in pensionable earnings;
- The furloughing of employees under the UK government's CJRS.

Sufficient, appropriate audit evidence about contributions to the scheme should be gathered as part of any audit work on the fund account.

Where contributions have not been paid in accordance with the schedule of contributions, or, in the case of a DC scheme, the scheme's payment schedule during the reporting period, the auditor will need to consider the implications for their statement and whether in the course of their work they have identified any matters of material significance to report to TPR.

The CJRS and pension contributions

Since the Guide was published changes have been

made to the CJRS that will add complexity to the calculation of pension contributions. Employers can claim an amount equivalent to the statutory minimum auto-enrolment employer contribution, based on each employee's reference pay under the CJRS until the end of July 2020.

TPR guidance on pension contributions and COVID-19 clarifies that where employer contributions above the statutory minimum are normally paid, these must continue to be paid into the pension scheme under scheme rules. Therefore, employer top-up payments into the scheme may be required, including where salary sacrifice arrangements are in place.

On 29 May, the Chancellor announced that the CJRS is to close on 31 October and set out details of how it will operate from 1 July onwards. This includes the ability to partially furlough staff. Therefore, employers can bring back staff to work some of their normal hours, with funding still available within the rules of the CJRS to fund the remaining hours.

Updated guidance from TPR to assist schemes, administrators and payroll providers been published following the Chancellor's announcement.

From August onwards, the CJRS won't cover employer National Insurance Contributions (NICs) or employer pension contributions to any extent.

Further information about how the UK government will wind down the Job Retention Scheme is available on the UK government's website.

Alert for pension scheme auditors: possibility of qualified Audit and Assurance Faculty (AAF) reports

Many schemes rely on the internal controls of third parties and their ability to provide services and information to pension schemes. Where a scheme auditor is seeking to rely on an assurance report on the internal controls of a third-party administrator (TPA), it is important that on obtaining that report, the scheme auditor establishes whether or not it has been qualified in any respect. The scheme auditor should consider the implications for their audit work of any weaknesses identified in the controls of a TPA, for example, whether increased testing may be required.

ICAS is aware of a recent example of a TPA receiving a qualified assurance report on aspects of its internal controls, therefore it is important for scheme auditors to be live to this possibility.

Assurance reports on the internal controls of TPAs, where these are undertaken, should be conducted in accordance with Assurance reports on internal controls of service organisations made available to third parties (TECH 01/06 AAF), published by the ICAEW's Audit and Assurance Faculty. For reporting periods commencing on or after 1 July 2020, (TECH 01/20 AAF), published in January 2020, supersedes TECH 01/06 AAF. However, early adoption of TECH 01/20 AAF is encouraged.

CHARITIES UPDATE – SUMMER 2020

In recent months there has been a plethora of guidance published relevant to the impact of COVID-19 on charities.

Both OSCR and the Charity Commission for England and Wales (CCEW) have COVID-19 guidance pages which include signposting to new, updated and existing guidance relevant to charities and their advisers during the pandemic. These can be found at:

- OSCR's website
- CCEW guidance

Charity advisers should visit these pages regularly to keep up to date with developments.

The Charities SORP-making body has also issued guidance recently. In the last edition of Technical Bulletin, we reported on its publication of 'COVID-19 control measures and financial reporting by charities' (23 March 2020). This can be found by clicking on the 'COVID' tab at the bottom of the homepage of the Charities SORP micro-site.

In June, the SORP-making body issued guidance unrelated to COVID-19 in the form of 'Information Sheet 5: The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018-UK, as applied to Charitable Companies'. Further details about the Information sheet are included below.

Before the pandemic, the Charities SORP-making body announced its intention to

review and update the Charities SORP to better meet the needs to the sector. This process is due to commence in the coming weeks, with a revised SORP expected to apply to periods commencing on or after 1 January 2024. This mirrors the likely timescale for the implementations of changes to FRS 102 arising from the FRC's second triennial review. There will be scope for members of ICAS to contribute to the development of the next edition of the Charities SORP prior to exposure draft stage.

Looking less far ahead, the popular ICAS Scottish Charities Update course which is normally delivered in November at four locations across Scotland is expected to be delivered virtually this year via the Online Classroom Live platform. Look out for further information in the coming months about this course.

OSCR

OSCR is delivering a series of webinars on charities and COVID-19 related matters. Three webinars have been delivered so far and these are available on the OSCR website:

- Meet the Regulator – including coverage of OSCR's survey on the impact of COVID-19 on Scottish charities (23 June).
- Charities and Coronavirus - Accounts and reporting to OSCR (27 May)
- Charities and Coronavirus - An update from the Regulator (7 May)

Charity Commission for England and Wales

In June 2020, the CCEW issued additional guidance on serious incident reporting and COVID-19. The additional guidance is in the form of supplementary examples, listing matters which should and should not be reported as serious incidents by charities.

However, the CCEW highlights that trustees should still exercise their judgement in deciding whether an incident is significant in the context of their charity, taking account of its staff, operations, finances and/or reputation.

It usually expects charities to report any financial losses that don't involve a crime where they exceed either £25,000 or 20% of the charity's income. However, in the context of the pandemic, the CCEW emphasises these parameters do not apply when considering financial losses, and trustees should focus on the significance of the impact of any losses rather than the amount.

Charities SORP Information Sheet 5

The Charities SORP-making body has published 'Information Sheet 5: The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018-UK, as applied to Charitable Companies' (12 June 2020).

The 2018 Regulations apply to reporting periods commencing on or after 1 April 2019 and the 2018 Regulations amend the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008.

The 2018 Regulations extend the obligation to comply with the reporting requirements of the UK government's policy on Streamlined Energy and Carbon Reporting (SECR) to large unquoted companies, including charitable companies, and large limited liability partnerships registered in the UK.

The Companies Act 2006 definition of 'large' applies here and should not be confused with the definition of 'larger' in the Charities SORP. The Information Sheet includes details of how the Companies Act definition of large should be applied by charitable companies, equating 'turnover' to 'gross income'.

Charitable companies which are medium-sized under company law and are close to qualifying as large may need to consider how they would comply with the 2018 Regulations should they cease to qualify as medium-sized. A charitable parent company's trustees' annual report (incorporating the directors' report) must take into account the energy and carbon consumption of all other group subsidiaries that fall within the scope of the reporting requirements i.e. subsidiaries which themselves qualify as large.

Information sheets are available at www.charitysorp.org. They do not form part of the SORP, nor do they amend the SORP. Information Sheets are authoritative in that these express the views of the Charities SORP-making body and its advisory SORP Committee.

CHARITIES SORP INFORMATION SHEET 5

The Charities SORP-making body has published 'Information Sheet 5: The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018-UK, as applied to Charitable Companies' (12 June 2020).

The 2018 Regulations apply to reporting periods commencing on or after 1 April 2019 and the 2018 Regulations amend the Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008.

The 2018 Regulations extend the obligation to comply with the reporting requirements of the UK government's policy on Streamlined Energy and Carbon Reporting (SECR) to large unquoted companies, including charitable companies, and large limited liability partnerships registered in the UK.

The Companies Act 2006 definition of 'large' applies here and should not be confused with the definition of 'larger' in the Charities SORP. The Information Sheet includes details of how the Companies Act definition of large should be applied by charitable companies, equating 'turnover' to 'gross income'.

Charitable companies which are medium-sized under company law and are close to qualifying as large may need to consider how they would comply with the 2018 Regulations should they cease to qualify as medium-sized.

A charitable parent company's trustees' annual report (incorporating the directors' report) must take into account the energy and carbon consumption of all other group subsidiaries that fall within the scope of the reporting requirements i.e. subsidiaries which themselves qualify as large.

Information sheets are available at www.charitysorp.org. They do not form part of the SORP, nor do they amend the SORP. Information Sheets are authoritative in that these express the views of the Charities SORP-making body and its advisory SORP Committee.

CARRY FORWARD OF COMPANY TRADING LOSSES

Trading losses incurred by companies after 31 March 2017 can generally be carried forward and offset against all income in future periods. Losses brought forward at that date can still be carried forward but can only be offset against losses of the same trade.

Whether the same trade is carried on or not is obvious in many cases but less obvious in others where the trade may have evolved or undergone a series of perhaps smaller changes over a period of time. There has been a number of cases on the point, perhaps the leading one being Rolls-Royce Motors Ltd v Bamford (51 TC 319). The company was incorporated in 1906 and produced motor cars. It greatly expanded its activities and, from 1915 began to manufacture aeroengines. The development of the RB211 aeroengine caused severe financial difficulties and receivers were subsequently appointed in 1971.

At that time, there were four aero engine divisions and two motor car divisions, the Derby aero engine division being by far the largest. In May 1971, the aero engine divisions were transferred to a government owned company while the motor car divisions were transferred to the appellant company, a wholly owned subsidiary of Rolls-Royce Ltd.

Rolls-Royce Ltd then went into liquidation in October 1971. Rolls-Royce Motors Ltd

sought to carry forward the trading losses of Rolls-Royce Ltd, up to 18 June 1971 against its profits, on the grounds that there had only ever been one trade and that Rolls-Royce Motors Ltd had succeeded to it. The Crown argued that Rolls-Royce Motors Ltd did not carry on the same trade, a contention that was upheld by the Special Commissioners.

In Kawthar Consulting Ltd v Revenue and Customs Commissioners (SpC 477), which was also won by HMRC, the company's accounts for the years ended 31 December 1984 to 1987 described its activities as, 'manufacturers, designers, importers, exporters and dealers in computers'. In the years from 1988 to 1997 the reference to 'computers' was replaced by 'computers and computer software'. In the accounts for the years from 1998 to 2001 the principal activity was described as 'computer consultancy and the provision of management services'. From 1987 to 1990 Kawthar was mainly concerned with a large project for one client.

After 1990, when its large client went into administration, the company's turnover fell until 1997 when Dr Fahmy, who controlled the company, secured another major contract. In the meantime, Dr Fahmy had undertaken further training in technology which was instrumental in obtaining that contract. Kawthar sought to carry forward the losses arising in the earlier years, to the 1998 accounting period, on the basis that it had carried on the same trade of 'IT consultancy' which had never ceased nor changed, and therefore its losses prior to 1995 were available for carry-forward against profits of years after 1996. The Crown contended that Kawthar had either ceased to trade between 1990 and 1997 or its trade had changed from the supply of computer systems to the supply of consultancy services in 1997.

It was held that the changes in Kawthar's activities from 1998 amounted to a change in the trade. There were organic developments in the nature of the activities over the years to 1997 that did not amount to a change in the trade of providing computer systems, but in the period after 1997, Kawthar's activities wer e IT consultancy activities. The change in emphasis of Kawthar's activities towards the consultancy services provided by Dr Fahmy, suggested that from 1998 onwards Kawthar had been carrying on a different trade from that carried on before 1996. The company's appeal was therefore dismissed.

The Crown also won in Cannon Industries Ltd v Edwards (42 TC 625), this time arguing from the opposite standpoint. The company began the assembly of an electric food mixer, under licence, alongside the existing manufacture of gas appliances principally cookers, heaters and gas chemical plants. The two branches were carried on in separate parts of the same factory, under separate management teams, apart from the top management. There were common arrangements for bookkeeping, banking and payment of wages, and the Company's trading and profit and loss account and balance sheet embraced the activities of both branches without distinction. The company contended that it had set up a new trade of food mixer assembly, but the Special Commissioners found that the activities in question were an extension of the Company's existing trade.

In the current economic climate, efficient use of tax losses is important and company trades may have had to change. It is worth considering those in the context of pre-April 2017 trading losses brought forward and whether these will still be available for use against future profits.

Tax, Trading Activities and COVID-19

COVID-19 and the resulting lockdown has had a significant impact on many UK traders, with some forces to change what they do. Tax will not have been at the forefront of their minds, but the changes may have tax consequences which will need to be considered.

HMRC has provided some guidance on how it applies legislation and case law to some common scenarios arising from crisis-driven changes to trading activities. In response to an ICAS query HMRC has provided its view on the transfer of a business as a going concern (TOGC) during the COVID-19 pandemic.

For details have a look at the article on the ICAS website.

MANDATORY DISCLOSURE OF OFFSHORE ARRANGEMENTS (DAC 6) – REPORTING DEADLINES DEFERRED

The EU directive known as DAC 6 (it is the sixth update of the Directive on Administrative Cooperation) imposes a requirement on intermediaries (and in some cases taxpayers) to report information on certain cross-border tax arrangements, to the tax authorities in their home member state. The UK has implemented the Directive through regulations.

The basic requirements – who needs to report and what constitutes a reportable arrangement – were outlined in an article on ICAS.com. It is important to recognise that because some of the hallmarks are widely drawn, they may catch arrangements where there is no avoidance intention. Accountants, tax advisers, lawyers, and financial advisers could all fall within the definition of an intermediary, so will need to look at the detailed rules and consider whether arrangements they advise on or promote could be reportable. Some problematic areas were highlighted in the ICAS response to the formal consultation.

There have been two significant recent developments: publication of HMRC's guidance and the deferral of the initial reporting deadlines. There is also a question mark over what will happen after the end of the Brexit implementation period, but it would be unwise to stop preparing for DAC 6 reporting.

HMRC Guidance

HMRC has recently published its guidance in the International Exchange of Information Manual. ICAS took part in HMRC working group discussions about draft versions of the guidance, although not all issues raised have been addressed to date. We understand that there will be further updates and that HMRC would welcome additional feedback: if you have any comments on the guidance please let us know by emailing tax@icas.com.

Reporting deadlines

The usual reporting deadline is 30 days after the relevant reporting trigger point (this could often be the first step in implementing the arrangement – but there are other triggers, some of which could be earlier).

However, the first report under the DAC 6 regime must include details of any arrangements where the first step was undertaken from 25 June 2018 (the date the EU directive entered into force) – it therefore requires a look back. This first report would originally have been due by 31 August 2020. However, due to coronavirus the deadlines have been deferred.

The following deadlines for reporting will now apply:

1. For arrangements where the first step in the implementation took place between 25 June 2018 and 30 June 2020, reports must be made by 28 February 2021, instead of by 31 August as originally required.
2. For arrangements which were made available for implementation, or which were ready for implementation, or where the first step in the implementation took place between 1 July 2020, and 31 December 2020, reports must be made within the period of 30 days beginning on 1 January 2021. Under the original rules, such arrangements would have had to be reported within 30 days of the reporting trigger point being reached.
3. For arrangements in respect of which a UK intermediary provided aid, assistance or advice between 1 July 2020 and 31 December 2020, reports must be made within the period of 30 days beginning on 1 January 2021. Again, under the original rules, such arrangements would have had to be reported within 30 days of the aid, assistance or advice being provided.
4. Arrangements which become reportable on or after 1 January 2021 must be reported as normal.
5. Where periodic reports are required in relation to marketable arrangements, the first such report must be made by 30 April 2021.

In view of the deferral, HMRC has not switched on the IT system which will be used for reporting. It will be made available ahead of the new deadlines and HMRC will use the additional time to carry out further work.

Impact of Brexit

DAC 6 reports will be shared between EU member state tax administrations via a database. It is not currently

clear whether the UK will still have access to this database after 31 December 2020.

The Financial Secretary to the Treasury recently responded to a parliamentary question asking whether the UK Regulations would be repealed after the end of transition period. He confirmed that the government remained committed to tax transparency and will continue to apply international standards on transparency and exchange of information. He also said that the Government would keep the Regulations under review – and that further legislative action may be appropriate in the light of the outcome of negotiations with the EU on the future relationship between the UK and the EU.

TEMPORARY EXTENSIONS TO COMPANIES HOUSE – ACCOUNTS FILING REQUIREMENTS

In light of the impact of the Covid-19 pandemic the Government has granted temporary extensions to accounts filing deadlines for companies and other specific entities. These provisions are contained in the Corporate Insolvency and Corporate Governance Act 2002 which came into force on 26 June 2020 and "The Companies etc. (Filing Requirements) (Temporary Modifications) Regulations 2020" which came into force on 27 June 2020. The latter will be referred to more often as the regulation covers various types of entities including private companies and LLPs. The former is restricted to public companies and Societas Europaes (SE) and is designed primarily to provide retrospective accounts filing extensions to such entities.

Corporate Insolvency and Corporate Governance Act 2002 ("the Act")

The temporary amendments to the accounts filing deadlines are contained in sec tion 38 of the Act and apply only to public companies and Societas Europaeas (SE) whose original filing date was after 25 March 2020 and before what is termed "the relevant date" in the legislation. The relevant date is defined as the earlier of:

a) 30 September 2020; and
b) the last day of the period of 12 months immediately following the end of the relevant accounting reference period.

Where section 38 applies, a company's filing deadline will be updated automatically and there is no need to apply for an extension. If the accounting deadline fell between 26 March 2020 and 26 June 2020 then Companies House will extend the deadline retrospectively. For most such companies, the relevant date will be 30 September 2020 except for those with a year-end date that falls between 26 September to 29 September 2019 (inclusive) where the relevant date will be 12 months immediately following that respective date (i.e. 26 September to 29 September 2020 inclusive).

Where a company is able to take advantage of section 38 of the Act, this extends the filing deadline to the earlier of 30 September 2020, and the relevant date. As explained above, this means that for many eligible companies the extension of the filing date will be to 30 September 2020.

Table 1 (page 25) summarises the effect of this temporary provision.

Section 39 of the Act also provides the temporary power for the Secretary of State to amend by regulations, various time periods in company legislation including those relating to the filing of documents with Companies House. The applicable documents are listed at section 40 of the Act and include accounts, notification of a change in directors, register of people with significant control, and control, and confirmation statements etc.

The Companies etc. (Filing Requirements) (Temporary Modifications) Regulations 2020

The Companies etc. (Filing Requirements) (Temporary Modifications) Regulations 2020 ("the regulations") came into force on 27 June 2020. In accordance with the regulations Companies House will extend the accounts filing deadline of a company (and

other specified entities, see below) if it falls any time from 27 June 2020 to 5 April 2021 (including these dates). These extensions are summarised in Table 2 (page 25).

Example of extension for a private company

A private company has a 9-month filing period with an Accounting Reference Date (ARD) of 31 October 2019. Their previous filing deadline was 31 July 2020 and is extended to 31 October 2020 (12 months).

Public companies and SEs

Public companies and SEs whose original accounts filing deadline fell before 30 June 2020 that received an extension to their accounts filing deadline under the Act (see above) will receive no further extension under the regulations. They may be able to apply for an extension using Companies House existing process. However, no extension will be granted where the public company (or SE) has already had 12 months after its accounting reference date in which to file its accounts. For example, a public company had a filing deadline of 30 April 2020 with an ARD of 30 October 2019. Its deadline was moved to 30 September 2020 under the Act. No further extension is provided under the regulations. But the company could apply to Companies House for an extra month if they are unable to file their accounts by 30 September 2020.

Where a company has already had an extension

The extension granted by the regulations will apply to a company's original filing deadline. It will not be added to a filing extension already granted by Companies House. For example, a private company has a 9-month filing period with an ARD of 31 July 2019. They previously applied for an extension and their filing deadline was extended from 30 April 2020 to 31 July 2020. Their filing period is already 12 months, so it will not get a further extension.

Where a company has lengthened its company's accounting reference period

If a company has extended its company's accounting reference period, the company will be eligible for a legislative extension if its filing deadline falls on or before 5 April 2021.

A company's first accounts

Where a company's first accounts cover a period of 12 months or less, and it has not received an extension, the company's filing deadline will be extended from:

- 9 months to 12 months for private companies; and
- 6 months to 9 months for public companies.

Where a company's first accounts cover a period of more than 12 months, its filing deadline will now be:

- 24 months from the date of the date of incorporation for private companies; and
- 21 months from the date of incorporation for public companies or 3 months from the accounting reference date - whichever is longer.

New filing deadlines – the register

Companies House will update the register in stages. A company can check its new filing deadline on Companies House service on its website.

Next year's filing deadline

As this is a temporary measure Companies House will not automatically extend any filing deadlines that fall on 6 April 2021 or later.

Companies must apply for an extension if their company's filing deadline falls on 6 April 2021 or later and they need more time to file their accounts.

Table 1

Scenario	Action
Filing deadline between 26 March 2020 and 31 March 2020 and company has not had an extension	Filing deadline extended to 12 months
Filing deadline on or after 1 April 2020 and before 30 September 2020 and company has not had an extension	Filing deadline will move to 30 September 2020
Filing deadline already extended prior to the Act coming into force	Filing deadline will either be extended to 12 months from the year end or 30 September 2020 - whichever is earlier
Filing deadline already extended to the maximum 12 months	No further extension

Table 2

Company type	Company has not had an extension or shortened their accounting reference period
Public companies	Filing deadline extended from 6 to 9 months. Where the original accounts filing deadline fell on or after 30 June 2020 before it was extended by the Act, this extension will apply and supersede the extension under the Act.
Private company	Filing deadline extended from 9 to 12 months.
LLP	Filing deadline extended from 9 to 12 months.
Overseas companies who are required to prepare and disclose accounts under parent law	Filing deadline extended from 3 to 6 months.
SEs	Filing deadline extended from 6 to 9 months. Where the original accounts filing deadline fell on or after 30 June 2020 before it was extended by the Act, this extension will apply and supersede the extension under the Act.

TEMPORARY CHANGES TO AGM AND OTHER MEETING REQUIREMENTS

Background

Many companies and other entities are required by the law or by their constitutions to hold an Annual General Meeting (AGM). Failure to do so has potential legal consequences for those appointed to senior ranking positions in those bodies, such as company directors. New legislation (the Corporate Insolvency and Corporate Governance Act 2020 "the Act") has been passed to help manage the challenges arising from Covid-19. The UK Government has also provided further guidance and factsheets.

In addition to AGMs, the measures apply to other meetings of members such as accounts meetings, other general meetings and class meetings of companies. It is important for companies and other bodies, and the economy as a whole, that these meetings can take place and that key business decisions can continue to be taken. Provisions came into force via the Act on 26 June 2020 which temporarily relax some of the requirements applying to AGMs and other meetings. These are detailed in Schedule 14 of the Act.

Scope

These temporary relaxations apply to "qualifying bodies". Such a body is defined in the Act as:

a) a registered society within the meaning of the Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (c. 24 (N.I.)),
b) a credit union within the meaning of the Credit Unions (Northern Ireland) Order 1985 (S.I. 1985/1205 (N.I. 12)),
c) a building society within the meaning of the Building Societies Act 1986,
d) a society that is registered within the meaning of the Friendly Societies Act 1974 or incorporated under the Friendly Societies Act 1992,
e) a registered branch within the meaning of the Friendly Societies Act 1992,
f) a Scottish charitable incorporated organisation within the meaning of Chapter 7 of Part 1 of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10),
g) a company within the meaning of section 1(1) of the Companies Act 2006,
h) a charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011, and
i) a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014.

The legislation applies to the following types of meeting held during the relevant period (see below):

a) a general meeting of a qualifying body,
b) a meeting of any class of members of a qualifying body, or
c) a meeting of delegates appointed by members of a qualifying body.

This article focusses on the impact on companies although the impact will be similar on other bodies (detailed above), including Registered Social Landlords (RSLs) and certain charities.

AGM requirements pre "the Act"

Every public company must hold an AGM within six months of the end of its financial accounting period (or such earlier date as may be specified in its articles of association) – see section 336 of the Companies Act 2006. The company's annual accounts (which must be laid before the meeting) must then be filed within the same time period (please refer to the separate article on filing of accounts for details of the temporary changes on filing deadlines). Private companies are not required to hold AGMs under statute, but they may be required to do so by their Articles in which case these temporary changes will apply to those private companies as well.

Period of relaxation and applicable meetings

For a temporary period, the Act enables qualifying bodies to suspend shareholders' and members' ability to attend meetings in person and to convene meetings in a flexible way using a range of technologies. The Act refers to the "relevant period" which means the period which:

a) begins with 26 March 2020, and
b) ends with 30 September 2020.

Therefore, if the date by which a company must hold its AGM (under statute or company's constitution) falls between these dates, e.g. 31 July 2020, the deadline will be automatically extended to 30 September 2020. This extension also applies to the deadline for public companies

to hold their accounts meetings (as defined in the Companies Act 2006).

The 30 September 2020 end date may be shortened or extended by future regulations issued by the appropriate national authority by increments of up to three months at a time. Any future revisions currently cannot be extended beyond 5 April 2021. For most of the qualifying entities such regulations would be the responsibility of the Secretary of State, except for devolved areas e.g. the Scottish Ministers would be responsible for a Scottish charitable incorporated organisation as per (f) above.

The legislation applies to the following types of meeting held during the relevant period:

a) a general meeting of a qualifying body,
b) a meeting of any class of members of a qualifying body, or
c) a meeting of delegates appointed by members of a qualifying body.

Effect of Temporary Changes

As well as being able to defer a meeting, the following relaxations are applicable:

- The meeting does not need to be held at any particular place and may be held (and any votes may be permitted to be cast) by electronic or any other means. Additionally, the meeting may be held without any number of those participating in the meeting being together at the same place.
- A member of the qualifying body does not have a right:

  a) to attend the meeting in person,
  b) to participate in the meeting other than by voting, or
  c) to vote by particular means.

Companies can therefore hold meetings in a fully "closed" way, with all members attending and participating virtually, regardless of whether this is permitted in their constitutional documents. As such, the minimum number of members required for a company's quorum could simply hold the meeting by tele or videoconference, with all other members only permitted to vote by way of proxy.

Alternatively, a company could decide to postpone its AGM to later in the year subject to the 30 September deadline, possibly enabling the company to hold the meeting in a more usual way to allow active shareholder engagement by members meeting with the directors and voting in person (of course, if so permitted at that time).

For those who have already gone ahead with AGMs, or other applicable meetings, which have not strictly complied with their articles, the Act provides retrospective application to 26 March 2020.

Given that "the Act" only provides temporary relaxations, companies may wish to think longer-term about how they will conduct AGMs for further information see BEIS/FRC best practice AGM guidance and FAQs. This highlights that over the longer term, bodies and their members may benefit from a move to a hybrid AGM format that enables attendance both in person and on-line.

With this in mind, the Financial Reporting Council (FRC) plans to work alongside representatives of both companies and shareholders to produce a fully considered assessment of best practice later this year. While this assessment will focus on companies and shareholders, it is envisaged it will be of relevance to other sectors.

FRAMEWORK FOR THE PREPARATION OF ACCOUNTS REVISED JUNE 2020

ICAS guidance (June 2020) on chartered accountants' professional responsibilities when an accounts preparation engagement is undertaken for a client has been revised and is available for download.

This guidance is applicable for accounting periods commencing on or after 1 April 2019.

There are no substantive changes to the guidance. The revisions mainly reflect changes to the ICAS Code of Ethics.

RETURN TO OFFICE WORKING – TOOLKIT AND GUIDANCE

As firms move closer to a potential return to office working, ICAS has put together a toolkit and further guidance to aid the planning process.

Employers are required by law to protect their employees; careful consideration of your operations is therefore required in order to identify the necessary, and important, modifications to the office/ workplace in light of the current pandemic. In these unprecedented times, it is difficult to know where to start – we have therefore produced a suite of documents and resources which can be used to evaluate the risks posed to your employees, and any visitors, to get the process started.

The toolkit includes documents to help keep your employees safe from the risk of COVID-19 when returning to work, ensuring they feel confident that their safety has been considered and the appropriate action has been taken. It includes practical guidance to support firms in some of the main issues we expect them to face when they eventually return to office working.

Given the varying size, location and nature of work carried out by practices, each firm will have differing challenges. The toolkit is therefore not intended to be a bespoke guide – but to provide general assistance and a framework which can be adapted to individual firm circumstances.

The toolkit has been put together using a range of resources and latest advice from organisations including Government, NHS and Public Health Authorities.

TAX CORNER

Domestic reverse charge VAT for constructions services delayed to 1 March 2021

The VAT reverse charge in construction means that the recipient of construction services becomes responsible for accounting for VAT on the transaction, rather than the supplier. Having been put off a year from 1 October 2019 to October 2020, the measure to bring in VAT reverse charge in construction has now been postponed to 1 March 2021. The further delay is due to the impact of Covid-19 on the construction sector.

The details are set out on Revenue and Customs Brief 7 (2020). The implementation, now scheduled for March will be in line with the original legislation, but there will be an additional requirement for businesses that are end users or intermediary suppliers to inform sub-contractors in writing of their status, so as to be excluded from the reverse charge.

Given the timing of the change, and the significant cashflow and accounting implications affected businesses will need to review their systems before the end of 2020 or at the latest early in the new year.

Non-VAT registered business, end users (who in essence are the final VAT registered customer at the end of the supply chain), and certain intermediary supplies do not apply reverse change.

HMRC has updated the guidance, Domestic reverse VAT charge for building and construction services, to show the changes.

Time to pay and deferment of tax

HMRC has brought in a number of easements to help business cashflow during the pandemic. These include deferment of VAT and income tax bills and wider time to pay measures.

VAT

Deferral applies to VAT payments that were due in the period between 20 March and 30 June 2020. Liabilities which were already late by 20 March are not included. Where payments were unintentionally made by Direct Debit for VAT due during this period, they can be reclaimed via the direct debit guarantee scheme.

Details of the deferral scheme for VAT are set out in HMRC guidance note – Deferral of VAT payments due to coronavirus (COVID-19). After the end of the deferral period on 30 June, businesses need to ensure that they reinstate cancelled direct debits in enough time for HMRC to take

payment for VAT due after 30 June.

Amounts deferred need to be settled in full by 31 March 2021.

Deferral of July 2020 SA Payments on Account – check HMRC's guidance

Many clients will currently be receiving paper statements from HMRC for their July payments on account. Instead of showing the due date for payment as 31 July, they show a due date of 31 January 2021. The statements explain that the July 2020 payment on account 'can' be deferred – and that to find out more HMRC's guidance on GOV.UK should be consulted.

It is important to refer to the guidance, which states that the option to defer the second payment on account is available if the taxpayer is:

- registered in the UK for Self-Assessment, and
- finding it difficult to make their second payment on account by 31 July 2020 due to the impact of coronavirus

The guidance goes on to say that:

"*You can still make the payment by 31 July 2020 as normal if you're able to do so.*

HMRC will not charge interest or penalties on any amount of the deferred payment on account, provided it's paid on or before 31 January 2021."
Clients using online accounts will see that the payment on account will be due for payment at 31 July, accompanied by a message to say that it can be deferred until 31 January 2021 - if they cannot pay because of coronavirus.

The deferral does not need to be applied for, so if clients do not pay HMRC, it will automatically treat it as a deferral. However, if a direct debit is in place this will need to be cancelled so that HMRC does not take the payment. In addition to considering HMRC's guidance that deferral is available where payments cannot easily be made due to coronavirus, it is also important to note that in January 2021 the total bill could be much higher if the July payment is deferred. It will need to be budgeted for and will include:

- the deferred July payment
- any balancing payment for the 2019/20 tax year, and
- the first payment on account for the 2020/21 tax year.

For many clients paying the July payment on account now, if they can do so, it will make sense from a financial management perspective. If payment cannot be made now but things improve later, it can also be paid at any time between 31 July and 31 January. HMRC sets out the options (including possible payment by instalments) in the guidance.

When advising on payment on account deferrals (or any other COVID-19 support) members should be mindful of professional standards, and in particular the requirements of PCRT. ICAS is aware that there are differing opinions on the application of PCRT to advice on payment deferrals. Where clients can afford to pay their July instalments, it is for them to choose to do so (taking into account HMRC's guidance). In terms of financial management and their long-term relationship with HMRC, it is likely to make sense to pay sooner rather than later.

Other taxes

HMRC announced a new service to support time to pay where Covid-19 has created cashflow challenges for businesses via a tax helpline to support businesses affected by coronavirus (COVID-19), The pandemic will be accepted as a valid reason for a business requesting time to pay over a range of taxes. Arrangements will be considered on a case by case basis. While this should enable many businesses to access additional time to pay tax debts in instalments, it is not a general moratorium. Businesses may ask for HMRC to temporarily suspend recovery action or to agree an instalment plan.

HMRC will expect businesses to do all that they can to pay taxes on time, this may include a review of commitments and prioritisation of debts. Company dividend policy may need to be included in any review of commitments before time to pay is agreed. HMRC may require upfront payment of part of the debt before agreeing that the balance be paid by instalment.

Normal HMRC time to pay principles apply (DMBM800040 Time To Pay (TTP): introduction: principles of Time To Pay).

Refunds

HMRC should process refunds as normal, but HMRC's statutory right of set off should be kept in mind (DMBM700010 Set-offs -

S130 FA2008: background). While HMRC should make repayments falling due between now and 31 January 2021 without taking account of Covid-19-related VAT or income tax second payment on account deferrals, it may want to offset refunds against other liabilities, including those covered by time to pay agreements.

R&D Payments and set off

HMRC has provided the following guidance:

Deferred liabilities

Where Ministers have agreed that tax can be deferred for a specific regime to support businesses in the COVID-19 period, i.e. the self-assessment payment on account and VAT quarterly payment deferrals, R&D expenditure credit (RDEC) or payable tax credit will not be set against any of those amounts before the revise due date.

Time to pay arrangement (TTP)s

Where tax has been deferred as part of a Time to Pay (TTP) arrangement, HMRC will follow existing policy and set any R&D tax credit off against *any TTP liability*, not just the amount owing at the point in time the credit is paid. This would include informal deferrals offered in advance of TTP arrangements being put in place.

TTP is an agreement by HMRC to delay enforcement proceedings for a given debt to a specified future date. It doesn't alter the fact that the debt is owed to HMRC or change the due date.

When HMRC agrees to set up a TTP, they ask the taxpayer about their current and future financial position. TTP is a payment plan based on ability to pay. If the taxpayer is due a credit, then HMRC will build it into the TTP, and explain that the TTP is subject to the taxpayer providing full information to HMRC and telling them if their financial position changes. It is therefore important that taxpayers are open about any claims they have made when they set up a TTP and notify HMRC if they make a claim after it has been set up. Any credits will normally be taken into account at the time the TTP is agreed or when the taxpayer notifies HMRC of a credit if it wasn't expected and notified when it was agreed.

Research and Development Expenditure Credit set offs at s104N (2) step 6

It is a legislative requirement that any RDEC remaining at Step 6 (CTA09/S104N(2)) is set-off against any liability owed to the Commissioners for HMRC. HMRC does not have the power to provide for a temporary relaxation of this rule and there are no plans at present to legislate to provide a temporary relaxation of this rule.

Credits under s130 Finance Act 2008

Credits under s130 Finance Act 2008, including credits under the R&D SME scheme, will continue to be applied on a discretionary basis. HMRC has a duty to protect public revenue and therefore would always look to offset any credit against tax liabilities before paying a credit.

See CIRD90600 and DMBM700010. HMRC will consider the particular circumstances of a customer on a case by case basis if they have objections to the credit being set off against other liabilities.

Alternative Dispute Resolution

There have been two important changes to the way in which HMRC operates the Alternative Dispute Resolution process.

Changes to the tribunal rules mean that they will now consider Alternative Dispute Resolution applications at any stage of the process up to the date of the tribunal.

Due to the current Covid-19 pandemic, HMRC will be also be carrying out mediations via telephone and video conferencing. HMRC are likely to offer face-to-face meetings again in the future but they will be one of several options available to the mediator when considering how to help resolve the dispute. If you have a case you would like considered for Alternative Dispute Resolutions, complete the online application form.

HMRC Toolkits

HMRC has a series of 'Toolkits' which have been designed to address the top errors that are made by agents. One assumes that errors may be more prevalent amongst unqualified agents, but these toolkits can be useful in a number of ways. Some members use the checklists within the toolkit as part of their review process on client tax returns; some use the toolkit as a once a year refresher of the risks to be aware of; and they can also be a supplement to training material for junior staff.

We understand that the most frequently used toolkits are:

- Capital Gains Tax for Shares
- Directors' Loan Accounts
- Company losses

- National Insurance Contributions and Statutory Payments
- Property Rental

Class 2 National Insurance update – self-employed clients missing from HMRC National Insurance database

There has been a long-running issue with Class 2 NIC, which has been tying up significant time for practitioners and causing difficulty for clients. HMRC has now released a note, which is set out below. This is not altogether satisfactory as HMRC considers that it would cost too much to correct the system. This lack of correction could put state pension entitlements of some taxpayers at risk.

Due to a mismatch between HMRC systems, some individuals who are registered for income tax self-assessment and are self-employed have nevertheless been omitted from the National Insurance databank. This has the following consequences:

1. Payments for Class 2 correctly included with self-assessment returns have been refunded and it has not been possible to pay Class 2 until HMRC records have been updated
2. Individuals may have missed a number of year's past contributions and so have an incomplete National Insurance record, potentially putting state pension and welfare benefit entitlement at risk.

A continuing risk area is people who are registered for self-assessment, perhaps due to having property or investment income, but who later move into self-employment or partnership with trading income. In this case it will be necessary to complete form CWF1 notification of self-employment in order to ensure that HMRC's National Insurance database is updated for the change in status.

HMRC's note on this class 2 National Insurance issue is set out below:

"Self Employed – Making sure Class 2 National Insurance is included in Self-Assessment calculations

HMRC have considered concerns raised by Professional Bodies representing self-employed agents in relation to instances where Class 2 National Insurance Contributions (NICs) are not included in a customer's Self-Assessment (SA) calculation, and as result go unpaid.

Paying Class 2 National Insurance is not only a legal requirement, it also protects a person's future entitlement to State Pension.

HMRC have confirmed that most people are correctly registered for SA and Class 2 NICs and do have their Class 2 NICs included in their SA calculation. Where this doesn't happen HMRC have found that, in the overwhelming majority of cases, the underlying reason is that the self-employed person has not correctly registered as self-employed. They have registered for SA (on the CESA system) but not registered for Class 2 NICs (on the NPS system). As it is the NPS system that determines the amount of Class 2 NICs due this prevents Class 2 being included in SA calculations.

While HMRC understands why changes to our IT systems to deliver an automated solution would be desirable any such solution is prohibited by cost and plans in place for the future of the IT systems concerned.

Agents and self-employed people are being urged to correctly follow the existing self-employed registration process by completing the correct registration form, which will ensure that the self-employed are registered on both the NPS and CESA systems. Completing form SA1 only results in registration for Self-Assessment tax and Class 4 NICs whilst completing form CWFI results in registration Self-Assessment tax, Class 4 NICs and Class 2 NICs.

HMRC is keen to make it clearer and easier for the existing process to work and will continue to work with Professional Bodies to help us improve guidance and communications."

Temporary property transaction tax threshold

Within his Summer statement, the Chancellor of the Exchequer announced that in **England and Northern Ireland**, the domestic Stamp Duty Land Tax (SDLT) zero rate threshold would be temporarily raised to £500,000 from £125,000 with effect from and including 8 July 2020 until 31 March 2021. This will affect house purchases all over England and NI but with a likely disproportionate

benefit to those based in the south east of England.

Scotland

This move immediately presented the Scottish Government and the Welsh Assembly with a problem in that they would either have to follow suit with similar moves, or else risk putting their own property markets at a competitive disadvantage.

The following day, it was therefore no surprise to hear that the Scottish Cabinet Secretary for Finance announce a rise in the Land & Buildings Transaction Tax (LBTT) zero rate threshold for domestic property to £250,000. This temporary change is effective from and includes 15 July through to 31 March 2021 under the provisions in SSI 2020/215. The below table sets out the rates for the period in question.

Note that all residential property transactions involving a consideration of £40,000 or more still need to be to be notified to Revenue Scotland - even when no tax is due. Rates for the Additional Dwelling Supplement (ADS) and non-residential LBTT remain unchanged. Revenue Scotland has updated its guidance and systems to reflect the changes.

Wales

The Welsh Government published a written statement from the Minister for Finance on 14 July confirming a temporary increase in the nil-rate band threshold of Land Transaction Tax (LTT) from and including 27 July 2020 until 31 March 2021. Like Scotland, the nil rate band will rise to £250,000. Properties selling for a value in excess of £250,000 will be taxed at the same rates as before. The higher rates for additional dwellings will continue to apply and remain based on the original LTT thresholds.

It will be interesting to see what happens in the property sector over the coming months in terms of domestic and foreign investment – time will tell.

Purchase Price	LBTT rate: 15 July 2020 – 31 March 2021
Up to £250,000	0%
Above £250,000 to £325,000	5%
Above £325,000 to £750,000	10%
Over £750,000	12%

EMPLOYMENT CORNER

IR35 in the Private Sector

Time and Tide

A delay to the amended legislation relating to off-payroll working in the private sector, known as IR35, which was due to be implemented in April 2020 has been pushed back to an April 2021 start date due to Covid-19.

This hasn't deterred the UK Government from continuing to push the provisions through the Commons in the Finance Bill 2020. The Financial Secretary to the Treasury, Jesse Norman, tabled the amendments on 27 April – the same day that the House of Lords published its report calling for a re-think on IR35 - and despite some minor attempts at resistance by some MPs, the provisions have thus far been passed at Report Stage in the Commons after passing through Committee Stage without amendment on 18 June 2020.

An amendment which called for a two-year delay to 2023 to implement the private sector changes brought by a cross-party group of MPs headed by Conservative MP David Davis, was defeated by 317 votes to 254 during Committee stage.

Further stages

After the Report Stage, the third reading is usually considered to be a formality before the Bill passes through to the House of Lords, which is also usually thought of as a further formality. However, the smooth progress thus far through the Commons does not mean that the provisions will not reach a stage when they might be amended before the Bill is passed into law.

Dissent?

In April, the House of Lords Economic Affairs Finance Bill Sub-Committee issued its report - the contribution made by ICAS to both the written and oral evidence was mentioned several times. The report described 'inherent flaws and unfairnesses' in the whole IR35 regime and the report called for a wider review focus to be taken on the whole subject area of employment status, fair work and working arrangements.

Bearing in mind the content and tone of the House of Lords Report, it will be interesting to see how the Bill fares in terms of the IR35 provisions.

CIS – a consultation on tackling abuse in the Construction Industry Scheme (CIS)

A recent consultation on the above subject was extended to 28 August 2020 due to Covid-19.
The consultation documentation makes interesting reading and gives an insight into how HMRC are viewing contractors and subcontractors at this time.

HMRC says: "The CIS permits limited company sub-contractors to set off CIS deductions suffered against in-year employer liabilities. This facility was introduced to ease cash-flow for subcontractor companies unable to secure 'gross payment status' (GPS). However, HMRC is aware that some employers are using this process to falsely reduce their tax liabilities, to create spurious sums to set off against other tax liabilities, or to create false repayments for themselves and/or their sub-contractors.

HMRC is aware that CIS deductions suffered are being claimed:

- by employers not working in construction;
- by sub-contractor employers that are not companies; and
- that exceed the sums recorded as having been withheld for a particular sub-contractor on contractor returns.

In these cases, HMRC asks employers to provide evidence of eligibility and/or evidence of the sums deducted and when appropriate to correct their EPS return accordingly, but where the employer does not do this tax is lost because there is an underpayment of employer liabilities".

HMRC is proposing to extend its powers to enable it to 'correct' returns from April 2021 where it perceives a correction is needed for one of the above reasons. ICAS has pointed out that there could be some difficulties due to the cash flow position of the employer, the tie in with PAYE Real Time information returns, and the effect on the payments and liabilities screen for the PAYE and NICs debt.

Stumbling blocks?

Another proposed power, that is to stop employers from offsetting CIS deductions against their PAYE and NICs liabilities for the remainder of the same tax year, is possibly going too far. In addition, where HMRC asks an employer to provide evidence of eligibility to claim a deduction, it is proposed that the employer will only have 14 days to respond. This could

potentially cause confusion, as the response time for most other issues, appeals etc. is 30 days. ICAS has also asked that where HMRC is aware that the employer has an agent, they write to both parties as a safety net, due to the short timeframe involved.

Points of view?

If you have clients who participate in the CIS, and you wish to contribute to the ICAS response to the consultation from a practical, strategic or policy perspective, please let us have any thoughts by Friday 7 August via tax@icas.com.

CJRS, expenses and benefits

The ICAS CJRS Factsheet contains details of payments of some specific expenses and benefits during Covid-19. However, one which has come into sharp focus recently has been that of employers providing PPE and paying for Covid-19 testing. Eventually, when a vaccine is available, it is likely the issue of vaccinations paid for by employers will also be debated.

Whilst PPE is not classified as a taxable benefit in kind because it is a supply of protective workwear, which is exempt from income tax and NICs under ss.336 and 201 Income Tax (Earnings and Pensions) Act 2003, the payment by an employer for Covid testing kits for employees was initially deemed as a taxable benefit in the first instance. This was simply due to the way in which the regulations covering employer-supplied goods and services, known as the "benefits code", works.

Following representations made by ICAS and other professional bodies, the Treasury Select Committee asked HMRC to remove the guidance it had published on employer-provided Covid testing, and to replace it with statements saying that no employee should suffer a taxable benefit in kind charge because they need to be tested for Covid-19. ICAS has since submitted a number of supplementary queries to HMRC following this change of policy stance, and once further information is obtained, we will publish it on icas.com and include it in our CJRS fact sheet.

COMPANIES HOUSE UPDATES

Companies House has issued several updates to help keep you informed of changes to its services and to help you understand the impact to you and your clients.

Removing address from public register

The fee to remove your home or service address from the public register has been reduced from £55 to £32 as of 1 June 2020. The form to suppress a service address has not changed so you would still send a SR01 form plus the new fee. New software was implemented which reduced the processing time which is reflected in the reduced fee. The new process was fully introduced from 15 January 2020 so if you applied to have information suppressed from 15th January onwards and your application was processed with appropriate payment then you will be eligible for a refund of £23, the difference between the current fee and new fee.

If you are eligible for a refund, HMRC will contact you directly.

The website list all Companies House charges and how they are determined.

Temporary Filing System

Companies House have introduced a temporary online filing service to upload a number of completed forms as they are not able to process paper documents as quickly as they previously could. Read the guidance to find out which documents you can upload using the upload service. The service will continually be updated and include more document types and features.

Restart of voluntary strike off process

The temporary easement measures to suspend voluntary strike off action in response to coronavirus will be lifted from 10 September 2020. From this date, Companies House will restart the process of removing companies form the register. When voluntary strike off action restarts from 10 September, if there are no objections to dissolution and the 2-month period from the publication of the Gazette notice has expired, the company will be struck off. For any applications made from 10 July 2020 up to this date, the easement for voluntary dissolution will not apply.

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