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MTD FOR VAT – THE ESSENTIAL ANSWERS

Now the dust is beginning to settle, what are the MTD for VAT essentials?

Basic requirements

It is becoming clear that the MTD requirements for VAT may not be as far reaching as first envisaged.

The fundamental requirement is that some basic data is held digitally and that there is a digital journey through to submission to HMRC.

At present, only submission of the standard VAT Return 100 nine-box data is required. Transactional data and supplementary information does not need to be submitted to HMRC from April 2019. Requirements may change as MTD for VAT beds in.

How will VAT returns be submitted?

The ‘front door’ into HMRC is changing. The only ‘doorway’ into HMRC for submissions of VAT returns for businesses with a turnover over the £85,000 threshold will be the HMRC API (Application Programming Interface) for VAT.

The ‘old portal’ will remain, but only for voluntary registrations and others exempted from the new rules. This is part of the process of bringing in an entire new computing platform for tax at HMRC

The change applies to the nine-box VAT 100 form. A decision from HMRC is still needed on the future of VAT 21, the Public / charity sector reclaim form currently submitted via the GIANT gateway.

What is the minimum record keeping requirement?

MTD for VAT does not require integrated digital / cloud accounting.

Specific information must be held digitally, but this can be held in a spreadsheet. VAT notice 700/22 has the details, which fall short of recording all details normally found in business records.

The basic information which must be kept digitally is:

1) Designatory data -
   - your business name
   - the address of your principal place of business
   - your VAT registration number
   - any VAT accounting schemes that you use

2) For supplies made -
   - time of supply (tax point)
   - value of the supply (net value excluding VAT)
   - rate of VAT charged

3) For supplies received -
   - time of supply (tax point)
   - value of the supply
   - amount of input tax that you will claim

There does not appear to be any requirement to record the supplier or details of the goods electronically, only the amount, VAT rate and time of supply (per para 3.3).

The other details are needed under the normal VAT rules, but could be recorded in non-digital form (see VAT notice 700/21 for overall recording requirements).

What are the minimum software requirements?

Businesses will need software which can communicate with the HMRC API. This could be MTD for VAT enabled record keeping software, or simply a software 'bridge' between business VAT data in a spreadsheet and the HMRC API.

Alternatively, their accountant could submit the figures on their behalf. The key decision is whether submission will be from a spreadsheet or from accounting / tax software.

Basic Software Options

HMRC software suppliers list has details of software providers who are in the VAT MTD pilot and have tested their products, but we await a more user friendly version showing software type and functionality.

In the meanwhile, a number of organisations are offering a low-cost (under £100 a year per business) product for submission from spreadsheets.

One example is from PwC which should be on the market by the end of September. See PwC overview and PwC demonstration.

Data capture and transfer

Transfer of data must be digital, from the point of entry into the mandatory digital records that the business must keep onwards into HMRC's system. But this does not rule out prior recording in a different form, so long as the mandatory data is entered digitally and the journey from then on is digital.

For example, it appears to be acceptable for a multi-site retail business to record daily branch takings manually and phone the figure through to head office for entry into digital records. Once entered in the digital records, the onward journey must be digital

Digital 'links' can be one-way, for example by linking spreadsheet cells, emailing data files, and file upload. Manual intervention is limited to making corrections, scheme adjustments, and selecting cells to link to. Copy and paste / cut and paste are not acceptable.

Conclusion

Even where the longer term solution is a new record keeping system, submission from spreadsheet may be attractive as a stop-gap method to ensure compliance from April 2019.

Changes in record keeping may be manageable, given that many businesses already collate the nine-box VAT information in a spreadsheet and the soft landing for penalties means that digital links will not be penalised during the first 12 months.

PENSIONS SORP 2018

A revised Pensions Statement of Recommended Practice (SORP) was published in July by The Pensions Research Accountants Group (PRAG). The Pensions SORP 2018 is applicable for periods commencing on or after 1 January 2019, although earlier adoption is possible.

The changes to the SORP take account of recent changes to Financial Reporting Standard (FRS) 102 and pension legislation. In relation to FRS 102, the Financial Reporting Council (FRC) has made amendments to FRS 102 since the Pensions SORP 2015 was published. These changes arose from experience gained in the implementation of the standard and from the FRC's first triennial review of the standard.

There have also been changes to relevant pension legislation, mainly the withdrawal of detailed investment disclosure requirements. However there have not been any significant industry developments which impact on pension scheme financial reporting and implementation experience of SORP 2015 has not given rise to any significant issues.

While SORP 2018 is not significantly different from SORP 2015, trustees' and accounts preparers' attention is drawn to the following.

Investments

The key change is that the fair value hierarchy disclosure has been amended. This includes the removal of the transitional option which allowed the use of categories a, b and c. The requirement is now to use a level 1, 2 and 3 hierarchy.

Additionally, further hierarchy guidance has been included based on the Investment Disclosure Guidance issued jointly by the Investment Association and PRAG in 2016.

There has been no change to the overall approach to fair value determination and the SORP continues to refer to categories in the context of fair

value, to ensure no change in the way fair value is determined.

The revised SORP also clarifies that investment holdings in pooled investment vehicles are included in the 5% concentration disclosure. The SORP also confirms the requirement to disclose the legal nature of pooled arrangements and the trustees' approach to managing the direct credit risk. Additional, guidance on common investment funds is also provided.

Comparative information

The only two exceptions to the requirement for full comparatives to be shown for all figures within the accounts are:

(i) the investment movement table; and
(ii) the derivatives disclosures, although comparative totals are required.

Further disclosure is also now required where for practical reasons, full comparative information for hybrid schemes is not given for all amounts in the Fund Account.

Benefits

Where there are significant benefits pending at the year-end, disclosures are required. A member is liable for tax where their benefit exceeds the Lifetime Allowance or Annual Allowance. This personal liability can be settled by the scheme on behalf of the member and subsequently deducted from the benefit when paid. The payment can therefore either be:

- expensed in the accounts, as the cost is subsequently paid through reduced benefit payments; or
- recorded in the accounts as a debtor and settled by the member when their benefit is paid.

Small schemes

The SORP does not provide any exemptions for small schemes as are permitted under Section 1A of FRS 102. PRAG believes that it would be discriminatory against members of small schemes if the requirements differed from larger schemes.

Copies of SORP 2018

The updated SORP and the Investment Disclosure Guidance is available to PRAG members at www.prag.org.uk

Copies of the SORP can also be purchased from Croner-I Ltd for £40, by phoning 0844 561 8166 or by emailing client.experience@croneri.co.uk.

PRAG GUIDANCE ON GOING CONCERN FOR PENSION SCHEME ACCOUNTS

The Pensions Research Accountancy Group (PRAG) has published guidance to assist trustees and auditors to deal with the raised profile of the concept of going concern.

The Going Concern guidance should be read in conjunction with the Pensions SORP 2018, which applies to accounting periods commencing, on or after, 1 January 2019. Scheme auditors should also refer to material on going concern in Practice Note 15 (Revised): The audit of occupational pension schemes in the UK (November 2017).
In most cases it is envisaged that the going concern assessment will be straightforward and therefore references to going concern in the scheme auditor's report will be uncontroversial. Inevitably, however, there will be circumstances where the going concern assessment will be more challenging and the content of the auditor's report more sensitive.

Key points

Statement of trustees' responsibilities
The trustees should now make a statement about going concern in their Statement of trustees' responsibilities. An illustrative wording is included in Practice Note 15 (Revised).

Although there is no formal change to the responsibilities of trustees in relation to going concern, the additional reference in the Statement is intended to raise the profile of the concept of going concern and the related responsibilities of the trustees.

Scheme auditors should check that the Statement of trustees' responsibilities has been updated to make reference to going concern.

Trustee assessment of going concern
Trustees should consider how they will formally document their assessment of going concern and any material

uncertainties in relation to going concern. Trustees, in performing their assessment, are required, under FRS 102 and the Pensions SORP 2018, to assess the scheme's ability to continue as a going concern for a period of at least twelve months from the date the accounts are authorised for issue.

In making their assessment, trustees should consider information available to them in the ordinary course of running the scheme. Considerations for scheme trustees could include:

1. Has a decision been taken by the trustees to wind up the scheme?
2. Has the sponsoring employer served notice to wind up the scheme?
2. Has a formal decision been made for an insurer to buy out the scheme's liabilities?
3. Have any trigger events occurred that cause a wind up under the trust deed and scheme rules?
4. Are there concerns over the strength of the sponsoring employer's covenant?

    - Are the results of an employer covenant review poor?
    - Is the employer experiencing financial difficulties which is giving concerns about its ability to pay future contributions? Financial difficulties could be indicated by banking facilities being renegotiated; where there are profitability issues; where this is a loss of key customers; or where there are cash flow issues. For listed companies, there may be profit warnings. There also may be disclosures around going concern issues in the sponsoring employer's latest statutory accounts.
    - Are there any notifiable events to The Pensions Regulator?
    - Has the employer experienced an insolvency event?

5. Scheme funding
    - For defined benefit schemes, has the triennial actuarial valuation been completed in time and a recovery plan put in place?
    - Are contributions payments up to date or are there any significant late contributions or a history of significant late contributions?

6. Are there contingent assets in place?
7. Does another group company provide financial support?
8. Is the scheme in the PPF (Pension Protection Fund) assessment period?
9. Has The Pensions Regulator issued a freezing order?
10. Has The Pensions Regulator ordered the scheme to be wound up?

The Going Concern guidance does not provide an exhaustive list of considerations and there may be other matters specific to the scheme. Therefore, consideration of the facts and circumstances faced by each scheme is crucial. The existence of any of the above conditions does not necessarily mean that the scheme accounts cannot be prepared on a going concern basis – it is for the trustees to assess what the impact is on the scheme's ability to continue as a going concern.

The trustees should consider documenting their assessment in a Board paper and formally minuting the results of the assessment.

Scheme auditors should consider the trustees' assessment of going concern and assess the implications for their auditor's report.

The auditor's report

Scheme auditors should comply with the requirements of ISA 700 (UK) Forming an Opinion and Reporting on Financial Statements (Revised June 2016) and ISA 570 (UK) Going Concern (Revised June 2016) in relation to going concern matters when preparing their auditor's report.

There will be instances where the accounts are prepared on a cessation basis or there is a material uncertainty as to whether a pension scheme is a going concern. In such instances, the auditor will draw attention in their auditor's report to these facts and any disclosures made in the pensions scheme's annual report and accounts.

In circumstances where the scheme accounts are prepared on the cessation basis, the key consideration will usually be around accounts disclosures as, in most cases, there will not be an impact on scheme assets which are valued at fair value.

Written representations

Scheme auditors should comply with the requirements of ISA 570(UK) Going Concern (Revised June 2016) in obtaining written representations from the scheme trustees' about going concern.

Paragraph 16e) of the ISA 570 (UK) states that:

"If events or conditions have been identified that may cast significant doubt on the entity's ability to continue as a going concern, the auditor shall obtain sufficient appropriate audit evidence to determine whether or not a material uncertainty exists related to events or conditions that may cast significant doubt on the entity's ability to continue as a going concern (hereinafter referred to as "material uncertainty") through performing additional audit procedures, including consideration of mitigating factors. These procedures shall include (Ref: Para. A16): Requesting written representations from management and, where appropriate, those charged with governance, regarding their plans for future actions and the feasibility of these plans. (Ref: Para A20)."

The Going Concern guidance is available to members of PRAG from www.prag.co.uk

AUDIT TENDERS FOR CHARITIES – INAPPROPRIATE INFORMATION REQUEST

ICAS has recently become aware that some charities, when tendering their audits, have requested that audit firms provide certain information, the nature of which raises ethical and legal concerns. As part of an audit tender questionnaire, audit firms are being asked to provide information on how much the firm intends to contribute to the charity's activities each year in exchange for opportunities to promote the firm through the charity, should the firm be awarded the statutory audit. The audit firm's response to this question is then scored as part of the overall evaluation of the tender.

ICAS has alerted both the Office of the Scottish Charity Regulator (OSCR) and the Charity Commission for England and Wales about this issue.

Audit firms are advised that they:

- Must refuse to make a financial contribution to a charity's activities in exchange for the charity promoting the firm at any point in their relationship.
- Must ensure that no charity audit client advertises the firm in its promotional material.
- Should inform the charity that this practice is not acceptable.

ICAS also strongly recommends that charities remove any requests from audit tender questionnaires or similar documentation which indicate that a funding contribution from the audit firm:

- Will contribute to its overall tender score; and/or
- Can be made in exchange for promotional opportunities being made available to the audit firm.

In addition, charities should not make requests in their audit tender questionnaires or impose conditions as part of the tender process which:

- Are contrary to the professional or ethical requirements placed on auditors;
- Could be perceived as limiting fair competition;
- Could create conflicts of interest (actual or perceived) in the selection process; and
- May otherwise be contrary to the law, including the statutory duties of the trustees. In the case of charitable companies, the trustees are the directors under company law and must also comply with the statutory duties of directors in the Companies Act 2006.

ICAS has published a good practice guide 'Selecting your auditor' (April 2018) for third sector and not-for-profit bodies. The guide explains the tender process and professional and ethical requirements which apply to the auditor, including requirements around auditor independence.

Specific considerations for audit firms: the ICAS Code of Ethics and the FRC's Ethical Standard

All CAs are required to comply with the five fundamental ethics principles within the ICAS Code of Ethics. One of the fundamental ethics principles being "Objectivity - To not allow bias, conflict of interest or undue influence of others to override professional or business judgements."

The Code requires CAs to use their professional judgement to identify and evaluate threats to compliance with the fundamental principles, and then apply safeguards to eliminate the threats, or reduce them to an acceptable level.

Audit firms must also adhere to the requirements within the Financial Reporting Council's (FRC) Ethical Standard 2016 in order to be able to demonstrate their integrity, objectivity and independence.

Accepting a charity audit client's offer to market the audit firm in its promotional material is in contravention of the FRC's Ethical Standard.

Section 2 of the FRC's Ethical Standard - "Financial, Business, Employment and Personal Relationships" - provides a specific prohibition against an audit client marketing the audit firm as such a relationship is an unsurmountable threat to auditor independence.

Audit firms should specifically refer to Section 2 of the FRC's Ethical Standard, paragraphs 2.27 and 2.28.

ACCOUNTING AND AUDITING QUERIES

COMPANIES HOUSE FILINGS – MEDIUM SIZED COMPANY ACCOUNTS

Query

Are there still exemptions for medium sized companies to combine certain profit and loss account items, for example Cost of sales, Gross profit or loss and Other operating income, when filing their financial statements at Companies House?

Response

For accounting periods beginning on or after 1 January 2016, there are no longer any filing exemptions available to medium-sized companies - medium sized companies must file their full accounts at Companies House.

Regulation 4 (3) (a) of The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 previously permitted medium-sized companies to choose to file a slightly reduced version of the profit and loss account

However, at the same time as it withdrew the option for small companies to file abbreviated accounts at Companies House, The Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2015 (SI 2015/980) withdrew the filing exemption for medium sized companies.

COMPANIES HOUSE FILINGS – FILING AMENDED ACCOUNTS

Query

My firm recently filed audited accounts for a company that prepares its accounts under FRS 102. The company has asked whether it would be possible to submit amended accounts so that they can make a narrative change to one of the notes to the accounts. Please note that none of the numbers in the primary statements or accompanying notes will change.

Can you advise whether this is possible and what disclosures would be required?

Response

It is possible to submit amended or corrected accounts with Companies House. The amended accounts must be sent to Companies House on paper and must be prepared for the same period as the original accounts.

In addition, you must clearly say in your new accounts that they:

- replace the original accounts;
- are now the statutory accounts;
- are prepared as they were at the date of the original accounts.

You must also write 'amended' on the front of the accounts so that Companies House know your accounts are not duplicates.

Please note that your original accounts will also remain on file at Companies House. The only way you can ensure that the original accounts are removed from the company's records is to seek a court order which grants their removal. However, this is likely to require legal advice therefore your client will need to consider whether it is worthwhile going down this route.

If you only want to amend one

part of your accounts, then you should send a note saying

what has been changed. This note must be signed by a director and filed with a copy of the original accounts.

Companies House has produced some helpful guidance on submitting amended accounts that details all of the above.

FRS102 – FAIR VALUE HEDGE ACCOUNTING

Query

My client is a medium-sized company with a large fleet of vehicles - they are considering entering into an agreement to hedge the risk of future fuel price increases by entering into a 24 month fixed price supply agreement for a specified volume of fuel.

The company applies FRS 102 and my reading of the standard suggests that this transaction will require to be accounted for under the fair value hedge accounting provisions of section 12. My understanding is that the agreement to purchase the fuel is an unrecognised firm commitment with a party external to the reporting entity attributable to a particular risk that will affect the profit and loss account and the hedged item includes cashflow and fair value changes above or below a specified price which can be reliably measured.

Para 12.20 of FRS 102 states that the gain/loss on the hedging instrument is recognised in the profit and loss account and that the cumulative gain/loss on the hedged item is included as an asset/liability.

Is my understanding of this correct?

Response

It is important to note that hedge accounting under FRS 102 is optional – it does not need to be applied because an entity is undertaking economic hedging, and can only be applied where the relevant requirements are met under section 12.

The basic conditions for hedge accounting are as follows:

- The hedging relationship consists only of a hedging instrument and a hedged item
- The hedging relationship is consistent with the entity's risk management objectives for undertaking hedges
- There is an economic relationship between the hedged item and hedging instrument
- The hedging relationship has been documented
- The entity has determined and documented causes of hedge ineffectiveness.

From the information you have provided, it is not clear that the conditions for hedge accounting have been met:

- The contract/agreement to purchase the fuel at a specified price needs to be assessed against FRS102.12.5 to determine if it is a financial instrument – 'own use' contracts to buy or sell non-financial items are not financial instruments.
- If this does not fall to be treated as a financial instrument, it cannot be designated as a hedging instrument.
- It is not clear what the hedged item is – this must be a recognised asset or liability or an unrecognised firm commitment or highly probable future transaction.

Therefore, the above suggests a more straightforward accounting treatment of the liability/expense for the fuel purchase can be adopted. Depending on the nature of the arrangement for the supply of the fuel, if there is a contractual obligation, then a liability would be recognised for the full amount, or alternatively, the expense would be recognised on receipt of the fuel.

FRS 102 TRIENNIAL REVIEW AMENDMENTS – WHAT HAS CHANGED?

The Financial Reporting Council (FRC) published incremental improvements and clarifications to FRS 102 in December 2017, arising from the first triennial review of the standard and feedback received from stakeholders. Subsequently in March 2018 a revised edition of FRS 102 (along with updated versions of FRS 100, 101, 103, 104 and 105) was issued which contains the triennial review amendments along with all other changes made since 2015.

The purpose of this article is to highlight some of the main changes in the new version of FRS 102 and when these can be applied.

Loans from directors

In May 2017, the FRC introduced an optional exemption for small entities to account for loans received from a director at below market rate or zero interest rate at transaction price. The triennial review amendments have made this exemption permanent for small entities accounting for loans from directors and close family groups of directors (provided that at least one of the family group is a shareholder). Previously under FRS 102, the accounting for such loans was problematic for many small entities, as they were required to be measured at the present value of future payments discounted at a market rate of interest for a similar loan. For many small entities, it was very difficult to determine an appropriate interest rate, therefore this exemption will be welcomed. Relief has also been extended, on a similar basis, to small LLPs. It is worth noting that the FRC resisted calls to further extend this relief as was requested by some stakeholders i.e. it does not apply to intra-group loans, nor to loans from entities to directors.

Investment properties including those rented to another group entity

Prior to the amendments, FRS 102 contained a limited number of undue cost or effort exemptions, including one for the measurement of investment properties. However, there was concern that these were being applied inconsistently so they have all been removed. Instead the FRC has introduced accounting policy options where relevant.

One such option has been introduced for investment properties rented to another group entity, permitting these to be measured at cost or fair value. This remedies a complication in the original version of FRS 102 which required such properties to be included in the individual company balance sheet at fair value, but in the group balance sheet at cost (as it is an item of property, plant & equipment from the group perspective). An exception to retrospective application is permitted for this amendment, allowing a revaluation to be treated as deemed cost on transition to the new accounting treatment.

Cash flow statement – net debt reconciliation

For entities that are required, or choose, to present a statement of cash flows under FRS 102 (small entities are not required to prepare a cash flow statement, whether or not they are using section 1A), a new requirement has been added to section 7 requiring the disclosure of a net debt reconciliation. This amendment was prompted by the 2016 change to IAS 7 which introduced the requirement to provide disclosures that enable users of financial statements to evaluate changes in liabilities arising from financing activities, including both changes arising from cash flows and non-cash changes.

Instead of mirroring the IFRS requirements, the FRC decided to re-instate the net debt reconciliation that was required in old UK GAAP under FRS 1, as this provides better information and will be familiar to UK entities.

Intangible assets acquired in a business combination

The FRC received feedback from stakeholders that they had encountered practical difficulties in applying the requirements of section 18 of FRS 102, which required the acquirer in a business combination to separately identify more intangible assets acquired than was previously required under FRS 10. As a result the FRC has amended the requirements in paragraph 18.8 so that entities are only required to recognise intangible assets separately from goodwill if they:

(a) meet the recognition criteria for intangible assets generally;
(b) arise from contractual or other legal rights; and
(c) are separable (i.e. capable of being separated or divided from the entity and sold, transferred, licensed, rented or exchanged either individually or together with a related contract, asset or liability).

This means that going forward fewer intangibles are required to recognised separately on acquisitions. Unlike IFRS, under FRS 102 goodwill also requires to be amortised, therefore regardless of whether intangibles are recognised separately or treated as part of goodwill, they will be amortised.

Definition of financial instruments

The original version of FRS 102 included (in section 11) a list of financial instruments that were classified as 'basic'. For some of these financial instruments, the classification as 'basic' or 'other' was further dependent on meeting a list of prescriptive conditions; for debt instruments these were set out in paragraph 11.9**.** The FRC received feedback from stakeholders that these conditions were causing implementation problems – therefore, as a result, a principles-based description of a 'basic' financial instrument has been added at paragraph 11.9A. Debt instruments that do not meet the detailed conditions in paragraph 11.9 can now be treated as basic if they meet the principles-based description. In addition, new examples have been added to help determine if an instrument is basic. These changes should assist stakeholders by making clearer the distinction between basic and complex financial instruments.

Implementation

The Triennial Review amendments must be applied for accounting periods beginning on or after 1 January 2019. Early application is permitted provided that all of the triennial review amendments are applied at the same time, except that the following amendments can be early adopted separately:

- Directors loans exemption
- Gift aid (please see the section in the following FRS 105 article).

When an entity early adopts the triennial review amendments, it should disclose the fact in the accounts.

AMENDMENTS TO FRS 105 - THE FINANCIAL REPORTING STANDARD APPLICABLE TO THE MICRO-ENTITIES REGIME

In March 2016, amendments were made to update Financial Reporting Standard (FRS) 105 'The Financial Reporting Standard applicable to the Micro-entities Regime. These amendments were in line with changes in UK legislation which extended the micro-entities regime to limited liability partnerships (LLPs) and qualifying partnerships. These amendments simply extended the scope of FRS 105 (with some consequential amendments) consistently with the change in legislation. The definition of a micro-entity and other related glossary terms were updated to reflect the extension of the micro-entities to include LLPs and qualifying partnerships.

The presentation and disclosure requirements applicable to LLPs and qualifying partnerships that adopt the micro-entities regime are almost identical to those applicable to the financial statements of companies that are micro-entities. Where there are differences these were reflected in amendments to FRS 105. The recognition and measurement requirements of FRS 105 were assessed to be suitable for LLPs and qualifying partnerships applying the micro-entities regime, and therefore no amendments were made to the recognition and measurement requirements of FRS 105.

Triennial Review 2017

Subsequently, in December 2017, FRS 105 was amended by the Financial Reporting Council (FRC) as part of the Triennial Review 2017. The majority of the amendments were consequential in nature to ensure FRS 105 maintained consistency with FRS 102 'The Financial Reporting Standard Applicable in the UK and Republic of Ireland'. However, other amendments were also made to align the standard with the legal frameworks in the UK and Republic of Ireland. These which are reflected in the latest version of FRS 105 (March 2018) are as follows:

UK company law disclosures for the micro-entities regime

Amendments were made to FRS 105 to ensure further alignment with the company law disclosures for the micro-entities regime. The legal requirement to make these disclosures was effective for accounting periods beginning on or after 1 January 2016 in the UK. However, because an effective date of 1 January 2016 in FRS 105 would be retrospective, these amendments are applicable to accounting periods beginning on or after 1 January 2017, but a footnote needs to be included to refer to the legal effective date.

Paragraph 3.8 of FRS 105 notes that for some of the disclosure requirements, disclosure is not required if the information resulting from that disclosure is not material. When no disclosure is provided on the basis that the resulting information is not material, a micro-entity is not required to state that fact.

Micro-entities in the Republic of Ireland

In June 2017, the Republic of Ireland implemented the EU Accounting Directive. The requirements are effective for accounting periods beginning on or after 1 January 2017, but early adoption is permitted for accounting periods beginning on or after 1 January 2015 provided that the financial statements have not yet been approved.

As a result, the micro-entities regime, as reflected in FRS 105, became available in the Republic of Ireland. However, there are some differences in the disclosure requirements applicable in the UK and the Republic of Ireland. Appendix B to Section 6 of FRS 105 was inserted reflecting the disclosure requirements for micro-entities in the Republic of Ireland.

FRS 105 does not contain accounting requirements specific to public benefit entities; micro-entities in Ireland that are charities will need to have regard to any specific requirements under the Charities Act 2009.

Consequential amendments

The main consequential amendments made to FRS 105, for consistency with FRS 102, are noted below.

Fair value measurement guidance

Minor amendments were made to the fair value measurement guidance in FRS 102 to emphasise that it is a methodology and to give further practical guidance and FRS 105 was updated accordingly.

Debt for equity swaps

FRS 102 was amended to include explicit guidance on how debt for equity swaps should be accounted for following feedback from stakeholders that when these transactions occur, they can be significant. FRS 105 was amended for consistency, by the insertion of paragraph 17.8A. The substance of this change is that, in specific circumstances where a financial liability is extinguished (partially or if full) by the issue of equity instruments, a micro-entity is prohibited from measuring equity instruments at the fair value of the cash or other resources received or receivable, net of transaction costs. Instead in such circumstances, there is no gain or loss recognised in profit or loss as the result of such a transaction.

Revenue – agent and principal

Amendments were made to include guidance on how to determine whether an entity is acting as an agent or a principal in order to improve clarity. This additional guidance is consistent with FRS 102 and was based on guidance included in International Accounting Standard (IAS) 18 ‘Revenue’.

- Determining whether a micro-entity is acting as a principal or as an agent requires judgement and consideration of all relevant facts and circumstances.
- A micro-entity is acting as a principal when it has exposure to the significant risks and rewards associated with the sale of goods or the rendering of services. Features that indicate this include:

  (a) the micro-entity has the primary responsibility for providing the goods or services to the customer or for fulfilling the order, for example by being responsible for the acceptability of the products or services ordered or purchased by the customer;
  (b) the micro-entity has inventory risk before or after the customer order, during shipping or on return;
  (c) the micro-entity has latitude in establishing prices, either directly or indirectly, for example by providing additional goods or services; and
  (d) the micro-entity bears the customer’s credit risk for the amount receivable from the customer.

- A micro-entity is acting as an agent when it does not have exposure to the significant risks and rewards associated with the sale of goods or the rendering of services e.g. if the amount the micro-entity earns is predetermined, being either a fixed fee per transaction or a stated percentage of the amount billed to the customer.
- When a micro-entity has entered into a contract as an undisclosed agent, it is normally acting as principal.
- The amounts collected by an agent on behalf of a principal are not revenue. Instead, revenue is the amount of commission.

Gift aid

The FRC was made aware of significant differences in accounting treatment arising in practice in relation to the accounting for payments made, or expected to be made, by a subsidiary to its charitable parent that will qualify for gift aid . This includes charitable parents that are exempt charities, e.g. they are not regulated by the Charity Commission, but have another principal regulator. Although such payments are donations for tax purposes, they are a distribution from the entity to its owners for company law purposes (see ICAEW Technical release TECH 16/14BL REVISED Guidance on donations by a company to its parent charity).

Therefore, an expected gift aid payment shall not be accrued

unless a legal obligation to make the payment exists at the reporting date. A board decision to make a gift aid payment to a parent charity, that has been taken prior to the reporting date, is not sufficient to create a legal obligation. An amendment was made to allow a pragmatic exception that would permit the tax effects of the gift aid payment to be taken into account when it is probable that the gift aid payment will be made within nine months of the reporting date.

In addition, an amendment was made to clarify that the tax effects of distributions to owners shall be presented in the profit or loss account, rather than the same component as the underlying transaction. This is because when there is a tax effect arising from the distribution, it affects taxable profits.

Editorial amendments

Various editorial amendments were made to FRS 102 which were also made to FRS 105. These editorial amendments were not intended to change the requirements of the standards, but improve drafting, usability and update external cross-references. For example, they included:

(a) improving the consistency of the scope sections throughout the standard to make it clearer what is within and outside the scope of each section;
(b) removing defined terms from the main body of the standard to reduce its length, as defined terms are set out in Appendix I Glossary; and
(c) improving the consistency of terminology and language in some areas.

BUSINESS PROPERTY RELIEF – REPLACEMENT PROPERTY

Inheritance Tax Business Property Relief is generally available at 100% in respect of certain lifetime gifts and assets held at death. This can be a very valuable relief.

One of the qualifying conditions is that it is necessary to have held the asset for at least two years. This can be an issue where, for example, an individual has disposed of shares in an unquoted trading company and subsequently acquires shares in another unquoted trading company, but dies before he has held the new shares for the requisite two year period.

Section 107 IHTA 1984 “Replacements” may allow relief in the above circumstances. Section 107 allows the new asset to satisfy the two year ownership requirement if it replaced other property and it and the other property were owned by the transferor for periods which together comprised at least two years falling within the five years immediately preceding the transfer of value.

Where an individual dies owning property which would have qualified for Business Property Relief, but for not having met the two year ownership requirement, then the Replacement Property provisions may allow relief.

It is not necessary for the entire proceeds of the old assets to be expended on replacement assets for some element of replacement relief to be available. For example, if an individual disposes of shares in an unquoted trading company for £5 million; and expends £2 million on shares in a new unquoted trading company; and dies 6 months later; then Business Property Relief will be restricted to the £2 million value of the replacement assets.

Where an individual gifts assets qualifying for Business Property Relief in his lifetime but does not survive seven years, then potentially the value of the assets gifted is subject to inheritance tax. Where the transferee still retains the assets at the date of the transferor’s death, then Business Property Relief would be available.

If the transferee has disposed of the assets, then Business Property Relief will not be available unless the Replacement Property provisions contained in Section 113B apply.

Section 113B (1) applies where the transferee has disposed of all of part of the original property before the death of the transferor, and the *whole* of the consideration received by him for the disposal has been applied by him in acquiring replacement property.

Section 113B does not apply unless the replacement property is acquired, or a binding contract for its acquisition is entered into, within three years or such longer period as HMRC may allow, after the disposal of the original property and the disposal and acquisition are both made in transactions at arm’s length, or on terms such as might be expected to be included in a transaction at arm’s length.

Note the important difference between Section 113B and Section 107 in that, if relief is to be available under Section 113B, it is necessary for the *entire consideration* received for the disposal of the original property to be expended on replacement property. Therefore, for example, if an individual receives a gift of £1 million of shares in an unquoted trading company, sells them and at the time of the transferor's death within seven years of the original gift, has expended only £800,000 on replacement property, no business property relief will be available.

DO PROPOSED CHANGES TO LAND AND BUILDINGS TRANSACTIONS TAX LAW GO FAR ENOUGH?

Three years ago, on 1 April 2015, Land and Buildings Transaction Tax (LBTT) replaced Stamp Duty Land Tax (SDLT) on purchases of residential and commercial property and leases of non-residential property in Scotland.

The LBTT legislation has proved influential, trailblazing a new 'progressive' rate structure in place of the old 'slab' structure of SDLT, but it has been found wanting in a number of respects. Revenue Scotland's new LBTT Project Board is overseeing some key areas of work during 2018, but more changes are needed.

Additional dwelling supplement

Since 1 April 2016 an 'additional amount' – a 3% additional dwelling supplement (ADS) – has been payable when a buyer liable to LBTT owns two or more dwellings, except in certain cases where they are replacing their only or main residence.

This supplement was regarded as unfair in some circumstances, and on 30 June 2017 the *Land and Buildings Transaction Tax (Additional Amount-Second Homes Main Residence Relief (Scotland) Order 2017 (SSI 2017/233)* introduced relief from ADS where spouses, civil partners or co-habitants jointly buy a dwelling but the dwelling being replaced is owned by only one of them. It also provided for repayment of ADS where, within 18 months of spouses, civil partners or cohabitants jointly acquiring a dwelling to be used as their main residence and paying ADS, one or other of the joint buyers disposes of a dwelling that has been used by both of them as their main residence.

SSI 2017/233, being secondary legislation, could not be applied retrospectively. Accordingly, the *Land and Buildings Transaction Tax (Relief from Additional Amount) (Scotland) Bill* now before the Holyrood Parliament, proposes that retrospective effect be given to the new reliefs back to the inception of ADS. ICAS has welcomed this Bill.

Commercial leases

The rules for charging LBTT on the grant of a new lease are broadly similar to those for SDLT, but with one fundamental difference. SDLT liability on rent payable under a lease is finally determined by reference to the rent payable for the first five years. By contrast, the tenant under a lease in Scotland must review the LBTT liability, not only on assignation or termination of the lease but also every three years throughout its term, to self assess whether further tax is due.

Whether or not there have been any changes in rents or other lease terms, a three-yearly return must be submitted at the end of lease years 3, 6, 9 etc – in each case within 30 days after the relevant anniversary. Any additional LBTT due must be paid when the return is lodged. In some instances a refund may be due. As LBTT was introduced in April 2015, the first three-yearly returns are becoming due from April 2018 onwards.

Such returns may be submitted online using the Scottish Electronic Tax System (SETS) for solicitors and agents or a new lease review return for tenants, or using paper forms. Further information is available on the Revenue Scotland website.

This requirement to submit three-yearly returns will be onerous for some tenants, particularly those with multiple leases. Penalties may be charged for failure to submit a return, and interest and penalties may arise on LBTT paid late.

LBTT relief for first-time buyers

For SDLT, a relief for first-time buyers existed temporarily from 25 March 2010 until 24 March 2012. Now a new relief for first-time buyers paying no more than £500,000 has been introduced by *Finance Act 2018* with effect from 22 November 2017, offering exemption from SDLT on consideration up to £300,000 and a rate of 5% on any remaining

consideration up to £500,000. On a qualifying purchase this relief can reduce SDLT by up to £5,000, but beware of the cliff edge: an extra £5,000 of tax becomes payable when the consideration exceeds £500,000, even if only by £1!

Faced with the new relief for first-time buyers south of the border, the Scottish Government committed to introducing such a relief in Scotland from June 2018 and has consulted on this. At present LBTT is payable on the purchase of a dwelling for more than £145,000, and the proposed relief would raise this threshold to £175,000 for first-time buyers – saving them tax of up to £600.

This LBTT consultation has now closed. The ICAS response questions the need for the new relief, arguing that it may well simply increase the price of a first-time purchase by up to £600. It also asks whether the added complexity of the relief is justified.

Other ICAS concerns

Group relief

Last October ICAS submitted representations drawing attention to aspects of LBTT law which produce commercial outcomes that differ from those under the SDLT regime, placing Scotland at a competitive disadvantage compared with the rest of the UK

The Scottish Government was asked to clarify its policy regarding the availability of LBTT group relief where shares in a subsidiary company are pledged as part of security arrangements. Unlike SDLT, and Land Transaction Tax (LTT) in Wales, LBTT law doesn't include provisions to prevent such security arrangements from denying group relief.

Similarly, where a property is transferred out of a trading company to another group company in a demerger prior to disposal of the trading company, HMRC would grant relief from SDLT but Revenue Scotland would not grant relief from LBTT.

Thankfully the Scottish Government listened, and conducted a consultation on LBTT group relief which closed on 13 April. The outcome of this is now awaited.

Pension scheme transfers

Commercial property transactions relating to pension scheme transfers have always been outside the scope of SDLT but within the scope of LBTT. This could have discouraged investment in commercial property in Scotland, with wider implications for the Scottish economy.

Following representations, Revenue Scotland has agreed that debt in the form of a liability assumed to pay benefits to pension scheme beneficiaries will not generally be considered as chargeable consideration in relation to such transactions. However, any consideration given in the form of money or money's worth for the transfer of the properties will be chargeable to LBTT.

Seeding reliefs

For SDLT purposes, specialist seeding reliefs were introduced in 2016 to facilitate onshore collective investment in property through Property Authorised Investment Funds (PAIFs) and Co-ownership Authorised Contractual Schemes (COACS). The absence of similar reliefs for LBTT means that Scottish properties within a UK portfolio may be excluded from transfers into these collective investment regimes.

LBTT changes

The piecemeal way LBTT law is amended raises concerns that there is no regular procedure for updating and maintaining Scottish taxes. At Westminster, an annual Finance Act provides a mechanism for amending UK tax law as required. That may not be precisely what is needed at Holyrood, but there should certainly be a regular parliamentary process for updating and amending devolved taxes when necessary.

Copycat antics

Fiscal devolution promised us a brave new world, but it seems unclear what part LBTT has to play in delivering this.

Initially modelled very closely on the SDLT legislation, LBTT was launched with a fanfare when it differentiated itself from SDLT by adopting a progressive rate structure. This was welcomed so much that SDLT was subsequently amended to become a progressive charge.

In November 2015, when the UK Government proposed a 3% supplement to SDLT on second homes, the Scottish Government followed suit with ADS. Now the UK Government has introduced a new SDLT relief for first-time buyers, and the Scottish Government intends to mirror this for LBTT – but on a more meagre scale.

If both governments are so intent on keeping their tax rules in step, is the costly process of administering similar but subtly different taxes benefiting society, or is it simply imposing unwanted complications and costs on a confused taxpaying public?

INCOME TAX POSITION OF INVESTMENT BOND HELD IN TRUST AT THE DATE OF DEATH OF SETTLOR

The taxation position of investment bonds can be complex. Gains arising on encashment, or partial encashment, are not subject to capital gains tax but are instead subject to income tax.

Top slicing relief may be available. The gain is divided by the number of complete years during which the bond has existed and income tax computed by adding the resultant figure to the tax payer's other income. The resultant income tax liability is then multiplied by the number of complete years. The effect of this can be to remove a substantial amount of the gain from higher or additional rate income tax and perhaps even basic rate if the tax payer has a particularly low income.

There are also differences between offshore bonds, where the entire gain is potentially subject to income tax, and onshore bonds where the gain is subject only to higher or additional rate income tax and not basic rate.

Bonds can be an attractive investment for trustees in that, if withdrawals are kept within the 5% amount allowed annually, there is no income to be reported on a Tax Return and it may therefore be possible to avoid the necessity of lodging returns each year.

Discounted gift trusts are frequently used as a means of inheritance tax planning. There is, however, a number of matters to consider, from a tax point of view, on the death of the settlor. Investment matters also require to be considered but these are outwith the scope of this article

Let the Trust Continue

This is probably an unlikely scenario if for no other reason than the beneficiaries of the trust will probably wish to receive their share of the investment within the trust. No income tax liability would arise to the extent that no more than 5% of the original capital was withdrawn each year.

Trustees Encash the Bond

On encashment, the insurance company will provide a chargeable event certificate showing the amount of the chargeable event gain. This will be based on the capital growth but also taking into account the amount of any 5% withdrawals which may have been made.

Chargeable event gains are subject to income tax in the hands of the recipient and, for an individual this will vary between 20%, 40% and 45% or a combination of all three. As noted above, top slicing relief may be available.

For trustees however the rate of income tax is 45%.

When the settlor dies, and the trustees decide to encash the bond, there is a difference in the income tax treatment depending upon whether the bond is encashed in the year of death or a subsequent year.

- Where the bond is encashed in the year of death of the settlor then the chargeable event gain should be included in the settlor's tax return to date of death and charged at the settlor's marginal tax rate in that year.
- Any tax paid by the executors is recoverable from the trustees so that the income tax is effectively settled from trust funds. The income tax liability can be reduced considerably where the settlor is not a 45% income tax payer in the year of death.
- If the trustees encash the bond in a year after the year of death then the gain will be taxable at the 45% trust rate. There is no advantage to this other than delaying the date of payment of income tax.

Assign the Bond to Beneficiaries

The trustees may be able to assign the bond to the beneficiaries, each receiving their appropriate share. Confirmation will require to be obtained from the insurance company that it will be possible to assign the bond and divide it between the beneficiaries.

Upon assignation, the beneficiaries will become the new beneficial owners as opposed to the trustees. The beneficiaries can then decide when they want to encash their share of the bond. They will receive a chargeable event certificate when they surrender or partially surrender the bond showing the gain to be reported in their own tax return. They will be subject to income tax at their marginal rates in the manner noted above.

As can be seen, this is a complex area which will involve the tax practitioner and independent financial advisor working together to consider both the tax and investment positions.

EMPLOYMENT CORNER – IR35 HITS THE HEADLINES AGAIN

Background

The intermediaries' legislation known as IR35 is currently under consultation again by HMRC. In April 2017, the legislation changed for all public authority engagers (the term 'Public Authority' is that defined in the Freedom of Information Act) to make them examine the hypothetical contract between themselves and the contractor. If the nature of the contract would have been one of employment, were it not for the existence of the intermediary company, the public authority is now responsible for deducting PAYE and NICs, including employer's NICs – something which has added an additional 13.8% to all public sector contracts. This legislation has caused difficulties in the contracting world and confusion for many – but was it the right solution to the problem?

The intermediaries' legislation was introduced 18 years ago in 2000, and has been a spectacular failure in terms of compliance as far as HMRC is concerned, because the directors of the limited companies are choosing not to classify themselves as coming within the IR35 regime and are paying themselves using a salary equal to the Personal Allowance with the rest paid in dividends – all of which is perfectly legal. So HMRC has had to think of another way of ensuring that they get the revenue they seek through the doors of the Exchequer.

However, if you are a contractor, working through a limited company, you are not technically an employee of the organisation contracting you – so why should that organisation have to classify you as an employee and pay employer NICs? You are an employee/director of your own company. Surely the legislation which needs to change is that contained in the Companies Act and Insolvency Act to prevent companies from being set up and closed down, simply to avoid tax.

A year after the public sector legislation was effective, on 18 May 2018, HMRC issued a consultation on Off-Payroll working in the private sector. The consultation closed on 10 August and ICAS submitted its response.

Essentially, the consultation offers three options for consideration:

1. Should the regime which has been brought in for the public sector be replicated in the private sector? or
2. Should private sector businesses be required to ensure that intermediaries are complying with IR35? or
3. Is additional record-keeping by the engager the answer?

ICAS did not respond to each and every one of the 34 questions, but instead set out some general initial thoughts and then responded to a number of questions where it was thought ICAS member experience and knowledge as it relates to policy formulation would be most relevant.

Employment status

It is generally accepted in the profession that employment status as a concept overarches this debate. While ever there is a conflict between employment legislation, where there are three statuses (employed, 'worker' and self-employed), and employment tax legislation, where there are two statuses (employed and self-employed), there will always be confusion and disputes.

HMRC considers that it is not necessary to establish that Mutuality of Obligation (MOO) exists because all contracts (both of service and for services) contain MOO. The IR35 Forum (a regular meeting between HMRC and professional bodies, the minutes for which are available online) professional bodies representatives generally disagree with this stance because MOO was originally conceived in the employment tribunal in the 1941 Chadwick case, to determine if a continuous employment existed in a particular scenario concerning employment rights, and therefore cannot include contracts for services.
In the 1984 Nethermere case MOO was expanded upon further, when the concept of the "irreducible minimum" ('...of obligation on each side to create a contract of service' (Stephenson LJ)) was introduced. This was meant to add clarity in cases where MOO would be used as a last resort test to determine whether a bare minimum for a contract of employment existed. So, without MOO, there cannot be a contract of employment.

Since then, the 1999 House of Lords case of Carmichael set a precedent when it was decided that a cluster of 'zero-hours' contracts with the same engager could be treated as one overarching contract.

In terms of IR35 contracts however, it is clear that some sort of contract already exists so it may not be necessary to consider MOO. As the IR35 legislation is not meant to determine employment status but merely examine a "hypothetical contract" (to determine whether the contract is one of service or for services), then arguably, MOO is rendered null and void.

However, by assuming that MOO is already present, HMRC is negating the need for a CEST decision to be made as it is effectively stating that an employment relationship is already present.

Other concerns

The other main concerns ICAS has are:

- There were many problems with the introduction of the new IR35 regime into the public sector, and that to introduce a new regime into the private sector before the public sector regime has had time to bed in and all the unintended consequences are known could be disastrous.
- The CEST tool is too inflexible and is not producing the correct result in many cases, and it requires substantial changes to be made to it so that it helps rather than hinders the decision-making process.
- The cost to the public sector in NICS is substantial and this must be acknowledged by HMRC. The cost to the private sector could cripple some businesses who already have extremely tight margins. The Government needs to be careful that innovation, growth and productivity do not suffer as a result, and that the labour market can remain flexible to support UK business.
- The public sector has had difficulty recruiting and retaining services suppliers despite HMRC insisting this is not an issue.
- The private sector works in a completely different way to the public sector. It is faster-paced, more agile and decisions need to be made quickly which will affect the recruitment and contracting process.
- There is a conflict between IR35 legislation and The Companies Act and Insolvency Act, and these pieces of legislation should be supporting the Intermediaries legislation, rather than HMRC placing yet another admin and cost burden on to the shoulders of employers.

One possible solution put forward is that it may be sensible to introduce a tax withholding in the same way as is currently operating in the Construction Industry Scheme. That way, engagers would not suffer financially by having to pay employer's NICs, and the intermediary could offset the withholdings against their final tax liability.

The sun always shines on TV

As part of its quest to stop so-called "Off-Payroll" working, HMRC has invested in investigations in some high-profile areas such as media workers in TV and radio. Being public figures, HMRC knows the investigations will be widely reported and therefore help to bring the message home that they are not going to give up. It recently had a success in the case of TV presenter Christa Ackroyd[1] and a FTT case was concluded on 11 May concerning three presenters: Joanna Gosling, David Eades and Tim Willcox, with the judgement pending. In total some 470 cases have been investigated with around 100 cases being taken further by HMRC.

The cases being looked at currently all concern three fundamental elements of employment status:

- Mutuality of obligation (MOO);
- Right of Control; and
- Personal service

It is interesting that MOO is a valid consideration in these cases whereas, as I mentioned earlier in this article, it is not a consideration when using the CEST tool as it is deemed to already exist by simply entering into a contract and being paid. After all, an individual's employment status rests on its own facts and on consideration of a set of criteria established in tax case law over many years.

Right of Control is broken down into four categories – the 'what', 'where', 'when' and 'how'. However, it is important to note that as there is always likely to be a degree of control by the paying party to the relationship, it is the *extent and degree* of control which should be examined.

Undoubtedly, the most important of these is the 'how'. In other words, the method in which the services are executed and delivered. HMRC states that this is a neutral factor when someone is highly skilled and experienced (i.e. where there is no or very little scope for control, then HMRC discards it as an irrelevant factor) instead of acknowledging that the reduced scope for exercising a right of control over them is a strong pointer towards self-employment.

Conclusion

ICAS supports the need for HMRC to collect the right amount of tax at the right time from the right people and understands that IR35 has not been a successful regime since its introduction 18 years ago in 2000. Nevertheless, with Brexit looming, the private sector may not need another cost and admin burden on its

[1] Christa Ackroyd Media v HMRC [2018] UKFTT 69

employers at this time and the next steps must be thought out carefully.

There are no easy answers and ideally, a combination of the three options could be configured to lessen the burden on private sector employers – in particular, in terms of cost. The timing and methodology of the introduction of any new regime needs to be taken gradually and not rushed in to avoid having a negative impact on business stability and growth.

Until a clear picture emerges on both the public sector repercussions and the employment status consultation it would not be sensible to introduce a new regime into the private sector. It seems premature to introduce it too quickly or indeed without the necessary clarification and support for employers and engagers to enhance their understanding of their obligations.

Meanwhile, the courts will continue to process off-payroll cases based on current case law and the argument rages on.

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