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WE'RE GETTING THERE

In the run-up to the March 2015 Budget we all knew that the Chancellor had no money to give away and was continuing in his quest to reduce the deficit and pay down public debt. One exception to this related to North Sea oil, where, at some cost to the Exchequer, he announced proposals to reduce the tax take to help companies which have been adversely affected by the reduction in the price of oil.

For those of us working in tax on a day-to-day basis, there were a number of interesting proposals announced, some of which will give people fairly modest benefits, while others are designed to tighten up on reliefs.

In common with many of us, the Office of Tax Simplification (OTS) had proposed that income tax and national insurance should be merged which, if done properly, would have produced a great simplification of the UK tax system. This of course presupposes that you accept that national insurance is indeed a tax. Those of us who pay it do consider that it is, and the only exceptions are those in Government who seem to consider that we are contributing to (what is effectively a non-existent) fund through our national insurance contributions, to provide benefits. Not having followed through the suggestions of the OTS, the Chancellor however did announce that proposals will be made later in the year to abolish class 2 National Insurance paid by the self-employed, and to review Class 4 which is also paid by self-employed individuals. This ought to be a simplification but we may end up with a more complex system, and it would not be at all surprising to see a more costly system for the self-employed.

A surprise announcement, which at first glance might have caused millions of taxpayers to jump for joy, was that tax returns are to be abolished for individuals and small businesses. The euphoria would however be short lived as the returns are to be replaced by digital accounts. The Government will provide more information on their proposals later. It does however appear that those who no longer have to prepare returns will have to go online and review their digital accounts, which will have been pre-populated by, for example, including earnings and benefits-in-kind and adding to it, other details from which their tax liabilities can be calculated. Far from tax advisers and accountants becoming redundant, it is likely that a number of people who prepare paper returns and lodge them with HM Revenue & Customs will be forced to seek assistance to complete their digital accounts if they are not computer literate. The Government seems to be hell bent on forcing digital interface down the throats of taxpayers, many of whom may be faced with the choice of paying a professional for assistance, (or perhaps joining a particular religious organisation in any effort to avoid computers for religious reasons).

Once more, further tinkering is proposed to the pension's legislation. While the Autumn Statement proposals were welcomed by most, the Budget proposes that the present £1.25 million lifetime allowance is to reduce to £1 million with effect from 6 April 2016. To most of the population, a pension pot of £1 million is something that they can only dream about. To many high earners, a pension income of around £55,000 per annum will be viewed as fairly modest and they will have to have made other arrangements to maintain their lifestyle in retirement if they feel their pensions are inadequate. The effect remains to be seen but it may well be that entrepreneurs will retain their businesses for longer before transferring them to the family or selling to management or third parties.

Tied in with the digital accounts proposal, it is also proposed that, from 6 April 2016, banks and building societies will not deduct tax at source from interest paid to depositors and the tax will instead be collected by an adjustment through the PAYE notices of coding of employees. This may avoid the necessity of non taxpayers completing R85 forms to receive interest gross or for those who have had tax deducted at source to make a repayment claim each year in respect of this.

In a sensible change, from the autumn of 2015, it will be possible to withdraw funds from an ISA and replace the amount withdrawn later without the replacement amount being treated as part of that year's ISA allowance. This is a welcome proposal as many individuals could have been forced to withdraw sums from their ISAs to meet a temporary cash flow issue, such as paying their income tax, but are in a position to replace the amount later.

Help is being introduced to assist first time buyers to save via ISAs with the ISA funds being ear-marked towards the purchase of their first home. The Government will give a bonus of up to 25% of the amount saved in the ISA with a limit of £3,000, to encourage people to save up a deposit towards their first home. A £3,000 contribution from the Government will certainly be welcomed by individuals who manage to save £12,000 in an ISA and utilise this as a deposit on their new home.

The Autumn Statement also included provisions to prevent entrepreneurs' relief being claimed on the disposal of goodwill by the owners of an un-incorporated business to a company which they own. The Budget proposals include a further restriction to entrepreneurs' relief in respect of associated disposals of assets. Where an individual owns shares in a company or as a member of a partnership, and qualifies for entrepreneurs' relief, he is also able to claim entrepreneurs' relief on the gain crystallised on disposal of an asset used by the company or partnership in its trade. It is however necessary for the individual to make a disposal of shares or reduce his interest in a partnership at the same time as he disposes of the associated asset, which in many cases will be the business property. It is now proposed that the individual will have to make a disposal of at least 5% of his shares or partnership interest for any associated disposal to qualify for entrepreneurs' relief. This is yet another complication for us to remember not to forget!

The annual investment allowance yoyo looks set to continue to go up and down with the Chancellor announcing that it is unreasonable for the maximum annual investment allowance to fall back to £25,000 with effect from 1 January 2016. How high the yoyo will go come 1 January remains to be seen.

And finally, in a case of slamming the door after the horse has bolted, and in a dig at the Miliband brothers, the Chancellor announced that the inheritance tax benefits of effecting a deed of variation are to be withdrawn. With the advent of the transferrable nil rate band between spouses, there has been less need for deeds of variation but they still provided a useful facility for people who have not been well advised or who had not updated their wills. Bearing in mind that deeds of variation have been enshrined in statute for many years, it is a step too far to describe their use as tax avoidance but that would appear to be the view of the politicians. The message here is clear however: review your will regularly to make sure that it is tax efficient and that the current will achieves what you want it to achieve. For example, an individual will may include a provision to leave a particular property to a child, rather than to the surviving spouse. If the value of the property has grown above the nil rate band, then the result of this will be that there will be a charge to inheritance tax on the first death. In circumstances like this, deeds of variation have been utilised in passing assets, or interests and assets to the surviving spouse, making use of the spouse exemption, and for the surviving spouse to make a lifetime gift. Survival for a period of 7 years would result in no inheritance tax liability arising. This will no longer be possible and lawyers may have to draw wills more tightly to include a provision, in the above example, to leave an interest in a property equivalent in value to the unutilised part of the nil rate band.

Some individuals have also used deeds of variation to divert bequests from their parents to their own children rather than having to receive the bequest and then make lifetime potentially exempt transfers. Unless they have updated their wills recently, clients should review them and ensure, perhaps in conjunction with their adult children, that they meet overall family objectives.

It won't affect Mr Miliband though because Mr Osborne wasn't quick enough.

HMRC COMPLIANCE ACTIVITY – SOME INTERESTING TRENDS

HM Revenue & Customs (HMRC) are continuing with their "broad brush" approach to target unpaid and underpaid tax with various campaigns, taskforces and initiatives focusing on selected issues and sectors.

Current topics under the spotlight of enquiry include:

- Farming losses and commerciality – particularly in relation to the five-year rule for losses and whether or not the trade is being carried out with a view to a profit. This concerns the rising number of "hobby farmers" wanting to set losses from farming activities against other income.
- Incorporation and goodwill valuations – this relates to individual or so-called "singleton" companies being incorporated where goodwill on incorporation is generated in connection with the individual. An area of focus by HMRC is on medical practices, with the rise of GP practices now providing services through companies.

HMRC are running a number of benchmarking initiatives where they compare individuals' results with sector averages. The sectors targeted include:

- Painters and decorators, driving instructors, taxi drivers and pharmacists (Income tax)
- Businesses involved in the repair of motor vehicles and the retail furniture sector (VAT)

HMRC have published net-profit ratio ranges which are expected from certain businesses; businesses reporting ratios outside the expected ranges are then contacted. This then results in potential investigations for those businesses that fall below the lowest ratio and fail to give adequate explanations for the differences.

HMRC's High Volume Agents (HVA) initiative, which used to be a pilot, is now more of a "business as usual" arrangement. It affects practices which act as agents in submitting subcontractors' repayment claims. HMRC's risk assessment is made on both the accountant and the subcontractor, which can lead to some friction as the quality of work of the practitioner is, in some cases, being questioned.

The Contractor Loan Settlement opportunity has been extended again, to 30 June 2015 (with settlement date extended to 30 September 2015), presumably as HMRC are still seeing a number of individuals coming forward.

Practices with contractor clients who may be affected should ensure that they are aware of the options available to them. More information on the opportunity can be accessed at: **https://www.gov.uk/government/publications/tax-on-contractor-loans/tax-on-contractor-loans-extended-time-limit-and-more-information**.

It would appear that HMRC are targeting certain professionals like Dentists, Doctors and Solicitors, alongside taxpayers who are engaged in typical cash-based businesses, such as taxi drivers and take-away owners.

There is a noted concern by HMRC of the degree of evasion amongst second property owners, particularly in relation to unpaid capital gains tax, which they believe to be at a high level. HMRC figures indicate that there are around 500,000 people registered as being second property owners whereas the true figure is believed to be closer to 1.5 million. It is quite possible that the let property and second property owners will be the targets of a further campaign.

More information on HMRC Campaigns and Taskforces is available at: **www.gov.uk/government/policies/reducing-tax-evasion-and-avoidance/supporting-pages/hmrc-campaigns**.

HMRC REVIEWING SELF-ASSESSMENT LATE PAYMENT PENALTY REGIME

HM Revenue & Customs (HMRC) have indicated that they may be considering a more lenient approach towards people who are late in filing their self-assessment tax return by removing the £100 penalty for late submission if taxpayers have made a genuine effort to file their return on time but have been prevented from doing so by factors not in their control.

The reason for the proposed change is because the system at present does not distinguish between someone who fails to submit a return by 1 or 2 days outside of the deadline with someone who is persistently late in filing their returns. Another issue identified by the consultation is that, in some situations, a taxpayer will be late in submitting a return where there is no tax to pay but the individual will receive a penalty regardless.

Another area which HMRC consider as not adequately addressed by the current system concerns taxpayers who are normally compliant; in other words, whether "*an uncharacteristic failure by an otherwise compliant customer*" should be punished. This would also include taxpayers who are filing a tax return for the first time.

Of particular relevance in the current year is the increase in the number of people who are required to file a tax return as a result of the High Income Child Benefit Charge. It is estimated that over one million extra returns have resulted from this charge, and of these, around 200,000 are estimated to have missed this deadline (out of the total 890,000 people who were late in filing).

The proposal going forward for these types of situations is to introduce non-financial sanctions as an alternative to financial penalties. A penalty points system, similar to that used to penalise motoring offences, has been suggested. Serious or persistent failure under the new regime could lead to heavier sanctions for non-compliance.

The consultation (which is open until 11 May 2015) can be accessed at: **www.gov.uk/government/uploads/system/uploads/attachment_data/file/400211/150130_HMRC_Penalties_a_Discussion_Document_FINAL_FOR_PUBLICATION__2_.pdf**.

WHAT'S NEW IN THE LAND AND BUILDINGS TRANSACTION TAX (LBTT)?

From 1 April 2015, Stamp Duty Land Tax (SDLT) is replaced by the new Land and Buildings Transaction Tax (LBTT) in Scotland. SDLT has been with us since 2003, and its key features have been in the background of all the land and buildings transactions. While LBTT shares much in common with SDLT in terms of charging structure, key concepts, exemptions and reliefs, there are important differences worth highlighting at the launch of this new tax.

Return, tax and title registration

The three key stages in the tax administration for land transactions are:

- Filing of return
- Payment of tax
- Registration of title

For the purchaser, the registration of title is the ultimate aim of the transaction. Under SDLT, title registration is predicated on the issue of the SDLT5 certificate by HM Revenue & Customs on the submission of a satisfactorily completed SDLT return. The issue of SDLT5 is dependent on return submission and not on the payment of tax. It is possible under the current SDLT regime for a title transfer to be completely effected *before* the associated tax is paid.

Under LBTT, the three stages are designed to be more strongly linked, where title registration is dependent on both return submission and payment of tax with the following new features:

- The submission of return and the payment of tax are joined up as a one-stage process, whereby at the point of the LBTT return being submitted, 'arrangements satisfactory' have to be in place for the payment of LBTT due.
- Registration of title is effected via automatic data feed from the LBTT return system.
- There is no equivalent of the SDLT5 certificate in the LBTT regime for the registration of title.
- 'Arrangements satisfactory' mean payment methods under the terms as directed by Revenue Scotland, and include Direct Debit, BACS or CHAPS for returns submitted online, and payment by cheque is to accompany a paper return.

Tax rate structure

It has been long advertised as a key new feature of LBTT that it is a 'progressive' tax, unlike the 'slab' tax structure of SDLT. This distinction is somewhat eroded after the Autumn Budget which changed the SDLT rates for residential purchases from slab to progressive. The rate structure may have become more similar between LBTT and SDLT, but the rate bands are substantially different especially at the top end of the home market. LBTT will be charged at 10% on the part of the purchase price between £325,001 and £750,000 (SDLT on price bracket between £925,001 and £1,500,000). The top rate for both regimes is 12% with LBTT band starting at £750,001 while SDLT at £1,500,001, doubling the banding threshold of LBTT.

Leases

If the distinction for LBTT and SDLT for residential purchases is becoming blurred after the Autumn Statement, the differences for leases between the two regimes remain. In fact, leases are likely to remain the area with the most substantive differences between the two regimes as a result of the differences between Scots law and English law governing leases.

Under SDLT:

- the nil rate band is £125,000 for residential and £150,000 for non-residential leases;
- over the nil rate band, it is charged at 1% of the net present value (NPV) of the total rental payments (inclusive of VAT) to be made for the duration of the lease;
- NPV is calculated on the basis that the rent for any years after the end of year 5 is at the highest annual rate payable over the first 5 years, regardless of whether the lease has in fact fixed the rent at a higher rate from year 6 onwards, (so effectively there is a capping of the NPV assessment for SDLT purposes).

Under LBTT, the rates and bands are very similar and the key differences are:

a) **Residential leases** are largely exempted from LBTT. Only residential leases of more than 20 years' duration will be subject to LBTT. As a feature of Scots law, residential 'freehold' is the norm, and residential leases of over 20 years are very rarely granted, it means that LBTT for residential leases will be a very rare occurrence.

b) For **commercial leases**, the charging structure is similar to SDLT on rent, but tenants will be required to submit LBTT returns every 3 years; there is no cut-off of assessment at the end of 5 years as with SDLT.

- LBTT is effectively re-assessed at 3-year intervals based on the actual rentals paid in the preceding 3 years; LBTT payable will then be adjusted accordingly.
- Any capital payment (ie premium) made for a lease will be assessed at the same rates as for a commercial purchase.

Reliefs

Most reliefs under SDLT are replicated in LBTT, with new reliefs added in LBTT such as 'Crofting Community Right to Buy' relief at 100%. Subordinate legislation is still being passed giving details of LBTT reliefs.

The most notable difference between the two regimes concerns the sub-sale relief. The sub-sale relief under SDLT is not being replicated for LBTT, instead what has been introduced is known as the 'Sub-sale Development' relief, which is subject to claw-back within the 5 years after the claim of relief if certain conditions are not made.

Revenue Scotland's website has published LBTT Legislative Guidance and can be accessed at: **https://www.revenue.scot/land-buildings-transaction-tax/guidance/lbtt-legislation-guidance**.

Rates and thresholds

In October 2014, the thresholds for Scotland's new LBTT were announced; then the Autumn statement on 4 December 2014 delivered the surprise announcement that SDLT rates would be radically altered, making the system more equitable than before, and it would seem that the majority of home buyers are going to fare a bit better under the new systems. Gone is the old "slab" rate structure in favour of a progressive rate regime.

The new SDLT rates, announced on 4 December 2014, and with immediate effect, are as follows:

Purchase price £	SDLT* %
0 – 125,000	NIL
125,001 – 250,000	2
250,001 – 925,000	5
925,001 – 1,500,000	10
1,500,001+	12

*rates apply to the price paid falling within each band

For example, a property with a purchase price of £275,000 will attract tax of £3,750, being (£125,000 x 2%) + (£25,000 x 5%); compared with the SDLT that would have been payable of £8,250 under the old system (3% x £275,000), this is clearly a substantial difference.

The new SDLT rates apply in England, Wales and Northern Ireland. In Scotland, LBTT replaced SDLT as at 1 April 2015.

Since the Autumn Budget announcement by George Osborne, the perception is that SNP Finance Secretary John Swinney has been forced to backtrack slightly and to introduce an additional band in order to make the forthcoming LBTT system comparable for those buying in the £250,001 to £325,000 band, which is the typical family-home market.

LBTT (initial and amended rates) are shown in Table 1 below.

The initial announcement of rates in October 2014 was received with some concern, as a property with a purchase price of £500,000 (not uncommon in Edinburgh, or Aberdeen) would attract a LBTT bill of £27,300. The amendment to the rates and thresholds does go some way towards addressing this but some buyers at the higher end will still find themselves paying a substantial amount more to Revenue Scotland from April this year.

Revenue Scotland have produced a handy calculator for LBTT which can be accessed at: **https://www.revenue.scot/land-buildings-transaction-tax/tax-calculator/lbtt-property-transactions-calculator**.

Table 1

Initial LBTT 2014		Amended LBTT 2015	
Purchase price £	**Rate %**	**Purchase Price £**	**Rate %**
0 – 135,000	0	0 - 145,000	0
135,001 – 250,000	2	145,001 – 250,000	2
250,001 – 1,000,000	10	250,001 – 325,000	5
1,000,001 +	12	325,001 – 750,000	10
		750,001+	12

REAL TIME INFORMATION LATE FILING – PENALTIES REVIEWED

HM Revenue & Customs (HMRC) have announced that employers will not incur penalties for delays of up to three days in filing PAYE information. In addition, late payment penalties will continue to be reviewed on a risk-assessed basis rather than be issued automatically. There is to be no change to the filing deadlines, which means that employers must file on or before each payment date unless the circumstances leading to the late filing meet the criteria laid down in the official guidance regarding "*sending a full payment submission after payday*" (accessed at: **www.gov.uk/running-payroll/fps-after-payday**).

HMRC have also announced that they are to close around 15,000 PAYE schemes this April which have not made any PAYE reports since April 2013 and appear to have ceased.

As a reminder to small employers (those with fewer than 50 employees), PAYE late filing penalties will apply to them from 6 March 2015.

More information can be obtained at: **www.gov.uk/government/news/hmrc-will-not-impose-paye-filing-penalties-for-short-delays-from-march-2015**.

EMPLOYEE BENEFIT TRUSTS AND CONTRACTOR LOAN SETTLEMENT OPPORTUNITIES – FINAL DEADLINES ANNOUNCED

HM Revenue & Customs (HMRC) have announced final deadlines to these two current settlement opportunities, covering Contractor Loans (CLs) and Employee Benefit Trusts (EBTs).

The two opportunities will be extended as follows:

EBTs:

- Notification of intention to settle must be received by 31 March 2015
- Settlement amount agreement must be in place by 31 July 2015

CLs:

- Notification of intention to settle has been extended from 9 January 2015 to 30 June 2015
- Settlement amount agreement must be in place by 30 September 2015

More information on the CL settlement opportunity can be found at: **https://www.gov.uk/government/publications/tax-on-contractor-loans/tax-on-contractor-loans-extended-time-limit-and-more-information**.

More information on the EBT settlement opportunity can be accessed at: **https://www.gov.uk/government/publications/employee-benefit-trusts-settlement-opportunity/time-is-running-out-to-use-the-employee-benefit-trust-settlement-opportunity**.

ONLINE SERVICES FOR AGENTS

An increasing number of services offered by HM Revenue & Customs (HMRC) are now available online, and HMRC are keen for as many practitioners as possible to make use of the online services, believing that practitioners will save time by moving all of their work online.

It is now possible to perform a number of tasks or to access a number of areas online, including:

- Registering a client's business with HMRC
- Accessing self-assessment for agents online service
- Accessing PAYE/CIS for agents online service (employers)
- VAT online for agents
- Corporation tax for agents online services
- Machine games duty for agents online services
- Notification of vehicle arrivals for agents online services

How to sign up

Practitioners may be familiar with the sign-up process and obtaining User IDs, passwords and activation codes. The generic login page where you either sign up or login in is accessed at: **https://online.hmrc.gov.uk/login**.

Client authorisations can also be obtained by using HMRC online services at: **www.gov.uk/applying-for-client-authorisation-using-hmrc-online-services**.

Administrators and assistants

Administrators and assistants can also be set up on a firm's online services account.

Administrators can perform tasks online on behalf of your firm including:

- Accessing an online service that your firm is enrolled for
- Enrolling for and re-enrolling from online services

- Assigning services to other administrators and assistants
- Creating and deleting other administrators
- Creating and deleting online assistants

Assistants are created by Administrators and can only access services they have been assigned. They can access any online service that their firm is enrolled for, providing that an administrator has assigned the service to them.

Administrators and assistants can also be used to manage online client lists.

Useful links

Registering your client's business online for tax purposes **www.gov.uk/registering-your-clients-business-with-hmrc**

Corporation tax online for agents - help **www.gov.uk/corporation-tax-for-agents-online-service**

HMRC online services helpdesk **www.gov.uk/government/organisations/hm-revenue-customs/contact/online-services-helpdesk**

Government Gateway website **http://www.gateway.gov.uk/**

THE COMPANY CAR CONUNDRUM – DECISIONS DECISIONS

The increased availability of energy efficient and low emission vehicles is something that has really developed over the last few years and is a great example of tax policy influencing the manufacturing design for market purposes and the purchasing behaviour of taxpayers as consumers.

The Government, wanting to promote the use of energy efficient vehicles with lower carbon monoxide emissions, reformed the benefit in kind (BIK) bandings for vehicles in 2002, basing it on an emissions system, replacing the previous system of basing tax banding on engine sizes. Tax year 2008/09 saw the introduction of a 10% BIK band for cars with emissions between 0 and 120g/km, and this was further amended in 2010/11, creating a 0% BIK for zero emissions cars, a 5% band for 1-75g/km and a 10% band for 76-120g/km. This development saw a real change in buyer behaviour (both fleet and personal), with hybrid vehicles now a much more common sight on our roads.

Since then, technology has moved on; and there are now a plethora of manufacturers offering vehicles matching decent performance with emissions around the 120g/km mark. Sensing that their tax revenues may become eroded, the Treasury have continued to review their bands and the percentage BIK rates are being 'quietly' increased to address the march in technological innovation by the big car manufacturers.

In fact, for 2015/16, the decision has been taken to remove the zero rate altogether with the new minimum rate sitting at 5% for emissions between 0 and 50 g/km. The diesel supplement, which is currently 3% on top of the rate for the equivalent petrol powered vehicle, will be continuing for 2015/16 before being scrapped in 2016/17. This is perhaps in recognition that today's diesel cars are often the lowest emitters.

This then poses a question for businesses with large numbers of fleet vehicles. Do they continue to provide their employees who have a requirement for a vehicle with a company car or do they promote the use of their personal vehicles? Or are there further options that may be considered such as car allowances? What about company directors who may have more expensive tastes? Do the changes proposed going forward make it uneconomical for businesses to offer company cars? Of course there are many considerations and in some situations it may be that there is no way around it and a company car has to be provided because of the nature of the client's business.

The position in relation to BIKs for zero emissions vans is also about to change. The exemption on the BIK for these types of vehicles is going to be removed from 5 April 2015 with a gradual phasing in of the charge such that a percentage of the overall charge will be assessable as shown in Table 1 below.

Table 1						
Tax year	**2015/16**	**2016/17**	**2017/18**	**2018/19**	**2019/20**	**2020/21**
% of standard van benefit charge	20	40	60	80	90	100

The options

The tax free mileage scheme, as a reminder, allows the employer to pay an employee 45p per mile for the first 10,000 miles and then 25p thereafter for business mileage driven in his or her own car.

At this stage it is useful to consider some examples and look at the financial implications of each situation.

Working out the BIK

The BIK value is calculated by taking the list price of the car and multiplying this by the BIK percentage, (See Table 2 overleaf), which is dependent on the emissions levels and the fuel type of the car (until 2016/17 when it will purely be based on emissions – as mentioned above).

Example scenario – the director or senior manager

If we look at the situation in respect of the typical director or senior manager (40% taxpayer), where the decision is likely to lean more on the tax and accounting effect of the two options available (employees may be entitled to a company car or a car allowance and it will be up to them what they take, if anything). Using an example of a new BMW 5 Series touring (estate), we can compare the results under the two possible options. The calculations require for a number of assumptions to be made as follows:

Manufacturers list price of car	£36,460
CO^2 emissions	129
Finance period (it is leased)	36 months
Estimated business mileage	15,000
Estimated private mileage	5,000
Fuel	Diesel
BIK charge	21%
Business VAT registered?	Yes

Costs if car is leased and private fuel provided:

Costs	**Individual £**	**Business £**
Road fund licence	150	150
Insurance	600	600
Servicing/repairs	1,000	832
Breakdown cover	60	60
Fuel	2,435	2,029
Hire charges	5,602	5,135
Class 1A NI	-	1,686
Scale charges	-	157
Total costs	9,847	10,649

(Individual cannot reclaim VAT, insurance, servicing & repairs and breakdown costs estimated).

Fixed profit car scheme calculation

Individual would be eligible for 10,000 miles at 45p and 5,000 miles at 25p. This gives a total claimed of £5,750. In this situation, the individual would have a net cost of £4,097 (ie £9,847 per the above estimation of total running costs less £5,750) and the VAT inclusive costs to the business £5,750, but if it is a VAT registered trader making vatable supplies, then the business can reclaim VAT of £1,150, making the net cost of £4,600 chargeable to profits and loss account.

Car and fuel benefit

Car benefit is equal to 21% of £36,460, which is £7,657.

Fuel benefit is equal to 21% of £21,700 (notional value for 2014/15), which is £4,557.

This gives a total taxable benefit of £12,214, and Class 1A NIC due of £1,686 (at 13.8%) will be payable by the employer.

Comparison of positions can be seen in Table 3 overleaf.

Table 2

BIK percentages

BIK band % *	**2014/15 Emissions g/km**	**2015/16 Emissions g/km**	**2016/17 Emissions g/km**
0	0	N/A	N/A
5	1-75	0-50	-
7	-	-	0-50
9	-	51-75	-
11	76-94	-	51-75
12	95-99**	-	-
13		-	-
14		76-94	-
15		95-99**	76-94
16			95-99**

*diesel cars have an additional 3% charge to their BIK compared to petrol cars, up to and including tax year 2015/16 and then this premium will be discontinued.

**for every additional 5g/km, an additional 1% is added to the BIK charge up to a maximum of 35% in 2014/15 and 37% for 2015/16 and 2016/17.

Commentary

The net cost of the employee providing the leased car is lower than the business leasing it because of the associated P11D cost and the income tax charge levied on the car, and fuel benefit for the employee. The total difference in costs (assuming a 40% taxpayer) is £4,708 in this situation. If the employee wished to provide his own car and claim mileage under these circumstances, not only would he be saving himself money but it would also lead to cost-saving for the company. If the director employee has a stake in the company, savings in cost for the company is enhancing the value of the company in the long run.

Of course there may be the situation where the company provides the Director or Senior Manager with a car by default. Under these circumstances, it would probably be correct for that person to be compensated with a dividend or bonus which equates to the loss in not being able to provide their own vehicle – in this case a net payment of £789 will be required, and this would require a dividend of £1,052 or a bonus of £1,315 to deliver.

The example is for illustration, and is by no means exhaustive and does not look at the situation where the employee purchases their own car (instead of leasing the vehicle) or where the company buys the car. In a situation where the employee or the company owns the vehicle, then the calculation needs to take in the costs of capital outlay, factoring in capital allowances that can be claimed, and the tax effect of the capital allowances on the individual or company. What it shows is that there are quite a number of variables to be taken into account, not least HR issues that may be tied to the employment contract, (see also article in Employment Corner on pages 10 and 11).

Table 3		
Comparison of Provisions		
Scenario 1 – Car provided by the company		
	Business Costs £	**Employee position £**
Vehicle running costs with corporation Tax relief @ 20%	8,519 (10,649 less 20%)	N/A
Tax liability (effective as result of dividend payment)	N/A	4,886 (40% x 12,214)
Total combined cost £13,405		
Net position		
Scenario 2 – Employee provides own car, paid fixed profit car scheme rate	**Business Costs £**	**Employee position £**
Mileage allowance with Corporation tax relief	4,600 (5,750 less 20%)	N/A
Vehicle running costs less mileage allowance	N/A	4,097 (9,847-5,750)
Total combined cost £8,697		
Net position – scenario 2 provides a saving of £4,708		

EMPLOYMENT CORNER

Benefits in Kind

Background

Benefits in kind are not what they used to be. Things have evolved from the 1970's when Luncheon Vouchers, a Christmas turkey, a 2lb box of chocolates at Christmas and a Ford Capri were more the order of the day.

Of course, some employers do still choose to give employees a turkey at Christmas, but the tax relief on Luncheon Vouchers was withdrawn in Finance Act 2012 and the Ford Capri has become a collector's item. Now, entire suites of benefits which employees can choose from to suit their lifestyle and budget are on offer, ranging from dental insurance to dog walking services and beyond.

Over the last twenty five years, the legislation has changed to accommodate trends in remuneration, and also due to the mergers between Government departments, most notably the Contributions Agency and Inland Revenue, back in 1999.

The advent of Class 1A National Insurance Contributions (NIC) in 1991 led to a focus on benefits in kind, which gave rise to numerous cases such as the **Overdrive Case (Revenue v Department of Social Security ex parte Overdrive Credit Card Ltd [1991] BTC STC129)**. The imposition of Class 1A NIC resulted in the addition of substantial liabilities to employer payroll costs. It seemed then that the provision of benefits in kind might no longer represent a viable tax planning tool.

However, despite this, benefits in kind have continued to represent a popular component of salary, and the market for remuneration and benefits planning is massive.

Expenses and benefits payments have recently been under scrutiny by the Office of Tax Simplification in an attempt to remove unnecessary bureaucracy surrounding this area and clarify certain aspects of what is quite a complicated regime.

Today's position

Turning to the present, this article examines the position for employers who consider offering benefits to their employees, either in addition to, or instead of, salary. Many employers now consider that being an employer of choice and attracting the right kind of talent involves offering employees a choice. More traditional employers often still stick to a cash-only method of remuneration.

There are a number of different ways in which an employer must deal with expenses and benefits in kind:

These are:

1. Completing a P11D return (Employer's return of expenses and benefits) to declare expenses and benefits payments to HM Revenue & Customs (HMRC). The employer pays Class 1A NICs based on the P11D return details on benefits paid to all its employees. **Note:** Any expenses paid or reimbursed to the employee should

also be declared on form P11D even if they are business expenses, unless the employer has been granted permission not to do so by way of P11D "dispensation" under s.65 Income Tax (Earnings & Pensions) Act (ITEPA) 2003. Business expenses, while notifiable on P11D return, are not subject to Class 1A NICs.
The other aspect of the P11D return exercise is for the employer to furnish the necessary records of benefits on individual forms P11D, for the individual employees to include in their Self-Assessment returns. The assessable value of the overall benefits will form part of the individual's overall income for the purpose of assessing the overall tax payable.

2. Until 6 April 2016, employees in receipt of benefits in kind who earn less than £8,500 per annum including benefits must have those benefits declared on a form P9D. After that date, the P9D is to be abolished and anyone in receipt of benefits must have them declared on a form P11D. The employer currently pays no Class 1A NICs on benefits declared on form P9D.
3. Using a PAYE Settlement Agreement (PSA) for expenses which are deemed to be "trivial", irregular or if it is impractical to operate PAYE on them (see PAYE Regs. 105-117 and ITEPA 2003 ss.703-707), the result is that the employer foots the bill, and Class 1B NICs are also payable by the employer under a PSA (see Social Security Act 1998 s.53).
Note: From 6 April 2015, HMRC will not expect employers to report benefits in kind in a PSA if they are worth less than £50.
4. Using a Taxed Award Scheme (TAS) for items which are provided to third-party employees, the result here is that the entity providing the awards pays the tax at either basic or higher rate tax. If he pays it at basic rate, any higher rate recipients will be liable to pay the balance owing through self assessment. Class 1A NIC is also payable by the entity providing the award on the benefit and the income tax due on the benefits. It should be noted that TAS is outside the scope of Real Time Information.
5. Taking account of whether any P11D "dispensations" are in place (s.65 ITEPA 2003 refers) in respect of any expenses which are "wholly, exclusively and necessarily" incurred on business, some of the questions presenting themselves when considering providing benefits to staff are:

- What is the exact nature of benefit being provided?
- How is it treated for tax and NIC purposes?
- What is the overall cost to the employer?
- Does the employer know and understand this treatment?
- If not, is the employer able to remedy the position?
- Does the refusal by an employer to acknowledge the position present the adviser with any difficulty?
- How is the employee's tax code affected?
- Are there any HR implications?

Exact nature of the benefit

Generally speaking, a benefit in kind is valued, and subject to income tax using the methods prescribed in ITEPA 2003, chapters 2-11, where each chapter deals with a different benefit provision.

The valuation of benefits depends entirely on what is provided; for example, living accommodation is valued in a completely different way to a company car. Loans are treated differently to the use of assets. Removal expenses are in a category of their own, and a car is not taxed in the same way as a van. However, the broad rule is that most other benefits in kind are valued based on the principle of the Market Value (MV) of the item when it was first provided to the employee.

It is important also to bear in mind the category of employee receiving the benefit. For example, seafarers, ministers of religion and persons working overseas can receive different treatment as far as benefits in kind go. Former employees can also be brought in to tax in some circumstances, as can shareholders, where the receipt of a benefit in kind can be classified as a distribution in certain circumstances. Benefits provided to family members can also be classified as if they were provided to the employee or director themselves.

The payment of a benefit in kind is not to be confused with a present - or a personal testimonial - which is considered to be different to a reward for services; and is therefore not assessable on the individual recipient as income (see **Calvert v Wainwright [1947] 27 TC 475 and Bridges v Beardsley [1957] 37 TC 289**).

Procedure for employers

As stated above, the MV when first provided to the employee is used to declare the benefit on the form P11D (employer's return of expenses and benefits payments) by 6 July following the tax year in which the benefit was provided; (that is 12 weeks after the end of the relevant tax year).

The P11D is submitted to HMRC by 6 July electronically with a corresponding return form P11D(b) which summarises the employer's liability to Class 1A NICs. The Class 1A NICs must be paid by 19 July to avoid interest and penalties, which are automatically assessed and issued by HMRC.

Other items, such as company cars, need to be reported to HMRC as soon as they are provided, using the form P46(car). This ensures HMRC is aware that the value of the benefit has changed and can contemporaneously assess the employee correctly for the car by adjusting the coding notice, for example.

The cars provided in the year are then detailed on the P11D in the usual way. However, please refer to the section on tax codes below for future changes to this regime.

Tax and NICs treatment, and overall cost to the employer

Once declared on the P11D, the employee is charged to tax on the value of the benefit at his marginal rate of tax. The employer pays Class 1A NICs at 13.8% (2014/15) on the value of the total benefits provided. Thus, the total cost to the employer is that of the provision of the benefit in kind, any irrecoverable VAT, the administration and resources costs, plus employer's NICs.

What is the valid comparison of costs if the employer is to pay an enhanced salary to enable the employee to purchase these items directly rather than receive them as benefits? The cost to the employer of paying a salary is the salary plus employer's NICs. However, it should be noted that the employee will pay NICs on salary (12% on the first £805 per week; 2% thereafter for 2014/15), which they would not do if the salary or part thereof was received as a benefit in kind.

It is up to advisers to discuss the viability of such schemes with their clients to ensure the client is aware of any additional costs and weighing up the costs against perceived goodwill and incentivisation connected to the employer brand.

Employer and agent issues

Many employers are unaware of all the rules surrounding benefits in kind (and expenses for that matter). For many employers, it is easier to let the payroll provider or accountant deal with the P11Ds, as they simply cannot get to grips with what the legislation is requiring them to declare.

The professional adviser must take care to ensure, if completing and submitting P11Ds on behalf of the employer, they have all the correct information. It is commonplace for the information relating to the expenses sections to be incomplete or inaccurate, as employers do not understand or agree that business expenses need to be declared on the P11D return in the absence of a P11D dispensation. The professional adviser must take care to ensure, if completing and submitting P11Ds on behalf of the employer, they have all the correct information. It is commonplace for the information relating to the expenses sections to be incomplete or inaccurate, as employers do not understand or agree that business expenses need to be declared on the P11D return in the absence of a corresponding requirement for the completion of a Form P11D for the employee who received the reimbursement of the business expenses.

What does the adviser do when it becomes obvious that P11Ds have been completed/submitted incorrectly? In the first stance, it would be to correct them and re-submit to HMRC. However, many employers refuse to do this, as there are additional fees to pay and they are concerned about HMRC "noticing" them. Advisers should consider whether this represents an event covered by the anti-money laundering regulations, as the P11Ds are tax returns, after all.

Tax codes

HMRC amend the employee's tax code upon receipt of a P11D to adjust the amount of "free pay" (£10,000 for 2014/15) the employee is allowed to earn before he starts to pay tax. Under PAYE the employee pays tax cumulatively, so the payment of income tax on a benefit in kind is spread over the whole tax year. Employees should check their tax codes regularly to ensure they are correct.

Under new measures introduced by HMRC, employees will be able to amend their own tax codes in certain circumstances, for example when they receive a new company car. This is part of HMRC's strategy to deal with tax matters in real time wherever possible to assist people with paying the correct amount of tax at a particular point of time.

Please see **https://www.gov.uk/transformation/paye.html** and **https://www.gov.uk/transformation/paye.html** for further details of this roll-out.

HR implications

As with any measure that affects employees, the employer should ensure that all payments of remuneration and reward are correctly reflected in the terms and conditions of employment, to ensure clarity and garner employee cooperation. Changes to terms and conditions of employment need to be agreed in advance with employees.

How does this affect the accountant and auditor?

The question of whether the client is treating the benefits in kind correctly for tax and NICs purposes is probably the most common conversation being had between clients and advisers. It is vital that clients understand that what they are providing is either taxable and NIC'able, or that a specific concession or exemption applies in certain circumstances.

Correct reporting is essential and incorrectly assessed expenses and benefits in kind can lead to underpayments, penalties and interest being levied by HMRC. This in turn can affect the income statement and balance sheet, and in certain cases lead to risks for the adviser in terms of anti-money laundering regulations.

In mergers and acquisitions situations, due diligence should always be carried out on employment taxation issues to ensure the relevant risks have been minimised.

MARRIAGE ALLOWANCE REMINDER – 2015/16 ONWARDS

Those who studied the 2015/16 budget in some detail will remember that the Government announced a plan that could be worth up to £212 per annum to married couples. The marriage allowance will allow up to £1,060 of the husband/wife's unused personal allowance (where they are earning less than their personal allowance of £10,600) to be transferred to their spouse who will benefit by up to £212 (ie 20% of £1,060).

It is to be noted, however, that if the higher earner is earning in excess of £42,385, then the married couple will not be eligible for any unused personal allowance of the spouse to be transferred.

More information on the allowance and registration details can be obtained at: **www.gov.uk/marriage-allowance**.

HMRC CAMPAIGNS & TASK FORCES

Minimum wage campaign – non-payers to be targeted

HM Revenue & Customs' latest campaign is to target those businesses not paying the national minimum wage (NMW) despite employees being entitled to it.

The sector that is being targeted is the hairdressing and beauty sector. Key aspects of the campaign are that:

- Penalties for non-compliance are now far more severe, at up to £20,000 per employee;
- Employers found to have not paid the minimum will be "named and shamed";
- No voluntary disclosure opportunity exists, and non-compliers will be penalised appropriately.

As a reminder, the national minimum wage levels are as follows:

Age	Rate £
21+	6.50
18-20	5.13
<18	3.79
Apprentice	2.73

Existing campaigns

An overview of current "live" campaigns is given below:

Campaign name	Targeting	Disclosure by	Payment by	Notes
Solicitors tax	Solicitors who may have underpaid tax	09/03/15	09/06/15	0300 013 4749 helpline
Credit card sales	Businesses who may have undeclared sales from credit cards	Open at the moment indefinitely	4 months from date of disclosure	0300 123 9272 helpline
Second Incomes	Employees who may have not declared secondary income	Open at the moment indefinitely	4 months from date of disclosure	0300 123 0945 helpline
Let property	Residential property letting market landlords – undisclosed rental income	Open at the moment indefinitely	3 months from date of receiving HMRC acknowledgment of notification	03000 514479.

The ICAS Tax Conference - The challenge of change

Thursday 21 May 2015, Waldorf Astoria Edinburgh - The Caledonian

This is a key opportunity to have a strategic look at tax and the challenges facing the tax and finance professionals in industry with tax responsibilities. You will hear from the real experts on some of the most significant changes in the tax world to emerge in the last year or so, what responses can be considered and gain high level insights into further changes to come. To book contact **memberengagement@icas.org.uk**.

ICAS

HMRC AND COMPANIES HOUSE WEBSITES ON THE MOVE – NAVIGATION TIPS

The Government's plans to migrate its individual departments' websites over to the central ".GOV.UK" website are well under way with both HM Revenue & Customs (HMRC) and Companies House sites no longer existing in their previous forms. This article highlights the addresses most likely to be of use to practitioners for day-to-day client compliance administration and filing.

HMRC

The following addresses are worth knowing for advisers:

- HMRC home page - **www.gov.uk/government/organisations/hm-revenue-customs** (**www.hmrc.gov.uk** will redirect automatically to this address).
- HMRC services (complete list), in alphabetical order - **www.gov.uk/government/organisations/hm-revenue-customs/services-information**
- HMRC agent area - **www.gov.uk/dealing-with-hmrc/tax-agent-guidance**
- Agent online services - **https://online.hmrc.gov.uk/login**

Companies House

- The main homepage is accessed at: **www.gov.uk/government/organisations/companies-house**
- Companies House Webcheck can be accessed at: **http://wck2.companieshouse.gov.uk//wcframe?name=accessCompanyInfo**
- Registered Companies House users can also still use the Companies House direct address at: **https://direct.companieshouse.gov.uk/**
- For accounts, annual returns and other filing matters, Companies House Web filing is accessed at: **https://ewf.companieshouse.gov.uk//seclogin?tc=1**

VAT: DIGITAL SERVICES UPDATE

Issues 126 and 127 provided details about the changes to the place of supply rules for digital services and the introduction of the VAT Mini One Stop Shop (MOSS) from 1 January 2015. The details of these changes can be referred to the earlier issues.

A very brief reminder of MOSS: from 1 January 2015 there are new rules regarding 'place of supply' for the supply of digital services (broadcasting, telecommunications, e-services, such as apps and e-books) by businesses to private consumers in the EU. Essentially, VAT on such services will now be paid in the consumer's country, rather than the supplier's country, at the rate that applies in the consumer's country.

In order to simplify VAT accounting, a UK business making such supplies can account for the VAT by submitting a single quarterly return and payment to HM Revenue & Customs (HMRC). HMRC will then send an electronic copy of the appropriate part of the return, and any payment, to each country's tax authority. This avoids the need for the supplier to register for VAT in every member state where digital services are supplied.

Since the original announcement of the change, however, new development has come in the form of an amendment and by way of a further announcement in Brief 46(2014), which aims to deal with practical problems that would otherwise have been faced by some UK businesses.

Small businesses

It is recognised that these rules are onerous for a small business that makes minimal digital supplies and only in a few EU locations. Before the amendment and announcement, in respect of digital supplies outside the UK, small businesses are faced with a choice of:

a) either registering under MOSS, or
b) registering for VAT in every member state where a digital supply is made.

Secondly, as a condition of using MOSS, the business needs to be registered for VAT. If a business has UK turnover below the UK VAT registration threshold (currently £81,000), and VAT registration is not mandatory, the business has a choice of:

a) either registering voluntarily for UK VAT and losing one-sixth of UK turnover in output VAT that would otherwise not have to be paid, but be able to use MOSS for foreign supplies, or
b) remaining unregistered in the UK, and registering separately in any member state where there are B2C (Business to Consumer) sales.

In order to address these issues concerning small businesses making digital supplies, HMRC decided that as from 1 January 2015, VAT need not be charged on taxable supplies of digital services made in the UK by a person established in the UK, and registered for VAT in the UK on a voluntary basis. The *quid pro quo* being that VAT input claims must be restricted to amounts directly attributable to the cross-border sales on which VAT will be accounted for via MOSS. A business using this special arrangement must monitor its turnover in respect of amounts attributable to UK sales and EU sales, and start accounting for VAT on the UK sales when the turnover attributable to UK sales exceeds the registration threshold.

This poses questions for many small businesses that are already VAT registered. Is it possible to use the arrangement because the level of their UK taxable turnover has suddenly fallen due to the new rules regarding 'place of supply' from 1 January 2015? The amendment announcement states that this opportunity is only available where a business registers for VAT because of the need to access MOSS. Does it mean that it would be necessary to de-register and then re-register under MOSS? Also, there is no clarity as regards at what point a business, registered under MOSS but otherwise below the registration threshold, should start accounting for VAT on supplies made, once it crosses the threshold. Is it on the first such supply, or perhaps more practically the first of the following month? HMRC have stated that they will assess for additional VAT due if the business fails to start accounting for VAT at the right time, once the threshold is crossed.

At the time of writing, HMRC have not clarified these points. We will keep readers updated of any further development coming from HMRC's clarification on these ensuing issues.

TAX CASES

Frederick Roberts v Commissioners of HM Revenue & Customs [2015] UKFTT TC 04235

Point at issue: Whether the appellant could offset claimed but unproven credit balances on their Directors loan account.

Background: The appellant, Mr Roberts, appealed against the Tribunal's earlier judgement that private expenses incurred by him and paid by his company should be assessed on him as benefits in kind (BIKs) which will accordingly be chargeable to tax.

The company, RSL was incorporated in 2003 and the appellant was a working Director in the company, along with another director, Dennis White, and they controlled the company together. The company was placed into voluntary liquidation on 8 March 2011 with total creditors in excess of £252,000.

The appellant's self-assessment returns for the years 2006/07, 2007/08 and 2008/09 contained no benefits. HM Revenue & Customs (HMRC) undertook a check into the Employer and Contractor's records in 2009, looking at benefits and expenses relating to the directors and their families and, as part of this, asked for details of the appellant's Director's Loan Account (DLA).

This check showed that the company's credit card was used for both business and private expenditure of the Directors, and that the DLAs were incorrect. The company accepted that the record system which they had was inadequate and that there was no system in place to identify how indebted to the company the Directors were (estimated to be in excess of £200,000).

The two sources charged to tax were categorised as:

- Credit card expenditure – used for private expenditure during 2006/07, 2007/08 and 2008/09, HMRC contended that this was taxable as remuneration.
- Personal motoring expenses of the appellant and his family were met by the company in the same 3 years. Again, HMRC contended that these were taxable as meeting the personal liabilities of the appellant.

The amounts assessed are shown in Table 1 below.

The evidence presented before the tribunal by the appellant consisted of copy correspondence between their agent and HMRC, notes of meetings, copy returns and assessments, spreadsheets detailing the benefits enjoyed by the appellant, copies of personal bank statements and business bank statements and analysis of the DLA from February 2009.

Argument: The appellant maintained that there had been capital injections into the company by the Directors which outweighed their withdrawals, and that under Section 203(2) Income Tax (Earnings and Pensions) Act (ITEPA) 2003, the Directors have a right to retrospectively make good a benefit in kind once they become aware of it. A large proportion of the credit, they said, was made up of Directors' mileage claims based on 27,000 miles per annum for each Director, totalling £115,500. He contended further that there had been expenses paid for by the Director for which claims had been submitted and that the actual DLA position as at 31 March 2010 was in fact that the Directors were owed £221,000.

HMRC argued that, with a lack of evidence to support such contentions, their assessment should still stand. In particular:

- There was no evidence provided to show that private expenditure had been reimbursed to the company by the Directors.
- Details of the DLAs as used to draw up the company accounts in later years have been requested, but not supplied.

Table 1

	Credit card total £	Motor total £	Total £	Duty assessed £
2006/07	7,668	18,639	26,307	9,177
2007/08	11,711	17,203	28,914	6,361
2008/09	6,368	17,542	23,910	4,782

- Invoices relating to expenditure were not all retained.

Decision: In making their decision, Judge Connell states that the onus of proof lies on the person making the assertion which means that they must demonstrate their contention on the balance of probabilities. In this situation, therefore, the appellant must show by satisfactory evidence that the assessments are wrong, but also what correction should be made to make them right or nearly right, if they are to be reduced or set aside.

In this case "*no documentary evidence has been provided by the Appellant to show that HMRC's assessments are not reasonable*".

The appeal was therefore dismissed.

Commentary: This is something of a curious case. The appellant had no evidence to corroborate their position but still decided to contest the earlier judgement. This case highlights the need for proper business record-keeping, especially for any supposed expenses incurred for business purposes and reimbursed by the company. The records are the evidence, and had the appellant kept his records for the alleged business expenses being reimbursed by adjustments to the DLA, the outcome of this case might have been different.

The Commissioners for HM Revenue & Customs v Apollo Fuels Ltd & Others [2014] UKUT 0095 TCC

Continuing the focus on employee taxes and benefits in kind, this tax case illustrates how changing Government policy has influenced the behaviour of businesses. The outcome of this case, which was being waited upon by 20 other businesses, will be a relief for those involved. However, further changes to the law in the interim period have meant that this methodology is no longer permitted and the leasing arrangement would need to be organised independently by the individual employees – much like the scenario which is explored in detail in the company car conundrum article on page 7.

Point at issue: Whether cars leased to employees amounted to a scheme falling within section 114 of ITEPA 2003 ie whether cars should be treated as company vehicles.

Background: This Upper Tribunal hearing is in relation to an appeal by the Commissioners for HMRC against the decision by the First-tier Tribunal (FTT) (**[2013] TC 02753**), which held that the arrangements entered into by a group of companies to provide cars to their employees and to pay the employees mileage allowances did not give rise to any liability to tax. The Tribunal also overturned HMRC's assessment that National Insurance Contributions (NICs) were payable in respect of the use of the cars provided and on the payments made in respect of mileage allowances.

The taxpayer companies in this case historically provided cars to salesmen and managers employed by them, both as a prerequisite of their employment and to enable them to carry out their duties. The cars were generally second-hand and had been purchased at auction. The business mileage of those concerned generally varied from between 5,000 to 20,000 miles per annum.

Following the change introduced in April 2002 in the law relating to the taxation of cars provided to employees, the group decided that it would move to an arrangement whereby it leased the cars to the workforce for an arm's length hire rental. All employees who were previously provided with a vehicle (26 of them) agreed to the new arrangements and began leasing their cars from their employer. The agreements stipulated that they would be paid business mileage at the same rate as other group employees who used their own cars for business purposes. Sums due to the employees for mileage expenses were set off against the rentals which they owed to the group under the car leases.

Each employee signed a lease agreement which set out the make and registration number of the car, the monthly rental and the VAT charged. In addition, the agreement stipulated that amounts due in respect of mileage payments would be set off against the rental and that, should the individuals decide to leave the company they would be required to:

a) Complete a standing order mandate for future rentals, should they wish to continue hiring the vehicle, or
b) Return the vehicle and any money owing would be settled on their last day.

The lease also stated that the employee could cancel the agreement at any point, subject to 7 days' notice or mutual agreement.

Argument: HMRC accepted that the rental paid by employees is an arm's length commercial rental, as would be paid for the particular car if the employee had hired it from a third party car hire company. HMRC's argument is that the car is still a benefit that falls to be taxed under Chapter 6 of Part 3 of ITEPA 2003 because the arrangement falls within section 114 of the Act.

HMRC, deciding that section 6 applied, had served notices of assessment on the individual employees in relation to the taxable benefit which they considered had fallen upon them. The employees appealed against the notices of assessment. The group's appeal concerned HMRC's assertion that they were liable to pay NICs in respect of the employees' use of leased cars and in respect of the taxation and NIC liability for the mileage allowance payments.

The FTT found that no tax and no NICs were due to be paid in respect either of the cars or of the mileage allowance. HMRC did not challenge this part of their ruling, instead asserting that the Tribunal erred in finding that the employees were not liable to pay tax on the cars and that the Group was not liable:

1. To account for PAYE on the mileage allowance payments made to the employees; and
2. To pay NICs on the cars under section 10 of the Social Security Contributions and Benefits Act 1992.

HMRC's argument hinged on the finding of the FTT that the employees had acquired a proprietary interest under the car hire arrangements. As a result, section 114 of ITEPA 2003 should apply, they argued.

The first question addressed by Mrs Justice Rose was whether there was a transfer of property in the car provided to the employees.

Ultimately, the issue concerns whether or not section 114(1)(a) of ITEPA 2003 was satisfied. This section of the legislation concerns whether or not there is a transfer of property in the car provided to the employees. In her judgement, Justice Rose ruled that "*there is no authority for the proposition that the lease of a chattel confers a proprietary right on the lessee*".

The second question requiring to be addressed was whether the transfer of partial proprietary rights was enough to take the arrangements out of section 114(1)(a).

In response to this question, Mrs Justice Rose highlights that, in the present case, "*the Employees are entitled, as an incident of the rights they acquire under the car lease to 100% of the use of the car to the exclusion of the lessor. In this case, the [taxpayers] argue there is no 'making available' of the car by the Group once the car has been leased by the Group to the Employee at least where, as here, the contract does not entitle the Group to terminate the lease at any time.*"

Her conclusion on this point was:

"*if…these leases do transfer a proprietary interest in the car for the purposes of section 114(1)(a), then the incidents of the interest transferred in this case is an exclusive right to the use of the car. That then means that the car is not being made available by the group to the employees. The making available of the car refers to an on-going activity and that on-going activity must be by reason of the employment. Here, the on-going availability of the car to the Employee derives not from the employment relationship but from the incidents of the lease – the car can still be used by the Employee after he leaves the Group's employment provided that he signs a standing order for the rental payments*".

Therefore, if the lease does not transfer a proprietary interest in the car to the Employee under the lease, then the scope of that interest is sufficient to mean that the condition in section 114(1)(a) is not satisfied and the car will not fall within section 114.

In alternative, the taxpayers contended that if the car leased is outwith section 114, by virtue of section 114(3), which provides:

114(3) This Chapter does not apply if an amount constitutes earnings from the employment in respect of the benefit of the car or van by virtue of any other provision (see section 119).

The taxpayers submitted that any 'money's worth' in relation to the car leased falls to be taxed under section 62(3), where 'money's worth' is:

a) Of direct monetary value to the employee, or
b) Capable of being converted into money or something of direct monetary value to the employee.

HMRC argued that the employees have paid market value for the car leased to them, and no 'earnings' arise to be taxed from the provision of the car under section 62.

It is accepted that the car here is 'money's worth' in the hands of the employees, because the rights they have under the lease entitle them, if they so choose, to lease the car out themselves to someone else and hence in effect convert the car into money for the purposes of section 62(3)(b). However, the amount falling to be taxed under section 62 is nil (by virtue of market value of the lease being adopted). The strategy in the taxpayers' argument can be analysed as:

- Any amount arising from the car lease arrangement falls to be taxed under section 62(3)(b);
- Given that section 62 applies, then in reliance of section 114(3), the amount falling to be charged to tax cannot be charged under Chapter 6;
- That the amount falls to be charged under section 62 is nil, because market value adopted for the lease arrangements and no consequent 'money's worth' arises from the arrangements.

Justice Rose considered the two sides of the argument on the point of section 62, and stated that she preferred the submissions by the taxpayers. She held that on the proper construction of section 114(3), if the arrangement falls to be considered under section 62, because the car is money or money's worth, then it falls outside section 114 (and Chapter 6 does not apply). She held that the payments made by the employee in return for receiving the asset that constitutes 'money's worth' falls to be taxed under section 62; and in this particular case, the section 62 charge is Nil.

She continued, stating that the cars leased do not fall within section 114 ITEPA 2003 because the structuring of the lease was done on an arm's length basis, and that point is not in dispute. If the arrangements are fair bargains, they are excluded from the regime for taxing benefits conferred on employees because there is no element of benefit accruing to the employees which can be properly subject to tax. Since HMRC accept that these leases between the Group and the employees were at arm's length, there could be no benefit arising that can be subject to tax under Chapter 6.

Decision: The appeal was therefore dismissed.

Commentary: This Upper Tribunal judgement has since been appealed again by HMRC. It would appear that the company in this case had obtained professional advice and structured their arrangements in such a way as to ensure that the arrangements are outwith the scope of section 114 of ITEPA 2003. The key to such arrangements is that they are fair bargains, under terms that would have been fair had it been with a third-party, and that no benefit in kind can be said to have accrued to the employee as a result of the arrangements.

ACCOUNTING AND AUDITING QUERIES

Query: *I am a sole practitioner who is preparing the accounts for a small private company client which currently rents office space within a shared property. The directors intend to relocate the company's office to new premises at the point when the next break in the existing lease agreement occurs in 5 years' time. Under the terms of the current lease, certain dilapidation work needs to be carried out before the vacant property can be returned to the landlord. The agreement also permits the landlord to recharge my client for any costs incurred to repair/restore the actual fabric of the property.*

The landlord is currently seeking quotes to carry out major structural work to the exterior walls of the property.

My questions therefore are as follows:

1. *Should my client recognise a provision for the costs associated with the dilapidation repairs now?*
2. *Should my client also recognise a provision for their share of the major structural repairs now?*

We will be preparing the accounts under Financial Reporting Standard (FRS) 102.

Answer: Section 21 'Provisions and Contingencies' of FRS 102 deals with such matters. The requirements under FRS 102 are very similar to those under FRS 12 'Provisions, Contingent Liabilities and Contingent Assets'.

Paragraph 21.4 of FRS 102 states that a provision should only be recognised when the following conditions are met:

a) The entity has an obligation at the reporting date as a result of a past event;
b) It is probable (ie more likely than not) that the entity will be required to transfer economic benefits in settlement; and
c) The amount of the obligation can be estimated reliably.

The conditions above can be applied to each of your questions as follows:

1. **Should my client recognise a provision for the costs associated with the dilapidation repairs now?**

   In this case, under the terms of the lease it would appear that the dilapidations need to be carried out by your client before the lease can be surrendered. Therefore, it would appear that your client does have a present legal obligation at the reporting date. It is also more likely than not that your client will be required to transfer economic benefits in settlement. Finally, it should be possible to arrive at a reliable estimate on an annual basis based on prior experience and management knowledge. Therefore, a provision for the estimated dilapidation costs should be created and spread over the remaining duration of the tenancy.

2. **Should my client also recognise a provision for their share of the major structural repairs now?**

   Whether your client should create a provision for any potential share of the major structural repairs will depend upon what is stated in the terms of the lease, and whether or not your client has any obligation for any repairs of this nature. If you determine that there is such an obligation on the part of your client, and that there is already evidence of structural damage, then a provision should be created for the entire cost of the structural repairs at the point when the damage is discovered.

Query: *My client, a small company, currently prepares financial statements annually to 31 December using the Financial Reporting Standard for Smaller Entities (FRSSE). Will they still be permitted to use the FRSSE under the new UK GAAP reporting framework which came into effect from 1 January 2015?*

Answer: The Financial Reporting Council (FRC) is currently consulting on proposals to withdraw the FRSSE for accounting periods commencing on or after 1 January 2016. It is considered almost certain that the FRSSE will no longer be applicable after this date.

Therefore, your client will still be permitted to adopt the FRSSE up to and including the period ended 31 December 2015. After this date, however, under the FRC's new proposal, small companies will be provided with the following three options in terms of reporting regimes:

1. Adoption of a proposed new standard, FRS 105, *The Financial Reporting Standard applicable to the Micro-entities regime*, if they meet the criteria set out in the applicable column of Table 1 overleaf; or
2. Adoption of Section 1A, Small Entities, of FRS 102 if they meet the criteria set out in the applicable column of Table 1 overleaf; or
3. Adoption of FRS 102, *The Financial Reporting Standard applicable in the UK and Republic of Ireland.*

The decision tree at Table 2 below will assist you and your client in the determination of the most appropriate reporting regime.

The consultation period on the new proposed regime will close on 30 April 2015 with the final standards expected to be issued in July 2015.

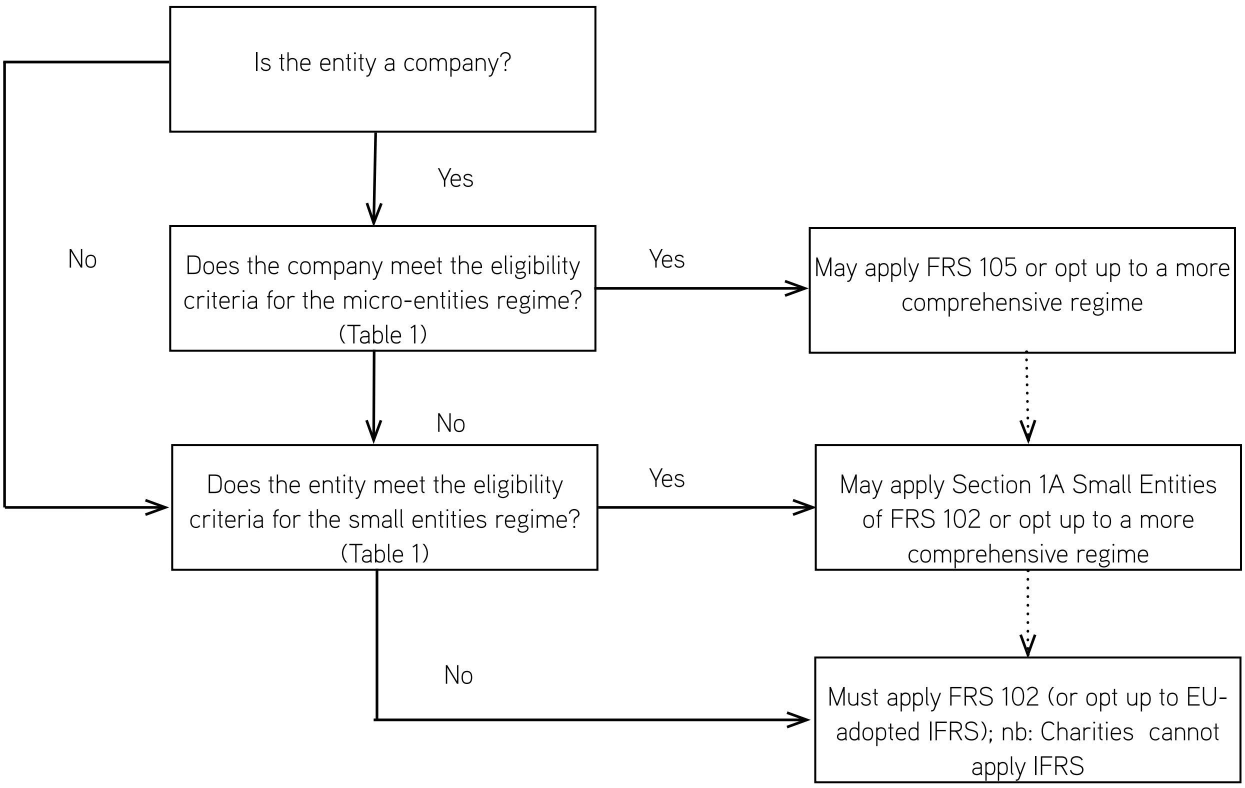
Entities which are excluded from the small company regime are also excluded from being a micro-entity. At present only companies can satisfy the definition of a micro-entity. Micro-entities are in fact a subset of the small company category. If a subsidiary is included in the consolidated accounts of a group then it cannot qualify as a micro-entity. A parent company can qualify provided that it satisfies the micro-entity criteria and the group which it heads up satisfies the definition of a small group. However, if the parent prepares group accounts (the Companies Act 2006 does not require it to) then it will not qualify for micro-entity status.

Table 1 - Size criteria

	Micro-entities	**Small entities**
Size thresholds	A company qualifies if it does not exceed two or more of the following criteria: • Turnover £632,000 • Balance sheet total £316,000 • Number of employees 10 (The usual 2 year rule applies ie in relation to a year which is not a company's first year, where on its balance sheet date a company meets or ceases to meet the qualifying conditions, that affects its qualification as a micro-entity only if it occurs in two consecutive financial years.) Where the period is not 12 months, the turnover criteria should be proportionately adjusted.	In relation to a company, it qualifies if it does not exceed two or more of the following criteria: • Turnover £10.2m • Balance sheet total £5.1m • Number of employees 50 (The usual 2 year rule applies ie in relation to a year which is not a company's first year, where on its balance sheet date a company meets or ceases to meet the qualifying conditions, that affects its qualification as a small company only if it occurs in two consecutive financial years.) Where the period is not 12 months, the turnover criteria should be proportionately adjusted.

Table 2

Decision tree on appropriate reporting regime



CONSUMER CREDIT CHANGES – RELAXATION TO INSTALMENT CREDIT

Following lobbying by ICAS and many other bodies, we are delighted to announce that Parliament has approved a statutory instrument which can be found at: **http://www.legislation.gov.uk/uksi/2015/352/contents/made**, effective from 18 March 2015, which de-regulates instalment credit where there are 12 or fewer payments in a 12-month period and there is no interest charged.

This is good news for many of our accountancy firms whose only previous involvement in consumer credit was offering clients the ability to pay fees by monthly instalment. Effective from 18 March 2015 this activity will no longer fall within consumer credit regulation. Instalment credit attracting interest will continue to be regulated.

Further guidance on consumer credit is available on the ICAS website at: **http://icas.org.uk/regulation-ethics/authorisations/consumer-credit/**.

DATA PROTECTION AND PRACTICES – A BRIEF REMINDER OF THE REQUIREMENTS

Chartered accountants in practice will probably deal with personal data of one type or another on a fairly regular (and sometimes daily) basis. What are the implications for those individuals and their firms if personal information about their clients is unwittingly released to third parties?

The Data Protection Act 1998 (the Act) requires that all businesses conduct a risk assessment and have an information security policy and appropriate controls in place. This risk assessment must focus on the likely risks which the business faces from a customer data protection perspective. Adequate procedures must be implemented in order to mitigate these risks. The body that is responsible for enforcing the requirements of the Act is the Information Commissioner's Office (ICO).

Take the example of a payroll client where information is flowing back and forth. This information will typically include dates of birth, addresses, national insurance numbers and so on. This is the kind of personal data that, if it got into the wrong hands, could potentially be used for criminal gain. Generally speaking, this sort of information is likely to be transmitted via email. It would be relatively easy for an email containing details of a monthly payroll run to find its way to the wrong person by accident. If there are insufficient or non-existent controls in place to address such risks, then the outcome could be very harmful for the client and also to the firm.

The damage that can be done to the firm can be on two levels:

1. Financial – monetary penalties may be levied by the ICO in relation to unauthorised disclosures of personal data.
2. Reputational – this should not be underestimated and can, in some cases, be catastrophic. A Welsh firm of accountants was put out of business as a result of an unauthorised disclosure of data.

Firms which make sure that they implement the policies and procedures to deal with these issues are less likely to feel such a negative impact on their business. Indeed, if they are able to demonstrate that they have taken reasonable precautions, then any liability to financial penalties for the firm is likely to be much reduced.

ICAS has also developed a quick checklist for practitioners to check how well their firms are complying with the Act and it can be accessed at: **http://icas.org.uk/WorkArea/DownloadAsset.aspx?id=4294975643**.

Another useful resource in this area comes from the Information Security Framework (ISF) produced by ICAS, which has been specifically tailored to meet the needs of accountancy practices. More information on the framework can be obtained at: **http://icas.org.uk/isf/**.

TOP PRACTICE TIPS – YOUR WEBSITE

This is the first piece in our practice excellence series and focuses on firms' websites. A recent practice technology conference highlighted a number of issues for practitioners to be wary of in relation to how they manage their web presence. It's time for practitioners to take notice and make sure that they aren't falling into some of the common traps.

Is your website mobile or tablet enabled?

In the current tech-savvy world, most prospective clients will be looking at your website on a variety of applications, and more often than not, this will be from a tablet computer or a smartphone. If your website is not mobile enabled then a prospective client will quickly move on to the website of a competitor who is one step ahead. You must make sure that you are not the one that is being skipped because your website is not mobile or tablet enabled.

What does it look like?

If you do a search of "accountants uk" or "accountancy firms uk" on google and then click images, you are greeted by a series of pictures of people in suits sat around tables or calculators next to pens and paper. And this is not what people think about accountants, it is what accountants themselves put on their websites. The key point here is that your websites must differentiate you from the competition. All chartered accountants are generally competent at providing their accounting services so it is up to you to say what is different about your firm and make a compelling case for a potential client to take the next step of getting in touch with you. Move away from the corporate boilerplate.

Make it human

One of the things often missing from a lot of practice websites is the human or "softer" side. We are all humans after all. Possible areas that firms might want to look at include:

- Detailed biographies of key staff with photographs
- Links to the local community and details of Corporate Social Responsibility (CSR) performed
- A newsfeed (accounting and non-accounting related) – often it is the non-accounting stuff that gets people engaged
- Twitter, Facebook and LinkedIn references where appropriate

Grabbing attention

To say "print is dead" might sound a bit premature but the reality is that people are consuming digital media in much greater quantity nowadays. Technology is marching on and making more and more possible. Therefore your website must include media content such as videos, webinars or links to content that make it compelling for visitors. A website home page covered in text is not going to grab people's attention – the average time spent on the homepage of a website is in the region of 2.7 seconds. If your practice has a homepage which lacks visual appeal, it may struggle even to hold the browser's attention for .7 of a second.

Follow up on website visits

Do you monitor who visits your website and follow up if appropriate? This is an example of where technology has got to - you can now obtain a piece of Internet Protocol matching software which tells you who has visited your website. This may yield useful information and allow follow up with prospects.

Make use of analytics

Do you monitor your website's activity levels? It is now possible to do this with a few clicks. Google analytics is just one example of software that analyses details of your site's visitors and gives information on peaks and troughs in levels of activity, visit duration etc. Making use of this information can facilitate a better understanding of your viewers, and help improve understanding of users' behaviour, and ultimately lead to a better website.

ISF PRACTITIONER WORKSHOPS

Perth - 6 May 2015
Glasgow - 7 May 2015

Cyber-Crime - The evolving landscape
Challenges and Opportunities for the CA

Hardly a day goes by without a new cyber-crime being reported in the news. The latest statistics suggest that over 80% of large businesses and 60% of small businesses have been victims in the last 12 months. 2014 saw the UK Government launch Cyber Essentials, a new security standard which is now mandatory for suppliers to the UK Government and is advised for their supply chains.

This event covers the changing threat scenarios and the increasing revenue opportunities for CAs to develop new client services using the ICAS Information Security Framework (ISF).

To book you place complete and return the booking form which can be found at: **http://icas.org.uk/WorkArea/DownloadAsset.aspx?id=12884908111**.

MONEY LAUNDERING QUERY

Query: *I am in the process of setting up in practice and am about to take on a number of clients who are intending on moving across to my firm (having previously dealt with them at my previous employment). A number of these clients live some distance away from my office and, although I have met a number of them before, I am unlikely to be seeing them again prior to my taking them on as a client.*

I would like some advice around what is required as regards verification when it comes to performing the necessary 'know your client' and client due diligence procedures? Is it enough for them to send me copies of passports and utility bills in their name or shall I be doing something more?

Answer: Before addressing the issue of what is appropriate from an Anti-Money Laundering (AML) procedures perspective, it would be remiss of me not to point out the ethical aspects of what you are proposing. Firstly, you should have made sure that you obtained professional clearance in relation to your new client relationships, but you should also be careful that your actions are not in any way going to breach any restrictive covenants which may have existed within your previous contract of employment and could leave you liable to being sued.

As is normal when it comes to AML procedures, you must take a risk-based approach to performing your client due diligence. In this case, you would need to look at each client on a case by case basis before deciding what verification to perform. In most cases, where an engagement meeting with the client has not taken place, you would probably want to perform some other form of checks to verify their identity (unless you felt that they satisfied a low risk rating and therefore simplified due diligence).

It is not normally sufficient to just receive copies of verification documents (passports and bills) if you yourself have not had sight of the originating documents. If you are not able to obtain these prior to copying, copies should be certified appropriately by another regulated party or a notary public.

Other checks which you may wish to perform could be, for example, by using electronic verification software, which has the capability to cross reference to other data bases such as the electoral roll and credit reference agencies.

IT QUERY – CLOUD MATTERS

Query: *I am a partner in a multi-office firm which is situated in the central belt of Scotland (we have 3 other offices around Scotland) and have been given the task of researching how we might take our practice offering to the cloud. I am unsure as to where to start as regards this task as there seem to be a huge variety of providers out there and they all seem to offer a similar albeit slightly different product with their own selling points. What issues do we need to consider as a firm and how might we go about implementing the change?*

Answer: This is an issue which a number of firms are wrestling with at the moment as the availability of cloud accounting software has reached such a level that the profession is now at a tipping point as regards getting on board with all of the other adopters before the cloud train leaves the station.

There are a number of options as regards cloud accounting software providers. Some are established players in the accountancy software game who have developed a cloud product (eg Sage, Iris) whilst others have come in to address what they perceive to be a gap in the accounting software market; eg Xero/Intuit. Which provider you decide to go with may have some bearing on your current practice arrangements; for example, if you already have a number of Iris products then using Kashflow might seem logical from a cloud perspective (Kashflow being as it is an Iris product).

Conversely, if your practice has a mixture of software providers then adding another different one should not theoretically cause major complications. The main piece of advice would be to look in detail at each provider and do some tests on their software using dummy accounts – both "client" accounts and "adviser" accounts so that you can see how the functionality matches up to what you require from the software and what the client experience looks and feels like.

The user experience from the client perspective is equally important as that of your own staff and how they rate the experience. Is the software likely to be intuitive enough/usable for the client's staff? Will it be relatively simple to train them up on using it? Remember, if you recommend a cloud product which is not suitable for your clients or they have a bad user experience, it will reflect badly on you. This is where research and first-hand experience become imperative.

As your firm has a number of offices, some co-ordination will be required, and it is probably a good idea to arrange a period of consultation where all of the offices get a chance to test out the software and make their own conclusions regarding what they prefer. It may be that you take the view that all offices need to be using the same provider for consistency, or you may have some who feel strongly that one provider is superior to the other and they would wish to use them. Clearly some discussion needs to take place around the approach.

Once you have selected your cloud provider and you are happy with the product, the next issue to address relates to how the function is going to sit within the business from a staffing perspective. Some firms have found that focusing the cloud operation within a small team or "pod" has worked well, with, for example, a manager and three more junior staff responsible for all things "cloud" within the firm. It is then their responsibility to ensure that the cloud accounting function operates effectively within the business and to act as an advocate for it within the firm but also to clients and prospective clients.

When it comes to getting clients to move to a cloud software package, you really have to spend some time looking at each client's accounting and business requirements to decide whether or not a cloud package would be suitable for them. Broadly speaking, cloud packages are not suitable for larger businesses; ie any business that is categorised as medium-sized and above, or has significant throughput in terms of transactions, is unlikely to be suited to a cloud provider, which is more geared towards servicing an SME/micro business/sole trader or a partnership. However, this situation is likely to change as providers develop add-ons to their software, which means that they will cater to a broader range of clients (take Xero for example, with its new payroll module).

Getting client businesses to adopt cloud will be easy for some and not so easy for others. Some clients will be very conducive to moving to the cloud because they will immediately see the benefits that it could bring them in terms of real-time information exchange and the convenience aspect regarding access. You will undoubtedly get some clients coming to you as a result of you providing a cloud service. On the other hand, you will have some businesses which are worried about moving to the cloud because of issues with data security and safety, cost and potential upheaval from moving systems.

We would advise that you begin your cloud transition by looking at the "easy wins" ie the straight forward ones where the transition will be simple and the results and benefits readily observed. These can then be used as advocates or even case studies for demonstrating the benefits of moving to the cloud.

When it comes to convincing the "hard sells" you need to be prepared for their questions. For the security aspect, you need to be comfortable that the data is not transferred out-with the European Economic Area (EEA) or, if it is, that it is just in transit. More detailed information on data protection considerations can be found on the Information Commissioner's office website at: **https://ico.org.uk/for-organisations/guide-to-data-protection/**.

As far as convincing your clients of the benefits of the cloud, we would recommend that you ensure that you are well prepared; set up a "demo" version so that clients can experience how the software works and get an idea of its functionality. Thinking about what issues are pertinent to the client and then framing these within the demonstration are likely to have some impact, and make it more likely that the client will consider moving with you onto the cloud provider.

As with any big project involving change, planning is everything and this is something that holds true with cloud accounting transition.

Support for Businesses Wanting to Make Use of Cloud Platforms

A useful resource is now available for small businesses wishing to embrace cloud technology. The resource comes under the name of "Clouding SMEs" and has information for all levels of business owners from those who are just starting out on their cloud journey, to those who are well informed and wish to compare cloud providers, for example, regarding their security scoring or in relation to possible add-on applications (apps). The service is free to use and is a support action as a result of a joint effort of SME associations, SMEs and cloud computing experts with information on best practice, how to be up to date and frequently asked questions on the cloud, amongst other things. More information can be accessed at: **www.cloudingsmes.eu/wordpress/**.

TECHNICAL BULLETIN

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