Factsheets index by title

Clear and concise factsheets on business and personal issues

Age Discrimination

The Equality Act 2010 replaces all previous equality legislation, including the Employment Equality (Age) Regulations 2006. The Equality Act covers age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. These are now called 'protected characteristics'.

The Act protects people of any age, however, different treatment because of age is not unlawful if you can demonstrate that it is a proportionate means of meeting a legitimate aim. Age is the only protected characteristic that allows employers to justify direct discrimination. Employers need to ensure they have the appropriate policies and procedures in place to deal with age discrimination and should raise awareness of it so that acts of discrimination on the grounds of age can be prevented.

Discrimination

Discrimination occurs when someone is treated less favourably than another person because of their protective characteristic.

There are four definitions of discrimination:

Direct Discrimination: treating someone less favourably than another person because of their protective characteristic

Indirect Discrimination: having a condition, rule, policy or practice in your company that applies to everyone but disadvantages people with a protective characteristic

Associative Discrimination: directly discriminating against someone because they associate with another person who possesses a protected characteristic

Perceptive Discrimination: directly discriminating against someone because others think they possess a particular protected characteristic

Examples of Age Discrimination

An example of direct discrimination would be where someone with all the skills and competencies to undertake a role is not offered the position just because they completed their professional qualification 30 years ago. Other examples could include refusing to hire a 40 year old because of a company's youthful image, not providing health insurance to the over 50's, colleagues nicknaming a colleague 'Gramps' and not promoting a 25 year old because they may not command respect.

A business requiring applicants for a courier position to have held a driving licence for five years is likely to be guilty of indirect discrimination. A higher proportion of people aged between 40 and above will have fulfilled this criteria than those aged 25. Other examples of indirect discrimination could include seeking an 'energetic employee', requiring 30 years of experience or asking clerical workers to pass a health test.

An example of perceived discrimination could be where an older man who looks much younger than his years is not allowed to represent his company because the Managing Director thinks he is too young.

However, different treatment because of age is not unlawful if it can be objectively justified and you can demonstrate that it is a proportionate means of meeting a legitimate aim. For example, an employer might argue that it was appropriate and necessary to refuse to recruit people over 60 where there is a long and expensive training period before starting the job. However, cost by itself is not capable of justifying such an action.

Harassment

Harassment on the basis of age is equally unlawful. For example, a mature trainee teacher may be teased and tormented in a school on the grounds of age during the teaching experience. If no action is taken by the head teacher, this may be treated as harassment. An employee may be written off as 'too slow' or 'an old timer'. This too could be seen as harassment.

The Equality Act 2010 covered harassment by a third party, making employers potentially vicariously liable for harassment of their staff by people they don't employ. However, this has been repealed with effect from October 2013, and employers will no longer have the risk of being held responsible if an external third party harasses an employee. However, employers must continue to take 'all reasonable steps' to ensure that employees don't suffer harassment at work; therefore it is recommended that your harassment policy still states that you show 'zero tolerance' towards such behaviour.

Recruitment

Employers must be aware of the significance of the legislation at all stages in the recruitment process and to avoid breaking the age rules they should consider:

- removing age/date of birth from adverts for example: 'Trainee Sales Representatives.. envisaged age 21-30 years'
- reviewing application forms to ensure they do not ask for unnecessary information about periods and dates
- avoiding asking for 'so many years of experience' in job descriptions and person specifications for example: 'graduated in the last seven years'
- avoiding using language that might imply a preference for someone of a certain age, such as 'mature', 'young', 'energetic' or 'the atmosphere in the office, although demanding, is lively, relaxed and young'
- ensuring that other visible methods are used to recruit graduates as well as university milk rounds, to avoid limiting opportunities to young graduates
- focusing on competencies to undertake a role and not making interview notes that refer to age considerations
- never asking personal questions nor make assumptions about health or physical abilities
- never ask health related questions before you have offered the individual a job.

Service related benefits

Employers are allowed to use a length of service criterion in pay and non-pay benefits of up to five years' service. Benefits based on over five years service are also allowed if the benefit reflects a higher level of experience, rewards loyalty or increases or maintains motivation and is applied equally to all employees in similar situations. It is for the employer to demonstrate that the variation in pay/benefits over five years can be objectively justified.

Employers are recommended to review their pay and benefits policies to ensure that they are based on experience, skills and other non-age related criteria.

Redundancy

The existing statutory payment provisions remain in place. Employers can, as before, pay enhanced redundancy payments. However, to avoid discriminating, employers should use the same age brackets and multipliers as used when calculating statutory redundancy pay.

Retirement

The default retirement age and the statutory retirement procedure were abolished from 6th April 2011.

Employers that wish to prescribe a compulsory retirement age may do so only if it is a proportionate means of achieving a legitimate aim.

Action for employers

Employers need to undertake the following to ensure that they are not breaking the law:

- review equality policies
- review employee benefits
- review policies and procedures on retirement
- undertake equality training covering recruitment, promotion and training.

How we can help

We will be more than happy to provide you with assistance or any additional information required. Please contact us for more detailed advice.

Agency Workers Regulations

Regulations which took effect from 1 October 2011 mean that workers supplied to a company, or to any other entity, by an agency will become entitled to receive pay and basic working conditions equivalent to any directly employed employees after a 12 week qualifying period.

Guidance for businesses and other employers

Under the Agency Workers Regulations workers supplied to a company (or to any other entity) by an agency will become entitled to receive pay and basic working conditions equivalent to any directly employed employees after a 12 week qualifying period.

Where an agency worker is at the entity for less than 12 weeks, a minimum break of more than six weeks between assignments with the same employer will be necessary for the rights not to be available.

Supporting guidance

Guidance can be found on the GOV.UK website at https://www.gov.uk/government/publications/agency-workers-regulations-2010-guidance-for-recruiters

Impact of the Regulations

As explained below, most of the additional work, and much of the risk and liability, will be the responsibility of the agencies but it seems certain that they will pass the cost on by way of higher fees.

More directly, where the 'Employer' (see below) hires staff for more than the 12 week period, typically the costs of hiring staff will be greater. The Employer will also need to monitor the period of time the 'Agency Worker' has been at their premises and there may be additional risks and costs as a result.

Terms used in the Regulations

Much of the guidance uses terms such as ‘Temporary Work Agency’ (the Agency supplying the workers), the ‘Agency Worker’ and the ‘Hirer’ (being the entity or business where the Agency Worker is working). In this summary we have generally used the term ‘Employer/Hirer’ when we mean the ‘Hirer’ although it is not strictly the correct legal term. We have also used the word ‘Agency’ rather than ‘Temporary Work Agency’.

Rights of Agency Workers under the Regulations

Under the Regulations, from their first day working at the Employer/Hirer, the Employer/Hirer will be required to ensure that the Agency Worker can access what are called ‘collective facilities’ such as canteens, childcare, transport services, car parking, etc and that they are able to access information on all job vacancies.

The Agency Worker’s rights are to ‘no less favourable treatment’ in relation to these facilities, than that given to a comparable worker. A comparable worker is an employee or worker directly employed by the employer.

Then, after 12 weeks in the same job, the ‘equal treatment entitlements’ described below come into force.

Equal treatment entitlements and the ‘Qualifying Clock’

After completion of the 12 week qualifying period the Agency Worker is entitled to the same basic terms and conditions of employment as if they had been directly hired by the Employer/Hirer. These would include:

- key elements of pay
- duration of working time
- night work
- rest periods
- rest breaks
- annual leave
- pregnant workers will be entitled to paid time off for antenatal appointments.

If a particular entitlement commences only after a period of service, for example, additional annual leave arises after one year of employment, then the entitlement would only start after one year plus 12 weeks.

The term ‘Qualifying Clock’ is used to illustrate the working of the guidance.

The guidance refers to extensive anti-avoidance provisions preventing a series of assignments being structured in such a way as to prevent an Agency Worker from completing the qualifying period and describes when the Qualifying Clock can be reset to zero, where the clock ‘pauses’ during a break, and where it continues to ‘tick’ during a break.

The examples given are extensive but include, for example:

- the clock is reset to zero where an Agency Worker begins a new assignment (and a new Employer/Hirer for this purpose is closely defined) or there is a break of more than six weeks
- the clock would be paused for a break of no more than six weeks and the worker returns to the same Employer/ Hirer, or a break of up to 28 weeks because the worker is incapable of work because of sickness or injury
- the clock continues to tick as a result of breaks to do with pregnancy, childbirth, maternity or paternity leave.

There are many more examples given in the Business, Energy and Industrial Strategy (BEIS) guidance.

Identification of basic working and employment conditions and pay

Equal treatment covers basic working and employment conditions included in the relevant contracts of direct recruits, which would normally mean terms and conditions laid out in standard contracts, pay scales, collective agreements or company handbooks. Where available this would be the same pay, holidays, etc as if the Agency Worker had been recruited as an employee or worker to the same job. There does not have to be a comparable employee (called a 'comparator') but it would be easier to demonstrate compliance with the Regulations where such a person is available.

Pay is defined as including and excluding a number of elements, most of which are shown below.

To be included in pay for this purpose:

- basic pay based on an annual salary equivalent
- overtime payments
- shift / unsocial hours allowances
- payment for annual leave
- bonus or commission payments
- vouchers or stamps with monetary value which are not salary sacrifice schemes.

Not to be included:

- occupational sick pay
- occupational payments (agency workers will be covered by Auto-enrolment which started to phase in from October 2012)
- occupational maternity, paternity or adoption pay
- redundancy pay / notice pay
- majority of benefits in kind
- payments requiring an eligibility period of employment.

Working time and holiday entitlements

In addition to an agency worker's existing rights under the Working Time Regulations 1998, after 12 weeks, the worker becomes entitled to the same rights for working time, night work, rest periods and rest breaks, annual leave and overtime rates, as directly employed employees.

The guidance recognises that some Agency Workers already receive these benefits from the date they join the Employer/Hirer and mention as an example that Employers/Hirers often offer a lunch hour rather than the minimum 20 minute rest under the Working Time Regulations. The guidance also includes a reminder that the statutory entitlement to paid holiday leave is 5.6 weeks per year.

Pregnant workers and new mothers

After the 12 week qualifying period pregnant workers will be allowed paid time off for antenatal appointments and classes and if they can no longer carry out the duties of their original assignment they will need to be found alternative sources of work. If no such alternative work is available from either the Employer/Hirer or the Agency, the Agency should pay the pregnant woman for the remaining expected duration of the assignment.

The provisions of the Equality Act also apply, meaning that there is a risk that either an Agency or the Employer/Hirer could be guilty of discrimination if a worker were to receive less favourable treatment as a result of their pregnancy or maternity.

If the nature of the assignment is such that there is a risk to the worker's health and safety, the Agency will need to ask the Employer/Hirer to carry out a workplace risk assessment, which they will need to do.

Permanent employment contract with the Agency

If the Agency Worker has a permanent contract of employment with the Agency then the equal treatment provisions do not need to be complied with by the Employer/Hirer.

Information likely to be requested by an Agency

To comply with these Regulations, agencies may need to collect certain information from the Employer/Hirer before an assignment begins. This is in addition to their existing obligations under what are known as the Conduct Regulations 2010 and the Gangmasters Licensing Regulations (for the food, agricultural and shellfish sectors).

Where an assignment is likely to last for more than 12 weeks, it will probably be good practice for the Agency to ask for information at an early stage though the Regulations do not refer to any particular timescale.

Existing regulations require information about:

- hirer's identity, business and location
- start date and duration
- role, responsibilities and hours
- experience, training, qualifications etc
- health and safety risk
- expenses.

The details now required to comply with the Agency Workers Regulations after the 12 week period are:

- basic pay, overtime payments, shift/unsocial hours allowances and any risk payments
- types of bonus schemes
- vouchers with monetary value
- annual leave entitlement.

It is likely that the Agency will also ask for information about any day one entitlements which may be available, even though they are the responsibility of the Employer/Hirer.

Liability and remedies

The responsibility lies with the Employer/Hirer to provide day one entitlements and claims would probably be against the Employer/Hirer.

Claims with regard to basic working and employment conditions could be against either the Employer/Hirer, or the Agency, or against both, depending on the nature of the breach and whether, for example, the Employer/Hirer had failed to provide information to the Agency. Claims would be made to an Employment Tribunal if not resolved through grievance procedures and/or possibly through the involvement of ACAS.

Employment Tribunals would be able to award financial compensation or recommend action that should be taken.

How we can help

If you would like to discuss the implications of the new Regulations for your business in more detail please contact us.

Annual Leave

Background

Under the Working Time Regulations 1998 (as amended), workers are entitled to paid statutory annual leave of 5.6 weeks (28 days if the employee works five days a week). This basic entitlement is inclusive of bank holidays. This annual leave entitlement is now closer to that of workers in other European countries, where holiday allowance is typically more generous. Workers in Ireland are entitled to 29 days; the highest minimum entitlement is in Austria at 38 days.

Payment for annual leave

A worker is entitled to be paid in respect of any period of annual leave for which they are entitled, at a rate of one week's pay for each week's leave. For employees with normal working hours a week's pay is the pay due for the basic hours the employee is contracted to work. Any regular contractual bonuses or allowances (except expense allowances) which do not vary with the amount of work done are also included.

Commission has previously not been included in the calculation of holiday pay, however, following a ruling by the European Court of Justice (ECJ) which was recently upheld by the Court of Appeal, when commission is related to the number of sales made whilst at work, it should also be included in the calculation of holiday pay. There was a further appeal to the Supreme Court, which was not granted and employers will now be required to comply with this ruling. The method of calculating such payments is not yet defined, but is likely to be an average of previous months' commission.

Guaranteed and non-guaranteed overtime should also be included along with regular voluntary overtime payments. The difference between non-guaranteed and voluntary overtime is that the employee is obliged to do non-guaranteed overtime if it is offered, but can turn down voluntary overtime. Where the voluntary overtime is irregular or ad hoc it does not need to be included unless it extends for a sufficient period of time on a regular and/or recurring basis. This includes overtime regularly worked at certain points in the year for example at Christmas, as well as frequently worked overtime throughout the year. These additional elements need only be included for the four weeks of statutory leave required by European law which is lower than the UK minimum of 5.6 weeks, it can be excluded for any additional days above this.

Under the Regulations any statutory annual leave may not be replaced by a payment in lieu, except on termination of employment. In such cases, a payment can be made for any untaken leave in the leave year that termination occurs. Payment may also be due for any carried over leave because of maternity/adoption leave or sickness.

Rolled up leave

The ECJ has ruled that it is unlawful for employers to roll up workers' annual leave payments. In accordance with this it is recommended that employers renegotiate contracts involving such pay for existing workers as soon as possible so that payment for statutory annual leave is made at the time when the leave is taken.

Requesting leave

Employees should be allowed to choose when they take some of their leave although many employers do set certain conditions, for example that only a certain number of workers may take leave at the same time or that workers may not take more than a certain number of consecutive working days off in one go.

It is common for employers to have a procedure in place for these instances and it should include the procedure for notification. If this is excluded then the legal position is that an employee requesting a period of leave must give notice of at least twice the period of leave to his or her employer. A similar arrangement of notice must be given by the employer if they are requesting the employee to take leave at specific times.

First year of employment

Workers accrue their annual leave entitlement on a pro rata basis during their first year of employment. This is calculated in relation to the proportion of the employment year worked. Therefore, the annual leave entitlement will accrue over the course of the worker's first year of employment at the rate of 1/12 of the annual entitlement, starting on the first day of each month. If the calculation does not result in an exact number of days then the figure will be rounded up to the nearest half day.

Annual leave and part time employees

Under the Regulations, time off for bank holidays should be pro rated. Part time workers are currently entitled to 5.6 weeks' holiday, based on the hours a week that they work, regardless of whether they work on days on which bank holidays fall.

Contractual annual leave entitlement

An employer can increase a worker's statutory annual leave entitlement via a contractual arrangement. In such cases any unused additional annual leave may be carried over to the next leave year. This is often a matter of employer discretion and will depend on the terms of the contract.

Annual leave accrual during maternity and adoption leave

An employee continues to accrue their statutory annual leave entitlement of 5.6 weeks and any additional contractual annual leave entitlement throughout both ordinary maternity leave (OML) and additional maternity leave (AML).

Sickness during holiday

Employees are now entitled to reclassify statutory holiday as sick leave if they fall ill whilst on prearranged statutory holiday. This means that they are entitled to take the statutory holiday they have missed at a later date. If they are unable to take the rest of their statutory holiday that holiday year they can carry it over to the next holiday year. If you offer more than 5.6 weeks holiday a year, you do not have to allow an employee to reclassify any additional (contractual) holiday as sickness absence. However, you will have to ensure that they can take their full statutory holiday at other times. If you pay contractual sick pay, you can minimise the scope for abuse by making contractual sick pay in these circumstances contingent on the employee notifying you on the first day of illness that they are ill and, possibly, requiring them to provide a medical certificate from the first day of their illness.

Employees who are on sick leave can ask their employer to re-classify their absence as statutory holiday in order to receive holiday pay. If an employee on sick leave does not want to take their outstanding statutory holiday before your current leave year ends, they should be permitted to carry it over into the next leave year. Employees returning from sick leave can take their statutory holiday entitlement for the current year on their return but, if there is insufficient time for them to take it, they should be allowed to carry it forward to the next leave year.

Recovery of overpayment of holiday

Employee contracts should make clear that if an employee takes more holiday than he or she is entitled to during the course of a leave year, the company will be entitled to recover the overpayment of holiday pay by deducting it from the employee's wages or salary. It is advisable for the company to consult with the employee before making the deduction.

How we can help

We will be more than happy to provide you with assistance or any additional information required. Please contact us for more detailed advice.

Bribery Act 2010

The Bribery Act 2010 (the Act) applies across the UK and all businesses need to be aware of its requirements. The Act includes a 'corporate' offence of 'failure of commercial organisations to prevent bribery'. The defence against this offence is to ensure that your business has adequate procedures in place to prevent bribery. To help ensure this we recommend that, you undertake a risk assessment for your own business and establish appropriate compliance procedures.

What action should you take?

- familiarise yourself with the guidance issued by the Ministry of Justice
- review the current activities of your business and assess the risk of bribery occurring
- assess the strength of the measures that you currently have in place to prevent bribery
- make any necessary updates to your staff handbooks: for example, your human resources manual
- consider whether specific anti-bribery staff training is required
- consider if changes are needed to other policies and procedures, for example, expenditure approval and monitoring processes
- communicate the changes that you have made to your policies and procedures
- consider if you need to undertake any due diligence procedures.

The Bribery Act 2010

The Act replaced, updated and extended previous UK law against bribery and corruption. It applies across the UK and all UK businesses and overseas businesses carrying on activities in the UK are affected.

The offences established by the Act are defined very broadly and the Act has significant extraterritorial reach in that it extends to acts or omissions which occur outside of the United Kingdom. Specific details about its jurisdiction can be found in the detailed guidance referred to under 'Ministry of Justice guidance' below, as well as in the Act itself.

What is bribery?

Bribery is a broad concept. In supplementary guidance published alongside the Act, it is very generally defined as 'giving someone a financial or other advantage to encourage that person to perform their functions or activities improperly or to reward that person for having already done so. So this could cover seeking to influence a decision-maker by giving some kind of extra benefit to that decision-maker rather than by what can legitimately be offered as part of a tender process.'

The key offences

Under the Act there are two general offences:

Active bribery – Section one of the Act prohibits offering, promising or giving a financial or other advantage (a bribe) to a person with the intention of influencing a person to perform their duty improperly.

Passive bribery – Section two of the Act prohibits a person from requesting, agreeing to receive or accepting a bribe for a function or activity to be performed improperly.

In addition, there are two further offences that specifically address commercial bribery:

Bribery of foreign public officials (FPO) – Section six of the Act prohibits bribery of an FPO with the intention of influencing them in their official capacity and obtaining or retaining business or an advantage in the conduct of business.

Failure of commercial organisations to prevent bribery – Section seven of the Act introduces a strict liability offence that will be committed if:

- bribery is committed by a person associated with a relevant commercial organisation
- the person intends to secure a business advantage for the organisation
- the bribery is either an active offence (section one of the Act) or bribery of an FPO (section six of the Act).

This means that a commercial organisation commits an offence if a person associated with it bribes another person for that organisation's benefit. This 'corporate' offence is the most significant and controversial change to existing law and it is primarily this offence that you must now consider and prepare your business for as necessary.

It is important to note, however, that the Act also states that there is a defence available for commercial organisations against failing to prevent bribery if they have put in place 'adequate procedures' designed to prevent persons associated with them from bribing others on their behalf. The Secretary of State is required by the Act to publish guidance about such procedures.

Senior officers of an organisation can also be held personally liable under the Act for other bribery offences committed by the organisation, i.e. the active and passive bribery offences as well as the bribery of an FPO, where the offence is proved to have been committed with their 'consent or connivance'.

'Senior officer' is widely defined in the Act to include directors, managers, company secretaries and other similar officers, as well as those purporting to act in such a capacity.

Key definitions and terminology

Inevitably, in order to fully understand the requirements of the Act, it is necessary to be familiar with a number of key definitions.

Relevant commercial organisation

The corporate offence can be committed by a 'relevant commercial organisation', which broadly includes:

- any body which carries on a business and is incorporated under, or is a partnership which is formed under, any UK law, regardless of where it carries on business
- any body corporate or partnership, wherever it is incorporated or formed, which carries on business in the UK.

We will refer to those affected by this corporate offence as 'businesses'.

Persons associated

The corporate offence also refers to a person 'associated' with a commercial organisation. While there is not an absolute list of all who could be included, we are told that this is a person who performs services for, or on behalf of, the organisation, regardless of the capacity in which they do so.

Accordingly, this term will be construed broadly and while examples are given of an employee, agent or subsidiary, it could also cover intermediaries, joint venture partners, distributors, contractors and suppliers.

Guidance issued by the Ministry of Justice (see below) acknowledges that the scope of 'persons associated' is broad and states that this is so as to 'embrace the whole range of persons connected to an organisation who might be capable of committing bribery' on its behalf.

Improper performance

The passive and active bribery offences both refer to the 'improper performance' of a function or activity. 'Improper performance' covers any act or omission that breaches an expectation that a person will act in good faith, impartially, or in accordance with a position of trust. This is an objective test based on what a reasonable person in the UK would expect in relation to the performance of the relevant activity.

Ministry of Justice guidance

The Act requires the Secretary of State to publish guidance for commercial organisations about procedures that they can put in place to prevent persons associated with them from bribing. This is important guidance in respect of providing a defence against the 'corporate offence'.

The Ministry of Justice (MoJ) has issued the following formal, statutory guidance:

- The Bribery Act 2010 – guidance about procedures which relevant commercial organisations can put into place to prevent persons associated with them from bribing (section nine of the Bribery Act 2010). Whilst the guidance is not prescriptive and does not set out an absolute checklist of requirements for businesses to follow, it does aim to clarify the practical requirements of the legislation. Illustrative case studies, which do not form part of the guidance issued under section nine of the Act, are also included.

It has also produced non-statutory guidance for small businesses, providing a concise introduction to how they can meet the requirements of the Act:

- The Bribery Act 2010 – quick start guide.
- Insight into awareness and impact of the Bribery Act 2010 among small and medium sized enterprises (SMEs).

Defending your business against failing to prevent bribery

All businesses will need to pay some attention to the corporate offence of failing to prevent bribery. How much you will have to do will depend on the bribery risks facing your business.

If a business can show that it had 'adequate procedures' in place to prevent bribery then it will have a full defence against the corporate offence. The meaning of 'adequate procedures' is not defined in the Act and it is here that the MoJ statutory guidance should be considered.

This guidance requires procedures to be tailored to the individual circumstances of a business, based on an assessment of where the risks lie. Therefore, what counts as 'adequate' will depend on the bribery risks faced by a business and its nature, size and complexity.

The MoJ guidance does recognise that the Act is not there to impose the 'full force' of criminal law upon well run businesses for an isolated incident of bribery. It also recognises that no business is capable of preventing bribery at all times. The 'quick start' guidance for smaller businesses comments that 'a small or medium-sized business which faces minimal bribery risks will require relatively minimal procedures to mitigate those risks'.

How should you begin to determine the approach needed in your business? The MoJ guidance identifies six guiding principles for businesses wishing to prevent bribery from being committed on their behalf (see the panel below). These principles are not, however, prescriptive.

The six principles that should guide anti-bribery procedures

1. **Proportionate procedures:** A commercial organisation's procedures to prevent bribery by persons associated with it are proportionate to the bribery risks it faces and to the nature, scale and complexity of the commercial organisation's activities. They are also clear, practical, accessible, effectively implemented and enforced.
2. **Top-level commitment:** The top-level management of a commercial organisation (be it a board of directors, the owners or any other equivalent body or person) are committed to preventing bribery by persons associated with it. They foster a culture within the organisation in which bribery is never acceptable.
3. **Risk assessment:** The commercial organisation assesses the nature and extent of its exposure to potential external and internal risks of bribery on its behalf by persons associated with it. The assessment is periodic, informed and documented.
4. **Due diligence:** The commercial organisation applies due diligence procedures, taking a proportionate and risk based approach, in respect of persons who perform or will perform services for or on behalf of the organisation, in order to mitigate identified bribery risks.
5. **Communication (including training):** The commercial organisation seeks to ensure that its bribery prevention policies and procedures are embedded and understood throughout the organisation through internal and external communication, including training, that is proportionate to the risks it faces.
6. **Monitoring and review:** The commercial organisation monitors and reviews procedures designed to prevent bribery by persons associated with it and makes improvements where necessary.

Other important matters

Corporate hospitality

A potential area of concern under the Act is the provision and receipt of corporate hospitality, promotional and other such business expenditure and how this might be perceived. While this may not be a significant issue for your business, especially when you consider your own level of such expenditure, it may be an important consideration for others.

The MoJ guidance states: 'Bona fide hospitality and promotional, or other business expenditure which seeks to improve the image of a commercial organisation, better to present products and services, or establish cordial relations, is recognised as an established and important part of doing business and it is not the intention of the Act to criminalise such behaviour. The Government does not intend for the Act to prohibit reasonable and proportionate hospitality and promotional or other similar business expenditure intended for these purposes.'

The guidance goes on to say: 'It is, however, clear that hospitality and promotional or other similar business expenditure can be employed as bribes.'

Facilitation payments

Facilitation payments, which are payments to induce officials to perform routine functions they are otherwise obligated to perform, are bribes and are therefore illegal under the Act.

Penalties

The penalties associated with the Act are significant. On conviction for one of the main bribery offences, an individual may face up to ten years' imprisonment and/or an unlimited fine. A business faces an unlimited fine.

The senior officers of a business could also be liable to a prison sentence if bribery was perpetrated with their 'consent or connivance'. Disqualification from acting as a director for a substantial period of time could also arise.

Conclusion

The steps to be taken to prevent bribery will clearly vary from business to business and not all businesses will need to put in place complex procedures to deal with the requirements of the legislation. The supporting guidance issued by the MoJ emphasises the need for a common sense approach.

A key point noted in 'quick start' guidance is that 'there is a full defence if you can show you had adequate procedures in place to prevent bribery. But you do not need to put bribery prevention procedures in place if there is no risk of bribery on your behalf.'

How can we help

We believe the above summary will help you understand the implications of the Bribery Act 2010. If you would like to discuss the implications of the Act for you and your business in more detail please contact us.

Bring your own device (BYOD)

Some employees will often prefer to use their own personal mobile devices to access company networks/ systems. However, this is potentially a security loophole which places the organisation at risk from reputational damage and legal proceedings.

Firms need to have a formal policy with regard to the use of personal devices at work.

Bring Your Own Device refers to this type of policy - which defines what mobile devices (if any), employees can use to access company networks/systems.

We consider how to structure such a policy, and what it may contain.

Broadly what should a BYOD policy cover?

Firms need a policy which sets out the devices which may or may not be connected to a firms' network; procedures to ensure that non-approved devices can never be 'accidentally' connected; and appropriate mechanisms in place to maintain security over personal data which may be stored on mobile devices.

Audit of existing devices and access rights

The first step is to perform an audit of the current situation. Which devices use the network, and what for?

What does the law say?

As the employer (who is the data controller) there are obligations under the Data Protection Act 1998 (DPA) to take appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

There is a high risk that confidential corporate and client data can find its way onto personal devices – which are usually not very secure and can be easily lost/mislaid/ stolen.

The risks of reputational damage

Imagine the scenario, an employee receives an email with an attachment containing a mailing list of all clients and their contact details which they open and save onto their mobile device. If that device then goes missing the data stored on it could find its way into the public domain, or be mis-used, or sold onto a competitor. What's worse is that the ICO will need to be notified of the loss of data, as will each individual on that mailing list. This can cause major reputational damage as well as a large financial penalty.

Which devices are acceptable?

Having performed an audit, the second stage is to decide what to include or exclude from a BYOD policy, and this is usually done at device level.

Level	Device
1	No devices (zero-tolerance)
2	A list of 'approved' devices
3	Any/all devices

1 - Zero-tolerance

This may be the quickest, easiest and simplest solution, but may not necessarily be the most pragmatic or practical.

It may also serve to hinder rather than help some employees perform certain tasks, which can lead to job dissatisfaction and a lowering of morale.

So an outright ban could prove to be counter-productive.

It can also be quite difficult (and therefore expensive) to control and police a zero-tolerance policy without strong network security controls.

2 - Approved devices

This allows a set list of devices, or, devices with particular operating software (e.g. iOS devices only or Android and Windows devices only).

The approved device approach can make it easier to manage and control access, but may leave some employees disadvantaged if their device is not covered. It can also be difficult to manage, as new models and new devices emerge on a daily basis.

3 - Any device

This allows any device to be 'plugged in'.

This approach is entirely opposite to zero-tolerance and allows any device to be 'plugged in' at any time. Advantages are a) for the employee who is not restricted by device, and b) for the company which does not have to keep updating a list of approved devices.

However, strong controls such as mobile device management systems need to be employed with this type of approach.

An alternative option!

In an increasing trend, some firms have decided to abandon BYOD and have a zero-tolerance policy, in favour of providing devices to employees.

Which applications are acceptable?

The firm may wish to restrict access to certain applications – most often to email and internet access only. Full blown access to networks and applications should be avoided where possible, other than from PCs or laptops and then only via trusted intranets or secure remote access tools.

Business v. private use

BYOD devices owned by an employee are likely to be used for both business and private purposes.

On the one hand the employee has to be confident that the company will not access personal material stored on the device or use device monitoring tools, whilst on the other hand the company will want to protect corporate and client confidential information which may also be stored (or visible) on the device.

Employers also need to be aware that devices may be used (for personal purposes) not just by the employee, but also by other family members.

Wireless security

The easiest and quickest way for devices to be attached to a network is for employees to use their device to login to a network, wirelessly. Some firms publish their wireless key to employees without realising that they are using the key on all devices including personal devices.

So, one of the cheapest methods of providing device security is to make the wireless key very strong (i.e. difficult to remember), only available on request and only entered into the device by a member of the IT support team or other nominated individual. Thus control can be maintained at device level relatively easily.

Device registration

Most current versions of network operating software (Windows and Mac) have inbuilt security tools which can be used to maintain a list of 'approved' devices.

This is done through a registration process whereby the device is presented and registered on the network.

If a device gets mislaid or an employee leaves, the device can be blocked/removed from the list of registered devices.

Mobile device management (MDM)/Mobile applications management (MAM)

A more expensive way of providing device security is to use MDM services – these may either be provided as part of the network operating software, or this service may be provided by a third-party.

There are different levels of this type of service ranging from simple registration and device reset services, to sandboxing personal and corporate data – which will allow separate wiping of corporate data only.

Employees will have to agree/consent to whichever mobile device management system is used if they want to adopt BYOD.

Employees must also agree/consent if MDM software is used to monitor the device, the activities which are monitored and whether or not geo-location is used.

Finally, employees will need to understand what will happen to their own personal data stored on the device, in the event the device has to be disabled.

Data encryption

A BYOD policy in itself is not enough to provide sufficient safeguards. All confidential/personal data must be encrypted. Just setting a document/spreadsheet as read-only, or creating a password to open the document/ spreadsheet is not the same as encrypting the data.

Firms must assess what personal data is being transferred from and to which devices, perform a risk assessment of the chances of the data getting into the public domain, and then use appropriate encryption methods to protect that confidential/personal data.

Other issues to consider

- Device password protection - Each BYOD device must have a start-up password/pin and should lock if not active for a specified number of minutes

- Mislaid devices – as part of the BYOD policy the employee will need to know who to contact and what will happen to the device if it is mislaid (i.e. what data might be wiped from the device)
- Cost – the firm may or may not agree to pay for certain mobile device charges
- Acceptable use policy – the firm will want to ensure that any acceptable use policy also applies to BYOD devices
- Devices which have been rooted/jail-broken should not be permitted
- Storage media – the firm may want to specify the approach with regard to memory/SD cards.

Implementing the BYOD policy

BYOD can either be formulated as a separate policy, added to an existing acceptable use policy, or added to an existing Internet and email policy or social media policy.

Company devices, by default, will come under the scope of BYOD.

Employees with their own personal devices should be given the opportunity to opt-out or opt-in to the BYOD policy -

- Opt-out - Decline to sign-up for the BYOD policy – in which case the employee will not be able to use any personal devices for work.
- Opt-in - Agree to sign-up for the BYOD policy – in which case their device will need to be registered on the network and also, if applicable, with a mobile device management service.

See our summary for our 4 easy steps in defining and implementing a BYOD policy.

Summary

It is important that the employer (who is the data controller) remains compliant with the DPA with regards to the processing of personal data. In the event of a security breach, the employer must be able to demonstrate that all personal data stored on a particular device is secured, controlled or deleted. Having a BYOD policy will go a long way towards meeting that objective.

4 steps to defining and implementing a BYOD

Step 1

Audit devices and usage

What devices are currently allowed onto the network?

What access rights do they have?

What applications do they use?

Step 2

Level of BYOD

Decide which level of BYOD is to be adopted –

1. No devices
2. Approved list
3. All/any devices
4. Define which applications are accessible to mobile devices

Step 3

BYOD policy

Formulate and write the BYOD policy.

Make appropriate network infrastructure security changes and procure any additional services (such as MDM).

Decide if additional security is required such as data encryption tools.

Define and communicate a date for implementing the policy.

Step 4

Implementation date

Remove all current devices.

Register approved devices.

Employees who own such devices sign BYOD.

How we can help

Please contact us if you require help in the following areas:

- Performing a security/information audit of corporate/ client data and who and what access this data
- Defining a BYOD policy
- Implementing a BYOD policy and training staff.

Business Motoring - Tax Aspects

This factsheet focuses on the current tax position of business motoring, a core consideration of many businesses. The aim is to provide a clear explanation of the tax deductions available on different types of vehicle expenditure in a variety of business scenarios.

Methods of acquisition

Motoring costs, like other costs incurred which are wholly and exclusively for the purposes of the trade are tax deductible but the timing of any relief varies considerably according to the type of expenditure. In particular, there is a fundamental distinction between capital costs and ongoing running costs.

Purchase of vehicles

Where vehicles are purchased outright, the accounting treatment is to capitalise the asset and to write off the cost over the useful business life as a deduction against profits. This is known as depreciation.

The same treatment applies to vehicles financed through hire purchase with the equivalent of the cash price being treated as a capital purchase at the start with the addition of a deduction from profit for the finance charge as it arises. However, the tax relief position depends primarily on the type of vehicle, and the date of expenditure.

A tax distinction is made for all businesses between a normal car and other forms of commercial vehicles including vans, lorries and some specialist forms of car such as a driving school car or taxi.

Tax relief on purchases

Vehicles which are not classed as cars are eligible for the Annual Investment Allowance (AIA) for expenditure incurred. The AIA provides a 100% deduction for the cost of plant and machinery purchased by a business up to an annual limit. The amount of AIA available varies depending on the period of the accounts. The current amount of AIA is £200,000.

Where purchases exceed the AIA, a writing down allowance (WDA) is due on any excess in the same period. The WDA available is currently at a rate of 18% or 8% depending on the asset. Cars are not eligible for the AIA, so will only benefit from WDA.

Capital allowance boost for low–carbon transport

A 100% First Year Allowance (FYA) is currently available for businesses purchasing zero-emission goods vehicles or gas refuelling equipment. Both schemes were due to end on 31 March 2018 but have been extended for a further three years.

Writing Down Allowances (WDA)

The writing down allowance rates are 18% on the main rate pool and 8% which applies to many higher emission cars which are part of the special rate pool.

Complex cars!

The green car

Cars generally only attract the WDA but there is one exception to this and that is where a business purchases a new car with low emissions - a so called 'green' car. Such purchases attract a 100% allowance to encourage businesses to purchase cars which are more environmentally friendly. From April 2018 a 100% write off is only available where the CO_2 emissions of the car do not exceed 50g/km (prior to this it was 75g/km since April 2015). The cost of the car is irrelevant and the allowance is available to all types of business.

When did you buy?

There have been significant changes to the basis of capital allowances for car purchases and the tax relief thereon. The allowances due are determined by whether the car was purchased

- from April 2018
- from April 2015 to April 2018
- or between April 2013 and April 2015.

The dates are 1 April for companies and 6 April for individuals in business.

For purchases from April 2018:

The annual allowance is dependent on the CO_2 emissions of the car.

Cars with emissions between 51 – 110 gm/km inclusive will qualify for main rate WDA.

Cars in excess of 110 gm/km are placed in the special rate pool and will qualify for an annual WDA of 8%.

The 100% first year allowance (FYA) will be available on new low emission cars purchased (not leased) by a business is generally available where a car's emissions do not exceed 50 gm/km.

If a used car is purchased with CO_2 emissions of 50gm/km or less, this will be placed in the main pool and will receive an annual allowance of 18%.

For purchases from April 2015 to April 2018:

Cars with emissions between 76 – 130 gm/km inclusive currently qualify for main rate WDA.

Cars in excess of 130 gm/km are placed in the special rate pool and will qualify for an annual WDA of 8%.

The 100% first year allowance (FYA) available on new low emission cars purchased (not leased) by a business is generally available where a car's emissions do not exceed 75gm/km.

If a used car is purchased with CO_2 emissions of 75gm/km or less, this will be placed in the main pool and will receive an annual allowance of 18%.

For purchases from April 2013 to April 2015:

Cars with emissions between 96 – 130gm/km inclusive qualify for main rate WDA.

Cars in excess of 130 gm/km are placed in the special rate pool and will qualify for an annual WDA of 8%.The 100% first year allowance (FYA) available on new low emission cars purchased (not leased) by a business is generally available where a car's emissions do not exceed 95 gm/km.

If a used car is purchased with CO_2 emissions of 95gm/km or less, this will be placed in the main pool and will receive an annual allowance of 18%.

Non-business

Any cars used by the self employed where there is part non–business use will still be separately allocated to a single asset pool. The annual allowance will initially be either the current 18% or 8% depending on the CO_2 emissions and then the available allowance will be restricted for the private use element.

Example

A company purchases two cars for £20,000 in its 12 month accounting period to 31 March 2018. The dates of purchase and CO_2 emissions are as follows:

White car	**Blue car**
1 May 2017	1 May 2017
105	145

Allowances in the year to 31 March 2018 relating to these purchases will be:

White car (main pool as emissions less than 130)	**Blue car (special rate pool as emissions more than 130)**
£20,000 @ 18% = £3,600	£20,000 @ 8% = £1,600

In the following year to 31 March 2019 the allowances will be:

White (main pool as emissions less than 110)	**Blue**
£16,400 @ 18% = £2,952	£18,400 @ 8% = £1,472

Disposals

Where there is a disposal of plant and machinery from the main or special rate pools any balance of expenditure, after taking into account sale proceeds, continues to attract the annual allowance.

Where there is a disposal of a car held in a single asset pool, the disposal proceeds are deducted from the balance of the pool and a balancing allowance or a balancing charge is calculated to clear the balance on the pool.

This applies to any cars used by the self employed with part non business use whenever purchased.

What if vehicles are leased?

The first fact to establish with a leased vehicle is whether the lease is really a rental agreement or whether it is a type of purchase agreement, usually referred to as a finance lease. This is because there is a distinction between the accounting and tax treatment of different types of leases.

Tax treatment of rental type operating leases (contract hire)

The lease payments on operating leases are treated like rent and are deductible against profits. However where the lease relates to a car there may be a portion disallowed for tax.

Currently a disallowance of 15% will apply for cars with CO_2 emissions which exceed 130gm/km.

Example

Contract signed 1 April 2018 by a company:

The car has CO_2 emissions of 136 gm/km and a £6,000 annual lease charge. The disallowed portion would be £900 (15%) so £5,100 would be tax deductible.

Tax treatment of finance leased assets

These will generally be included in your accounts as fixed assets and depreciated over the useful business life but as these vehicles do not qualify as a purchase at the outset, the expenditure does not qualify for capital allowances unless classified as a long funded lease. Tax relief is generally obtained instead by allowing the accounting depreciation and any interest/finance charges in the profit and loss account – a little unusual but a simple solution!

Private use of business vehicles

The private use of a business vehicle has tax implications for either the business or the individual depending on the type of business and vehicle.

Sole traders and partners

Where you are in business on your own account and use a vehicle owned by the business – irrespective of whether it is a car or van – the business will only be able to claim the business portion of any allowances. This applies to capital allowances, rental and lease costs, and other running costs such as servicing, fuel etc.

Providing vehicles to employees

Where vehicles are provided to employees irrespective of the form of business structure – sole trader/partnership/ company – a taxable benefit generally arises for private use. A tax charge will also apply where private fuel is provided for use in an employer provided vehicle. For the employer such taxable benefits attract 13.8% Class 1A National Insurance.

Vans

No charge applies where employees have the use of a van and a restricted private use condition is met. For details on what this means please contact us. Where the condition is not met there is a flat rate charge per annum. These benefits are £3,350 for the unrestricted private use plus an additional £633 for private fuel 2018/19 (£3,230 and £610 for 2017/18).

How we can help

If you would like further details on any matter contained in this factsheet please contact us.

Business Plans

Every new business should have a business plan. It is the key to success. If you need finance, no bank manager will lend money without a considered plan.

It is one of the most important aspects of starting a new business. Your plan should provide a thorough examination of the way in which the business will commence and develop. It should describe the business, product or service, market, mode of operation, capital requirements and projected financial results.

Why does a business need a plan?

Preparing a business plan will help you to set clear objectives for your business and clarify your thinking. It will also help to set targets for future performance and monitor finances and profitability. It should help to provide early warning for when you might need to reconsider the plan.

Always bear in mind that anyone reading the plan will need to understand the essentials of your business quickly and easily.

Contents

The business plan should cover the following areas.

- **Overview**
  An overview of your plans for the business and how you propose to put them into action. This is the section most likely to be read by people unfamiliar with your business so try to avoid technical jargon.
- **Description**
  A description of the business, your objectives for it and how you plan to achieve them. Include details of the background to your business for example how long you have been developing the business idea and the work you have carried out to date.
- **Personnel**
  Details of the key personnel including yourself and any external consultants. You should highlight the skills and expertise that these people have and outline how you intend to deal with any weaknesses.
- **Product**
  Details of your product or service and your Unique Selling Point. This is exactly what its name suggests, something that the competition does not offer. You should also outline your pricing policy.
- **Marketing**
  Details of your target markets and your marketing plan. This may form the basis for a separate, more detailed, plan. You should also include an overview of your competitors and your likely market share together with details of the potential for growth. This is usually a very important part of the plan as it gives a good indication of the likely chance of success.
- **Practices**
  You will need to include information on your proposed operating practices and production methods as well as premises and equipment requirements.
- **Financial forecasts**
  The plan should cover your projected financial performance and the assumptions made in your projections. This part of the plan converts what you have already said about the business into numbers. It will include a cash flow forecast which shows how much money you expect to flow in and out of the business as well as profit and loss predictions and a balance sheet. Detailed financial forecasts will normally be included as an appendix to the plan. As financial advisers we are particularly well placed to help with this part of the plan.
- **Financial requirements**
  The cash flow forecast referred to above will show how much finance your business needs. The plan should state how much finance you want and in what form. You should also say what the finance will be used for and show that you will have the resources to make the necessary repayments. You may also give details of any security you can offer.

The future

Putting together a business plan is often seen as a one-off exercise undertaken when a new business is starting up.

However the plan should be updated on a regular basis. It can then be used as a tool against which performance can be monitored and measured as part of the corporate planning process. There is much merit in this as used properly it keeps the business focused on objectives and inspires a discipline to achieve them.

How we can help

We can look forward with you to help you put together your best possible plan for the future.

Business Structures - Which Should I Use?

Having made the decision to be your own boss, it is important to decide the best legal and taxation structure for your enterprise. The most suitable structure for you will depend on your personal situation and your future plans. The decision you make will have repercussions on the way you are taxed, your exposure to creditors and other matters.

The possible options you have are as follows.

Sole trader

This is the simplest way of trading. There are only a few formalities to trading this way, the most important of which is informing HMRC. You are required to keep business records in order to calculate profits each year and they will form the basis of how you pay your tax and national insurance. Any profits generated in this medium are automatically yours. The business of a sole trader is not distinguished from the proprietor's personal affairs so that if there are any debts, you are legally liable to pay those debts down to your last worldly possession.

Partnership

A partnership is an extension of being a sole trader. Here, a group of two or more people will come together, pool their talents, clients and business contacts so that, collectively, they can build a more successful business than they would individually. The partners will agree to share the joint profits in pre-determined percentages. It is advisable to draw up a Partnership Agreement which sets the rules of how the partners will work together. Partners are taxed in the same way as sole traders, but only on their own share of the partnership profits. As with sole traders, the partners are legally liable to pay the debts of the business. Each partner is 'jointly and severally' liable for the partnership debts, so that if certain partners are unable to pay their share of the partnership debts then those debts can fall on the other partners.

Limited company

A limited company is a separate legal entity from its owners. It can trade, own assets and incur liabilities in its own right. Your ownership of the company is recognised by owning shares in that company. If you also work for the company, you are both the owner (shareholder) and an employee of that company. When a company generates profits, they are the company's property. Should you wish to extract money from the company, you must either pay a dividend to the shareholders, or a salary as an employee. The advantage to you is that you can have a balance of these two to minimise your overall tax and national insurance liability. Companies themselves pay corporation tax on their profits after paying your salary but before your dividend distribution. Effective tax planning requires profits, salary and dividends to be considered together.

There are many advantages as well as disadvantages to operating through a limited company. We have a separate factsheet on 'incorporation' which considers the relative merits as well as the downsides of operating as a company.

New companies can be purchased in a ready-made form usually referred to as 'off the shelf' companies. These types of formation are becoming less frequent however as the speed of which companies can now be created takes on average 3 hours rather than days. There are additional administrative factors in running a company, such as statutory accounts preparation, company secretarial obligations and PAYE (Pay as You Earn) procedures. A big advantage of owning a limited company is that your personal liability is limited to the nominal share capital you have invested.

Limited liability partnership

A limited liability partnership is legally similar to a company. It is administered like a company in all aspects except its taxation. In this, it is treated like a partnership. Therefore you have the limited liability, administrative and statutory obligations of a company but not the taxation and national insurance flexibility. They are particularly suitable for medium and large-sized partnerships.

Co-operative

A co-operative is a mutual organisation owned by its employees. One example of such an organisation is the John Lewis Partnership. These structures need specialist advice.

How we can help

We will be happy to discuss your plans and the most appropriate business structure with you. The most appropriate structure will depend on a number of factors including consideration of taxation implications, the legal entity, ownership and liability.

Capital Allowances

Overview

The cost of purchasing capital equipment in a business is not a revenue tax deductible expense. However tax relief is available on certain capital expenditure in the form of capital allowances.

The allowances available depend on what you are purchasing. Here is an overview of the types of expenditure which qualify for capital allowances and the amounts available.

Capital allowances are not generally affected by the way in which the business pays for the purchase. So where an asset is acquired on hire purchase (HP), allowances are generally given as though there were an outright cash purchase and subsequent instalments of capital are ignored. However finance leases, often considered to be an alternative form of 'purchase' and which for accounting purposes are included as assets, are denied capital allowances. Instead the accounts depreciation is usually allowable as a tax deductible expense.

Any interest or other finance charges on an overdraft, loan, HP or finance lease agreement to fund the purchase is a revenue tax deductible business expense. It is not part of the capital cost of the asset.

If alternatively a business rents capital equipment, often referred to as an operating lease, then as with other rents this is a revenue tax deductible expense so no capital allowances are available.

Plant and machinery

This includes items such as machines, equipment, furniture, certain fixtures, computers, cars, vans and similar equipment you use in your business.

Note there are special rules for cars and certain 'environmentally friendly' equipment and these are dealt with below.

Acquisitions

The Annual Investment Allowance (AIA) provides a 100% deduction for the cost of most plant and machinery (not cars) purchased by a business up to an annual limit and is available to most businesses. Where businesses spend more than the annual limit, any additional qualifying expenditure generally attracts an annual writing down allowance of only 18% or 8% depending on the type of asset.

The maximum amount of the AIA depends on the date of the accounting period and the date of expenditure. The AIA from 1 January 2016 is £200,000.

Where purchases exceed the AIA, a writing down allowance (WDA) is due on any excess in the same period. This WDA is currently at a rate of 18%. Cars are not eligible for the AIA, so will only benefit from the WDA (see special rules for cars).

Please contact us before capital expenditure is incurred for your business in a current accounting period, so that we can help you to maximise the AIA available.

Pooling of expenditure and allowances due

- Expenditure on all items of plant and machinery are pooled rather than each item being dealt with separately with most items being allocated to a main rate pool.
- A writing down allowance (WDA) on the main rate pool of 18% is available on any expenditure incurred in the current period not covered by the AIA or not eligible for AIA as well as on any balance of expenditure remaining from earlier periods.
- Certain expenditure on buildings fixtures, known as integral features (eg lighting, air conditioning, heating, etc) is only eligible for an 8% WDA so is allocated to a separate 'special rate pool', though integral features do qualify for the AIA.
- Allowances are calculated for each accounting period of the business.
- When an asset is sold, the sale proceeds (or original cost if lower) are brought into the relevant pool. If the proceeds exceed the value in the pool, the difference is treated as additional taxable profit for the period and referred to as a balancing charge.

Special rules for cars

There are special rules for the treatment of certain distinctive types of expenditure. The first distinctive category is car expenditure. Other vehicles are treated as general pool plant and machinery but cars are not eligible for the AIA. The treatment of car expenditure depends on when it was acquired and is best summarised as follows:

Acquisitions from April 2018

The government has announced the following changes to the capital allowance rules for cars.

Type of car purchase	**Allocate**	**Allowance**
New low emission car not exceeding 50g/km CO_2	Main rate pool	100% allowance
Not exceeding 110 g/km CO_2 emissions	Main rate pool	18% WDA
Exceeding 110 g/km CO_2 emissions	Special rate pool	8% WDA

From 1 / 6 April 2015 to 31 March / 5 April 2018

The capital allowance treatment of cars is based on the level of CO_2 emissions.

Type of car purchase	**Allocate**	**Allowance**
New low emission car not exceeding 75g/km CO_2	Main rate pool	100% allowance
Not exceeding 130 g/km CO_2 emissions	Main rate pool	18% WDA
Exceeding 130 g/km CO_2 emissions	Special rate pool	8% WDA

Acquisitions from April 2013 to 31 March / 5 April 2015

Type of car purchase	**Allocate**	**Allowance**
New low emission car not exceeding 95g/km CO_2	Main rate pool	100% allowance
Not exceeding 130 g/km CO_2 emissions	Main rate pool	18% WDA
Exceeding 130 g/km CO_2 emissions	Special rate pool	8% WDA

Non-business use element

Cars and other business assets that are used partly for private purposes, by the proprietor of the business (ie a sole trader or partners in a partnership), are allocated to a single asset pool irrespective of costs or emissions to enable the private use adjustment to be made. Private use of assets by employees does not require any restriction of the capital allowances.

The allowances are computed in the normal way so can in theory now attract the 100% AIA or the relevant writing down allowance. However, only the business use proportion is allowed for tax purposes. This means that the purchase of a new 40g/km CO_2 emission car which costs £15,000 with 80% business use will attract an allowance of £12,000 (£15,000 x 100% x 80%) when acquired.

On the disposal of a private use element car, any proceeds of sale (or cost if lower) are deducted from any unrelieved expenditure in the single asset pool. Any shortfall can be claimed as an additional one off allowance but is restricted to the business use element only. Similarly any excess is treated as a taxable profit but only the business related element.

Environmentally friendly equipment

This includes items such as energy saving boilers, refrigeration equipment, lighting, heating and water systems as well as new cars with CO_2 emissions up to 50 g/km April 2018(prior years 75 g/km).

A 100% allowance is available to all businesses for expenditure on the purchase of new environmentally friendly equipment.

- www.gov.uk/guidance/energy-technology-list gives further details of the qualifying categories.

- where a company (not an unincorporated business) has a loss after claiming 100% capital allowances on green technology equipment (but not cars) they may be able to reclaim a tax credit from HMRC.

Short life assets

For equipment you intend to keep for only a short time, you can choose (by election) to keep such assets outside the normal pool. The allowances on them are calculated separately and on sale if the proceeds are less than the balance of expenditure remaining, the difference is given as a further capital allowance. This election is not available for cars or integral features.

For assets acquired from 1 April 2011 (6 April for an unincorporated business) the asset is transferred into the pool if it is not disposed of by the eighth anniversary of the end of the period in which it was acquired.

Long life assets

These are assets with an expected useful life in excess of 25 years. These assets are combined with integral features in the 8% special rate pool.

There are various exclusions including cars and the rules only apply to businesses spending at least £100,000 per annum on such assets so that most smaller businesses are unaffected by these rules.

Other assets

Capital expenditure on certain other assets qualifies for relief. Please contact us for specific advice on areas such as qualifying expenditure in respect of enterprise zones and research and development.

Claims

Unincorporated businesses and companies must both make claims for capital allowances through tax returns.

Claims may be restricted where it is not desirable to claim the full amount available - this may be to avoid other allowances or reliefs being wasted.

For unincorporated businesses the claim must normally be made within 12 months after the 31 January filing deadline for the relevant return.

For companies the claim must normally be made within two years of the end of the accounting period.

How we can help

The rules for capital allowances can be complex. We can help by computing the allowances available to your business, ensuring that the most advantageous claims are made and by advising on matters such as the timing of purchases and sales of capital assets. Please do contact us if you would like further advice.

Capital Gains Tax

A capital gain arises when certain capital (or 'chargeable') assets are sold at a profit. The gain is the sale proceeds (net of selling costs) less the purchase price (including acquisition costs).

What are the main features of the current system?

- From 6 April 2016 capital gains tax (CGT) is charged at the rate of 10% on gains (including any held over gains coming into charge) where net total taxable gains and income is below the income tax basic rate band threshold. Gains or any parts of gains above the basic rate band are charged at 20% with a few exceptions which are considered in the 'Exceptions to the CGT rates section' below.
- Entrepreneurs' Relief (ER) or Investors' Relief (IR) may be available on certain business disposals.

Entrepreneurs' Relief (ER)

ER may be available for certain business disposals taking place on or after 6 April 2008 and has the effect of charging the first £10m (from 6 April 2011) of gains qualifying for the relief at an effective rate of 10%.

The relief will apply to gains arising on a disposal of:

- the whole, or part, of a trading business that is carried on by the individual, either alone or in partnership;
- shares in a trading company, or holding company of a trading group, provided that the individual owns broadly a 5% shareholding and has been an officer or employee of the company;
- assets used by a business or a company which has ceased;
- assets used in a partnership or by a company but owned by an individual, if the assets disposed of are 'associated' with the withdrawal of the individual from participation in the partnership or the company.

A trading business includes professions but only includes a property business if it is a 'furnished holiday lettings' business.

Restrictions on obtaining the relief on an 'associated disposal' are likely to apply in certain specific situations. This includes the common situation where a property is currently in personal ownership, but is used in an unquoted company or partnership trade in return for a rent. Under ER the availability of relief is restricted where rent is paid from 6 April 2008 onwards.

The government will consult on how access to ER might be given to those whose holding in their company is reduced below the normal 5% qualifying level (meaning 5% of both ordinary share capital and voting power) as a result of raising funds for commercial purposes by means of an issue of new shares. The proposal would allow shareholders to elect to crystallise a gain on their shares before the dilution occurs. This would be achieved by treating the shareholding as having been sold and immediately re-purchased at the prevailing market value. The election will have to be made in their tax return for the year in which the dilution takes place. The shareholder may also elect to defer the accrued gain until their shares are actually disposed of.

Careful planning will be required with ER but if you would like to discuss ER in detail and how it might affect your business, please do get in touch.

Investors' Relief

Entrepreneurs' Relief has been extended to external investors (other than certain employees or officers of the company) in unlisted trading companies. To qualify for the 10% CGT rate under 'investors' relief' the following conditions need to be met:

- shares must be newly issued and subscribed for by the individual for new consideration
- be in an unlisted trading company, or an unlisted holding company of a trading group
- have been issued by the company on or after 17 March 2016 and have been held for a period of three years from 6 April 2016
- have been held continuously for a period of three years before disposal.

An individual's qualifying gains for investors' relief are subject to a lifetime cap of £10 million.

Simplification of the share identification rules

All shares of the same class in the same company are treated as forming a single asset, regardless of when they were originally acquired. However, 'same day' transactions are matched and the '30 day' anti-avoidance rules will remain.

Example

On 15 April 2018 Jeff sold 2000 shares in A plc from his holding of 4000 shares which he had acquired as follows:

1000 in January 1990
1500 in March 2001
1500 in July 2005

Due to significant stock market changes he decided to purchase 500 shares on 30 April 2018 in the same company.

The disposal of 2000 shares will be matched firstly with the later transaction of 500 shares as it is within the following 30 days and then with 1,500/4,000 (1000+1500+1500) of the single asset pool on an average cost basis.

CGT annual exemption

Every tax year each individual is allowed to make gains up to the annual exemption without paying any CGT. The annual exemption for 2018/19 is £11,700 (2017/18 £11,300). Consideration should be given to ensuring both spouses/civil partners utilise this facility.

Exceptions to the CGT rates

The rates of CGT are generally 10% and 20%. However 18% and 28% rates apply for carried interest and for chargeable gains on residential property that does not qualify for private residence relief. In addition, the 28% rate applies for ATED related chargeable gains accruing to any person (principally companies).

Other more complex areas

Capital gains can arise in many other situations. Some of these, such as gains on Enterprise Investment Scheme and Venture Capital Trust shares, and deferred gains on share for share or share for loan note exchanges, can be complex. Please talk to us before making any decisions.

Other reliefs which you may be entitled to

And finally, many existing reliefs continue to be available, such as:

- private residence relief;
- business asset rollover relief, which enables the gain on a business asset to be deferred until a point in the future;
- business asset gift relief, which allows the gain on business assets that are given away to be held over until the assets are disposed of by the donee; and
- any unused allowable losses from previous years, which can be brought forward in order to reduce any gains.

How we can help

Careful planning of capital asset disposals is essential. We would be happy to discuss the options with you. Please contact us if you would like further advice.

Capital Gains Tax and the Family Home

The capital gains tax (CGT) exemption for gains made on the sale of your home is one of the most valuable reliefs from which many people benefit during their lifetime. The relief is well known: CGT exemption whatever the level of the capital gain on the sale of any property that has been your main residence. In this factsheet we look at the operation of the relief and consider factors that may cause it to be restricted.

Several important basic points

Only a property occupied as a residence can qualify for the exemption. An investment property in which you have never lived would not qualify.

The term 'residence' can include outbuildings separate from the main property but this is a difficult area. Please talk to us if this is likely to be relevant to you.

'Occupying' as a residence requires a degree of permanence so that living in a property for say, just two weeks with a view to benefiting from the exemption is unlikely to work.

The exemption includes land that is for 'occupation and enjoyment with the residence as its garden or grounds up to the permitted area'. The permitted area is half a hectare including the site of the property which equates to about 1.25 acres in old money! Larger gardens and grounds may qualify but only if they are appropriate to the size and character of the property and are required for the reasonable enjoyment of it. This can be a difficult test. In a court case the exemption was not given on land of 7.5 hectares attaching to a property. The owner said he needed that land to enjoy the property because he was keen on horses and riding. The courts decided that the owner's subjective liking for horses was irrelevant and, applying an objective test, the land was not needed for the reasonable enjoyment of the property.

Selling land separately

What if you want to sell off some of your garden for someone else to build on? Will the exemption apply? In simple terms it will if you continue to own the property with the rest of the garden and the total original area was within the half a hectare limit.

Where the total area exceeds half a hectare and some is sold then you would have to show that the part sold was needed for the reasonable enjoyment of the property and this can clearly be difficult if you were prepared to sell it off.

What if on the other hand you sell your house and part of the garden and then at a later date sell the rest of the garden off separately, say for development? Then you will not get the benefit of the exemption on the second sale because the land is no longer part of your main residence at the point of sale.

More than one residence

It is increasingly common for people to own more than one residence. However an individual can only benefit from the CGT exemption on one property at a time. In the case of a married couple (or civil partnership), there can only be one main residence for both. Where an individual has two (or more) residences then an election can be made to choose which should be the one to benefit from the CGT exemption on sale. Note that the property need not be in the UK to benefit although there are additional restrictions from April 2015 detailed below. Also foreign tax implications may need to be brought into the equation.

The election must normally be made within two years of the change in the number of residences and the potential consequences of failure to elect are shown in the case study that follows.

Furthermore the case study demonstrates the beneficial rule that allows CGT exemption for the last 18 months of ownership (36 months prior to 6 April 2014) of a property that has at some time been the main residence. Where the owner of the property is in long term care or a disabled person, and meets the necessary conditions, they continue to benefit from a 36 month exemption.

Case study

Wayne, an additional rate taxpayer, acquired a home in 2009 in which he lived full-time. In 2013 he bought a second home and divided his time between the two properties.

- Either property may qualify for the exemption as Wayne spends time at each - ie they both count as 'residences'.
- Choosing which property should benefit is not always easy since it depends on which is the more likely to be sold and which is the more likely to show a significant gain. Some crystal ball gazing may be needed!
- The choice of property needs to be made by election to HMRC within two years of acquiring the second home. Missing this time limit means that HMRC will decide on any future sale which property was, as a question of fact, the main residence.

Wayne elects for the second home to be treated as his main residence for CGT purposes. If say in 2019 he sells both properties realising a gain of say £100,000 on the first property and £150,000 on the second property.

The gain on the second property is CGT-free because of the election.

Part of the gain on the first property is exempt. Namely that relating to:

- the four years before the second property was acquired (when the first property was the only residence) and
- the last 18 months of ownership will qualify providing the property has been the main residence at some time.

In other words out of the ten years of ownership, a total of five and a half years (66 months) would qualify for the exemption. Therefore 54/120ths of the gain - ie £45,000 will be taxable.

What if no election were made?

Without the election, and the first property being treated as the main residence throughout, the gain on the first property would be wholly exempt and the gain on the second property would be wholly chargeable. Failure to make an election can be an expensive mistake.

Can you claim PPR relief on your property?

From 6 April 2015 a person's residence will not be eligible for Principal Private Residence (PPR) relief for a tax year unless either:

- the person making the disposal was resident in the same country as the property for that tax year, or
- the person spent at least 90 midnights in that property.

The rules apply to both a UK resident disposing of a residence in another country and a non-resident disposing of a UK residence.

Business use

More and more people work from home these days. Does working from home affect the CGT exemption on sale? The answer is simple - it may do!

Rather more helpfully the basic rule is that the exemption will be denied to the extent that part of your home is used exclusively for business purposes. In many cases of course the business use is not exclusive, your office doubling as a spare bedroom for guests for example, in which case there is not a problem.

Where there is exclusive business use then part of the gain on sale will be chargeable rather than exempt. However, it may well be that you plan to acquire a further property, also with part for business use, in which case the business use element of the gain can be deferred by 'rolling over' the gain against the cost of the new property.

Residential letting

A further relief is given if your main residence has been let as residential accommodation during the period of ownership. The case study below best demonstrates the operation of this.

The letting exemption can be very valuable but is only available on a property that has been your main residence. It is not available on a 'buy to let' property in which you never live.

Case study

Frank bought a property in 2004 and lived in it as his main residence for eight years until 2012. Then he bought a second property which immediately became his main residence and the first property is then let from then until its sale in say 2019.

The gain on sale of the first property amounted to £210,000.

Some of this gain will be exempt as it has been Frank's main residence.

96 months (8 years actual occupation - from 2004 to 2012)

18 months (last 18 months of ownership - part way through 2018 and 2019)

So 114 months in total is exempt.

As the total period of ownership is 180 months (15 years) the exempt gain will be calculated as follows:

114/180 x £210,000 = £133,000

The balance of the gain (£77,000) relates to the period from 2012 to part way through 2018. The property was let during this period and had previously been Frank's main residence so that the letting exemption is available. Although the gain relating to this period amounts to £77,000 the exemption for letting is limited to a maximum of £40,000.

Overall £173,000 of Frank's gain is exempt leaving £37,000 chargeable to tax and this is subject to the annual exemption.

Periods of absence

Certain other periods of absence from your main residence may also qualify for CGT relief if say you have to leave your property to go and work elsewhere in the UK or abroad. The availability of the exemption depends on your circumstances and length of period of absence. Please talk to us if this is relevant for you. We would be delighted to set out the rules as they apply to your particular situation.

Trusts

The exemption is also available where a property is owned by trustees and occupied by one of the beneficiaries as their main residence.

Until December 2003 it was possible to transfer a property you owned but which was not eligible for CGT main residence relief into a trust for say the benefit of your adult children. Any gain could be deferred using the gift relief provisions. One of your children could then live in the property as their main residence and on sale the exemption would have covered the entire gain.

HMRC decided that this technique was being used as a mechanism to avoid CGT and so blocked the possibility of combining gift relief with the main residence exemption in these circumstances.

How we can help

The main residence exemption continues to be one of the most valuable CGT reliefs. However the operation of the relief is not always straightforward nor its availability a foregone conclusion. Advance planning can help enormously in identifying potential issues and maximising the available relief. We can help with this. Please contact us if you have any questions arising from this factsheet or would like specific advice relevant to your personal circumstances.

Cars for Employees

The current regime for taxing employer provided cars (commonly referred to as company cars) is intended:

- to encourage manufacturers to produce cars which are more environmentally friendly and
- to give employee drivers and their employers a tax incentive to choose more fuel-efficient and environmentally friendly vehicles.

We set out below the main areas of importance. Please do not hesitate to contact us if you require further information.

The rules

Employer provided cars are taxed by reference to the list price of the car but graduated according to the level of its carbon dioxide (CO_2) emissions.

Percentage charges

CO2 emissions (g/km)*	**2017/18% of car's price taxed**	**2018/19% of car's price taxed**
0 - 50	9	13
51 – 75	13	16
76 - 94	17	19
95	18	20
100	19	21
105	20	22
110	21	23
115	22	24
For every additional 5g thereafter add 1%	-	-
Until the maximum percentage is reached	37	37

*** Emissions are rounded down to nearest 5g/km for values above 95g/km**

Examples

Jane was provided with a new company car, a Mercedes CLK 430, on 6 April 2017. The list price is £50,000. The CO_2 emissions are 240 g/km.

For 2017/18 and 2018/19 Jane's benefit will be £50,000 x 37% =£18,500.

Phil has a company car, a BMW 318i, which had a list price of £21,000 when it was provided new on 6 April 2017. The CO_2 emissions are 11/km. Note: The CO_2 emissions are rounded down to the nearest 5 grams per kilometre - in this case 115.

Phil's benefit for 2017/18 is: £21,000 x 22% = £4,620. Phil's benefit increases for 2018/19 to £5,040 being £21,000 x 24%.

Diesels

Diesel cars emit less CO_2 than petrol cars and so would be taxed on a lower percentage of the list price than an equivalent petrol car. However, diesel cars emit greater quantities of air pollutants than petrol cars and therefore a supplement of 4% of the list price generally applies to diesel cars (unless the car is registered on or after 1 September 2017 and meets the Euro 6d emissions standard).For 2017/18 and previous years the diesel supplement was 3%.

The diesel supplement does not apply to hybrid cars.

Example

A diesel car that would give rise to a 22% charge on the basis of its CO_2 emissions will instead be charged at 25% for 2017/18. For 2018/19 a 22% diesel car would be charged at 26% The maximum charge for diesel is capped at 37%.

Obtaining emissions data

The Vehicle Certification Agency produces a free guide to the fuel consumption and emissions figures of all new cars. It is available on the internet at www.carfueldata.direct.gov.uk. These figures are not however necessarily the definitive figures for a particular car. The definitive CO_2 emissions figure for a particular vehicle is recorded on the Vehicle Registration Document (V5).

The list price

- The list price of a car is the price when it was first registered including delivery, VAT and any accessories provided with the car. Accessories subsequently made available are also included (unless they have a list price of less than £100).
- Employee capital contributions up to £5,000 reduce the list price.

Employer's Class 1A national insurance contributions

The benefit chargeable to tax on the employee is also used to compute the employer's liability to Class 1A (the rate is currently 13.8%).

Imported cars

Some cars registered after 1 January 1998 may have no approved CO_2 emissions figure, perhaps if they were imported from outside the EC. They are taxed according to engine size.

Engine size (cc)	% of list price charged to tax 2017/18	% of list price charged to tax 2018/19
0 - 1400	16%	23%
1401 - 2000	27%	34%
Over 2000	37%	37%

Private fuel

There is a further tax charge where a company car user is supplied with or allowed to claim reimbursement for fuel for private journeys.

The fuel scale charge is based on the same percentage used to calculate the car benefit. This is applied to a set figure which is £23,400 for 2018/19 (£22,600 for 2017/18). As with the car benefit, the fuel benefit chargeable to tax on the employee is used to compute the employer's liability to Class 1A. The combined effect of the charges makes the provision of free fuel a tax inefficient means of remuneration unless there is high private mileage.

The benefit is proportionately reduced if private fuel is not provided for part of the year. So taking action now to stop providing free fuel will have an immediate impact on the fuel benefit chargeable to tax and NIC.

Please note that if free fuel is provided later in the same tax year there will be a full year's charge.

Business fuel

No charge applies where the employee is solely reimbursed for fuel for business travel.

HMRC issue advisory fuel only mileage rates for employer provided cars. Employers can adopt the rates in the following table but may pay lower rates if they choose.

Rates from 1 March 2018

Engine size	Petrol
1400cc or less	11p
1401cc - 2000cc	14p
Over 2000cc	22p
Engine size	**LPG**
1400cc or less	7p
1401cc - 2000cc	8p
Over 2000cc	13p
Engine size	**Diesel**
1600cc or less	9p
1601cc - 2000cc	11p
Over 2000cc	13p

HMRC update these rates on a quarterly basis in March, June, September and December. The latest rates can be found at www.gov.uk/government/publications/advisory-fuel-rates

Employees' use of own car

There is also a statutory system of tax and NIC free mileage rates for business journeys in employees' own vehicles.

The statutory rates are:

	Rate per mile
Up to 10,000 miles	45p
Over 10,000 miles	25p

Employers can pay up to the statutory amount without generating a tax or NIC charge. Payments made by employers are referred to as 'mileage allowance payments'. Where employers pay less than the statutory rate (or make no payment at all) employees can claim tax relief on the difference between any payment received and the statutory rate.

How we can help

We can provide advice on such matters as:

- whether a car should be provided to an employee or a private car used for business mileage
- whether employee contributions are tax efficient
- whether private fuel should be supplied with the car.

Please contact us for more detailed advice.

Cash Basis for the Self-Employed

We consider the optional rules which allow small unincorporated businesses to calculate their profits for tax purposes on a cash basis rather than the normal accruals basis.

Accruals basis and cash basis

One example which illustrates the difference between the accruals basis and cash basis is that credit sales are included in the accruals basis accounts income despite the fact that the customer may not have paid for the goods or services by the end of the accounting period. Under the optional cash basis the business is taxed on its cash receipts less allowable cash payments made during the accounting period. So under the optional cash basis credit sales are accounted for and taxed in the year in which they are paid for by the customer.

Cash basis eligibility

The main entry criteria are that your business is unincorporated (sole trader or a partnership consisting only of individuals) and that your receipts in the accounting period are less than the entry threshold. From 1 April 2017 the entry threshold is £150,000. The exit threshold is £300,000.

There are some individual exclusions from cash basis, for example, Limited Liability Partnerships, Lloyd's underwriters and those eligible individuals who wish to continue to claim averaging of profits like farmers.

Once the cash basis election is made an individual will generally have to remain in the scheme unless the business either grows too large or there is another acceptable 'change of circumstances.' These matters are not considered further here.

Key tax points

Cash receipts

Cash receipts literally mean all cash receipts that the business receives during the accounting period. As well as trading income this will also include the proceeds from the sale of any plant and machinery. If a customer does not pay what is owed by the accounting year end then it will not be taxable until the next year when it is actually received by the business.

What deductions are allowable?

In terms of what deductions can be claimed the main rules are that the expenses must have been actually paid in the accounting period as well as being incurred wholly and exclusively for the purposes of the trade.

As is the case with calculating taxable profits generally for a business no deductions are allowed for items which are of a capital nature such as the purchase of property. However, under the cash basis the costs of most plant and machinery can be included as a deduction. One key exception is the purchase of cars.

Relief for interest payments

If you have a business loan or overdraft only interest, payments up to a maximum limit of £500 can be claimed. If, in the future, you have a larger loan and wish to claim more interest as a deduction then this could be treated as a change of circumstances and result in you then having your accounts prepared on the accruals basis.

Restrictions on the use of losses

If your business incurs a loss then under the cash basis this can only be carried forward and set against profits of the same business in future years. This is not as advantageous as the normal rules which will allow the loss to be carried back or set off 'sideways' against other income.

In order to ensure that income is taxed and expenses are relieved 'once and once only' special calculations are needed on entering or leaving the cash basis.

How we can help

So, in summary, as you can see there is more to the cash basis than might be expected and we would be happy to review your circumstances to see if this would be suitable for you and your business. Please contact us if you would like any further information.

Charitable Giving

If you are thinking of making a gift to charity, this factsheet summarises how to make tax-effective gifts. You can get tax relief on gifts to UK charities if you give:

- under Gift Aid
- through a Payroll Giving scheme, run by your employer, or
- by making a gift of certain shares or land.

Location of the charity

UK charitable tax reliefs are available to certain organisations which are the equivalent of UK charities and Community Amateur Sports Clubs (CASCs) in the EU, Norway and Iceland.

UK donors are able to receive the same tax reliefs in respect of these donations and legacies that they enjoy for donations to UK charities.

The qualifying overseas charities benefit from the same UK tax exemptions and reliefs as UK charities.

Gift Aid

If you pay tax, Gift Aid is a scheme by which you can give a sum of money to charity and the charity can normally reclaim basic rate tax on your gift from HMRC. That increases the value of the gift you make to the charity. So for example, if you give £10 using Gift Aid that gift is worth £12.50 to the charity.

You can give any amount, large or small, regular or one-off.

If you do not pay tax, you should not use Gift Aid.

How does a gift qualify for Gift Aid?

There are three main conditions. You must:

- make a declaration to the charity that you want your gift to be treated as a Gift Aid donation
- pay at least as much tax as the charities will reclaim on your gifts in the tax year in which you make them
- not receive excessive benefits in return for your gift.

Making a declaration

The declaration is the charity's authority to reclaim tax from HMRC on your gift.

The declaration can be in writing or orally but, usually, the charity will provide a written declaration form.

You do not have to make a declaration with every gift. In order to make a Gift Aid donation you'll need to make a Gift Aid declaration. The charity will normally ask you to complete a simple form - one form can cover every gift made to the same charity or CASC for whatever period you choose, and can cover gifts you have already made (backdating your claim for up to four years) and/or gifts you may make in the future.

Membership subscriptions through Gift Aid

You can pay membership subscriptions to a charity through Gift Aid, provided any membership benefits you receive do not exceed certain limits. The current limits on the value of benefits received relative to donations are:

- 25% of the value of the donation, where the donation is less than £100
- £25, where the value of the donation is between £100 and £1,000
- 5% of the value of the donation, where the donation exceeds £1,000

There is an overriding limit on the value of benefits received by a donor in a tax year as a consequence of donations to a charity, which is £2,500.

However, you can disregard free or reduced entry to view any property preserved, maintained, kept or created by a charity in relation to their charitable work.

Simplification of Gift Aid donor benefit rules

The government announced in the Autumn Budget 2017 that they will introduce legislation to simplify the donor benefit rules that apply to charities that claim Gift Aid. Currently there are a mix of monetary and percentage thresholds, detailed above, that charities have to consider when determining the value of benefit they can give to their donors in return for a donation on which Gift Aid can be claimed. These will be replaced by two percentage thresholds:

- the benefit threshold for the first £100 of the donation will remain at 25% of the amount of the donation, and
- for larger donations, charities will be able to offer an additional benefit to donors up to 5% of the amount of the donation that exceeds £100.

The total value of the benefit that a donor will be able to receive remains at £2,500.

The government have confirmed that four extra statutory concessions that currently operate in relation to the donor benefit rules will also be brought into law. The changes will have effect on and after 6 April 2019.

Fund-raising events

Where you have raised money which has simply been collected from other people, such as on a flag day, and the other people have not made a declaration to the charity that they are taxpayers, the payment is not made under Gift Aid and generally no tax relief is due but see below regarding the introduction of the Gift Aid Small Donations Scheme.

However, if you have been sponsored for an event, and each sponsor has signed a Gift Aid declaration, then the charity can recover the tax on the amounts covered by declarations. Charities may produce sponsorship forms for this.

Higher rate and additional rate taxpayers

If you are a higher/additional rate taxpayer, you can claim tax relief on the difference between the basic rate and higher/additional rate of tax (through your tax return). Relief is given either for the tax year of payment or in some cases it is now possible to elect to receive the benefit of the higher/additional rate tax relief one year earlier than previously.

You should therefore keep a record of payments made under Gift Aid for each tax year.

The time limit for claiming tax relief on Gift Aid donations is four years. This time limit applies to the charity and the individual making the gift.

Tainted donations to charity

Tax relief is denied on donations where one of the main purposes of the donation is to receive a tax advantage for the donor or connected person directly or indirectly from the charity. There is no monetary limit on the amount of the donation which may be caught by these rules.

Gift Aid Small Donations Scheme (GASDS)

Charities can use Charities Online for repayment of tax on other income and claims for top-up payments under the new Gift Aid Small Donations Scheme (GASDS).

Charities and CASCs can claim a top-up payment on cash donations of £20 or less without the need to collect Gift Aid declarations. Charities will generally be able to claim on small donations of up to £8,000 per annum which will result in a repayment of £2,000 for the charity or CASC.

The GASDS is ideal for small cash donations received in collection boxes, bucket collections and during religious services. Charities and CASCs wishing to claim under the GASDS will still need to make Gift Aid claims in respect of other donations for which they have a Gift Aid declaration in the same tax year, for example, on regular donations received from supporters. This is called the 'matching rule': every £10 of donations claimed under the GASDS must be matched with £1 of donations claimed under Gift Aid in the same tax year.

Payroll Giving

A Payroll Giving scheme allows you to give regularly to charity from your pay and get tax relief on your gifts. The scheme requires your employer to set up and run a scheme. You authorise your employer to deduct your gift from your pay. Every month your employer pays it over to a Payroll Giving agency approved by HMRC. The agency then distributes the money to the charity or charities of your choice.

Because your employer deducts your gift from your pay or pension before PAYE is worked out, you pay tax only on the balance. This means that you get your tax relief immediately at your highest rate of tax. (The amount you pay in national insurance contributions is not affected.)

Gifts of shares or land

Capital gains tax (CGT)

You are not liable to CGT when you make a gift of assets, such as land or shares, to charity, even if the asset is worth more when you donate it than when you acquired it.

Income tax

You may also get income tax relief for these gifts to charity if they are ‘qualifying investments’. There are two main types of qualifying investments:

- quoted shares and securities
- land and buildings.

Example

Alma owns quoted shares with a market value of £10,000 and an original cost to her of £3,000. Alma is a higher rate taxpayer.

Alma gives the shares to the charity. The charity will then sell the shares for £10,000 and keep the full sale proceeds.

Alma will not have a capital gain arising under CGT. She will be entitled to 40% income tax relief on the value of her gift ie £4,000.

Although this sounds a very attractive relief, a comparison should be made of the alternative route of gifting to a charity by selling the investment and giving the net proceeds to charity under Gift Aid.

So, if Alma sold the shares, she would make a capital gain of £7,000 before considering any unused annual exemption. If, say, the CGT bill is nil, she could gift the proceeds of £10,000 under Gift Aid. The charity can reclaim tax of £10,000 x 20/80 = £2,500. Alma is entitled to higher rate relief on the gross gift of £2,500 (£10,000 x 100/80 x 40 - 20%).

Although Alma has received less tax relief (£4,000 compared to £2,500), the charity will have received £12,500 (£10,000 from Alma and £2,500 from HMRC).

If you would like further advice on this matter, please contact us.

Qualifying investments

In more detail, the following investments qualify for the tax relief:

- shares and securities listed or dealt in on the UK Stock Exchange, including the Alternative Investment Market
- shares or securities listed or dealt in on any overseas recognised stock exchange
- units in an authorised unit trust (AUT)
- shares in a UK open-ended investment company (OEIC)
- holdings in certain foreign collective investment schemes (foreign equivalents of AUTs and OEICs)
- freehold interests in land
- leasehold interests in land where the lease period is for a term of years absolute.

You should always contact the charity to ensure that it can accept the shares or the land. Indeed for land, the charity needs to give you a certificate stating that it has acquired the land.

The charity may be able to help you with the transfer procedure.

How we can help

If you would like to help a charity financially, it makes sense to do this in a tax efficient way. We can provide assistance in determining this for you. Please contact us for more detailed advice.

Charities in Scotland: Trustees' Responsibilities

It is often considered an honour to act as a trustee for a charity and an opportunity to give something back to the community. However, becoming a trustee involves a certain commitment and level of responsibility which should not be underestimated.

Whether you are already a trustee for a charity, be it a local project or a household name, or are thinking of becoming involved, there are a number of responsibilities that being a trustee places upon you.

We outline the main responsibilities below, with a particular emphasis on accounting and audit requirements for Scottish charities.

Background

The charities sector in Scotland is generally overseen by the Office of the Scottish Charity Regulator (OSCR) also known as the 'Scottish Charity Regulator'. OSCR is a Non-Ministerial Government department which is the independent regulator and registrar for Scottish charities.

OSCR plays an important role in the charity sector and is in place to give the public confidence in the integrity of charities and to help charity trustees to understand and comply with their legal duties.

A key part of OSCR's work is to provide advice to trustees. A great deal of useful advice can be found on the OSCR website, where there is a section dedicated to Charity trustees' duties.

Types of charity

The main legislation which charities in Scotland operate is the Charities and Trustees Investment Act (Scotland) 2005 (the 2005 Act). Charities can be created in a number of ways but are usually either:

- incorporated under the Companies Act 2006 or earlier (limited company charities)
- incorporated under the 2005 Act through The Scottish Charitable Incorporated Organisations Regulations 2011 ('the General Regulations') (Scottish charitable incorporated organisations, SCIOs), or
- created by a declaration of trust (unincorporated charities).

Each of these charities need to register and file their accounts with OSCR and limited companies are additionally registered with Companies House.

The type of the charity will determine the full extent of a trustee's responsibilities.

Who is a Trustee?

The 2005 Act defines trustees as 'persons having the general control and management of the administration of a charity'. This definition would typically include:

- for unincorporated charities and SCIOs, members of the executive or management committee
- for limited company charities, the directors or members of the management committee.

Charities need at all times to fulfil the charitable purpose for which they were created and it is the duty of all the trustees to ensure this.

Trustee restrictions and liabilities

In addition to the responsibilities of being a trustee, there are also a number of restrictions which may apply. These are aimed at preventing a conflict of interest arising between a trustee's personal interests and their duties as a trustee. These provide that generally:

- trustees cannot benefit personally from the charity, although reasonable out of pocket expenses may be reimbursed
- trustees should not be paid for their role as trustee.

There are limited exceptions to these principles which are set out in the 2005 Act. Where trustees do not act prudently, lawfully or in accordance with their governing document they may find themselves personally responsible for any loss they cause to the charity.

Trustees' responsibilities

The OSCR guidance Charity Trustee Duties explains what it means to be a trustee and how to become one. Trustees have full responsibility for the charity and a general duty to act in the interests of the charity. This means they should:

- operate in a way which is consistent with the charity's charitable purposes
- follow the law and the rules in the charity's governing document
- act with care and diligence
- manage any conflict of interest between the charity and any person or organisation that may appoint the charity's trustees.

Trustees have a duty to make sure that their charity's funds are only applied in the furtherance of its' charitable objects. They need to be able to demonstrate that this is the case, so they should keep records which are capable of doing this.

Charity trustees must put the interests of the charity before their own needs or those of any relatives or business interests. Where a decision must be taken where one option would be in the interests of a trustee and another in that of the charity a trustee should make sure the other trustees know of the conflict and should not take part in the discussion or decision.

The OSCR guidance Charity Trustee Duties also provides information on some specific duties contained in the 2005 Act. The guidance sets out trustees' duties to:

- provide all the information needed to keep the Scottish Charity Register up to date
- comply with the charity's governing document and the 2005 Act when making changes to the way the charity operates
- keep proper accounting records and prepare an annual statement of account and annual report which are externally scrutinised
- take control of how the charity raises funds
- provide information to the public.

These duties are shared by every individual in charge of the charity. No individual charity trustee (for example the Chair or Treasurer) has more responsibility than any other trustee.

Accounting requirements

The 2005 Act requires that charities:

- keep full and accurate accounting records (and funds requirements are of particular importance here)
- prepare charity accounts and an annual report on its activities
- ensure an audit or independent examination is carried out
- submit an annual return, annual report and accounts to OSCR (and, for limited company charities, to Companies House).

The extent to which these requirements have to be met generally depends upon the type of charity and how much income is generated.

Funds requirements

An important aspect of accounting for charities is the understanding of the different 'funds' that a charity can have.

Essentially funds represent the income of the charity and there may be restrictions on how certain types of funds raised can be used. For example, a donation may be received only on the understanding that it is to be used for a specified purpose.

It is then the trustees' responsibility to ensure that such 'restricted' funds are used only as intended.

Fundraising

The effective management and control of fundraising is also an important trustee responsibility. The Scottish Fundraising Standards Panel oversee fundraising standards and deal with fundraising complaints for Scottish registered charities in line with the Code of Fundraising Practice.

The annual report

The annual report is often a fairly comprehensive document, as legislation sets out the minimum amount of information that has to be included. The report generally includes:

- a trustees' report (which can double as a directors' report and a strategic report, if required for charitable companies)
- a statement of financial activities for the year
- an income and expenditure account for the year (for some charitable companies)
- a balance sheet
- a statement of cash flows
- notes to the accounts (including accounting policies).

Audit requirements

Whether or not a charity requires an audit will depend mainly upon how much income is received or generated and their year end:

- all charities where income exceeds £500,000 require an audit
- all other charities require an independent examination. Where 'accruals' accounts are prepared the independent examiner must be suitably qualified.

There are other criteria to consider, particularly regarding total assets, and we would be pleased to discuss these in more detail with you.

Reporting requirements

There is a comprehensive framework in place that determines how a charity's accounts should be prepared.

Unincorporated charities with income below £250,000 may prepare receipts and payments accounts, unless their governing document says otherwise.

All other charities must prepare accounts that show a 'true and fair' view and are referred to as ‘accruals’ accounts. To show a ‘true and fair’ view the accounts generally need to follow the requirements of the Charities Statement of Recommended Practice (SORP). The SORP can be viewed at www.charitysorp.org/ and charities are able to build a bespoke version of the SORP dealing with their own circumstances.

How we can help

A trustee’s responsibilities are many and varied. If you would like to discuss these in more detail or would like help in maintaining your charity’s accounting records or preparing its annual report please contact us.

We are also able to advise on whether or not an audit or independent examination will be required and are able to carry this out.

Charities: Trustees' Responsibilities

It is often considered an honour to act as a trustee for a charity and an opportunity to give something back to the community. However, becoming a trustee involves a certain commitment and level of responsibility which should not be underestimated.

Whether you are already a trustee for a charity, be it a local project or a household name, or are thinking of becoming involved, there are a number of responsibilities that being a trustee places upon you.

We outline the main responsibilities below, with a particular emphasis on accounting and audit requirements.

Background

The charities sector in England and Wales is generally overseen by the Charity Commission. The Commission is a government department that requires the registration of most charities.

The Commission plays an important role in the charity sector and is in place to give the public confidence in the integrity of charities.

All charities need to demonstrate that their aims are for the public benefit, initially as part of their application process to the Charities Commission and subsequently each year at the time they prepare their annual report.

A key part of the Commission's work is to provide advice to trustees. A great deal of useful advice can be found on the Commission's website, where there is a section dedicated to Setting up and running a Charity.

Types of charity

Charities can be created in a number of ways but are usually either:

- incorporated under the Companies Act 2006 or earlier (limited company charities)
- incorporated under the Charities Act 2011 (Charitable Incorporated Organisations - CIOs) or
- created by a declaration of trust (unincorporated charities).

Each of these charities need to register and file their accounts with the Charity Commission and limited companies are additionally registered with Companies House. The type of the charity will determine the full extent of a trustee's responsibilities.

All charities are affected by the Charities Act 2011.

Who is a Trustee?

The Charities Act 2011 defines trustees as 'persons having the general control and management of the administration of a charity'. This definition would typically include:

- for unincorporated charities and CIOs, members of the executive or management committee
- for limited company charities, the directors or members of the management committee.

Trustee restrictions and liabilities

In addition to the responsibilities of being a trustee, there are also a number of restrictions which may apply. These are aimed at preventing a conflict of interest arising between a trustee's personal interests and their duties as a trustee. These provide that generally:

- trustees cannot benefit personally from the charity, although reasonable out of pocket expenses may be reimbursed
- trustees cannot be employees of the charity.

There are limited exceptions to these principles. Where trustees do not act prudently, lawfully or in accordance with their governing document they may find themselves personally responsible for any loss they cause to the charity.

Trustees' responsibilities

The CC guidance CC3a, 'Charity Trustee: What's involved' explains what it means to be a trustee and how to become one. Trustees have full responsibility for the charity and are required to:

- follow the law and the rules in the charity’s governing document
- act responsibly and only in the interests of the charity
- use reasonable care and skill and
- make well-informed decisions, taking advice when they need to.

The Charity Commission publication CC3, ‘The essential trustee: what you need to know’provides more detailed guidance for both new and existing trustees. The guidance sets out trustees’ duties and responsibilities under seven headings:

- ensure you are eligible to be a charity trustee
- ensure your charity is carrying out its purposes for the public benefit
- comply with your charity’s governing document and the law
- act in your charity’s best interests
- manage your charity’s resources responsibly
- act with reasonable care and skill
- ensure your charity is accountable.

In particular, trustees are under a legal duty to make sure that their charity’s funds are only applied in the furtherance of its charitable objects. They need to be able to demonstrate that this is the case, so they should keep records which are capable of doing this.

Fundraising

The Fundraising Regulator was established in 2015 to strengthen the system of charity regulation and restore public trust in fundraising. Trustees should be aware of the requirements of the Code of Fundraising Practice, which are many and various.

Accounting requirements

There are particular requirements for most charities to:

- keep full and accurate accounting records (and funds requirements are of particular importance here)
- prepare charity accounts and an annual report
- to ensure an audit or independent examination is carried out
- to submit an annual return, annual report and accounts to the Charity Commission (and, for limited company charities, to Companies House).

The extent to which these requirements have to be met generally depends upon the type of charity and how much income is generated.

Funds requirements

An important aspect of accounting for charities is the understanding of the different 'funds' that a charity can have. The effective management and control of fundraising is an important trustee responsibility.

Essentially funds represent the income of the charity and there may be restrictions on how certain types of funds raised can be used. For example, a donation may be received only on the understanding that it is to be used for a specified purpose.

It is then the trustees' responsibility to ensure that such 'restricted' funds are used only as intended.

The annual report

The annual report is often a fairly comprehensive document, as legislation sets out the minimum amount of information that has to be included. The report generally includes:

- a trustees' report (which can double as a directors' report and a strategic report, if required for charitable companies)
- a statement of financial activities for the year
- an income and expenditure account for the year (for some charitable companies)
- a balance sheet
- a statement of cashflows
- notes to the accounts (including accounting policies).

Audit requirements

Whether or not a charity requires an audit will depend mainly upon how much income is received or generated and their year end. The income limit varies according to the type of charity as follows:

- all charities where income exceeds £1,000,000 in a financial year require an audit
- charities (both incorporated and unincorporated) require an independent examination where their income falls between £25,000 and £1,000,000 in their financial year
- where income is over £250,000 the independent examiner must be suitably qualified.

There are other criteria to consider, particularly regarding total assets, and we would be pleased to discuss these in more detail with you.

Reporting requirements

There is a comprehensive framework in place that determines how a charity’s accounts should be prepared.

Unincorporated charities with income below £250,000 may prepare receipts and payments accounts.

All other charities must prepare accounts that show a 'true and fair' view. To achieve this the accounts generally need to follow the requirements of the Charities Statement of Recommended Practice (SORP). The SORP can be viewed at www.charitysorp.org/ and charities are able to build a bespoke version of the SORP dealing with their own circumstances.

How we can help

A trustee's responsibilities are many and varied. If you would like to discuss these in more detail or would like help in maintaining your charity's accounting records or preparing its annual report please contact us.

We are also able to advise on whether or not an audit or independent examination will be required and are able to carry this out.

Child Benefit Charge

The High Income Child Benefit charge applies to a taxpayer who has income over £50,000 in a tax year where either they or their partner, if they have one, are in receipt of Child Benefit for the year.

We set out below the main points of the charge and illustrate some of the practical issues.

Does this affect my family?

The High Income Child Benefit charge is payable by a taxpayer who has 'adjusted net income' (explained later) in excess of £50,000 where either they or their partner, if they have one, are in receipt of Child Benefit. Where there is a partner and both partners have adjusted net income in excess of £50,000 the charge only applies to the partner with the higher income.

Practical issues

Some couples with fluctuating income levels may find that they are caught by the charge or perhaps that the partner who usually has the highest income does not actually end up paying the charge as the following example illustrates.

Example

Nicola, who receives Child Benefit, is employed as a teacher and earns £52,000 a year. Her husband Alan is a self-employed solicitor and his accounting year end is 31 March. He is late in submitting his books and records to his accountant for the year ended 31 March 2018. His results for that year will form his taxable profit for 2017/18. Nicola and Alan do not have any other income other than their earned income but his profits are generally in excess of £60,000. On this basis Nicola assumes that Alan will be liable for the charge.

In January 2019 Alan's accountant completes his tax return, files this in advance of the 31 January deadline and advises that his profit has reduced to £48,000 as he had experienced a number of bad debts.

As a result Nicola has the highest income for 2017/18 and is therefore responsible for paying the charge by 31 January 2019 and she will need to contact HMRC about this.

For couples who do not share their financial details there is a problem as it is difficult to accurately complete their tax return (or know if they need to contact HMRC to request one) if their own income is over £50,000 and Child Benefit is being claimed. Only the highest earning partner is liable so this will need to be determined.

Changes in circumstances

As the charge is by reference to weeks, the charge will only apply to those weeks of the tax year for which the partnership exists. If a couple breaks up, the partner with the highest income will only be liable for the period from 6 April to the week in which the break up occurs.

Conversely, if a couple comes together and Child Benefit is already being paid, the partner with the highest income will only be liable to the charge for those weeks from the date the couple start living together until the end of the tax year.

So what is the adjusted net income of £50,000 made up of?

It can be seen that the rules revolve around 'adjusted net income', which is broadly:

- income (total income subject to income tax less specified deductions e.g. trading losses and payments made gross to pension schemes)
- reduced by grossed up Gift Aid donations to charity and pension contributions which have received tax relief at source.

In some cases it may be that an individual may want to donate more to charity or make additional pension contributions: for example, to reduce or avoid the charge.

Inequity applies as household income is not taken into account.

Therefore, equalising income for those who have the flexibility to do so such as in family partnerships or family owner managed businesses is important.

Who is a partner for the purpose of the charge?

A person is a partner of another person at any time if any of the following conditions are met at that time. The persons are either:

- a man and a woman who are married to each other and not separated; or
- a man and a woman who are not married to each other but are living together as husband and wife.

Similar rules apply to same sex couples.

The charge

An income tax charge will apply at a rate of 1% of the full Child Benefit award for each £100 of income between £50,000 and £60,000. The charge on taxpayers with income above £60,000 will be equal to the amount of Child Benefit paid.

Example for 2018/19

The Child Benefit for two children amounts to £1,788 per annum. The taxpayer's adjusted net income is £55,000. The income tax charge will be £894. This is calculated as £1,788 x 50% (£55,000 - £50,000 = £5,000/£100 x 1%).

How does the administration operate?

In the self assessment system individuals are required to notify HMRC if they have a liability to income tax, capital gains tax (CGT) and the High Income Child Benefit Charge by 6 October following the tax year. This requirement is amended to include situations where the person is liable to the Child Benefit charge.

In addition, the charge is included in PAYE regulations so that it can be collected through PAYE, using a reduced tax code. It is also included in the definition of tax liability, so that it could potentially affect payments on account and balancing payments.

So should you continue to claim Child Benefit?

It is important to appreciate that Child Benefit itself is not liable to tax and the amount that can be claimed is therefore unaffected by the charge. It can therefore continue to be paid in full to the claimant even if they or their partner have a liability to the charge.

On the other hand Child Benefit claimants are able to elect not to receive the Child Benefit to which they are entitled if they or their partner do not wish to pay the charge. However, this will not affect the credit available (for state pension purposes) to certain people who stay at home to look after children (provided that an initial claim for child benefit was made when the child was born).

An election can be revoked if a person's circumstances change.

But I don't receive a tax return?

It may well be that you and/or your partner have not received a tax return before but this may need to change. You need to tell HMRC by 6 October following the end of the tax year if you think a charge may be due.

Guidance

HMRC have issued some guidance on the charge and the options available which can be found at www.gov.uk/child-benefit-tax-charge. This should be essential reading for many families.

How we can help

If you are unsure about anything to do with this charge or would like to discuss the matter further including how we might be able to minimise the tax charge which may apply to your family, please do not hesitate to contact us.

Community Amateur Sports Clubs

Local amateur sports clubs may wish to register with HMRC as Community Amateur Sports Clubs (CASCs) and benefit from a range of tax reliefs including Gift Aid. This factsheet considers the tax benefits and the registration requirements that clubs have to satisfy.

What kind of club can register?

Broadly a club seeking to register must:

- be open to the whole community
- be organised on an amateur basis
- have as its main purpose providing facilities for, and promoting participation in, one or more eligible sports
- not exceed the income limit.

Open to the whole community

A club is open to the whole community if:

- membership of the club is open without discrimination
- the club's facilities are open to members without discrimination, and
- any fees are set at a level that does not pose a significant obstacle to membership or use of the club's facilities.

Discrimination

Discrimination includes:

- discrimination on grounds of ethnicity, nationality, sexual orientation, religion or beliefs
- discrimination on grounds of sex, age or disability, except as a necessary consequence of the requirements of a particular sport.

Costs associated with membership and participation

Some objective tests have been introduced in order to determine whether costs of membership pose a significant obstacle:

- clubs where membership and participation costs total £520 or less a year will be considered to be open to the whole community
- clubs where membership costs (excluding participation costs) are above £1,612 a year will not be eligible
- clubs where membership and participation costs total more than £520 a year must make special provisions for members on a low or modest income to participate for £520 or less.

HMRC examples of how to compute membership and participation costs in their guidance at: www.gov.uk/government/publications/community-amateur-sports-clubs-detailed-guidance-notes/community-amateur-sports-clubs-detailed-guidance-notes

Organised on an amateur basis

A club is organised on an amateur basis if:

- it is non-profit making
- it provides for members and their guests only the 'ordinary benefits' of an amateur sports club
- it does not exceed the limit on paid players
- its governing document requires any net assets on the dissolution of the club to be applied for approved sporting or charitable purposes.

Non-profit making

A club is non-profit making if its governing document requires any surplus income or gains to be reinvested in the club. Surpluses or assets cannot be distributed to members or third parties. This does not prevent donations to other clubs that are registered as Community Amateur Sports Clubs.

'Ordinary benefits' of an amateur sports club

The ordinary benefits of an amateur sports club include:

- provision of sporting facilities
- reasonable provision and maintenance of club-owned sports equipment
- provision of suitably qualified coaches

- provision, or reimbursement of the costs, of coaching courses
- reimbursement of necessary and reasonable travel expenses and subsistence expenses incurred by players and officials travelling to away matches
- sale or supply of food or drink as a social adjunct to the sporting purposes of the club.

HMRC, in their guidance provide examples of what are necessary and reasonable travel and subsistence expenses.

Payments to members

A club is allowed to:

- enter into agreements with members for the supply to the club of goods or services or
- employ and pay remuneration to staff who are club members.

So a CASC could pay members for services such as coaching or grounds maintenance but would not, for example, normally pay members to play. However under new regulations clubs are allowed to pay a maximum of £10,000 a year in total to players to play for the club.

Eligible sports

Eligible sports are defined in the legislation by reference to the Sports Council's list of recognised activities. This can accessed using the following link: www.sportengland.org/our-work/national-work/national-governing-bodies/sports-that-we-recognise/

Promoting participation in an eligible sport

A club must promote participation in an eligible sport and also provide facilities for playing the sport. To meet this objective, a club must ensure at least 50% of the members are 'participating members'. To be a participating member they must participate in the sporting activities of the club on a number of occasions that is equal to or more than the club's 'participation threshold'. The participation threshold is based on the number of weeks in the club's accounting period.

Some clubs have the main purpose of providing social leisure facilities. If this is the case they will not be able to register as CASCs, because these clubs are principally places for people to meet for social purposes even though some sporting activities take place.

The income limit condition

All CASCs must meet an income condition which aims to ensure that CASCs are mainly sports clubs rather than mainly commercial clubs with sports activities. The income condition applies to the turnover received from broadly commercial transactions with non-members, where the club is offering a commercial service or supply, for example sales of food and drink. Any income from renting out property is to be included eg renting out the club's grounds.The maximum amount of turnover that a club may receive under the income condition is £100,000 a year, excluding VAT.

Clubs are able to generate unlimited income from transactions with their members. Investment income and donations received is also excluded from the income condition.

Tax reliefs for registered CASCs

CASCs can reclaim basic rate tax on Gift Aid donations made to them by individuals but CASC subscriptions are not eligible as Gift Aid payments.

CASCs are treated as companies for tax purposes. Therefore their profits may be chargeable to corporation tax.

CASCs can claim the following tax reliefs:

- exemption from Corporation Tax on profits from trading where the turnover of the trade is less than £50,000
- exemption from Corporation Tax on income from property where the gross income is less than £30,000
- exemption from Corporation Tax on interest received
- exemption from Corporation Tax on chargeable gains.

It should be noted that if trading turnover exceeds £50,000, all the trading profit is assessable to corporation tax.

Example

A CASC runs a trade with turnover of £60,000 and profit of £6,000. Because the turnover exceeds the £50,000 limit the profit is taxable. The CASC also has gross rental income of £12,000. The gross rental income is below the exemption limit and is not taxable.

Claiming the tax reliefs

Where a CASC receives a tax return, relief can be claimed in the return. However most clubs do not receive a tax return each year. If the club has had tax deducted from its income or if it has received Gift Aid payments, it can claim a repayment from HMRC.

Corporate Gift Aid to the rescue?

Corporate Gift Aid is available for donations of money made by companies to CASCs. Companies are therefore allowed to claim tax relief on qualifying donations they make on or after 1 April 2014.

The corporate Gift Aid provisions encourage companies to make donations to clubs which are registered as CASCs but also encourage clubs with high levels of commercial trading to potentially benefit from CASC status.

A club with significant trading receipts may well not qualify for CASC status because of the trading receipts. It could however set up a trading subsidiary and donate the profits to the club. The donation received by the club will not be treated as trading receipts and thus the club could apply for CASC status. The new Gift Aid relief will eliminate the corporation tax charge on the profits of the company.

There are however other issues for the club to consider in the establishment of a trading subsidiary.

Non-domestic rates relief

CASCs in England and Wales get the same relief that would be available to a charity (80% mandatory relief) where the CASC property is wholly or mainly used for the purposes of that club. For CASCs in Scotland, the Scottish Executive has agreed voluntary relief with local authorities for the same amount.

Relief for donors

- Individuals can make gifts to CASCs using the Gift Aid scheme. We have a separate factsheet giving further details of the Gift Aid scheme.
- Businesses giving goods or equipment that they make, sell or use get relief for their gifts.
- Corporate Gift Aid.
- Gifts of chargeable assets to CASCs are treated as giving rise to neither a gain nor a loss for capital gains purposes.

How we can help

Please contact us if you have any queries relating to the rules on CASCs. We would be delighted to help.

Companies - Tax Saving Opportunities

Due to the ever changing tax legislation and commercial factors affecting your company, it is advisable to carry out an annual review of your company's tax position.

Pre-year end tax planning is important as the current year's results can normally be predicted with some accuracy and time still exists to carry out any appropriate action.

We outline below some of the areas where advance planning may produce tax savings.

For further advice please do not hesitate to contact us.

Corporation tax

Advancing expenditure

Expenditure incurred before the company's accounts year end may reduce the current year's tax liability.

In situations where expenditure is planned for early in the next accounting year, the decision to bring forward this expenditure by just a few weeks can advance the related tax relief by a full 12 months.

Examples of the type of expenditure to consider bringing forward include:

- building repairs and redecorating
- advertising and marketing campaigns
- redundancy and closure costs.

Note that payments into company pension schemes are only allowable for tax purposes when the payments are actually made as opposed to when they are charged in the company's accounts.

Capital allowances

Consideration should also be given to the timing of capital expenditure on which capital allowances are available to obtain the optimum reliefs.

Single companies irrespective of size are able to claim an Annual Investment Allowance (AIA) which provides 100% relief on expenditure on plant and machinery (excluding cars). The amount of AIA is currently set at £200,000. Groups of companies have to share the allowance. Expenditure on qualifying plant and machinery in excess of the AIA is eligible for writing down allowance (WDA) of 18%. Where the capital expenditure is incurred on integral features the WDA is 8%.

100% allowances on designated energy saving technologies continue to be available in addition to the AIA. Details can be found at www.gov.uk/guidance/energy-technology-list.

Limited allowances are also available for investments in certain types of building.

Trading losses

Companies incurring trading losses have three main options to consider in utilising these losses:

- they can be set against any other income (for example bank interest) or capital gains arising in the current year
- they can be carried back for up to one year and set against total profits
- they can be carried forward and set against trading profits arising in future years.

More flexibility for losses from April 2017

The government have amended the rules for corporation tax losses to make the tax relief more flexible. When losses arising on or after 1 April 2017 are carried forward, they will be available to be used against profits from different types of income in the company and other group companies.

There is, however, a restriction on the use of carry forward losses where a company’s or group’s profits are above £5 million. Any profits over £5 million arising on or after 1 April 2017 cannot be reduced by more than 50% by brought forward losses. Losses that have arisen at any time are subject to these restrictions.

Extracting profits

Directors/shareholders of family companies may wish to consider extracting profits in the form of dividends rather than as increased salaries or bonus payments.

This can lead to substantial savings in national insurance contributions (NICs).

Note however that company profits extracted as a dividend remain chargeable to corporation tax at a minimum of 19% (reducing to 17% from 1 April 2020).

Dividends

From the company's point of view, timing of payment is not critical, but from the individual shareholder's perspective, timing can be an important issue. A dividend payments in excess of the Dividend Allowance which is delayed until after the tax year ending on 5 April may give the shareholder an extra year to pay any further tax due. The Dividend Allowance is £2,000 for 2018/19 (£5,000 2017/18).

The deferral of tax liabilities on the shareholder will be dependent on a number of factors. Please contact us for detailed advice.

Loans to directors and shareholders

If a 'close' company (broadly, one controlled by its directors or by five or fewer shareholders) makes a loan to a shareholder, this can give rise to a tax liability for the company.

If the loan is not settled within nine months of the end of the accounting period, the company is required to make a payment equal to 32.5% (25% for loans made before 6 April 2016) of the loan to HMRC. The money is not repaid to the company until nine months after the end of the accounting period in which the loan is repaid by the shareholder.

A loan to a director may also give rise to a tax liability for the director on the benefit of a loan provided at less than the market rate of interest.

Rates of tax

The main rate of corporation tax is currently 19%. The rate for future years is:

- 19% for the financial Years beginning on 1 April 2018 and 2019
- 17% for the Financial Year beginning on 1 April 2020.

Self assessment

Under the self assessment regime most companies must pay their tax liabilities nine months and one day after the year end.

Companies which pay (or expect to pay) tax at the main rate are required to pay tax under the quarterly accounting system. If you require any further information on the quarterly accounting system, we have a factsheet which summarises the system.

Corporation tax returns must be submitted within twelve months of the year end and are required to be submitted electronically. In cases of delay or inaccuracies, interest and penalties will be charged.

Capital gains

Companies are chargeable to corporation tax on their capital gains less allowable capital losses.

Indexation allowance

In order to counteract the effects of inflation inherent in the calculation of a capital gain, an indexation allowance is given. However the allowance is not allowed to increase or create a capital loss.

It was announced in the Autumn Budget 2017 that the calculation of indexation allowance will be restricted for disposals of assets on or after 1 January 2018. The indexation allowance will be calculated using the Retail Price Index factor for December 2017 irrespective of the date of disposal of the asset.

Planning of disposals

Consideration should be given to the timing of any chargeable disposals to ensure advantage is taken where possible of minimising the tax liability at small profits rate rather than full rate. This could be achieved (depending on the circumstances) by accelerating or delaying sales. The availability of losses or the feasibility of rollover relief (see below) should also be considered.

Purchase of new assets

It may be possible to avoid a capital gain being charged to tax if the sale proceeds are reinvested in a replacement asset.

The replacement asset must be acquired in the four year period beginning one year before the disposal, and only certain trading tangible assets qualify for relief.

How we can help

Tax savings can only be achieved if an appropriate course of action is planned in advance. It is therefore vital that professional advice is sought at an early stage. We would welcome the chance to tailor a plan to your specific circumstances. Please do not hesitate to contact us.

Company Secretarial Duties

Company legislation provides an opportunity for a business organisation to benefit from the protection of limited liability, separating the legal persona of the organisation from the individuals who own and run it.

In return for this protection a certain amount of information about a company must be publicly available including, for example, the company's annual accounts, registered office address and details of directors, company secretary (if there is one) and members. Historically, providing and updating this information has been the job of the company secretary.

Do all companies need a company secretary?

Since April 2008, unless there is an express requirement in the company's articles of association, the Companies Act 2006 no longer requires private limited companies ('limited' or 'ltd') to appoint a company secretary. Even if the articles do require it, it is relatively straightforward for the directors of a company to amend the provision, subject to shareholder agreement.

Although there is no requirement for private companies to employ a company secretary, in practice many still choose to do so. The important tasks that would normally fall to a company secretary, including shareholder administration and communication, corporate governance and statutory compliance must still be done. In the absence of a company secretary, company law states that directors must take on this responsibility. As a result, many private companies continue to employ a company secretary in order to reduce the administrative and corporate governance burdens otherwise placed on their directors.

Public limited companies (whose name ends in 'plc') are still required to have a company secretary who must have specialist, up-to-date knowledge of company law.

The company secretary is an officer of the company. This means that they may be criminally liable for company defaults, for example, failing to file a document in the time allowed or failing to submit the company's annual return.

If your private company does not want to have a company secretary

If a private company decides not to have a company secretary then it should check its Articles of Association to ensure that its own regulations do not require it to appoint one. The company should inform Companies House of the resignation of any existing company secretary.

Where a private company chooses not to have a company secretary, any item that would normally be sent to the company secretary is treated as being sent to the company. Any duties which would normally be the responsibility of the company secretary will be carried out either by a director or a person authorised by the directors.

The company secretary and Companies House

A company secretary, or in the case of a private company the person responsible for company secretarial duties, will have regular dealings with Companies House as this is where public records about the company are held.

Most communications with Companies House are through Companies House Webfiling or their software filing facility. Companies House is moving towards 100% online filing.

Company secretarial duties

The duties of the person responsible for company secretarial matters are not defined specifically within company law but may be divided generally into three main areas:

- maintaining statutory registers (keeping the company's records up to date)
- completing and filing statutory forms (keeping the public record up to date)
- meetings and resolutions (making sure the company abides by both its internal regulations and the law).

Maintaining statutory registers

All companies must maintain up-to-date registers of key details. These include:

- a register of members
- a register of directors
- a register of charges
- a register of persons with significant control (PSC register)*.

The details in these registers include, for example, names, addresses, dates of appointment and resignation (for directors) and for members, the number and type of shares held. This is not an exhaustive list.

Responsibility for maintenance of the company's statutory books and records is a duty that normally falls to the company secretary. It can be a time-consuming task that is often overlooked, but failure to keep the registers up to date can incur a penalty of up to £5,000.

The registers must be made available for inspection by the general public at the company's registered office or at a single alternative inspection location (SAIL) which must also be recorded at Companies House.

A company may choose to keep its directors' residential addresses private and to record a service address for them. If so it will need to keep an additional register showing the directors' residential addresses which is not open to inspection by the general public.

* A person with significant control is an individual who ultimately owns or controls more than 25% of a company's shares or voting rights or who otherwise exercises control over a company or its management.

Maintaining statutory information at Companies House

Alternatively, private companies may also choose (elect) to keep some of the information normally kept in the statutory registers at its registered office or SAIL on the public register at Companies House. This will include their registers of directors, directors' usual residential addresses, secretaries, members and persons with significant control. While this election is in force the company does not need to keep its own separate statutory registers updated.

Whilst this election is in force the general public can access company information through Companies House instead of visiting the registered office. This will include some information, such as members' addresses or directors' full dates of birth, which is not generally available on the public record for private companies.

Completing and filing statutory forms

The company must ensure that their record at Companies House is always up to date and contains current details of various statutory matters.

Many of the more common types of information can be submitted online by first registering at www.companieshouse.gov.uk. Alternatively Companies House currently has a series of over 200 statutory forms to allow paper filing.

The company secretarial duties would extend to ensuring that, for example:

- The company's annual accounts are filed on time at Companies House. For a private limited company, under normal circumstances, this must be within 9 months of the end of the accounting year. A fine will be levied if the accounts are late.
- Once each year Companies House will send each company a reminder to file their **'confirmation statement'** which replaces the old Annual Return, and can be filed online or by downloading and completing on paper (for a higher fee). The company must 'check and confirm' that the information held at a given due date is accurate. The statement must be filed by the date specified on the reminder, ie within 14 days, and if it is returned late or not returned at all, the company, director(s) and secretary (if appointed) may be prosecuted. This confirmation statement replaced the annual return from June 2016.
- All changes to the way the company is organised need to be notified to Companies House, within a specified period of between 14 and 28 days, depending on the change. The annual confirmation statement cannot be used to change this information and a separate form should be used. The most common forms include:
  - changes in directors, secretaries and their particulars
  - a change of accounting reference date
  - a change of registered office
  - allotments of shares.
- If a company does not complete its confirmation statement the Registrar might assume that the company is no longer carrying on business and take steps to strike it from the register.
- The current version of the company's Articles of Association is filed whenever a change in the company's internal rules is made.
- The rules relating to the register of Persons with Significant Control (PSC) have already changed since this new register was introduced. Initially, companies could update the public version of their PSC register annually as part of their confirmation statement, but now each change has to be updated on the register within 14 days and notified to Companies House within a further 14 days.

Charges

When a company gives security for a loan either the lender or borrower should notify Companies House within 21 days, by filling in the appropriate form and paying the statutory charge. Without timely registration the charge will be void - that is, the loan will still be repayable but the security given will not be valid. This does not apply to property acquired which is subject to a charge.

Good company secretarial practice ensures that any charges created are registered and that the company's credit profile is protected by removing the charge from the register as soon as the loan is repaid.

Meetings and resolutions

Company law sets out procedures for conducting certain aspects of company business through formal meetings where resolutions will be passed. When resolutions are passed, the company is bound by them (a resolution is an agreement or a decision taken by the members).

Here the company secretarial role would be to ensure that proper notice of meetings is given to those who are entitled to attend, to minute the proceedings and to ensure that copies of resolutions which affect the way the company is run are sent to Companies House within the relevant time frame.

Notice of company meetings

Members and auditors are entitled to notice of company meetings. For a private limited company a general meeting notice of at least 14 days is needed. Notice can be in writing, by email or by means of a website (if certain conditions are met). However, a private company is no longer required to hold an Annual General Meeting (AGM), unless the company's Articles of Association make express provisions for holding AGMs.

If an existing company with an existing express provision for an AGM wishes to abolish this requirement, it will need to change its articles by special resolution.

Resolutions

There are two types of resolution that may be passed, ordinary resolutions (passed by a simple majority of the members) or special resolutions (passed by a 75% majority of the members). In general, resolutions will be voted on by any members present at a meeting.

Private companies can take most decisions by written resolution. Such a resolution does not require a hard copy and can be passed by email. These resolutions, however, need to be passed by a majority of all members of the company, not just by those who return the voting form!

It is important that companies retain copies of all important decisions taken in the management of the company where they are taken at a meeting or by written resolution. Where these decisions change the way a company is run, a copy needs to be filed at Companies House.

Keeping your public record safe

Companies House has recently reported increasing levels of fraudulent filing of information. A favourite ploy is to change the company's registered office by submitting the appropriate form to Companies House. Once this has been accepted, the fraudsters can change directors or file false accounts without the company having any idea that they have been hijacked! They can then buy goods or obtain credit based on this false information.

Companies House is keen that companies file their information online. This can be a very secure method, particularly if the company signs up for the enhanced security arrangements offered by their PROOF (protected online filing) system, which prevents the paper filing of certain forms.

How we can help

If you would like to discuss any of the issues raised above, or would like further information about the new register of persons of significant control or the implications of keeping your statutory information on the public register, please do contact us.

We are able to provide comprehensive assistance with company secretarial matters such as:

- the updating, maintenance and safekeeping of the company registers
- the processing and filing of minutes from directors and shareholders meetings
- the preparation and filing of resolutions
- the completion and filing of correct statutory forms
- the filing of the annual accounts
- confirmation statement filing.

Even though the need to appoint a company secretary for a private company has been abolished, there are a number of statutory procedures that companies must continue to comply with. We would be pleased to discuss these with you.

Construction Industry Scheme

The Construction Industry Scheme (CIS) sets out special rules for tax and national insurance (NI) for those working in the construction industry. Businesses in the construction industry are known as 'contractors' and 'subcontractors'. They may be companies, partnerships or self employed individuals.

The CIS applies to construction work and also jobs such as alterations, repairs, decorating and demolition.

Contractors and subcontractors

Contractors include construction companies and building firms and also government departments and local authorities. Any other business spending more than £1 million a year on construction is classed as a contractor for the purposes of the CIS.

Subcontractors are those businesses that carry out work for contractors.

Many businesses act as both contractors and subcontractors.

Monthly return

Contractors have to make an online monthly return to HMRC:

- confirming that the employment status of subcontractors has been considered
- confirming that the verification process has been correctly dealt with
- detailing payments made to all subcontractors and
- detailing any deductions of tax made from those payments.

The monthly return relates to each tax month (ie running from the 6th of one month to the 5th of the next). The deadline for submission is 14 days after the end of the tax month.

Where a contractor has not made any payments to subcontractors in a tax month it is advisable to make a nil return to avoid HMRC chasing the return or issuing penalties for failure to make a return.

All contractors are obliged to file monthly even if they are entitled to pay their PAYE quarterly.

Identification

Subcontractors must give contractors their name, unique taxpayer reference and national insurance number (or company registration number) when they enter into a contract. So long as the contractor is satisfied that the subcontractor is genuinely self-employed the 'verification' procedure (explained below) must be followed.

Employed or self-employed?

A key part of the CIS is that the contractor has to make a monthly declaration that they have considered the status of the subcontractors and are satisfied that none of those listed on the return are employees. HMRC can impose a penalty of up to £3,000 if contractors negligently or deliberately provide incorrect information.

Remember that employment status is not a matter of choice. The circumstances of the engagement determine how it is treated.

The issue of the status of workers within the construction industry is not a new matter and over the last few years HMRC have been making substantial efforts to re-classify as many subcontractors as possible as employees. The courts have considered many cases over the years and take into account a variety of different factors in deciding whether or not a worker is employed or self-employed. The tests which are applied include:

- the right of control over how, what, where and when the work is done; the more control that a contractor can exercise, the more likely it is that the worker is an employee
- whether the worker provides a personal service or whether a substitute could be provided to do that work
- whether any equipment is necessary to do the job, and if so, who provides it
- the basis of payment - whether an hourly/weekly rate is paid, whether there is any overtime, sick or holiday pay and whether or not invoices are raised for the work done
- whether the worker is part and parcel of the organisation or whether they are conducting a task which is self-contained in its own right
- what the intention of the parties is - whether there is any written statement that there is no intention of an employment relationship

- whether there is a mutuality of obligation; that is, an ongoing understanding that the contractor will offer work and the worker accept it
- whether the workers have any financial risk.

As can be seen from the above, there are a number of factors which must be considered and the decision as to whether somebody should be classified as employed or self-employed is not a simple one.

Clearly, HMRC would like subcontractors to be classed as employees, as this generally means that more tax and national insurance is due. However, just because the HMRC think that somebody should be re-classified does not necessarily mean that they are correct.

HMRC have developed software known as the employment status indicator tool, which is available on their website, to address this matter but the software appears to be heavily weighted towards re-classifying subcontractors as employees. It should not be relied on and professional advice should be taken if this is a major issue for your business. Please talk to us if you have any particular concerns in this area.

Verification

The contractor has to contact HMRC to check whether to pay a subcontractor gross or net. Not every subcontractor will need verifying (see below). Usually it will only be new ones.

The verification procedure will establish which of the following payment options apply:

- gross payment
- a standard rate deduction of 20%
- a deduction made at the higher rate of 30% if the subcontractor has not registered with HMRC or cannot provide accurate details to the contractor and HMRC cannot verify them.

HMRC will give the contractor a verification number for the subcontractors which will be matched with HMRC's own computer. The number will be the same for each subcontractor verified at any particular time. There will be special suffixes for the numbers issued in respect of subcontractors who cannot be verified. The numbers are also shown on contractors' monthly returns and the payslips issued to the subcontractors.

Clearly, these numbers are a fundamental part of the system and contractors have to ensure that they have a fool-proof system in place for obtaining and retaining them. It is also very important to give precise details to HMRC because, if their computer does not recognise the subcontractor, the higher rate deduction will have to be made.

From 6 April 2017 mandatory online verification of subcontractors has been introduced.

Who needs verifying with HMRC?

If a contractor is paying a subcontractor they will not have to verify them if:

- they have already included them on any monthly return in that tax year; or
- the two previous tax years.

A payslip?

Contractors have to provide a monthly 'payslip' to all subcontractors paid, showing the total amount of the payments and how much tax, if any, has been deducted from those payments. The contractor has to provide this for each tax month as a minimum. Contractors are allowed to choose the style of the 'payslips' themselves but certain specific information has to be provided including the:

- contractor's name and their employer tax reference
- tax month to which the payment relates
- subcontractor's name, unique tax reference or specific subcontractor reference
- the gross amount of the payment
- cost of any materials which have reduced the gross payment
- amount of any tax deductions made; and
- verification number where deduction has been made at the higher rate of 30%.

If contractors include such payments as part of their normal payroll system, it needs to be clear that although payslips are being generated for those individuals, they are not employees and have clearly been classed as self-employed.

Are tax deductions made from the whole payment?

Not necessarily. The following items should be excluded when entering the gross amount of payment on the monthly return:

- VAT charged by the subcontractor if the subcontractor is registered for VAT
- any Construction Industry Training Board levy.

The following items should be deducted from the gross amount of payment when working out the amount of payment from which the deduction should be made:

- what the subcontractor actually paid for materials including VAT paid if the subcontractor is not registered for VAT, consumable stores, fuel (except fuel for travelling) and plant hire used in the construction operations
- the cost of manufacture or prefabrication of materials used in the construction operations.

Any travelling expenses (including fuel costs) and subsistence paid to the subcontractor should be included in the gross amount of payment and the amount from which the deduction is made.

Penalties

The whole system is backed up by a series of penalties. These cover situations in which an incorrect monthly return is sent in negligently or fraudulently, failure to provide CIS records for HMRC to inspect and incorrect declarations about employment status. Late returns under the CIS scheme also trigger penalties as follows:

- a basic penalty of £100 for failure to meet due date of the 19th of the month
- where the failure continues after two months after the due date, a penalty of £200
- after six months the penalty rises to the greater of 5% of the tax or £300
- after 12 months the penalty will again be the greater of £300 or 5% of the tax but, where the withholding of information is deliberate and concealed, it will be 100% of the tax (or £3,000 if greater) and where information is withheld deliberately, 70% of tax (or £1,500 if greater)
- where the return is 12 months late but the information only relates to persons registered for gross payment, the penalty will be £3,000 for deliberate and concealed withholding of information and £1,500 for deliberate withholding without concealment
- where a person has just entered the CIS scheme penalties will be restricted to a maximum of £3,000 in certain circumstances.

Paying over the deductions

Contractors have to pay over all deductions made from subcontractors in any given tax month by the 19th following the end of the tax month to which the deductions relate. If payment is being made electronically, the date will be the 22nd, or the next earlier banking day when the 22nd is a weekend or holiday. If the contractor is a company which itself has deductions made from its payments as a subcontractor, then the deductions made may be set against the company’s liabilities for PAYE, NI and any CIS deductions it is due to pay over.

What about subcontractors?

If a subcontractor first starts working in the construction industry on a self-employed basis they will need to register for the CIS.

To register, a subcontractor needs to contact HMRC by phone or over the internet and they will conduct identity checks.

Gross payment status

The rules for subcontractors to be paid gross include a business test, a turnover test and a compliance test. To qualify for gross payment a subcontractor must:

- have paid their tax and National Insurance on time in the past
- do construction work (or provides labour for it) in the UK
- run the business through a bank account.

The turnover for the last 12 month, ignoring VAT and the cost of materials, must be at least:

- £30,000 for a sole trader
- £30,000 for each partner in a partnership, or at least £100,000 for the whole partnership
- £30,000 for each director of a company, or at least £100,000 for the whole company

If your company's controlled by 5 people or fewer, you must have an annual turnover of £30,000 for each of them.

Subcontractors not registered with the HMRC will suffer the higher rate deduction from any payments made to them by contractors.

How we can help

Please do get in touch if you would like further information about the CIS. We can advise on the CIS whether you are a contractor or a subcontractor.

Corporation Tax - Quarterly Instalment Payments

Under corporation tax self assessment large companies are required to pay their corporation tax in four quarterly instalment payments. These payments are based on the company's estimate of its current year tax liability.

Note that the overwhelming majority of companies are not within the quarterly payment regime and pay their corporation tax nine months and one day after the end of their accounting period.

We highlight below the main areas to consider if your company is affected by the quarterly instalments system.

Companies affected by quarterly instalment payments

Large companies

Only large companies have to pay their corporation tax by quarterly instalments. A company is large if its profits for the accounting period exceed the upper relevant maximum amount (URMA) in force at the end of that period. The URMA is £1.5 million and the rate of corporation tax is 19% from 1 April 2017 reducing to 17% from 1 April 2020.

Group companies

Where a company has one or more 51% related group companies, the URMA is reduced to the figure found by dividing that amount by one plus the number of related 51% group companies. The URMA is also proportionately reduced for short accounting periods.

So, if a company has three 51% group companies the URMA is £375,000. Any of the companies that have taxable profits exceeding that figure will be subject to the instalment payments regime. Those which do not exceed that figure will not be subject to the regime.

Some companies have many group companies and are treated as being large even though their own corporation tax liability is relatively small. Where the corporation tax liability is less than £10,000 there is no requirement to pay by instalments.

Growing companies

A company does not have to pay its corporation tax by instalments in an accounting period if:

- its taxable profits for that accounting period do not exceed £10 million and
- it was not large for the previous year.

Where there are associated companies or 51% related group companies, the £10 million threshold is divided by one plus the number of associates or one plus the number of 51% related group companies at the end of the preceding accounting period. The threshold is also proportionately reduced for short accounting periods.

This gives companies time to prepare for paying by instalments (but see below).

The pattern of quarterly instalment payments

A large company with a 12 month accounting period will pay tax in four equal instalments, in months 7, 10, 13 and 16 following the start of the accounting period. The actual due date of payment is six months and 13 days after the start of the accounting period, then nine months and 13 days, and so on. So, for a company with a 12 month accounting period starting on 1 January, quarterly instalment payments are due on 14 July, 14 October, 14 January next and 14 April next.

There are special rules where an accounting period lasts less than 12 months.

Larger companies

Earlier dates will apply for the payment of corporation tax for larger companies and groups, for accounting periods starting on or after 1 April 2019. For companies with annual taxable profits of £20 million or more, tax will be payable in quarterly instalments in the third, sixth, ninth and twelfth months of their accounting period. For groups the £20 million threshold is divided by the number of companies in the group.

Pattern of payments for a growing company

If a growing company is defined as a large company for two consecutive years, the quarterly instalments payments regime will apply for the second of those years.

The transition from small to large is best illustrated by an example.

A company with a 31 December year end was large in 2017 for the first time and is expected to be large in 2018. Its tax payments will be as follows:

- for the 2017 accounting period, the tax liability is payable on 1 October 2018.
- for the 2018 accounting period, 25% of its tax for 2018 in each of July and October 2018 and January and April 2019.

As can be seen, the first instalment for 2018 is payable before the tax liability for 2017. It is therefore essential that budgets are prepared of expected profits whenever a company becomes large in order to determine:

- whether the company will be large in the second year, and if so
- what tax payments will have to be made in month seven of the second year.

Working out quarterly instalment payments

A company has to estimate its current year tax liability (net of all reliefs and set offs) and then make instalment payments based on that estimate. This means that by month seven, a company has to estimate profits for the remaining part of the accounting period.

In particular note that tax due under the loans to participators legislation is also included.

A company's estimate of its tax liability will vary over time. The system of instalment payments allows a company to make top-up payments – at any time – if it realises that the instalment payments it has made are inadequate. A company will normally be able to have back all or part of any instalment payments already made if later it concludes that they ought not to have been made, or were excessive.

Interest and penalties

Interest is calculated only once a company has filed its tax return, or HMRC have made a determination of its corporation tax liability and the normal due date has passed.

The payments the company makes are compared to the amounts that ought to have been paid throughout the instalment period. If a company has paid too much for a period compared to the amount of corporation tax that was due to have been paid, it will be paid interest. If it has paid too little, it will be charged interest.

Rates of interest

Special rates of interest apply for the period from the due and payable date for the first instalment to the normal due and payable date for corporation tax (nine months and one day from the end of the accounting period).

Thereafter, the interest rates change to the normal interest rates for under and overpaid taxes. This two-tier system takes into account the fact that companies will be making their instalment payments based on estimated figures but, by the time of the normal due date, should be fairly certain about their liability.

Interest received by companies is chargeable to tax, and interest paid by companies is deductible for tax purposes.

Penalties

A penalty may be charged if a company deliberately fails to make instalment payments, or makes instalment payments of insufficient size.

Special arrangements for groups

There is a group payment arrangement facility which allows groups to make instalment payments on a group-wide basis, rather than company by company. This should help to minimise their exposure to interest.

How we can help

If you think your company may be affected by the quarterly instalment regime, procedures will need to be set in place to estimate the liability.

We will be more than happy to provide you with assistance or any additional information required so please do contact us.

Corporation Tax Self Assessment

Key features

The key features are:

- a company is required to pay the tax due in advance of filing a tax return
- a 'process now, check later' enquiry regime when the tax return is submitted
- the inclusion in the tax return, and in a single self assessment, of the liabilities of close companies on loans and advances to shareholders and others, and of liabilities under Controlled Foreign Companies legislation
- the requirement for companies to self assess by reference to transfer pricing legislation.

Practical effect of CTSA for companies

Notice to file

Every year, HMRC issue a notice to file to companies. In most cases, the return must be submitted to HMRC within 12 months of the end of the accounting period.

Filing your company tax return online

Companies must file their corporate return online. Their accounts and computations must also be filed in the correct format - inline eXtensible Business Reporting Language (iXBRL).

Unincorporated organisations and charities that don't need to prepare accounts under the Companies Act can choose to send their accounts in iXBRL or PDF format. However any computations must be sent in iXBRL format.

Penalties

Penalties apply for late submission of the return of £100 if it is up to three months late and £200 if the return is over three months late. Additional tax geared penalties apply when the return is either six or twelve months late. These penalties are 10% of the outstanding tax due on those dates.

Submission of the return

The return required by a Notice to file contains the company's self assessment, which is final subject to:

- taxpayer amendment
- HMRC correction; or
- HMRC enquiry.

The company has a right to amend a return (for example changing a claim to capital allowances). The company has 12 months from the statutory filing date to amend the return.

HMRC have nine months from the date the return is filed to correct any 'obvious' errors in the return (for example an incorrect calculation). This process should be a fairly rare occurrence. In particular the correction of errors does not involve any judgement as to the accuracy of the figures in the return. This is dealt with under the enquiry regime.

Enquiries

Under CTSA, HMRC check returns and has an explicit right to enquire into the completeness and accuracy of any tax return. This right covers all enquiries, from straightforward requests for further information on individual items through to full reviews of a company's business including examination of the company's records.

The main features of the rules for enquiries under CTSA are:

- HMRC generally have a fixed period, of 12 months from the date the return is filed, in which to commence an enquiry
- where the company is a member of a group (other than a small group), HMRC can raise an enquiry up to 12 months from the due filing date
- if no enquiry is started within this time limit, the company's return becomes final - subject to the possibility of an HMRC 'discovery'
- HMRC will give the company formal notice when an enquiry commences
- HMRC are also required to give formal notice of the completion of an enquiry, and to state their conclusions
- a company may ask the Commissioners to direct HMRC to close an enquiry if there are no reasonable grounds for continuing it.

Discovery assessments

HMRC have the power to make an assessment (a 'discovery assessment') if information comes to light after the end of the enquiry period indicating that the self assessment was inadequate as a result of fraudulent or negligent conduct, or of incomplete disclosure.

Summary of self assessment process

Example

A company prepares accounts for the 12 months ended 31 May 2017 and submits the return by 31 December 2017. Key dates under CTSA are:

01.03.18 - Payment of corporation tax

31.05.18 - Deadline for filing the return

31.12.18 - End of period for HMRC to open enquiry (being 12 months from the date the return was actually filed)

On 31 December 2018 the company tax position is finalised subject to HMRC's right to make a discovery assessment in some circumstances.

Payment of tax

There is a single, fixed due date for payment of corporation tax, nine months and one day after the end of the accounting period (subject to the Quarterly Instalment Payment regime for large companies).

If the payment is late or is not correct, there will be late payment interest on tax paid late and repayment interest on overpayments of tax. These interest payments are tax deductible/taxable.

Credit interest

If a company pays tax before the due date, it receives credit interest on amounts paid early. Any interest received is chargeable to corporation tax.

Loans to shareholders

If a close company makes a loan to a participator (for example most shareholders in unquoted companies), the company must make a payment to HMRC if the loan is not repaid within nine months of the end of the accounting period. The amount of the tax is 32.5% of the loan for loans made or benefits conferred on or after 6 April 2016. The tax charge is 25% of the loan for loans made prior to 6 April 2016.

This increased rate mirrors the dividend upper rate. The government has noted that this will prevent individuals gaining a tax advantage by taking loans or making other arrangements to extract value from their company rather than remuneration or dividends.

Additional rules for loans to shareholders

Further rules prevent the avoidance of the charge by repaying the loan before the nine month date and then effectively withdrawing the same money shortly afterwards.

A ‘30 day rule’ applies if at least £5,000 is repaid to the company and within 30 days new loans or advances of at least £5,000 are made to the shareholder. The old loan is effectively treated as if it has not been repaid. A further rule stops the tax charge being avoided by waiting 31 days before the company advances further funds to the shareholder. This is a complex area so please do get in touch if this is an issue for you and your company.

This tax is included within the CTSA system and the company must report loans outstanding to participators in the tax return.

How we can help

Do not hesitate to contact us if you require any further information.

Could I Really Make a Go of it?

Many people wonder deep down if they could really make a go of running their own business. It is not for everyone but the following is a list of attributes that successful business owners have. You do not need all of these characteristics but 'go-getters' have the majority of the qualities.

Qualities needed for success

To help you decide whether or not you are cut out for the enterprise culture, do you see in yourself any of the following? Are you:

- Positive - decisive and enthusiastic to succeed?
- Proactive - do you go out to get things or do you let them come to you?
- Determined - have you clearly-defined personal and business goals?
- Hardworking - do you mind being tied to the business seven days a week?
- Leadership - are you able to get the best from your colleagues and discipline them when necessary?
- Opportunist - will you see openings in your market and develop products for it?
- Self-critical - are you able to review your own performance and welcome advice from others?
- Flexible - could you change your products or methods quickly when necessary?

Erratic spending power

You must appreciate that in becoming self-employed you will lose the comfort of having a regular income. There will be times when you will have very positive cash flow but also times when money is short. Therefore during times of shortage you must be prepared to do without some luxuries for both yourself, your family and your business.

Making sure the family is with you

Starting a business is not easy and your family must both be on your side and also lend you support. Initially, especially in the early days, you could often find yourself away from your family for long, unsocial hours. Their understanding can be invaluable.

It can help to get your family involved in aspects of the business. There may be many jobs that can be easily delegated to them. It may also help on the financial side that they understand why there may be a tight control of the family finances.

Identifying your skills

You may be considering self-employment to exploit your talents. Running a business needs many skills. You should identify those things you are good at and those with which you will need help. You may wish to employ people with the necessary skills or, alternatively, consider contracting out certain tasks.

Researching your market

You must research as much as possible about the marketplace, your potential customers and competitors. It is vital to have knowledge of these areas when considering whether you have a potentially successful business proposition. You may wish to use published material or ask people who are likely to buy from you, either directly or by market survey.

You will need to find out about:

- Your target market - its size and whether it is expanding or contracting.
- Your customers - who are they? Where are they? What do they want? How much will they pay?
- Your competitors - what are their products, prices and market share?

How we can help

You will need to consider all the above very seriously, involve your family and make a trial business plan.

We can help you to plan and answer any questions you may have.

Credit Control

Obtaining new customers is great for business, unless they fail to pay you. If you fail to check that the customer can support the amount of credit you are granting, then commencing legal action when they do not pay can be a long, drawn out and potentially costly process.

If payment from the customer is not obtained and the goods or services have been provided, your cash flow is likely to be under pressure. Ensuring that customers pay on time will make managing your business easier.

If you fail to pay your suppliers because you have not been paid by your customer then you could also be damaging their business as well. This is not only bad business practice but could be regarded as corporate social irresponsibility. Treat your suppliers as you want your customers to treat you.

Factors to consider

The first thing you should do is get to know your customer. This should start before you take on a new customer and before you give them any credit. The bare minimum of what you should know is:

- the exact name of the customer and the trading address (consider using Companies House Webcheck service)
- their type of business structure, e.g. are they a sole trader, a partnership or a limited company?
- names and personal addresses of the proprietors if their structure is unincorporated (consider verifying letter headed paper to support this information)
- contact other suppliers to obtain references
- their credit rating.

Before you provide goods or services to any customer make sure you address the following:

- discuss and agree payment terms with the customer before accepting the order
- agree the terms in writing
- review any documentation from the customer where they try to change the agreed payment terms
- negotiate and agree payment terms with suppliers before accepting the order
- if there is a gap between customer and supplier payment terms, consider whether finance is available to bridge the gap (this will require an understanding of your working capital management)
- produce a cash flow forecast covering all expected income and expenses
- have a standard policy in place to ensure that payment terms cannot be altered without appropriate authorisation
- ensure that you have the right to apply late payment and interest charges on invoices.

After you have provided goods or services to a customer ensure that you:

- raise invoices promptly
- raise invoices accurately to ensure all items are included at the quoted prices
- include a reference number for the order and then quote this if any dispute arises
- have everything the customer requires on the invoice
- have a process for chasing invoices
- have a process for dealing with disputes
- keep a log of disputes to ascertain whether similar disputes for customers occur
- ensure that your invoices are fully compliant with HMRC for VAT purposes.

Consider your suppliers - treat them as you would like to be treated

Remember that not paying your suppliers on time is a bad business habit and it may result in a drop in your credit rating. You should:

- ensure you advise your suppliers of any disputes as soon as they occur
- pay on time by ensuring that your creditors' ledger is accurately aged; and
- keep your suppliers up to date with any issues you have with paying on time.

Some businesses unfortunately go 'bad' so you may wish to consider obtaining credit insurance where the business:

- would not be able to function if key customers went insolvent
- does not have the controls in place to ascertain whether a customer is likely to go insolvent
- is struggling to obtain information on prospective customers
- needs to improve credit management

- is considering a new market venture.

Businesses should consider obtaining factoring and financing options when:

- insufficient cash reserves are available to pay suppliers on time
- the business needs to grow
- the level of short term finance (including any overdraft facility) is insufficient
- staff do not have the right level of credit management skills.

How we can help

If you are struggling with your cash flow in these difficult times then we would be happy to discuss this further with you. Please contact us for more detailed advice.

Criminal Finances Act 2017

The Criminal Finances Act 2017 (CFA) came into effect on 30 September 2017, and makes companies and partnerships criminally liable for failing to prevent their employees from criminally facilitating tax evasion. A potential defence can be utilised, in cases where the business has put into place a system of reasonable prevention measures. The CFA does not change what tax fraud is, just who may be liable. Here, we take a look at the key aspects of the Act and the implications for your business.

Outlining the new Act

Under the CFA, two new criminal offences were introduced:

- **Domestic fraud offence**

The domestic fraud offence criminalises companies, partnerships and relevant bodies for failing to put into place reasonable prevention measures to stop their employees, agents or associated persons from facilitating tax evasion.

- **Overseas fraud offence**

This offence criminalises corporations trading within the UK who fail to implement reasonable procedures to prevent their employees, agents or representatives from facilitating tax evasion in another jurisdiction.

The new rules apply to tax evasion committed both onshore and offshore, and are applicable to all taxes.

Three stages to the facilitation of tax evasion

Under the CFA, there are three stages that apply to both the domestic and the foreign tax evasion facilitation offences. The first two stages are already offences under existing criminal law and stage three is a new offence.

Only the UK offence is considered here, additional requirements apply for the foreign offence.

Stage one

- The criminal evasion of tax (including national insurance contributions (NICs) is committed by a taxpayer.

Stage two

- The criminal facilitation of tax evasion is committed by an 'associated person' of the 'relevant body'.

Stage three

- The relevant body failed to prevent its employee from criminally facilitating tax evasion, or failed to implement reasonable measures to prevent the employee from committing the facilitation of tax evasion.

Under the CFA, only 'relevant bodies' and legal entities, such as incorporated bodies and partnerships, can commit the new offences. Natural persons, as opposed to legal persons, cannot commit the offences.

'Relevant body' refers to body corporates (including LLPs), and partnerships (whether incorporated or formed). Meanwhile, a person acts in the capacity of an 'associated person' if they are:

- an employee of a relevant body, acting in the capacity of an employee
- an agent of a relevant body, acting in the capacity of an agent
- Any other person who performs or intends to perform services for or on behalf of a relevant body, who is acting in the capacity of an individual performing such services (for instance, a subcontractor).

Where stages one and two have been committed, the relevant body is deemed to have committed the new corporate offence (subject to a reasonable defence being claimed).

The new third offence does not essentially alter what is considered to be a criminal act, but focuses on who is held accountable.

Making use of a 'reasonable defence'

Under the CFA, the onus is on the relevant body in question to demonstrate that it has implemented adequate procedures within the business to protect against the criminal facilitation of tax evasion. If the organisation can prove that it implemented stringent procedures, prosecution will be 'unlikely'.

A relevant body may utilise a defence whereby they can prove that, when the tax evasion facilitation offence was committed, it had appropriate prevention procedures in place.

'Prevention procedures' here refers to procedures designed to prevent persons acting in the capacity of someone associated with a relevant body from committing UK tax evasion facilitation offences. The new Act does not require relevant bodies to implement 'excessively burdensome' procedures, but it does require more than 'mere lip service'.

The government has recommended that organisations within 'high risk' sectors, such as banks and financial services companies, carry out thorough risk assessments to establish the likelihood of their associated persons committing the criminal act of facilitation of tax evasion. It is recommended that such organisations follow government advice on the matter.

What does my business need to do?

HMRC has published guidance on the procedures that relevant bodies (ie. your organisation) can implement into your business in order to help prevent their associated persons from committing the criminal offence of the facilitation of tax evasion. This can be accessed at goo.gl/iiHspg. The HMRC guidance is designed to help you understand the types of processes they can make use of.

The six 'guiding principles'

The government has outlined six 'guiding principles' that can be used to help inform preventative processes. Each of the principles aim to advise organisations in respect of assessing the risk of their associated persons criminally facilitating tax evasion.

1. **Risk assessment**

As a relevant body, you are advised to assess the nature and the extent to which you are exposed to the risk of their associated persons committing the facilitation of tax evasion. HMRC recommends that you 'sit at the desk' of your 'associated persons' and consider whether they have a motive, the opportunity and the means to criminally facilitate tax evasion.

You should ask:

- Is the work that 'associated persons' carry out subject to monitoring or scrutiny?
- How likely is the criminal facilitation of tax evasion by an 'associated person' to be detected?
- Are there any products or services that 'associated person' use that could be open to abuse?
- How often do those within high risk roles receive fraud training, and how vigorously is this training evaluated?

2. **Proportionality of risk-based prevention procedures**

Your reasonable procedures must take into account the nature, scale and complexity of its preventative activities. Organisations in sectors such as the banking industry or the accountancy sector may find that they are exposed to more significant risks than others.

3. **Top level commitment**

Senior management need to be committed to preventing 'associated persons' from criminally facilitating tax evasion. A 'zero tolerance' attitude may be adopted, and managers should ensure that the consequences of the criminal facilitation of tax evasion are outlined to their associated persons.

Managers are urged to:

- Outline the consequences of failing to comply with the relevant body's facilitation of tax evasion policy
- Refrain from utilising the services of those who do not have the appropriate preventative measures in place
- Communicate the relevant body's main preventative procedures.

4. **Due diligence**

In order to mitigate any potential risks, you must ensure you apply proportionate due diligence procedures in relation to persons who perform or intend to perform services on their behalf.

Ask yourselves:

- How well do you know the persons performing tasks on behalf of your organisation? Do you need to carry out any additional checks on them?
- Does your organisation require annual certificates to show that you are complying with the CFA?
- If you plan to acquire or merge with another business, have you considered the CFA implications?

5. **Communication**

The associated persons of your organisation must receive thorough and adequate training in regard to the criminal facilitation of tax evasion, and prevention policies must be well-communicated, understood and implemented through the workforce.

Your communication should seek to outline:

- The policies and procedures in place to prevent the criminal facilitation of tax evasion
- How to seek advice or report any concerns in regard to the criminal facilitation of tax evasion
- What is meant by tax evasion and associated fraud
- An employee's duty under the CFA.

6. **Monitoring and review**

Detailed reviews must be carried out of your preventative measures, and changes must be made to these where necessary. Typically, the nature of the risks you face will evolve over time: as such, senior management must ensure that the organisation adapts in response.

Ways to review your procedures:

- Through feedback provided by internal staff members
- Through periodic reviews, accompanied by documented findings

- By working alongside other organisations facing similar risks.

Non-compliance: what are the penalties?

HMRC states: 'The legislation aims to tackle crimes committed by those who act for or on behalf of a relevant body.' Under the CFA, relevant bodies who fail to prevent their associated persons from committing the criminal act of facilitation of tax evasion are subject to unlimited fines and ancillary orders, such as serious crime prevention orders or confiscation orders.

How we can help

Ensuring that you have adequate preventative procedures in place to protect against the risk of your associated persons facilitating tax evasion is crucial. We can help you to implement such procedures - please contact us for more information.

Data Security - Access

Many businesses are now completely reliant on the data stored on their Network Servers, PCs, laptops, mobile devices and cloud service providers or internet service providers. Some of this data is likely to contain either personal information and/or confidential company information.

Here we look at some of the issues to consider when reviewing the security of your computer systems with respect to access controls, and to ensure compliance with Principle 7 of the Data Protection Act. This states that -

Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

Access security

Good access controls to the computers and the network minimise the risks of data theft or misuse.

Access controls can be divided into two main areas:

- Physical access - controls over who can enter the premises and who can access personal data
- Logical access - controls to ensure employees only have access to the appropriate software, data and devices necessary to perform their particular role.

Physical access

As well as having physical access controls such as locks, alarms, security lighting and CCTV there are other considerations, such as how access to the premises is controlled.

Visitors should not be allowed to roam unless under strict supervision.

Ensure that computer screens are not visible from the outside.

Use network policies to ensure that workstations and/or mobile devices are locked when they are unattended or not being used.

Ensure that if a mobile device is lost it can be immobilised remotely.

Mobile devices being small are high risk items so sensitive data should always be encrypted and access to the service should be controlled via a pin number or password.

It may be necessary to disable or restrict access to USB devices and Optical readers and writers.

Finally, information on hard-copy should be disposed of securely.

Logical access

Logical access techniques should be employed to ensure that personnel do not have more access than is necessary for them to perform their role.

Sensitive data should be encrypted and access to this data controlled via network security and user profiles.

Access to certain applications and certain folders may also need to be restricted on a user by user basis.

Finally, it may be necessary to lock down certain devices on certain machines.

Passwords

A password policy consisting of a username and password is good practice.

These help identify a user on the network and enable the appropriate permissions to be assigned.

For passwords to be effective, however, they should:

- be relatively long (i.e. 8 characters or more)
- contain a mixture of alpha, numeric and other characters (such as & ^ ")
- be changed regularly through automatic password renewal options
- be removed or changed when an employee leaves
- be used on individual files such as spreadsheets or word processed documents which contain personal information

and should NOT

- be a blanket password (i.e. the same for all applications or for all users)
- be written on 'post it' notes that are stuck on the keyboard or screen
- consist of common words or phrases, or the company name.

How we can help

We can provide help in the following areas:

- defining and documenting security and logical access procedures
- performing a security/information audit
- training staff in security principles and procedures.

Please contact us if you would like any help in any of these areas.

Data Security - Backup

Many companies are now completely reliant on the data stored on their network servers, PCs, laptops, mobile devices and in the cloud. Some of this data is likely to contain either personal information and/or confidential company information.

Here we look at some of the issues to consider when reviewing the security of your computer systems and data.

Data backup is an essential security procedure and needs to be undertaken on a regular basis. A business should view regular backups as a form of insurance policy.

There are a number of points to consider.

Systems and Applications Software Installation media

Ideally, once software has been installed, the original media (unless the software was downloaded) should be stored securely off-site. Any activation keys/codes should be similarly stored securely.

Data file locations

In a network environment some data files might be stored on the server and other data files stored on local drives. In which case, separate backups may be required for both the server and one or more PCs.

Ideally, a network solution should be provided which ensures that all data is re-copied back to the server from local drives.

Backup strategy and frequency

There is likely to be a need for two parallel backup procedures; one to cover a complete systems backup of the server(s) and another to incrementally (or differentially) backup data files which have been updated since the previous backup.

The most common backup cycle is the grandfather, father, son method. With this, there is a cycle of 4 daily backups, 4/5 weekly backups and 12 monthly backups.

Remember that some data has to be preserved for many years - for example accounting records need to be kept for a minimum of 6 years.

Backup media can be re-used many times, but they do not have an infinite life and will need replacing after 2-10 years depending on quality and number of times used. Some additional points are made on this issue in the section on backup media degradation.

Backup responsibilities

Someone should be given responsibility for the backup procedures. This person needs to be able to:

- regularly ensure that all data files (server and local) are incorporated in the backup cycle(s)
- adapt the backup criteria as new applications and data files are added
- modify the backup schedule as required
- interpret backup logs and react to any errors notified
- restore data if files are accidentally deleted or become corrupt
- regularly test that data can be restored from backup media
- maintain a regular log of backups and where the backup media are stored.

Applications backup routines

Many accounting and payroll applications have their own backup routines. It is a good idea to use these on a regular basis (as well as conventional server backups) and always just before critical update routines. These backup data files should be stored on the server drive so that they are backed up.

Local PCs

Certain users will have applications data files exclusively on their local drives (such as payroll data for example) and these will require their own regular backup regime, which as mentioned in the previous paragraph, may consist of a combination of backing up to media and backing up to the server.

Backup media

Selecting the right media to use for backups depends on budget, how much data there is and the networking operating software. External hard disks or a NAS box with cloud backup may provide a good solution. If an external service provider is used, or perhaps a cloud option, they should have their own backup regime – but don't totally rely on this.

Optical storage such as CD/DVD, or Blu-Ray may also be considered as a cheaper alternative, but capacity and life may be limited.

Backup location

Backups should be stored in a variety of both on-site and off-site locations. On-site backups are easily accessible when data has to be restored quickly, but are at risk from either fire or other disaster.

A large number of businesses use an on-site safe, however, in a recovery situation this could be buried under tons of rubble, or the premises themselves may be inaccessible for a period of time.

Off-site backups have the advantage that they can be recovered in an emergency, but

a) they still need to be stored securely; and

b) need to be reasonably accessible.

Backup retention

Finally, certain type of records, such as accounting records for example, need to be kept for a minimum period of time and this must be considered when developing the data backup strategy (also see below regarding degradation).

Backup media degradation/ decomposition

Backup media degrades and the data stored on them decomposes over a period of time.

Optical media such as CD/DVD and Blu-Ray are particularly sensitive to light (photosensitive), so ensure that they are stored in a dark environment. They are also prone to physical damage when being handled. Finally, this type of media is not designed for long-term storage - lasting possibly as little as 2 years.

Backups should be checked on a regular basis for signs of digital decomposition, and tested to check that data can be successfully restored.

In-house or cloud?

Many internet service providers and third-party IT service organisations, now offer, either as standard or as a chargeable extra, off-site data repositories and also complete online application solutions. The immediate appeal is that there is no need to internally support a server and its operating and applications software. However, there are a significant number of key security issues which should be covered as part of the contract/ service level agreement (SLA). These should include level of encryption, the countries in which the data is processed and stored (as this has potential issues with Data Protection laws), data deletion and retention periods, the availability of audit trails of who is accessing the data and finally, who has ownership of the data if the provider goes into administration/receivership.

Where data is stored in the cloud, try to ensure that as little personal data as possible is processed and stored in this way. If this is not possible then at least anonymise the data so that individuals cannot be identified.

Ensure you can manually take your own backup copies of data stored with a third-party, and that this data is in a readable format and can be restored onto other services and applications.

How we can help

We can provide help in the following areas:

- performing a security/information audit
- drawing up a suitable backup regime
- training staff in security principles and procedures.

Please do contact us if we can be of further help.

Data Security - Cloud and Outsourcing

Many companies are now completely reliant on the data stored on their network servers, PCs, laptops, mobile devices or in the cloud. Some of this data is likely to contain either personal information and/or confidential company information.

We have a related factsheet which covers the conventional data security considerations.

Here we look at some of the issues to consider when reviewing the security of your computer systems, and how to minimise the risks of data loss within the cloud and where some or all services are outsourced.

Whilst cloud data storage and outsourcing can often be more secure than using internal resources, there are some additional things to bear in mind when some, or all, of your data is not held on-site.

Audit use and storage of personal data

Consider the potentially sensitive and confidential data which is stored in the cloud by your business.

Find out what is happening to data and what controls are in place to prevent accidental or deliberate loss of this information.

Risk analysis and risk reduction

So the key question is - If all or some of this data is lost who could be harmed and in what way?

When that is known, then steps to mitigate the risks of data loss must be taken. Here are some steps which can be undertaken to reduce the risk of data loss:-

- Ensure that the cloud provider or outsourcer will not share your data with a third party
- Check in what countries the data will be stored and processed – as this could have Data Protection implications
- Ensure that you can take local backup copies of your data
- A data subject has the same rights of access wherever data is being stored, so ensure that a subject access request can be facilitated
- Try to minimize the amount of personal data stored in the cloud or with a third party
- What happens if the provider becomes insolvent? Have a contingency plan in place
- Is the data encrypted – if so have you got access to the keys and who else has access to the keys?

There are many resources available, but we have included two examples here:-

https://www.cesg.gov.uk/cloud-security-collection

https://ico.org.uk/media/for-organisations/documents/1540/cloud_computing_guidance_for_organisations.pdf

How we can help

Please contact us if you require help in the following areas:

- performing a security/information audit
- reviewing cloud and outsourcing/third party agreements
- training staff in security principles and procedures.

Data Security - Data Loss Risk Reduction

Many companies are now completely reliant on the data stored on their network servers, PCs, laptops, mobile devices or in the cloud. Some of this data is likely to contain either personal information and/or confidential company information.

Here we look at some of the issues to consider when reviewing the security of your computer systems, and how to minimise the risks of data loss. We have a related factsheet which covers some additional considerations for those with data in the cloud, or use some form of outsourcing.

There have been many high profile incidents of data loss where large volumes of personal information have found their way into the public domain. Examples of this sort of information have included health records, financial records and employee details.

A commercial organisation also faces the additional risk of data being lost to a competitor.

Obviously, the larger data losses from government departments and corporations have hit the headlines. However, any company, no matter how large or small can suffer data loss unless sensible precautions are taken.

In the past year alone, according to recent research commissioned by the Department for Culture, Media and Sport (DCMS) some 45% of small/micro businesses have experienced some sort of security breach or cyber attack in the 12 months. The small/micro business survey results can be found here

The full report encompassing all company sizes can be found here

Over all sizes of business, the most common types of of breaches were - fraudulent emails (72% of all breaches), viruses and malware (33%), organisational impersonators (27%) and ransomware (17%).

Audit the use and storage of personal data

Consider the potentially sensitive and confidential data which is stored by your business -

- staff records with date of birth, salary and bank account details, medical information etc
- customer and supplier records with bank/credit card account details, pin numbers, passwords, transaction information, discounts and pricing, contracts information
- financial and performance data and business plans.
- Confidential data is not always conveniently stored in a 'secure' database. Often employees need to create and circulate ad hoc reports (using spreadsheets and other documents) which are usually extracts of information stored in a database. This sort of data retrieval is quite often done at the expense of data security - as the database itself invariably will have access controls, but these ad hoc reports usually do not.
- Find out what is happening to data and what controls are in place to prevent accidental or deliberate loss of this information.

Risk analysis and risk reduction

So the key question is - If all or some of this data is lost who could be harmed and in what way?

When that is known, then steps to mitigate the risks of data loss must be taken. Here are some steps which can be undertaken to reduce the risk of data loss -

- Undertake regular backups and store backup data securely off-site
- If high risk data is stored in the cloud understand what security mechanisms are in place and how you can retrieve all of this data if necessary
- Review the type of information which is stored on all devices (including laptops, mobiles, tablets etc) which are used off-site. If such information contains personal and/or confidential data try to minimise or anonymise the data. Ensure that the most appropriate levels of data security and data encryption are applied to this data
- If mobile devices are permitted to use company facilities ensure there is an active Bring your own Device (BYOD) policy in place, and appropriate security controls to restrict the type of data that can be stored on such devices
- Ensure that company websites which process online payments have the highest levels of security. This means adopting SSL encrypted transmissions.

- Review the use/availability of USB, and other writable media such as optical devices within the company and think about restricting access to these devices to authorised users only, via appropriate security settings, data encryption, and physical controls
- Ensure that company websites and networks are tested for vulnerabilities from attacks
- Have a procedure for dealing with sensitive information and its secure disposal once the data is no longer required
- Have a procedure by which any personal/corporate data stored on mobile devices can be wiped
- Train staff on their responsibilities, the data security procedures and what they should do if data goes missing
- Train staff to identify rogue emails, ransomware and malware, and other potential threats, and the procedures which should be followed.

Security breach

As well as risk reduction, it is also good practice to have procedures in place in the event a security breach occurs. This should concentrate on four main areas -

1. A recovery plan and procedures to deal with damage limitation
2. Recovery review process to assess the potential adverse consequences for individuals, how serious or substantial these are and how likely they are, to happen again
3. Notification procedures – this includes not only notifying the individuals who have been, or potentially may be, affected. If the security breach involves loss of personal data then the Information Commissioner (ICO) should be informed. There may be other regulatory bodies and other third parties such as the police, the banks and the media who may need to be informed
4. Post-breach - ensure that appropriate measures are put in place to prevent a similar occurrence, and update procedures and train or re-train staff accordingly.

Useful resources

National Cyber Security Centre (UK)

https://www.ncsc.gov.uk/guidance

The cyber threat to UK business 2016-17 report

How we can help

Please contact us if you require help in the following areas:

- performing a security/information audit
- training staff in security principles and procedures.

Data Security - Data Protection Act

Many businesses are totally reliant on the data stored on their PCs, laptops, networks, mobile devices and in the cloud. Some of this data is likely to contain either personal information and/or confidential company information.

Here we look at some of the key compliance issues surrounding data protection and the Data Protection Act 1998 (the Act). The Data Protection Act will be superseded by the General Data Protection Regulation (GDPR) in May 2018. Please see factsheets - 'Data Security - General Data Protection Regulation' and 'Data Security - General Data Protection Regulation - Preparation' for more information on GDPR.

Whilst compliance with the Data Protection Act is a good step towards compliance with the GDPR, there are a number of new compliance issues which need to be addressed before May 2018, so we recommend you read these related factsheets as well as this one.

Most businesses process personal data to a greater or lesser degree. If this is the case, compliance with the Act is required unless one of the exemptions applies (see below).

Complying with the Act includes a notification process, handling data according to the principles of data protection and dealing with subject access requests.

In the UK, the Information Commissioner (ICO) is responsible for the public Data Protection Register and for enforcing the Data Protection Act.

Summary of the principles of the Data Protection Act

1. Personal data must be fairly and lawfully processed
2. Personal data must be processed for limited purposes
3. Personal data must be adequate and not excessive
4. Personal data must be accurate and up to date
5. Personal data must be kept no longer than necessary
6. Personal data must be processed in line with the data subjects' rights
7. Personal data must be secure
8. Personal data must not be transferred to countries outside the European Economic Area (EEA) without adequate protection.

Exemptions

There are 5 main categories of exemption -

- organisations that process personal data only for:
  - staff administration (including payroll)
  - advertising, marketing and public relations (in connection with their own business activity) and
  - accounts and records
- some not-for-profit organisations
- organisations that process personal data only for maintaining a public register
- organisations that do not process personal information on computer and
- individuals who process personal data only for domestic purposes.

There are a number of more specific exemptions. However, most companies find the exemptions are too narrow, and opt to notify (see below).

Notification

Notification is the method by which a company's usage of personal data is added to the public Data Protection register maintained by the ICO. The process starts by completing the notification documentation (available from www.ico.org.uk) and sending this back with the annual notification fee (currently £35 for the small business and charities, for example).

Notification needs to be performed annually (even if there are no changes).

Be aware that there are shadow organisations who say they represent the ICO, and who charge more than the standard £35 fee.

Subject Access Request (SAR)

Individuals have rights under the Act to find out whether you are processing personal data relating to them. Further, the individual may make a subject access request (SAR) which means they must be provided with a copy of the data which is stored about them.

Most SARs must be responded to within 40 days.

An individual has the right to ask you to:

- correct or delete information about them which is inaccurate;
- stop processing their personal data for direct marketing purposes;
- stop processing their data completely or in a particular way (depending upon the circumstances)

A fee can be levied for dealing with an SAR - but only up to £10 (except for health or education records where the fee may be higher or lower than £10).

If a fee is levied, the access request does not have to be complied with until the fee has been received.

The Act makes it clear that the SAR must contain enough information to validate that the person making the request is the individual to whom the personal data relates. So it may be necessary and is legitimate to ask for further identification from the originator of the SAR.

Data security

The Act says there should be security that is appropriate to:

- the nature of the information in question;
- the harm that might result from its improper use, or from its accidental loss or destruction.

The Act does not define 'appropriate' - but it does say that 'an assessment of the appropriate security measures in a particular case should consider technological developments and the costs involved'.

So, there are a number of key areas to concentrate on which are considered below.

Management and organisational measures

Someone in the organisation should be given overall responsibility for data security.

Staff

Staff need to understand the importance of protecting personal data, that they are familiar with the organisation's security policy, and that they follow security policies and procedures. There should be on-going training and refresher sessions to reinforce the need for good security.

Physical security

Technical security measures to protect computerised information are of obvious importance. However, many security incidents relate to the theft or loss of equipment, the disposal of old equipment not being wiped sufficiently and manual records not being shredded or otherwise disposed of securely.

Compliance with other Acts and regulations

As well as the necessity to comply with the Data Protection Act, there are various other Acts and regulations which have a bearing on data security. These include:

- Privacy and Electronic Communications Regulations (PECR) 2003 - which cover 'Spam' and mass-marketing mail shots. Regulations under the PECR are also issued from time to time. For example, regulations on the use of cookies on websites, and in 2016 to require anyone making a marketing call to display their number.
- Copyright Design and Patents Act - amended 2002 to cover software theft.
- There may be other IT standards and regulations applicable to your business sector. For example, companies processing credit card transactions need to ensure compliance with the Payment Card Industry Data Security Standards (PCI DSS).

Sources and links

There is a wealth of information, checklists and other material on the Information Commissioner's (ICO) website regarding both the Data Protection Act and GDPR.

How we can help

We can provide help in the following areas:

- performing a security/information audit
- training staff in security principles and procedures
- notification
- advising on appropriate procedures to ensure compliance with regulations applicable to the organisation.

Please do not hesitate to contact us if we can be of further assistance.

Data Security – General Data Protection Regulation

The General Data Protection Regulation (GDPR) will replace the existing Data Protection Act and will apply from 25 May 2018.

Whilst there are similarities between the Data Protection Act and the GDPR, there are some new elements and significant enhancements.

The new GDPR will require all organisations that deal with individuals living in an EU member state to protect the personal information belonging to those individuals and to have verified proof of such protection. Failure to comply with the new regulation will result in significant fines.

Here we look at the scope and some of the key principles of the GDPR.

Controllers and processors

The GDPR applies to both controllers and processors of data, as defined under the Data Protection Act. Controllers say how and why personal data is processed, and the processor acts on the controller's behalf to process the data. Your organisation may be both a controller and a processor, or just a controller or just a processor.

There are specific legal obligations on both controllers and processors:

- controllers must specifically ensure that contracts with processors comply with the GDPR; and
- controllers and processors have separate, but explicit, requirements to maintain records of personal data and processing activities;
- processors are also legally responsible and liable for any security breaches.

Please see our related factsheet 'Data Security - General Data Protection Regulation - preparation' for more detailed information on the documentation requirements.

Scope of the GDPR – data protection principles

The GDPR has a number of principles relating to personal data. Whilst these are not dissimilar to those under the UK Data Protection Act, there are some differences, together with a new accountability requirement. Personal data shall be:

- processed lawfully, fairly and transparently
- collected for specified, explicit and legitimate purposes
- adequate, relevant and limited to what is necessary for the purpose
- accurate and kept up to date. Inaccurate data should be erased or corrected
- kept in an identifiable format for no longer than is necessary
- processed securely and protected from unauthorised or unlawful processing, accidental loss, or destruction or damage.

Finally, the GDPR requires that the controller shall be responsible for, and be able to demonstrate, compliance with these principles.

GDPR rights for Individuals:

The right to be informed

Individuals have the right to know how their personal data is going to be processed. The GDPR promotes transparency over processing by way of a privacy notice encompassing (amongst other things) details of the controller, the source of the data, recipients of the data, data transfers made outside the EU, and the retention period of the data.

The right of access (subject access request)

Individuals have the right to obtain confirmation that their data is being processed, access to their personal data, and other information, such as that provided in a privacy notice.

The maximum amount of time allowed to deal with a subject access request has been reduced from 40 to 30 days under the GDPR, and the right to charge a subject access fee has been removed, unless the request is unfounded, excessive or repetitive.

The right to rectification

Individuals have the right to have inaccurate or incomplete personal data rectified. This must also include personal data which is shared or given to third parties.

The right to erasure

Individuals have the right to request the deletion or removal of personal data where there is no compelling reason for its continued processing. Again, this must also include personal data which is shared or given to third parties.

Note that there are extra requirements when the request relates to a child.

There are some exceptions to the right to erasure, such as where data is held to comply with a legal obligation.

The right to restrict processing

Individuals have the right to restrict the processing of personal data. In these circumstances the personal data can be stored but not processed.

The right to data portability

Individuals have the right to obtain and reuse their personal data across different services. It allows them to move, copy or transfer personal data. Personal data must be provided in a structured machine-readable format (such as.csv).

The right to object

Individuals have the right to object to the processing of personal data. Processing must stop immediately unless there are 'compelling' legitimate grounds for the processing, or if processing is for the establishment, exercise or defence of legal claims.

Rights in relation to automated decision making and profiling

Individuals have the right to ensure that safeguards are in place to protect against the risk of damaging decisions being taken without human intervention. This also extends to the safeguarding of personal data used for profiling purposes.

Accountability and governance

The GDPR contains the principle of accountability, which requires that appropriate governance measures are in place. Organisations therefore need to:

- implement measures that meet the principles of data protection
- document policies and procedures in relation to the storage and processing of personal data (Please see our related factsheet 'Data Security - General Data Protection Regulation - preparation' for more detailed information on the documentation requirements.)
- implement technical and organisational measures to ensure and demonstrate compliance
- appoint a data protection officer where necessary (also see below)
- certain types of organisations, such as public authorities, must appoint a data protection officer
- organisations which perform particular types of processing (large scale monitoring of individuals, or large scale processing of special categories of data, or data relating to criminal convictions and offences) must also appoint a data protection officer.

Conditions for consent

The new law places particular emphasis on the issue of consent, stating that an indication of consent must be specific, unambiguous and freely given. Positive consent cannot be assumed from inaction, such as failing to click an online 'unsubscribe' box, or from the use of pre-ticked boxes. Businesses also need to make sure that they capture the date, time, method and the actual wording used to gain consent, so it is important to ensure that your business has the means to record and document such information.

Notification of breaches

Breaches must be notified to the relevant supervisory authority where '*it is likely to result in a risk to the rights and freedoms of individuals'.*

A notifiable breach must be reported within 72 hours.

Transfer of data

The GDPR places restrictions on the transfer of data outside of the EU.

Sources and links

ICO home page for organisations

ICO GDPR micro site self assessment toolkit 12 preparatory steps

EU GDPR portal - http://www.eugdpr.org/

How we can help

We can provide help in the following areas:

- performing a security/information audit of the storage and processing of personal data
- training staff in security principles and procedures
- notification

- advising on appropriate procedures to ensure compliance with regulations applicable to the organisation.

Please contact us if we can be of further assistance.

Data Security – General Data Protection Regulation - preparation

The General Data Protection Regulation (GDPR) will replace the existing Data Protection Act and will apply from 25 May 2018.

The new GDPR will require all organisations that deal with individuals living in a EU member state to protect the personal information belonging to those individuals and to have verified proof of such protection. Failure to comply with the new regulation will result in significant fines.

Whilst there are similarities between the Data Protection Act and the GDPR, there are some new and different requirements that all businesses need to be aware of, and act on, before May 2018. This factsheet will help you consider how to prepare for the implementation of the regulations.

We have also produced a related factsheet entitled 'Data Security – General Data Protection Regulation', which covers the principles behind the new regulations.

Summary of new and modified requirements

Here we summarise the new/modified requirements of the GDPR in comparison to the Data Protection Act.

There are perhaps a number of overriding principles and key words within the GDPR. These include transparency, accountability, consent, compliance and privacy by design. Some of the areas where these impact, include:

- **Controllers and processors** – there are some specific legal obligations for controllers and processors.
- **Controllers** – must specifically ensure that contracts with processors comply with the GDPR. Controllers shall also be responsible for, and be able to demonstrate, compliance with the GDPR data protection principles - including appropriate documentation.
- **Processors** – are required to document records of personal data and processing activities, and are also legally responsible and liable for any security breaches.
- **Privacy notices** – The GDPR promotes transparency over processing by way of a privacy notice encompassing (amongst other things) details of the controller, the source of the data, recipients of the data, data transfers made outside the EU, and the retention period of the data.
- **Consent** – Consent must be freely given, specific, informed and unambiguous. Positive consent can no longer be inferred from silence, inactivity or the use of pre-ticked boxes.
- **Children's personal data and consent** – There are special provisions relating to the consent and processing of children's personal data.
- **Accountability and governance** – Organisations need to have 'comprehensive but proportionate' governance measures. For many organisations this is likely to mean more policies and procedures. And, for larger organisations (over 250 employees), this also means assigning or appointing a Data Protection Officer (DPO).
- **Subject Access Request (SAR)** – The time to respond to a SAR is now 30 days, and it must be provided free of charge unless the request is unfounded or excessive.
- **Notification of breaches** – breaches must be reported within 72 hours to the relevant supervisory/ regulatory authority.
- **Data portability** – This is a new right under the GDPR, and allows an individual to request a machine readable copy of their personal data where processing is carried out by automated means.

Summary of key preparatory steps

The ICO have produced a twelve step checklist to help organisations get themselves ready for compliance.

1. **Awareness** – the decision makers and key people in the organisation need to be made aware that law is changing. They need to appreciate the impact, and quantify and allocate resources to ensure compliance.
2. **Information held** – what personal data is held, where it came from and who it is shared with should be documented. It may be necessary to arrange for an information audit to be performed.

3. **Communicating privacy information** – existing privacy notices should be reviewed, and, if necessary, updated. Enhanced disclosure may be necessary to take into account all the new rights of individuals. If a privacy notice(s) does not exist, then one will need to be constructed.
4. **Individuals' rights** – review the eight key rights individuals have under the GDPR, and whether existing procedures and policies cover all these rights.
5. **Subject access requests** – update subject access rights procedures to take into account the rules.
6. **Lawful basis for processing personal data** – the lawful basis for processing activity should be documented and communicated in the privacy notice(s) – also see three above.
7. **Consent** – consent under the GDPR relies on a positive and transparent opt-in. Existing consent mechanisms and procedures may need to be updated.
8. **Children** – children's consent and children's personal data is given special protection under the GDPR. In some cases, a parent or guardian may be required to give consent.
9. **Breaches** – the right procedures need to be in place to detect, report and investigate a breach of personal data security. All organisations must report breaches to the ICO (as well as, perhaps, their own regulatory body).
10. **Privacy by design** – this is a legal requirement of the GDPR. In particular, an Impact Assessment should be performed even where it is not mandatory.
11. **Data Protection Officer** – someone in the organisation should be designated the responsibility for compliance. A Data Protection Officer is formally required in certain circumstances.
12. **International** – if the organisation operates in more than one EU member state, a lead data protection supervisory authority needs to be nominated. This is usually the country in which significant decisions are made about processing activities.

Documentation

Documentation of the processing activities carried out by the organisation is required. Documentation should cover the purposes of processing data, data sharing and data retention policies and procedures.

A good starting point might be the firm's existing Data Protection Act annual registration form. However, this is only a starting point - the GDPR requirements for documentation are much more explicit than under the Data Protection Act.

Data controllers and data processors have their own separate obligations, and these are covered in more detail here - ICO guide to GDPR

There are limited exemptions for firms employing less than 250 employees in which case documentation is only required for processing activities that:

- are not occasional
- are likely to impact the rights and freedoms of individuals, and
- involve special category data or criminal conviction and offence data.

A more detailed step by step guide on how to proceed with the documentation process can be found using the link above.

Other laws and regulations

As well as the necessity to comply with the GDPR, there are various other Acts and regulations in the UK which have a bearing on data security. These include:

- Privacy and Electronic Communications Regulations (PECR) 2003 - which cover 'spam' and mass-marketing mailshots. Regulations under the PECR are also issued from time to time. For example, regulations on the use of cookies on websites, and in 2016 to require anyone making a marketing call to display their number.
- Copyright Design and Patents Act - amended in 2002 to cover software theft.
- There may be other IT standards and regulations applicable to your business sector: for example, companies processing credit card transactions need to ensure compliance with the Payment Card Industry Data Security Standards (PCI DSS).

Sources and links

ICO home page for organisations

ICO GDPR micro site self assessment toolkit 12 preparatory steps

EU GDPR portal - www.eugdpr.org/

ICO GDPR micro site

How we can help

We can provide help in the following areas:

- performing a security/information audit
- performing a privacy impact assessment
- updating policies and procedures in line with the new provisions of the GDPR
- training staff in security principles and procedures
- advising on appropriate procedures to ensure compliance with regulations applicable to the organisation and business sector.

Please contact us if we can be of further assistance.

Directors' Responsibilities

The position of director brings both rewards and responsibilities upon an individual.

Whether you are appointed to the Board of the company you work for or you are involved in establishing a new business and take on the role of director you will feel a sense of achievement.

However the office of director should not be accepted lightly. It carries with it a number of duties and responsibilities. We summarise these complex provisions below.

Companies

You can undertake business in the UK as either:

- an unincorporated entity, ie a sole trader or a partnership or
- an incorporated body.

An incorporated business is normally referred to as a company. Although there are limited liability partnerships and unlimited companies the vast majority of companies are limited by shares. This means the liability of shareholders is limited to the value of their share capital (including any unpaid).

A limited company can be a private or public company. A public company must include 'public' or 'plc' in its name and can offer shares to the public.

The responsibilities and penalties for non compliance of duties are more onerous if you are a director of a public company.

Directors

When you are appointed a director of a company you become an officer with extensive legal responsibilities. For a director of an incorporated body, the Companies Act 2006 sets out a statement of your general duties. This statement codifies the existing 'common law' rules and equitable principles relating to the obligations of company directors that have developed over time. Common law had focused on the interests of shareholders. The Companies Act 2006 highlights the connection between what constitutes the good of your company and a consideration of its wider corporate social responsibilities.

The legislation requires that directors act in the interests of their company and not in the interests of any other parties (including shareholders). Even sole director/shareholder companies must consider the implications by not putting their own interests above those of the company.

The aim of the codification of directors' duties in the Companies Act 2006 is to make the law more consistent and accessible.

The Act outlines seven statutory directors' duties, which also need to be considered for shadow directors. These are detailed below.

Duty to act within their powers

As a company director, you must act only in accordance with the company's constitution, and must only exercise your powers for the purposes for which they were conferred.

Duty to promote the success of the company

You must act in such a way that you feel would be most likely to promote the success of the company (ie its long-term increase in value), for the benefit of its members as a whole. This is often called the 'enlightened shareholder value' duty. However, you must also consider a number of other factors, including:

- the likely long-term consequences of any decision
- the interests of company employees
- fostering the company's business relationships with suppliers, customers and others
- the impact of operations on the community and environment
- maintaining a reputation for high standards of business conduct
- the need to act fairly as between members of the company.

Duty to exercise independent judgment

You have an obligation to exercise independent judgment. This duty is not infringed by acting in accordance with an agreement entered into by the company which restricts the future exercise of discretion by its directors, or by acting in a way which is authorised by the company's constitution.

Duty to exercise reasonable care, skill and diligence

This duty codifies the common law rule of duty of care and skill, and imposes both 'subjective' and 'objective' standards. You must exercise reasonable care, skill and diligence using your own general knowledge, skill and experience (subjective), together with the care, skill and diligence which may reasonably be expected of a person who is carrying out the functions of a director (objective). So a director with significant experience must exercise the appropriate level of diligence in executing their duties, in line with their higher level of expertise.

Duty to avoid conflicts of interest

This dictates that, as a director, you must avoid a situation in which you have, or may have, a direct or indirect interest which conflicts, or could conflict, with the interests of the company.

This duty applies in particular to a transaction entered into between you and a third party, in relation to the exploitation of any property, information or opportunity. It does not apply to a conflict of interest which arises in relation to a transaction or arrangement with the company itself.

This clarifies the previous conflict of interest provisions, and makes it easier for directors to enter into transactions with third parties by allowing directors not subject to any conflict on the board to authorise them, as long as certain requirements are met.

Duty not to accept benefits from third parties

Building on the established principle that you must not make a secret profit as a result of being a director, this duty states that you must not accept any benefit from a third party (whether monetary or otherwise) which has been conferred because of the fact that you are a director, or as a consequence of taking, or not taking, a particular action as a director.

This duty applies unless the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

Duty to declare interest in a proposed transaction or arrangement

Any company director who has either a direct or an indirect interest in a proposed transaction or arrangement with the company must declare the 'nature and extent' of that interest to the other directors, before the company enters into the transaction or arrangement. A further declaration is required if this information later proves to be, or becomes either incomplete or inaccurate.

The requirement to make a disclosure also applies where directors 'ought reasonably to be aware' of any such conflicting interest.

However, the requirement does not apply where the interest cannot reasonably be regarded as likely to give rise to a conflict of interest, or where other directors are already aware (or 'ought reasonably to be aware') of the interest.

Enforcement and penalties

The Companies Act states that they will be enforced in the same way as the Common Law, although under Company Law. As a result there are no penalties in the Companies Act 2006 for failing to undertake the above duties correctly.

Enforcement is via an action against the director for breach of duty. Currently such an action can only be brought by:

- the company itself (ie the Board or the members in a general meeting) deciding to commence proceedings; or
- a liquidator when the company is in liquidation
- an individual shareholder can take action against a director for breach of duty. This is known as a derivative action and can be taken for any act of omission (involving negligence), default or breach of duty or trust.

Where the company is controlled by the directors these actions are unlikely.

How we can help

You will now be aware that the position of director must not be accepted lightly.

- the law is designed to penalise those who act irresponsibly or incompetently.
- a director who acts honestly and conscientiously should have nothing to fear.

We can provide the professional advice you need to ensure you are in the latter category. Please contact us if you would like more information.

Dismissal Procedures

There have been many changes to employment law and regulations in the last few years. A key area is the freedom or lack of freedom to dismiss an employee.

An employee's employment can be terminated at any time but unless the dismissal is fair the employer may be found guilty of unfair dismissal by an Employment Tribunal.

In November 2011, the qualifying period for unfair dismissal increased from one to two years continuous service. However, there is no length of service requirement in relation to 'automatically unfair grounds'.

We set out below the main principles involved concerning the dismissal of employees including some common mistakes that employers make. We have written this factsheet in an accessible and understandable way but some of the issues may be very complicated.

Professional advice should be sought before any action is taken.

The right to dismiss employees

Reasons for a fair dismissal would include the following matters:

- the person does not have the capability or qualification for the job (this requires the employer to go through consultation and/or disciplinary processes)
- the employee behaves in an inappropriate manner (the company/firm's policies should refer to what would be unreasonable behaviour and the business must go through disciplinary procedures)
- redundancy, providing there is a genuine business case for making (a) position(s) redundant with no suitable alternative work, there has been adequate consultation and there is no discrimination in who is selected
- the dismissal is the effect of a legal process such as a driver who loses his right to drive (however, the employer is expected to explore other possibilities such as looking for alternative work before dismissing the employee)
- some other substantial reason.

Claims for unfair dismissal

Upon completion of the required qualifying period, employees can make a claim to an Employment Tribunal for unfair dismissal within three months of the date of the dismissal and if an employee can prove that he/she has been pressured to resign by the employer he/she has the same right to claim unfair dismissal or constructive dismissal.

In addition to the increase in qualifying period, the government has also introduced plans for details of claims to be submitted to ACAS where the parties will be offered pre-tribunal conciliation before proceeding to a Tribunal. However, there is no obligation of either party to take it up.

There are two levels of claim, depending on the complexity of the case. There is the straightforward claim where there is one claim per claimant or the more complex multiple claims (including unfair dismissal and discrimination claims)

If the claim proceeds to Tribunal and the employee wins his/her case the Tribunal can choose one of three remedies which are:

- re-instatement which means getting back the old job on the old terms and conditions
- re-engagement which would mean a different job with the same employer
- compensation where the amount can be anything from a relatively small sum to a maximum cap of 12 months' pay, which will apply where the amount is less than the overall cap. Where the dismissal was due to some form of discrimination the award can be unlimited.

If the dismissal is demonstrated as being due to any of the following it will be deemed to be unfair regardless of the length of service:

- discrimination for age, disability, gender reassignment, race, religion or belief, sex, sexual orientation or marriage and civil partnership
- pregnancy, childbirth or maternity leave
- refusing to opt out of the Working Time Regulations
- disclosing certain kinds of wrong doing in the workplace
- health and safety reasons
- assertion of a statutory right.

Statutory disciplinary procedures

The Employment Act 2008 introduced the ACAS Code of Practice which saw a change to the way employers deal with problems at work. It also saw the removal of 'automatic unfair dismissal' related to failure to follow procedures. Tribunals may make an adjustment of up to 25% of any award, where they feel the employer has unreasonably failed to follow the guidance set out in the ACAS Code.

The ACAS Code of Practice sets out the procedures to be followed before an employer dismisses or imposes a significant sanction on an employee such as demotion, loss of seniority or loss of pay.

The ACAS Code does not apply to redundancy or expiry of a fixed term contract.

Standard procedure

Step 1	Employers must set out in writing the reasons why dismissal or disciplinary actions against the employee are being considered. A copy of this must be sent to the employee who must be invited to attend a meeting to discuss the matter, with the right to be accompanied
Step 2	A meeting must take place giving the employee the opportunity to put forward their case. The employer must make a decision and offer the employee the right to appeal against it.
Step 3	If an employee appeals, you must invite them to a meeting to arrive at a final decision

There may be some very limited cases where despite the fact that an employer has dismissed an employee immediately without a meeting, an Employment Tribunal will very exceptionally find the dismissal to be fair. This is not explained in the regulations but may apply in cases of serious misconduct leading to dismissal without notice. What this means in practice awaits the test of case law.

Modified procedure

Step 1	Employers firstly set out in writing the grounds for action that has led to the dismissal, the reasons for thinking at the time that the employee was guilty of the alleged misconduct and the employee's right of appeal against the dismissal
Step 2	If the employee wishes to appeal against the decision, the employer must invite them to attend a meeting, with the right to be accompanied, following which the employer must inform the employee of their final decision. Where practicable, the appeal meeting should be conducted by a more senior or independent person not involved in the earlier decision to dismiss.

The only occasions where employers are not required to follow the ACAS Code of Practice are as follows:

- they reasonably believe that doing so would result in a significant threat to themselves, any other person, or their or any other person's property
- they have been subjected to harassment and reasonably believe that doing so would result in further harassment
- because it is not practicable within a reasonable period
- where dismissal is by reason of redundancy or the ending of a fixed term contract
- they dismiss a group of employees but offer to re-engage them on or before termination of their employment
- the business closes down suddenly because of an unforeseen event
- the employee is no longer able to work because they are in breach of legal requirements eg to hold a valid work permit.

Common mistakes that employers make

For many the regulations have caused some confusion and practical difficulties. Some of the most common mistakes include:

- not applying the procedures to employees with less than the qualifying period of continuous service for unfair dismissal (ie two years). Whilst such employees are often unable to claim unfair dismissal (unless the reason for their dismissal is one of the automatically unfair reasons for which there is no qualifying period of employment such as pregnancy), they may be able to bring other claims such as discrimination with compensation increased accordingly

- failure to invite employees to disciplinary hearings in writing or supply adequate evidence before the disciplinary hearing. The standard procedure requires the employer to set out the 'basis of the allegations' prior to the hearing
- excluding dismissals other than disciplinary dismissals (eg ill-health terminations)
- not inviting employees to be accompanied
- not including a right of appeal
- not appreciating the statutory requirement to proceed with each stage of the procedure without undue delay
- failure to appreciate that an employee may have right to appeal even if it is requested verbally rather than in writing and is after a timescale set down by the employer
- not appreciating that paying an employee a lower bonus for performance related reasons could potentially amount to 'action short of dismissal' by the employer
- failure to treat as a grievance any written statement/ letter (for example a letter of resignation) which raises issues which could form the basis of a tribunal claim to which statutory procedures apply. This means that the employer must be alert to issues being raised in writing even if there is no mention of the word grievance.

How we can help

We will be more than happy to provide you with assistance or any additional information required so please do contact us.

Employee Expenses

This factsheet considers the operation and reporting of expenses and benefits. A new exemption regime for such expenses replaces the need to report these items on P11Ds as long as the necessary conditions are met. To meet the conditions the business must satisfy itself that the employee would be entitled to full tax relief on expenses reimbursed to the employee.

A new regime

For many years the established treatment for employee incurred expenses has been to treat the expenses as earnings with the employer reporting them on the annual form P11D and then to allow an employee to make a claim for tax relief to the extent that the expenses were business expenses. Dispensations were introduced as a way of streamlining the process. Employers could apply to HMRC to dispense with the need to report certain expenses on the P11D and so remove the need for employees to make claims.

The dispensation was only given where HMRC were satisfied that the employee would have been entitled to full tax relief on that payment or benefit. Whilst many employers did apply and use dispensations, many smaller or unrepresented employers did not participate.

The new exemption

From 6 April 2016 businesses will no longer be able to apply for a dispensation and all existing dispensations came to an end. Instead, a new exemption has been introduced which effectively means that businesses will not have to pay tax and NIC on paid or reimbursed expenses payments or put them on a P11D. In other words the introduction of the new exemption places the onus on employers to determine whether employee expenses are fully deductible for tax purposes.

Types of expenses

The main types of expenses to which the exemption applies are:

- travel and subsistence expenses
- fees and subscriptions
- business entertainment expenses.

All other non-allowable expenses will still be reportable on a P11D and/or subject to PAYE (and possibly NIC). Employees will still be able to claim tax relief in respect of unreimbursed business expenses.

The new exemption does not apply to expenses or benefits provided under a relevant salary sacrifice arrangement. This includes any arrangement where an employee gives up the right to receive earnings in return for tax free expenses payments or where the level of their earnings depends on the amount of any expenses payment.

Conditions of the new regime

In order for an employee reimbursed expense to be treated as an exempt payment, an employer needs to put himself in the position of the employee. The employer then asks himself the question - would that expense have qualified for full tax relief to the employee (were it not for the amount being exempt)? There is no explicit requirement in law for a checking system (but see scale rates later) but to answer the question above an employer will, in practice, have to operate a checking system.

An employer should consider:

- setting out a corporate policy of which type of expenses are reimbursable and the need for those expenses to be reasonable
- requiring the completion of a standard expense claim form
- the need for any expense claim to be supported by a receipt
- making checks on expense claims.
- requiring a senior person to authorise the claims.

One would expect HMRC to be looking for a checking system and that there is evidence an expense has actually been incurred by the employee (hence the need for receipts).

What about scale rates?

The dispensation system allowed amounts based on scale rates to be paid or reimbursed, instead of the employee's actual costs in certain circumstances. Scale rates are generally for travel and subsistence expenses and consist of round sum allowable amounts for specific circumstances.

Two key types of scale rates were available for use by an employer:

- 'benchmark' rates and
- 'bespoke' rates.

As part of the changes, these options are still available as detailed below.

Benchmark rates

Benchmark rates are a set of maximum reimbursement rates for meals. These round sum amounts have now been included in Regulations and can be used by employers for payment or reimbursement of employees expenses where relevant qualifying conditions are met.

These rates apply only if the employee incurs expenditure in the course of 'qualifying business travel' as follows:

- one meal allowance per day paid in respect of one instance of qualifying travel, the amount of which does not exceed:

a) £5 where the duration of the qualifying travel in that day is 5 hours or more

b) £10 where the duration of the qualifying travel in that day is 10 hours or more, or

c) £25 where the duration of the qualifying travel in that day is 15 hours or more and is on-going at 8pm or

- an additional meal allowance not exceeding £10 per day paid where a meal allowance (a) or (b) is paid and the qualifying travel in respect of which that allowance is paid is on-going at 8pm.

Bespoke rates

These are rates negotiated and specifically agreed with HMRC in writing. If the business wants to pay bespoke rates for meals or other types of expense, it can apply to HMRC.

HMRC have issued a specific form: http://goo.gl/iz2qjE

Transitional arrangements for bespoke scale rates apply, meaning that employers can continue to use any existing rates agreed since 6 April 2011, up until the fifth anniversary of that agreement subject to re-confirming specified information to HMRC.

Conditions for using approved rates

Employers must have a checking system in place if approved benchmark or bespoke rates are used to ensure that the employee is incurring and paying amounts in respect of expenses of the same kind and that tax relief would be allowed. Exemption is also conditional on neither the payer, nor anyone operating the checking system, suspecting or reasonably being expected to know or suspect that the employee had not incurred an amount in respect of the expense.

HMRC have issued guidance on what checking systems they will expect employers to operate. We can assist you with this matter or in applying for bespoke rates so please contact us for more information.

Business mileage rates

The key travel and subsistence expenses for many employees are their costs in using their own car or van for business travel. Many employers and their employees use the statutory mileage allowances known as 'authorised mileage allowance payments' (AMAPs). These are scale amounts that employers can pay to employees using their own vehicle for business travel. For cars and vans, the scale rate is 45p per mile for up to 10,000 miles in the tax year and 25p per mile above this.

AMAPs are a separate statutory regime and do not come within the new exemption regime.

For employer provided vehicles the fuel advisory rates can be used to reimburse fuel costs incurred in travelling on business. These rates are updated quarterly throughout each tax year.

Qualifying travel expenses

Qualifying travel is a necessary condition for both travelling and subsistence expenses to be treated as an exempt expense (and also in the use of business mileage rates for cars and vans). A business journey is one which either involves travel:

- from one place of work to another or
- from home to a temporary workplace or vice versa.

However, journeys between an employee's home and a place of work which he or she regularly attends are not business journeys. These journeys are 'ordinary commuting' and the place of work is often referred to as a permanent workplace. This means that the travel costs have to be borne by the employee.

The term 'temporary workplace' means that the employee attends the place for a limited duration or temporary purpose. However, some travel between a temporary workplace and home may not qualify for relief if the trip made is 'substantially similar' to the trip made to or from the permanent workplace. 'Substantially similar' is interpreted by HMRC as a trip using the same roads or the same train or bus for most of the journey.

There will be many variations of types of journeys undertaken by employees so ensuring that it is a business journey is critical especially as the term 'travel expenses' includes the actual costs of travel together with any subsistence expenditure and other associated costs that are incurred in making the journey such as toll or congestion charges. Detailed further guidance is available in HMRC Booklet 490.

The new regime

The effect of the new regime is that all employers should have checking processes in place regardless of whether they use scale rates or specific reimbursement. If there is a lack of evidence that amounts paid to employees represent business expenses, the business may incur penalties for errors in completion of P11Ds. In some cases if the expenses are non-business expenses the employer may be responsible for PAYE and NIC underpayments.

How we can help

We can advise on the creation and implementation of a robust expenses system. We can also help with the completion of annual forms P11D. Please contact us for any further assistance or advice.

Employer Supported Childcare

Employer supported childcare, commonly by way of childcare voucher, is for many employers and employees a tax and national insurance efficient perk. We consider the implications of this type of benefit on the employer and employee.

Background

The workplace nurseries exemption was introduced many years ago. This exempts from tax and NIC the provision to an employee of a place in a nursery at the workplace or in a facility wholly or partly financed and managed by the employer.

Whilst these sorts of arrangements are not that common, the later introduction of a limited tax and NIC exemption for employer-contracted childcare and employer-provided childcare vouchers has been very popular with both employers and employees alike.

Salary sacrifice

Many employers use these childcare exemptions as part of salary sacrifice arrangements; for example, the employee gives up pay, which is taxable and NIC-able, in return for childcare vouchers, which are not. This may save tax and NIC for the employee and NIC for the employer. Such arrangements can be attractive; however care needs to be taken when implementing a scheme to ensure that it is set up correctly. Also, for those on low rates of pay, such arrangements may not be appropriate.

How much childcare can be provided tax and NIC free?

This depends on when the employee joined the employer's scheme. For those who joined the employer's scheme prior to 6 April 2011 the limit is currently £55 a week.

If the employer-contracted care exceeds £55 per week the excess will be a benefit in kind and subject to Class 1A NIC. However, with vouchers, although any excess is also a benefit in kind it is subject to Class 1 NIC via the payroll. As the tax and NIC issues are complex many employers limit their employees' potential entitlement to a maximum of the exempt limit (currently £55 a week).

The exempt limit applies to the full face value, rather than the cost, of providing a childcare voucher, which would normally include an administration fee.

An employee is only entitled to one exempt amount even if care is provided for more than one child but it does not matter that another person may also be entitled to an exempt amount in respect of the same child. As always, there are various conditions to meet but these rules have led to many employers providing such care, particularly childcare vouchers, to their employees.

What about those who join a scheme from 6 April 2011 onwards?

The limit on the amount of exempt income associated with childcare vouchers and employer-contracted childcare for employees joining an employer's scheme will be restricted in cases where an employee's earnings and taxable benefits are liable to tax at the higher or additional rate.

Anyone already in a scheme before 6 April 2011 is not affected by these changes as long as they remain within the same scheme.

What do employers have to do?

To identify the rate of tax an individual employee pays in any one tax year, an employer needs to carry out a 'basic earnings assessment' for any employee who joins an employer-provided childcare scheme on or after 6 April 2011.

Employers who offer or provide employer childcare are required, at the beginning of the relevant tax year, to estimate the 'employment income amount' that the employee is likely to receive during that year.

This is basically the contractual salary and benefits package (not discretionary bonuses or overtime) less the personal allowance if appropriate.

Employers must keep a record of the basic earnings assessment. These records do not need to be sent to HMRC but must be available for inspection by HMRC if required.

The employer must re-estimate the 'employment income amount' for each tax year.

What is the position for the employee?

For 2018/19, the personal allowance for most employees is £11,850 and the basic rate limit will be £34,500, a combined figure of £46,350. The higher rate limit is £150,000.

If the level of estimated earnings and taxable benefits is equal to or below the equivalent of the sum of personal allowances and the basic rate limit for the year, the employee will be entitled to relief on £55 exempt income for each qualifying week.

If the level of estimated earnings and taxable benefits exceed the equivalent of the sum of personal allowances and the basic rate limit for the year as above) but falls below the limit at which tax becomes payable at the 45% rate limit for the year, the employee is entitled to relief on £28 exempt income for each qualifying week.

If the level of estimated earnings and taxable benefits exceed the equivalent of the additional tax rate limit for the year, the employee is entitled to relief on £25 exempt income for each qualifying week.

Similar rules apply for NIC purposes.

As the employer has to estimate the employee's tax position each year, the amount of exempt income they can receive may change throughout their period of employment.

New starters

The rules are modified where employees join the scheme part way through a tax year. In that case, the earnings review has to be carried out at the point of joining. Basically, the joining employee’s salary and taxable benefits need to be pro-rated upwards to estimate the notional annual earnings figure for the employee.

Gaps in payment

An employee can ask to stop receiving childcare vouchers temporarily whilst staying in the employer’s scheme; for example, if an employee only works during school term time and doesn’t need the vouchers during the school holidays. Basically, as long as the gap in providing the vouchers doesn’t exceed 12 months the employee can still be classed as an existing member of the employer’s scheme.

This also applies to employees who are on maternity leave, sick leave and those who wish to take a career break, provided that the total length of absence does not exceed 12 months.

Further information

HMRC have provided many questions and answers on their website to help both employees and employers and these can be viewed at https://www.gov.uk/government/publications/employer-supported-childcare

Tax-Free Childcare scheme

The government has introduced a Tax-Free Childcare (TFC) a new tax incentives for childcare.

The relief is 20% of the costs of childcare up to a total of childcare costs of £10,000 per child per year. The scheme will therefore be worth a maximum of £2,000 per child (£4,000 for a disabled child). All children under 12 (up to 17 for children with disabilities) are eligible.

To qualify for Tax-Free Childcare all parents in the household must generally meet a minimum income level, based on working 16 hours a week (on average £120 a week) and each earn less than £100,000 a year and not already be receiving support through Tax Credits or Universal Credit.

How does this relate to employer supported childcare?

The existing scheme, ESC, will remain open to new entrants until at least September 2018 to support the transition between the schemes. ESC continues to be available for current members if they wish to remain in it or they can switch to the new scheme but parents cannot be in both ESC and TFC at the same time.

How we can help

If you would like to discuss childcare in further detail, please do not hesitate to contact us.

Employment Benefits

Today the remuneration of many directors and employees comprises a package of salary and benefits.

Essentially two tests must be applied in determining the tax implications of any benefit.

- Is the benefit taxable?
- If the benefit is taxable, what is its taxable value?

In this factsheet, we give guidance on some of the main benefit in kind rules and indicate some common types of benefits.

It is not intended to be an exhaustive guide and any decisions should be supported by professional advice appropriate to your personal circumstances.

Setting the scene

All earnings of an office or employment are taxable. Where they are not in cash it becomes necessary to put a value on them.

As a general rule unless the benefit can be converted into cash there is no taxable benefit. Where it is convertible into cash the taxable amount is the resale value.

To prevent avoidance, additional legislation charges certain other benefits to tax. The detailed rules are complex. We can advise on structuring remuneration packages, including benefits, in a tax efficient way.

Reporting

Employers are required to notify HMRC of benefits provided to directors and most employees by completing forms P11D annually.

Penalties can apply where the forms are submitted late or are incorrect.

The full amount of any benefit must be reported on this form.

National Insurance

In general, employees' national insurance (NIC) is not due on benefits except vouchers, stocks and shares, the discharge of an employee’s personal liability and benefits provided by way of ‘readily convertible’ assets.

Most benefits are subject to Class 1A NIC payable by the employer. As this amounts to 13.8% of the taxable value of the benefit, you always need to consider the tax efficiency of providing benefits.

Please consult us for advice.

Non-taxable benefits

Certain benefits are not taxable. The most important ones are:

- retirement benefits which are paid by an employer into a registered pension scheme
- meals provided in a staff canteen
- drinks and light refreshments at work
- parking provided at or near an employee’s place of work
- workplace nursery places provided for the children of employees
- certain other employer-supported childcare up to £55 per week. Any formal registered childcare or approved home childcare contracted for by the employer such as a local nursery, out-of-school club or childminder may be covered by this exemption
- in-house sports facilities
- payments for additional household costs incurred by an employee who works at home
- removal and relocation expenses up to a maximum of £8,000 per move
- the provision of a mobile phone or vouchers to make available a mobile phone (limited to one phone per employee only)
- annual social functions for employees provided the total cost of all events in a tax year is less than £150 per head
- trivial benefits up to £50 or £300 per annum in close company situations.

Trivial benefits

A statutory exemption applies for trivial benefits in kind. The exemption sets out a number of conditions that must be met for a benefit to be exempt which are that the:

- cost of providing the benefit does not exceed £50
- benefit is not cash or a cash voucher

- benefit is not provided under salary sacrifice arrangements or any other contractual obligation
- benefit is not provided in recognition of particular services performed by the employee in the course of the employment or in anticipation of such services.

In addition where qualifying trivial benefits are provided to directors and other office holders of close companies they will be subject to an annual cap of £300. In a case where the benefit is provided to a member of the employee’s family or household who is not an employee of the employer, this benefit will count towards the £300 exempt amount. Where the director's or other office holder's family or household member is also an employee of the company, they will be subject to a £300 cap in their own right.

Please contact us for advice on how the exemption operates.

Taxable benefits

The following benefits are taxable on all employees:

- any living accommodation provided, unless job related
- vouchers
- credit tokens.

In addition, special rules apply to tax other benefits received by directors and all but the lowest paid employees. Common types of benefits provided are detailed below.

- **Employer provided cars** - this is probably the most common benefit and the taxable amount will generally be based on a range of 13% - 37% of the manufacturer’s list price (including accessories) of the car. The taxable benefit depends upon the carbon dioxide emissions of the car.

  There are reductions for unavailability of the car and where the employee makes a contribution towards the cost of the car.

  Please talk to us for further details on the application of the rules.
- **Private fuel** - a separate charge applies where private fuel is provided for an employer provided car, unless the employee reimburses the employer for all private mileage (including travel between home and work). The charges are determined by reference to the percentage applying to the company car. A set figure of £23,400 for 2018/19 (£22,600 for 2017/18) is multiplied by this percentage to determine the taxable benefit.
- **Van** - the scale benefit charge for the unrestricted use of an employer provided van is £3,350 for 2018/19 (£3,230 for 2017/18). Where the restricted private use condition is met no benefit arises. Where an employer also provides fuel for unrestricted private use an additional fuel charge of £633 (£610 for 2017/18) applies. Please do get in touch if you would like to ensure that employee van use meets the restricted private use condition.
- **Cheap or interest free loans** - no benefit will be taxed where the loan does not exceed £10,000.
- **Medical insurance** - the cost of providing medical insurance is a taxable benefit.
- **Use of company assets** - an annual benefit is taxed where employees have the private use of company assets. The annual benefit amounts to 20% of the asset’s market value when first made available to any employee. Insignificant private use of certain assets is not taxable.
- **Phones** - private home phone bills, including rental charges, which are paid for by the employer will be taxed as a benefit.

Salary sacrifice

The government has introduced new rules which limit the income tax and employer NICs advantages where:

- benefits in kind are offered through salary sacrifice; or
- where the employee can choose between cash allowances and benefits in kind.

The taxable value of benefits in kind where cash has been forgone will be fixed at the higher of the taxable value or the value of the cash forgone.

These rules will not affect employer-provided pension saving, employer-provided pensions advice, childcare vouchers, workplace nurseries, Cycle to Work schemes or Ultra-Low Emission Vehicles.

This change took effect from 6 April 2017. Those already in salary sacrifice contracts at that date will become subject to the new rules in respect of those contracts at the earlier of:

- an end, change, modification or renewal of the contract
- 6 April 2018, except for cars, accommodation and school fees when the last date is 6 April 2021.

Employers may wish to review their car policy in light of these rules.

How we can help

The taxation of employment benefits is a complex area. Ensuring that you comply with all the administrative obligations and plan in advance to minimise tax liabilities is essential. We can help you with the following:

- reviewing existing employees' remuneration packages for tax and NIC efficiency
- planning flexible and tax efficient remuneration packages for key employees within your organisation
- advising on systems for reimbursing expenses and checking procedures
- help on applying for bespoke scale rates
- providing advice and assistance with the completion of your PAYE returns
- negotiating with HMRC if disagreements arise and in reaching settlements.

We would welcome the opportunity to assist you with any planning and compliance matters so please do contact us.

Enterprise Investment Scheme

The purpose of the Enterprise Investment Scheme (EIS) is to help certain types of small higher-risk unquoted trading companies to raise capital. It does so by providing income tax and CGT reliefs for investors in qualifying shares in these companies.

There are really two separate schemes within the EIS:

- a scheme giving income tax relief on the investment and a CGT exemption on gains made when the shares are disposed of; and/or
- a scheme aimed at providing a CGT deferral.

An individual can take advantage of either or both of these schemes.

EIS reliefs available

Income tax relief

- Investors may be given income tax relief at 30% on their investments of up to £1,000,000 a year (£2 million a year for knowledge-intensive companies from 6 April 2018).
- The income tax relief is withdrawn if the shares are disposed of within three years.

CGT exemption

- Gains on the disposal of EIS shares are exempt unless the income tax relief is withdrawn.
- The CGT exemption may be restricted if an investor does not get full income tax relief on the subscription for EIS shares.
- Losses on the disposal of EIS shares are allowable. The amount of the capital loss is restricted by the amount of the EIS income tax relief still attributable to the shares disposed of.
- A capital loss arising on the disposal of EIS shares can be set against income.

CGT deferral

- Gains arising on disposals of **any** assets can be deferred against subscriptions for shares in any EIS company.
- Shares do not have to have income tax relief attributable to them in order to qualify for deferral relief.
- The gain will become chargeable in the tax year when the subscription shares are disposed of.
- There is no upper limit on the amount of deferral relief available to an individual although there is a limit on investment in a single company or group of companies.

Qualifying Companies

Companies must meet certain conditions for any of the reliefs to be available for the investor.

- The company must be unquoted when the shares are issued and there must be no arrangement in existence at that time for it to cease to be unquoted.
- All the shares comprised in the issue must be issued to raise money for the purpose of a qualifying business activity.
- The money raised by the share issue must be wholly employed within a specified period by the company.
- The company or group must generally have fewer than 250 full time employees.
- The size of the company is limited to £15 million (gross assets).
- The amount of capital raised in any 12 month period is limited to £5 million (£10 million for knowledge-intensive companies from 6 April 2018)
- The company must not be regarded as an 'enterprise in difficulty' under EC guidance.
- The company need only have a permanent establishment in the UK rather than carrying on a qualifying trade wholly or mainly in the UK.

Qualifying business activities

A trade will not qualify if excluded activities amount to a substantial part of the trade. The main excluded activities are:

- dealing in land, in commodities or futures or in shares, securities or other financial instruments
- financial activities
- dealing in goods other than in an ordinary trade of retail or wholesale distribution
- leasing or letting assets on hire
- receiving royalties or licence fees, other than, in certain cases, such payments arising from film production, or from research and development

- providing legal or accountancy services
- property development
- farming or market gardening
- holding, managing, or occupying woodlands
- operating or managing hotels, guest houses or hostels
- operating or managing nursing homes or residential care homes
- ship building
- coal and steel production.

Time period in which the money is invested

The time limit for the employment of money invested is to two years from the issue of the shares or, if later, two years from the commencement of the qualifying activity.

Changes to the rules for qualifying companies

Over the years, governments make amendments to what are regarded as qualifying companies for EIS. The thrust of the changes is to ensure well-targeted support for investment into small and growing companies, with a particular focus on innovative companies.

How to qualify for income tax relief

Eligibility for income tax relief is restricted to companies with which you are not 'connected' at any time during a period beginning two years before the issue of the shares and ending three years after that date, or three years from the commencement of the trade if later.

You can be connected with a company in two broad ways:

- by virtue of the size of your stake in the company; or
- by virtue of a working relationship between you and the company.

In both cases the position of your 'associates' is also taken into account.

Size of stake

You will be connected with the company at any time when you control directly or indirectly possess, or are entitled to acquire, more than 30% of the ordinary share capital of the company.

Working relationship

You will be connected with the company if you have been an employee or a paid director of the company.

There is an exception to this rule if you become a paid director of the company after you were issued with the shares.

You must never previously have been connected with the company and must not become connected with it in any other way. Also, you must never have been involved in carrying on the whole or any part of the trade or business carried on by the company.

How to qualify for CGT deferral relief

You can defer a chargeable gain which accrues to you on the disposal by you of any asset. In addition, you can defer revived gains arising to you in respect of earlier EIS, Venture Capital Trust (VCT) or CGT reinvestment relief investments.

There are some restrictions on investments against which gains can be deferred. These are designed, broadly, to prevent relief being obtained in circumstances where there is a disposal and acquisition of shares in the same company.

Receiving value from a company

The EIS is subject to a number of rules which are designed to ensure that investors are not able to obtain the full benefit of EIS reliefs if they receive value from the company during a specified period. If relief has already been given, it may be withdrawn.

Examples of the circumstances in which you would be treated as receiving value from the company are where the company:

- buys any of its shares or securities which belong to you
- makes a payment to you for giving up the right to payment of a debt (other than an ordinary trade debt)
- repays a debt owed to you that was incurred before you subscribed for the shares
- provides you with certain benefits or facilities
- waives any liability of yours or an associate's to the company
- undertakes to discharge, any such liability to a third party
- lends you money which has not been repaid before the shares are issued.

Receipts of 'insignificant' value will not cause the withdrawal of relief.

How we can help

It is not possible to cover all the detailed rules of the schemes in a factsheet of this kind. If you are interested in using the EIS please contact us.

We can also help to guide you through the implementation of a scheme which is suitable for your circumstances.

Fixed Rate Expenses

We consider an optional system of fixed rate expenses which is available for some businesses.

The rules allow the use of a 'simplified' fixed rate deduction instead of actual costs paid or incurred. It is optional, but using fixed rates may reduce the need for some of the detailed record keeping and calculations necessary to support tax deductible expenses. The amount of the overall tax allowable deductions could be greater or smaller compared to an actual cost comparison depending on the business circumstances.

Am I eligible?

The use of fixed rates is available to anyone who is self-employed. Partnerships can also use them as long as all the members of the partnership are individuals.

What do the fixed rates apply to?

Principally they apply to the following:

- business mileage
- deductions for business use of home
- adjustments for private use of business premises

We consider the rules for calculating the fixed rates and when these are available.

Business mileage

Rather than claiming the actual deductions for purchasing, maintaining and running a motor vehicle or motorcycle, businesses can calculate allowable expenditure using a fixed rate based on mileage. The rates are:

Cars and vans	
Up to 10,000 miles	45p per mile
Over 10,000 miles	25p per mile
Motorcycles	24p per mile

It is important to note that once the fixed rate is used for a particular vehicle, the same method must continue to be used for as long as the vehicle remains in the business. It will therefore be important to keep a detailed mileage log/diary. Additional business costs that are journey specific, such as parking fees and congestion charges will still need to be recorded and claimed. If capital allowances have been claimed the fixed rate cannot be used. Additionally, where for example a van has been claimed as an allowable payment under the cash basis, then the fixed rate cannot be used.

Business use of home

It is very common for self-employed individuals to work at least some of the time from home. Some tax relief is available if part of a home is used solely for the purpose of the business for a specified time. It is important however to ensure that part of the home is not exclusively used for business purposes unless absolutely necessary as this restricts the capital gains tax main residence exemption on the eventual sale of the home. Instead of recording actual costs on running a home (e.g. utilities, telephone and internet charges) and claiming a business proportion, a fixed rate deduction can be claimed. If you decide to adopt the fixed rate then the following rates apply:

Number of hours worked per month	**Allowable amount**
25 or more	£10
51 or more	£18
101 or more	£26

Hours worked is the number of hours spent wholly and exclusively on work done by yourself or an employee in your home wholly and exclusively for the purposes of the business. You can revert to actual costs in another year after choosing to use the fixed rate for one year.

Private use of business premises

If you use premises both as a home and as business premises (for example, a pub), the total expenses of the property need to be adjusted for private use. A fixed scale can be used to adjust for the private use which will increase taxable profits. Only premises which are used mainly for the purposes of carrying on a trade will qualify.

The fixed scale is as below and is for each month (or part month) falling within the period:

Number of relevant occupants	**Flat rate per month**
1	£350
2	£500
3 or more	£650

The 'number of relevant occupants' is based on how many people (including children) use the business premises each month (or part of a month) as a private home.

HMRC have advised that the flat rate includes all household goods and services, food and non-alcoholic drinks and utilities but not mortgage interest, rent, council tax or rates. This appears to make the rates above expensive add backs, as a further adjustment is therefore required for these other expenses.

How can we help

We would be happy to review whether claiming fixed rate expenses would be beneficial in your business circumstances so please do contact us.

Franchising

Franchising is a flourishing industry boasting nearly 1,000 brands in a multitude of different sectors. The business community now takes franchising very seriously and the industry consistently shows 90% of franchisees reporting profitability. The advantages of owning your own business are obvious but so too are the risks. The franchisee is taking less of a risk than starting his or her own business and less than 4% of franchises fail for commercial reasons. This is because they are operating under an established and proven business model and supplying or producing a tested brand name.

Franchising is essentially the permission given by one person, the franchisor, to another person, the franchisee, to use the franchisor's name, trademarks and business system in return for an initial payment and further regular payments.

Each business outlet is owned and managed by the franchisee. However, the franchisor retains control over the way in which products and services are marketed and sold, and controls the quality and standards of the business.

The advantages and disadvantages

Advantages

These include:

- it is your own business
- someone else has already had the bright idea and tested it too
- there will often be a familiar brand name which should have existing customer loyalty
- there may be a national advertising campaign
- some franchisors offer training in selling and other business skills
- some franchisors may be able to help secure funding for your investment as well as discounted bulk buy supplies.

Disadvantages

The potential disadvantages include the following:

- it is not always easy to evaluate the quality of a franchise especially if it is relatively new
- extensive enquiries may be required to ensure a franchise is strong
- part of your annual profits will have to be paid to the franchisor by way of fee
- the rights of the franchisor, for example to inspect your premises and records and dictate certain methods of operation, may seem restrictive
- should the franchisor fail to maintain the brand name or meet other commitments there may be very little you can do about it.

The costs

The franchisor receives an initial fee from the franchisee together with on-going management service fees. These will be based on a percentage of annual turnover or mark-ups on supplies and can vary enormously from business to business. In return, the franchisor has an obligation to support the franchise network with training, product development, advertising, promotional activities and a specialist range of management services.

Financing costs

Raising money to finance the purchase of a franchise is just like raising money to start any business. All of the major banks have specialist franchise departments. You may need to watch out for hidden costs of financing. These could arise if the franchisor obtains a commission on introducing you to a business providing finance or a leasing company for example. Of course these only represent true costs if you could have obtained the finance cheaper elsewhere.

Choosing a franchise

Factors to consider

There are many factors you may need to take into account when choosing a franchise. Consider the following:

- your own strengths and weaknesses - make sure they are compatible with the franchise
- thoroughly investigate the business you are planning to buy
- research the local competition and make sure there is room for your business
- give legal contracts careful consideration

- last but not least, talk to us about the financial projections for the business - cash flow, working capital needs and profit projections will form the core of your business plan.

Finding a franchise

The British Franchise Association (BFA) is likely to be a sensible starting point. They are at 85f Park Drive, Milton Park, Abingdon, OX14 4RY (01235 820470).

The official online partner of the BFA is whichfranchise.com which lists the latest BFA approved franchises.

A directory of all franchises available in the UK is available at www.franchiseadvice.com

Having narrowed down your choice, you will then need to think about contacting a shortlist of probably five or six franchise companies asking them for further details. This should include projections of the likely level of business as well as a draft contract.

If the franchise is a good one there are likely to be a number of applicants. You will need to sell yourself as the ideal applicant to the franchisor which will include providing references as well as putting forward a strong case as to your suitability as a franchisee.

The contract

The contract will form the basis of all franchise agreements. It should ensure that you run your business along the lines set out by the franchisor. The following areas should be covered:

- the name and nature of the business
- the geographical territory where the franchisee can use the name
- how long the franchise will run
- the fees (both initial and on-going) that will be charged
- what happens if the franchisee wants to sell or either the franchisee or franchisor want to end the agreement
- the terms of the relationship, specifically that the franchisor will provide training, advertising etc and that the franchisee will abide by the rules laid down by the franchisor.

How we can help

The franchising industry claims to be able to help you start a new business with a much greater than average chance of survival. Statistics seem to back this up and suggest that a franchised business has a much better chance of surviving the first three ‘danger’ years than other new businesses.

However you don’t get something for nothing and we can help you to look critically at the costs of entering into a franchise. We can also help with the all important business plan, including cash flow, working capital needs and profit projections. We can also provide independent advice on the forecasts given by the franchisor and help you determine how realistic they are. Contact us to find out more.

Fraud and How to Spot It - Ten Step Guide

Major corporate frauds and collapses hit the headlines from time to time and many of these were high profile and the amounts involved quite spectacular.

With the current pressures we are still facing from a slow economy, challenges associated with difficulties in renewing finance, the challenge of achieving targets, even simply paying suppliers bills and it becomes easy to see that the risk of fraud for all sizes of businesses has increased significantly.

The issues associated with well publicised frauds may seem far removed from your business but the simple truth is that fraud can affect businesses of all sizes. Whether you employ a small team or a significant workforce, this factsheet considers how you can increase your awareness of the factors that indicate fraud. It also sets out the defences that you can implement to minimise the risk within your business.

It couldn't happen here

It is easy to think that fraud is something that 'couldn't or wouldn't happen here'. However while large businesses have the resources to implement what they hope are effective systems of internal control to prevent fraud, smaller and medium-sized businesses often have to rely on a small team of people who they trust. No doubt you can think of a handful of key employees who you couldn't imagine being without! On so many occasions employers have said "do you know he/she (the fraudster) was my most trusted employee".

A key difficulty faced by smaller businesses is the lack of options to segregate duties. Individuals have to fulfil a number of roles and this can lead to increased opportunity and scope to commit fraud, and for some, the temptation can be too great.

Areas where fraud can occur

While the precise nature of any fraud will be specific to the nature of the business and the opportunities afforded to a potential fraudster, there are a number of common areas where fraud can occur.

Employees abusing their position

Most fraud impacts on the profit and loss account, where either expenses are overstated or income understated. Frauds here could range from a few pounds of fiddled expenses, where no one checks supporting documentation or reviews whether the claim made is reasonable, to more significant frauds. These could involve the setting up of fictitious suppliers and the production of bogus invoices, or an employee who approves purchases working in collusion with a supplier.

Positions could also be abused where a business requests tenders. Here there is a risk of 'kickbacks' where the individuals involved in the tender process accept bribes or sweeteners from potential suppliers. This could result in inefficient contracts being signed perhaps for dubious quality goods.

The individual amounts involved in these types of fraud may not be large, so they go unnoticed for some time. However as time progresses the amounts involved can become significant. Many fraudsters gain in confidence and the figures involved escalate as they become 'greedy'. Of course large scale frauds are more likely to be discovered and greed often plays a part in the identification and capture of fraudsters.

Nevertheless the time taken to detect fraud is vital. It may make all the difference to cashflow as fraud drains a business of resources that it needs to grow.

Suppliers taking advantage

Where a business has few or weak checking procedures and controls, a supplier may recognise this fact and take advantage. For example fewer items may actually be delivered than those included on the delivery note. Invoices may include higher quantities or prices than those delivered and agreed.

This highlights the importance of checking both delivery notes and invoices and following up any discrepancies promptly.

Other risk areas

Theft of confidential information such as client or customer lists or intellectual property such as an industrial process could cause a business untold problems if these are stolen by disgruntled employees. There have even been examples of these being copied onto a smart phone!

Information could also be vulnerable to attack from outside. Advances in technological developments mean that businesses need to consider IT related risks. Nowadays it is often believed that the computer is always right, so fewer manual checks are completed generally within the organisation as a result.

Certain types of organisation are at greater risk of fraud, for example those that are cash based can be more vulnerable due to the difficulties in implementing effective controls over cash. Similarly businesses that deal in attractive consumer goods are at increased risk.

Examples

J F Bogus & Sons

You might think that this could never happen to you but if your trusted bookkeeper presents you with an invoice and a cheque to sign, just how hard do you look at the invoice? The amount might be relatively small and is of course supported by an invoice. You have to sign the cheque in a hurry as you won't be in tomorrow and it's 5.15pm. Your bookkeeper will fill the payee line in before the cheque is sent out.

Ultimately, your year end figures just don't look quite right and subsequent investigations identify missing invoices and eventually, that the bookkeeper has been making these cheques payable to himself.

Sporting life!

Stock controls were put to the test in the sportswear and equipment business that showed up too many discrepancies between computerised stock and that actually counted at the year end. The differences could not be explained and eventually surveillance was used to monitor the warehouse.

Revealing footage showed the cleaners adding various bats, balls and kit to the bin bags full of rubbish removed each evening!

Businesses that are growing rapidly may also be more susceptible to fraud. When both company resources and directors personally are stretched to capacity, it is even more difficult to maintain an overview. Indicators of fraud may go unnoticed.

Does anyone know where Sid is?

Imagine the surprise a director of a local manufacturing company had when he handed out the payslips to his workforce and two were left over! His financial controller, who had never missed handing these out previously, had been taken ill and could not come into work. Subsequent investigations revealed that for some time, this much trusted staff member had created fictitious employees and had been paying the wages into his own bank account.

Ten step guide to preventing and detecting fraud

Given the wide range of fraud that could be committed, what steps can you take to minimise the risk of fraud being perpetrated within your organisation? Consider our top ten tips for detecting and preventing fraud.

1. Begin by recruiting the right people to work in your organisation. Make sure that you check out references properly and ensure that any temporary staff are also vetted, particularly if they are to work in key areas.
2. Ensure that you have a clear policy that fraud will not be tolerated within the organisation and ensure that this is communicated to all staff.
3. Consider which areas of your organisation could be at risk, then plan and implement appropriate defences. Target the areas where most of your revenue comes from and where most of your costs lie. Develop some simple systems of internal control to defend these areas. Effective controls include:

   - segregating duties
   - supervision and review
   - arithmetical checks
   - accounting comparisons
   - authorisation and approval
   - physical controls and counts

4. Wherever possible don't have only one person who is responsible for controlling an entire area of the business. This in particular includes the accounting function but will also include other key areas. For example ordering goods, stock control and despatch in a business where stocks include attractive consumer goods.
5. Always retain a degree of control over the key accounting functions of your business. Don't pre-sign blank cheques other than in exceptional circumstances and ensure that the corresponding invoices are presented with the cheques.
6. Be on the lookout for unusual requests from staff involved in the accounting function.
7. Watch out for employees who are overly protective of their role - they may have something to hide. Similarly watch out for disaffected employees, who might be bearing a grudge or those whose circumstances change for the worse or inexplicably for the better!
8. Watch out for notable changes in cashflow when an employee is away from the office, on holiday for example. Similarly be aware of employees who never take their holiday. These could both be indicators of fraud, something we see when we look back retrospectively.
9. Prepare budgets and monthly management accounts and compare these against your actual results so that you are aware of variances. Taking prompt investigative action where variances arise could make all the difference by closing the window of opportunity afforded to fraudsters.

10. Where a fraudster is caught, make sure that appropriate action is taken and learn from the experience.

Winning the battle against fraud

While the most devious of fraudsters might go unnoticed for some time, many fraudsters are ordinary individuals who see an opportunity. The frauds that they commit are quite simple in nature.

The implementation of some simple checks within a business can make it much more difficult for a fraudster to take advantage. The results could be startling - preventing a fraud of £100 each week equates to around £5,000 leaving a business over a year. Operating at a 20% margin would mean generating £25,000 of turnover to compensate for this.

How we can help

If you would like to discuss any of the issues raised in this factsheet please do contact us.

Grants

Ensuring adequate finance is a fact of life if you run a business. Whether you are looking to expand, undertake a specific project or simply fund your day to day purchases, finance is essential.

Obtaining finance is not always easy, especially if yours is a small business and particularly if it is a recent start-up. Borrowing may be difficult due to lack of security.

A grant may be the answer.

What is a grant?

A grant is a sum of money awarded, by the government or other organisation, for a specific project or purpose. Normally it will cover only some of the costs (typically between 15% and 50%); the business will need to fund the balance. Their availability is limited and competition for the funds can be quite intense. One of the main features of a grant is that the money generally becomes repayable if the terms and conditions of the grant are not met.

This sounds quite simple in principle. However, in practice, it can be somewhat daunting because of the huge number of different schemes in operation and the fact that schemes are constantly changing. Government grants are distributed through a variety of ministries, departments and agencies both on a national and local basis. They are usually for proposed projects only, so ensure you have not already started the project otherwise you may not be entitled to the grant.

The following websites may help with initial research into grant availability:

https://www.gov.uk/business-finance-explained/grants

https://www.gov.uk/business-finance-support-finder

The European Union is also a provider of funds, mainly through the European Commission which administers a large number of schemes.

http://ec.europa.eu/contracts_grants/grants_en.htm

Grants can also be received through Local Enterprise Partnerships (LEPs), local authorities and charitable organisations.

Is my business eligible?

Many of the available schemes are open to all without restriction. Eligibility for others will generally depend upon a number of factors:

- geographical location of the business - for example some schemes are targeted in areas of social deprivation or high unemployment
- size of business - for example some schemes are restricted to small or medium sized businesses - such as those businesses with fewer than 250 employees
- industry or sector in which the business operates - for example some schemes aim to tackle particular problems or issues affecting an industry sector - these are generally defined by the European Commission
- purpose of the grant - grants are often awarded for specific purposes - for example purchasing a new machine or increasing employment. Grant bodies often seek specific targets which are often in line with their own objectives.

Applying for a grant

Before applying

Initial research is essential so that you know what's on offer.

It is also necessary to ensure that you:

- have funds available to 'match' any grant that may be awarded (where this is a condition of the grant)
- need the money for a specific 'project' or purpose
- have a business plan
- do not start work on the project before the award is confirmed.

Making the application

It is a good idea, if possible, to make personal contact with an individual involved in administering your chosen scheme. This will give you a feel for whether it is worthwhile proceeding before you spend too much time on a detailed application. You may also be able to get some help and advice on making the application.

It is also a good idea where you can to apply as soon as possible after launch of the scheme. Many grant schemes run for a limited period of time; there will be more money available at an early stage and the administrators will be keen to receive applications and make awards.

The application itself should focus on the project for which you are claiming a grant. It should include an explanation of the potential benefits of the project as well as a detailed plan with costings. You should ensure that your application matches the objectives of the scheme. You will almost certainly need to submit a business plan as part of the application. It is important to show that the project is dependent on grant funds to proceed and that you have matching funds available.

Hearing back

This can take anything from a few weeks to a year or more. Your application will generally be assessed by looking at a variety of factors including your approach, your expertise, your innovation and your need for the grant.

Why you might be turned down

There are various reasons why your application may be turned down. The common ones include:

- your industry sector or field is not relevant to the body making the award
- your plan of action was not detailed enough or was unfocused and lacking in clarity
- you have not made it clear that the grant is vital to the success of the project
- matched funds are not available.

Finally, if your application is unsuccessful, ask for feedback. This will help you to be more effective when applying for funds in the future.

How we can help

We can help you to find an appropriate source of grant funds and also assist with your business plan and detailed application. Contact us to find out more.

Homeworking and Tax Relief for Employees

Over the last ten years technology has advanced massively. It was not so long ago that mobile phones were the size of a brick. Now emails and the internet can be accessed on the move. However, whilst technology has moved on, travelling has become more and more difficult. Homeworking has become the answer for many but how have the tax rules kept up with these changes?

Your status is important

The tax rules differ considerably depending on whether you are self-employed, as a sole trader or partner, or whether you are an employee, even if that is as an employee of your own company. One way or the other though, if you want to maximise the tax position, it is essential to keep good records. If not, HMRC may seek to rectify the tax position several years down the line. This can lead to unexpected bills, including several years' worth of tax, interest and penalties.

This factsheet considers the position for employees.

General rules

Generally, any costs paid on behalf of, or reimbursed to, an employee by their employer will be taxable. The employee will then have to claim the personal tax relief themselves and prove that they incurred those costs 'wholly, exclusively and necessarily' in carrying out their job. The word 'necessarily' creates a much tighter test than that for the self-employed.

In addition, the way in which the services are provided can sometimes make a substantial difference to that tax cost. For example, if the employer provides something for the employee, the rules are often much more generous than if the employee bought it themselves and attempted to claim the tax relief. A bit of advice and forward planning can often prove to be fruitful.

An exemption

The rules for employees in relation to 'use of home as office' contains a specific exemption from a tax charge. They allow payments made by employers to employees for additional household expenses to be tax free, where the employee incurs those costs in carrying out the duties of the employment under homeworking arrangements.

'Homeworking arrangements' means arrangements between the employee and the employer under which the employee regularly performs some or all of the duties of the employment at home.

The arrangements do not need to be in writing but it is advisable to do this, as the exemption does not apply where an employee works at home informally.

Where these rules are met, the additional costs of heating and lighting the work area and the metered cost of increased water usage can be met. There might also be increased charges for internet access, home contents insurance or business telephone calls and where working at home leads to a liability for business rates. HMRC accept that the additional cost incurred can also be included.

However, unlike the self-employed, HMRC do not accept that a proportion of household fixed costs such as mortgage interest, rent, council tax or water rates are allowable.

HMRC accept that a £4 per week payment from the employer is acceptable without too much formality if the above tests are met. However, to justify a higher payment, the message is: prove it!

Tax relief

The above rules only allow tax free payments to be made in specific circumstances. However, if payments are made outside of these rules or, in fact, no payments are made at all, the employee can claim personal tax relief themselves if they can prove that they incurred those costs or received those payments 'wholly, exclusively and necessarily' for the purposes of their job. In reality this is extremely difficult – some would say impossible – as HMRC require the following tests to be met:

- the employee performs the substantive duties of their job from home (i.e. the central duties of the job)
- those duties cannot be performed without the use of appropriate facilities
- no such facilities are available to the employee on the employer's premises or are too far away

- and at no time either before or after the employment contract is drawn up is the employee able to choose between working at the employer's premises or elsewhere.

So the moral for employees is to go for tax free payments, not tax relief!

Equipment costs

Capital allowances will be available to the company for the costs of providing equipment to employees who work at home. Provided that the private use of those assets by the employee is insignificant, then there will be no taxable benefit on the employee. Again, this could apply to things such as a laptop, desk or chair, provided that the employer has a written policy making it clear that the provision of the equipment is for work-related purposes.

Travel costs

The rules are so 'simple' that HMRC explain them in a convenient 77 page booklet, IR490! However, the main point to note is that although an employee's home may be treated as a workplace for tax purposes, this is not enough, on its own, to allow the employee to get tax relief for the expenses of travelling to another permanent workplace.

Employees are able to claim tax relief on the full travelling cost incurred in the performance of their duties. However, no relief is available for the costs of ordinary commuting or private travel.

The rules are complex but ordinary commuting is defined as travel between the employee's home and a place which is a 'permanent workplace'. A 'permanent workplace' includes places where there is a period of continuous work lasting more than 24 months or the period of attendance is all or most of the period of employment.

HMRC state that, for most people, the place where they live is a matter of personal choice, so the expense of travelling from home to any permanent workplace is a consequence of that personal choice. As a result such travelling expenses will not qualify unless the location of the employee's home is itself dictated by the requirements of the job.

Even if that condition is met, the cost of travel between the employee's home and another permanent workplace is only deductible during those times when the home is a place of work.

Of course, employees who work at home are entitled to a deduction for the expenses of travelling to a temporary workplace - that is anything which is not a permanent workplace. It is as clear as that!

Example

Jane's duties often involve her working late into the evenings and she has no access to her employer's premises (her permanent workplace) at night, so she takes work home with her. As it is a matter of personal choice where the work is done (there is no objective requirement that it is done at her home), any travel to or from her home cannot be said to be in the performance of her duties and no relief is available for any costs.

However, Jane's husband is an area sales manager who lives in Leicester. He manages his company's sales team in the Midlands and the company's nearest office is in Newcastle. He is therefore obliged to carry out all his administrative work at home, where he has set aside a room as an office. He is entitled to relief for the expenses of travelling to the company's office in Newcastle, as well as for journeys within the Midlands as these should all qualify as temporary workplaces.

Be reasonable

As you can see, all things are possible but the key is to be clear about the rules, keep good records and be sensible about how much to claim.

How we can help

If you would like any help about obtaining tax relief on the costs of homeworking, please do contact us.

Homeworking Costs for the Self-Employed

Over the last ten years technology has advanced massively. It was not so long ago that mobile phones were the size of a brick. Now emails and the internet can be accessed on the move. However, whilst technology has moved on, travelling has become more and more difficult. Homeworking has become the answer for many but how have the tax rules kept up with these changes?

Your status is important

The tax rules differ considerably depending on whether you are self-employed, as a sole trader or partner, or whether you are an employee, even if that is as an employee of your own company. One way or the other though, if you want to maximise the tax position, it is essential to keep good records. If not, HMRC may seek to rectify the tax position several years down the line. This can lead to unexpected bills including several years' worth of tax, interest and penalties.

This factsheet focuses on the position of the self-employed.

Wholly and exclusively

The self-employed pay tax on the profits that the business makes or their share of those profits. So, the critical issue is to ensure that costs incurred can be set against that profit. For day to day overheads, those costs generally have to be incurred 'wholly and exclusively' for the purposes of the trade to be tax deductible. What does this really mean in practice? Well, HMRC have issued a lot of guidance on the matter which is summarised below.

Use of the home

If the self-employed carry on some of their business from home, then some tax relief may be available. HMRC accept that even if the business is carried on elsewhere, a deduction for part of the household expenses is still acceptable provided that there are times when part of the home is used solely for business purposes. To quote:

'If there is only minor use, for example writing up the business records at home, you may accept a reasonable estimate without detailed enquiry.'

So that there is no confusion, wholly and exclusively does not mean that business expenditure has to be separately billed or that part of the home must be permanently used for business purposes. However, it does mean that when part of the home is being used for the business then that is the sole use for that part at that time.

HMRC accept that costs can be apportioned but on what basis? Well, if a small amount is being claimed then HMRC will usually not be too interested. In fact, HMRC seem to accept that an estimate of a few pounds a week is acceptable. However, if more is to be claimed then HMRC suggest that the following factors are considered:

- the proportion in terms of area of the home that is used for business purposes
- how much is consumed where there is a metered or measurable supply such as electricity, gas or water and
- how long it is used for business purposes.

What sort of costs can I claim for?

Generally, HMRC will accept a reasonable proportion of costs such as council tax, mortgage interest, insurance, water rates, general repairs and rent, as well as cleaning, heat and light and metered water.

Other allowable costs may include the cost of business calls on the home telephone and a proportion of the line rental, in addition to expenditure on internet connections to the extent that the connection is used for business purposes.

So how does this work in practice?

As already mentioned, if there is a small amount of work done at home, a nominal weekly figure is usually fine but for substantial claims a more scientific method may be needed.

Example

Andrew works from home and has no other business premises. He uses a spare room from 9am to 1pm and then from 2pm until 6pm. The rest of the time it is used by the family. The room represents about 10% of the total area of the house.

The costs including cleaning, insurance, council tax and mortgage interest are about £8,000. 10% = £800 and 8/24 of the use by time is for business, so the claim could be £267.

Electricity costs total £1,500, so 10% is £150 of which 8/24 = £50.

In addition, a reasonable proportion of other costs such as telephone and broadband costs would be acceptable.

The key to Andrew's claim will be that he keeps the records to prove the figures and proportions used.

Equipment costs

For self-employed businesses, the depreciation of assets is covered by a set of tax reliefs known as capital allowances. For equipment at home, such as a laptop, desk, chair, etc, capital allowances may be available on the business proportion (based on estimated business usage) of those assets. So, if Andrew uses his laptop solely for business, the whole cost will be within the capital allowances rules.

What about travel costs?

Another consequence of working from home is the potential impact on travel costs. The cost of travelling from home to the place of business or operations is generally disallowed, as it represents the personal choice of where to live. The fact that the individual may sometimes work at home is irrelevant.

Where an individual conducts office work for their trade does not by itself determine their place of business, so although many may be able to claim tax relief for the costs of working from home, far fewer will be able to claim travel costs of going to and from their home office.

Of course, this principle presupposes that there is a business or operational 'base' elsewhere from which the trade is run. Normally, the cost of travel between the business base and other places where work is carried on will be an allowable expense, while the cost of travel between the taxpayer's home and the business base will not be allowable.

However, where there are no separate business premises away from the home, travel costs to visit clients should be fully allowable. The crux of the matter is where the business is really run from.

And finally

Capital gains tax contains a tax exemption for the sale of an individual's private home, known as principal private residence relief (PPR). Where part of the dwelling is used exclusively for business purposes, PPR relief will not apply to the business proportion of the gain. However, HMRC make clear in their guidance that 'occasional and very minor' business use is ignored.

Be reasonable

As you can see, all things are possible but the key is to be clear about the rules, keep good records and be sensible about how much to claim.

How we can help

If you would like any help about obtaining tax relief on the costs of homeworking or other expenses, please contact us.

Incorporation

The issue of whether to run your business as a company or a sole trader or partnership is an important one. In this factsheet, we summarise the potential tax savings available from operating as a company.

Is trading as a limited company the best option?

In our view it is generally beneficial, in tax terms, to trade as a limited company as there are annual tax savings.

Is it better to take a dividend rather than an increase in salary?

In our view there is a benefit for a director-shareholder to take a dividend rather than further salary.

Tax savings

The examples below give an indication of the 2017/18 tax savings that may be achievable for a husband and wife who are currently in partnership.

Profits:	£30,000	£50,000	£100,000
Tax and NI payable:	**£**	**£**	**£**
As partners	2,750	8,550	23,998
As company	2,499	7,499	20,037
Potential saving	251	1,051	3,961

The extent of the savings is dependent on the precise circumstances of the couple's tax position and may be more or less than the above figures. The examples are computed on the basis that the couple:

- share profits equally
- have no other sources of income
- both take a salary of £8,164 from the company with the balance (after corporation tax) paid out as a dividend.

When might a company be considered?

A company can be used as a vehicle for:

- a profitable trade
- buy-to-let properties

Summary of relevant tax and national insurance rates 2018/19

Rate of corporation tax

Profits are taxed at 19%.

Taxation of dividends

The cash dividend received is the gross amount potentially subject to tax. The rates of tax on dividend income are 7.5% for basic rate taxpayers, 32.5% for higher rate taxpayers and 38.1% for additional rate taxpayers.

A Dividend Tax Allowance taxes the first £2,000 of dividends received in a tax year at 0%.

National Insurance

The rate of employees' NICs is 12%. In addition, a 2% charge applies to all earnings over the NIC upper earnings limit (£46,350 for 2018/19). The rate of NICs for the self-employed is 9%, and 2% on profits above £46,350 for 2018/19.

All NI contributions can be avoided by incorporating, taking a small salary up to the threshold at which NI is payable and then taking the balance of post-tax profits as dividends.

Pension provision

As an employee/director of the company, it should be possible for the company to make pension contributions (subject to limits) to a registered fund irrespective of the salary level, provided it is justifiable under the 'wholly and exclusively' rule. Pension contributions are deemed to be a private expense for sole traders or partners.

Other tax issues

In addition we consider other relevant factors including potential disadvantages. It is all too easy to focus exclusively on the potential annual tax savings available by operating as a company. However, other tax issues can be equally, and in some cases, more, significant and should not be underestimated.

Capital gains

Incorporating your existing business will involve transferring at least some of your assets (most significantly goodwill) from your sole trade or partnership into your new company. The transfer of goodwill may create a significant capital gain although there is a mechanism for deferring the gain until any later sale of the company if the business is transferred in exchange for shares in the company.

Relief for goodwill

Generally where goodwill is sold to the company for cash or debt on or after 3 December 2014, individuals are prevented from claiming Entrepreneurs' Relief (ER), and capital gains tax (CGT) arises on the gain. The exceptions to this rule are that a claim to ER is allowed:

- for partners in a firm who do not hold or acquire any stake in the successor company
- where the individual claiming relief holds less than 5% of the shares and the voting power of the acquiring company
- where an individual holds 5% or more of the shares or voting power if the transfer of the business to the company is part of arrangements for the company to be sold to a new, independent owner.

Property taxes

Depending on where the property is situated there will be Stamp Duty Land Tax, Land and Buildings Transaction Tax or Land Transaction Tax charges to consider when assets are transferred to a company. Goodwill and debtors do not give rise to a charge, but land and buildings may do so.

Income tax

The precise effects of ceasing business in an unincorporated form, including 'overlap relief' need to be considered.

Capital allowances

Once again the position needs to be carefully considered.

Other advantages

There may be other non-tax advantages of incorporation and these are summarised below.

Limited liability

A company normally provides limited liability. If a shareholder's shares are fully paid he cannot normally be required to invest any more in the company. However, banks often require personal guarantees from the directors for borrowings. The advantage of limited liability will generally apply in respect of liabilities to other creditors.

Legal continuity

A company will enjoy legal continuity as it is a legal entity in its own right, separate from its owners (the shareholders). It can own property, sue and be sued.

Transfer of ownership

Effective ownership of the business may be more readily transferred, in comparison to a business which is not trading as a limited company.

Borrowing

Normally a bank is able to take extra security by means of a 'floating charge' over the assets of the company and this will increase the extent to which monies may be borrowed against the assets of the business.

Credibility

The existence of corporate status is sometimes deemed to add to the credibility or commercial respectability of the business.

Pension schemes

The company could establish an approved pension scheme which may provide greater benefits than self-employed schemes.

Staff incentives

Employees may, with adequate safeguards, be offered an opportunity to acquire an interest in the business, reflecting their position in the company.

Disadvantages

No analysis of the position would be complete without highlighting potential disadvantages.

Administration

The annual compliance requirements for a company in terms of administration and accounting tend to result in costs being higher for a company than for a sole trader or partnership. Annual accounts need to be prepared in a format dictated by the Companies Act and, in certain circumstances, the accounts need to be audited by a registered auditor.

Details of the directors and shareholders are filed on the public register held by the Registrar of Companies.

Privacy

The annual accounts have to be made available on public record - although these can be modified to minimise the information disclosed.

PAYE/benefits

If you do not have any employees at present, you do not have to be concerned with Pay As You Earn (PAYE) and returns of benefits forms (P11Ds). As a company, you will need to complete PAYE records for salary payments and submit details of salary payments on a timely basis under PAYE Real Time Information (RTI). You will also need to keep records of expenses reimbursed to you by the company. Forms P11D may have to be completed.

Dividends

If you will require regular payments from your company, we will need to set up a system for you to correctly pay dividends.

Transactions with the business owner

A business owner may introduce funds to and withdraw funds from an unincorporated business without tax implications. When a company is involved there may be tax implications on these transactions.

Director's responsibilities

A company director may be at risk of criminal or civil penalty proceedings e.g. for late filing of accounts or for breaking the insolvency rules.

How we can help

There may be a number of good reasons for considering use of a company as part of a tax planning strategy. However as you can see there are many factors to consider. We would welcome the opportunity to talk to you about your own specific circumstances. Please do not hesitate to contact us.

Individual Savings Accounts

Successive governments, concerned at the relatively low level of savings in the UK economy have over the years introduced various means by which individuals can save through a tax-free environment.

What is an ISA?

ISAs are tax-exempt savings accounts available to individuals aged 18 or over who are resident and ordinarily resident in the UK. ISAs are only available to individual investors and cannot be held jointly.

ISAs are guaranteed to run for ten years although there is no minimum period for which the accounts must be held.

Investment limits

The overall annual savings limit is £20,000.

Investment choices

Investors are allowed to invest in a cash ISA, an investment ISA, an Innovative Finance ISA, or a combination of the three subject to not exceeding the overall annual investment limit.

Investors are to transfer their investments from a stocks and shares ISA to a cash ISA (or vice versa).

ISAs are allowed to invest in cash (including bank and building society accounts and designated National Savings), stocks and shares (including unit and investment trusts and government securities with at least five years to run) and life assurance.

A wide range of securities including certain retail bonds with less than five years before maturity, Core Capital Deferred Shares issued by building societies, listed bonds issued by Co-operative Societies and Community Benefit Societies and SME securities that are admitted to trading on a recognised stock exchange are eligible to be held in a ISA, Junior ISA or Child Trust Fund (CTF).

A recent introduction is the Innovative Finance ISA, for loans arranged via a peer-to-peer (P2P) platform. Peer-to-peer lending is a small but rapidly growing alternative source of finance for individuals and businesses. The Innovative Finance ISA may also invest in debt securities offered via crowdfunding platforms.

Withdraw and replace monies

ISA savers may be able to withdraw and replace money from their cash ISA without it counting towards their annual ISA subscription limit for that year where they hold a 'Flexible ISA'.

Additional ISA allowance for spouses on death

An additional ISA allowance is available for spouses or civil partners when an ISA saver dies. The additional ISA allowance is equal to the value of a deceased person's accounts at the time of their death and is in addition to the normal ISA subscription limit. There are time limits within which the additional allowance has to be used. In certain circumstances an individual can transfer to their own ISA non-cash assets such as stocks and shares previously held by their spouse.

In most cases it is envisaged that the additional allowance will be used to subscribe to an ISA offered by the same financial institution that provided the deceased person's ISA. As the new regulations allow the transfer of stocks and shares directly into the new ISA, in many cases the effect will be that the investments are left intact and the spouse becomes the new owner of the deceased person's ISA.

The tax advantaged treatment of ISAs continue whilst an individual's estate is in administration.

Tax advantages

The income from ISA investments is exempt from income tax.

Any capital gains made on investments held in an ISA are exempt from capital gains tax.

Uses of an ISA

Many people use an ISA in the first instance, to save for a rainy day. Since they were first introduced people have used them to save for retirement, to complement their pension plans or to save for future repayment of their mortgage to give just a few examples. We have known young people, wary of commitment to long-term saving start an ISA and when more certain of the future use it as a lump sum to start another financial plan.

Help to Buy ISA

The government has introduced the Help to Buy ISA, which provide a tax free savings account for first time buyers wishing to save for a home.

The scheme will provide a government bonus to each person who has saved into a Help to Buy ISA at the point they use their savings to purchase their first home. For every £200 a first time buyer saves, the government will provide a £50 bonus up to a maximum bonus of £3,000 on £12,000 of savings.

Help to Buy ISAs are subject to eligibility rules and limits:

- An individual is only be eligible for one account throughout the lifetime of the scheme and it is only available to first time buyers.
- Interest received on the account will be tax free.
- Savings are limited to a monthly maximum of £200 with an opportunity to deposit an additional £1,200 when the account is first opened.
- The government will provide a 25% bonus on the total amount saved including interest, capped at a maximum of £3,000 which is tax free.
- The bonus will be paid when the first home is purchased.
- The bonus can only be put towards a first home located in the UK with a purchase value of £450,000 or less in London and £250,000 or less in the rest of the UK.
- The government bonus can be claimed at any time, subject to a minimum bonus amount of £400.
- The accounts are limited to one per person rather than one per home so those buying together can both receive a bonus.

Once an account is opened there is no limit on how long an individual can save into it and no time limit on when they can use their bonus.

Lifetime ISA

A Lifetime ISA is available from 6 April 2017 for adults under the age of 40. Individuals are able to contribute up to £4,000 per year and receive a 25% bonus on the contributions from the government. Funds, including the government bonus, can be used to buy a first home at any time from 12 months after opening the account, and can be withdrawn from age 60 completely tax-free.

Further details of the Lifetime ISA are as follows:

- Any savings an individual puts into the account before their 50th birthday will receive an added 25% bonus from the government.
- There is no maximum monthly contribution and up to £4,000 a year can be saved into a Lifetime ISA.
- The detailed rules are based on those for the Help to Buy ISA, in that the withdrawal must be for the purchase a property for the first time buyer to live in as their only residence and not buy-to-let. There are differences however. In particular, the bonuses within the Lifetime ISA can be used to fund the initial deposit on the home whereas the Help to Buy bonus can only fund the completion of the purchase.
- The savings and bonus can be used towards a deposit on a first home worth up to £450,000 across the country.
- Accounts are limited to one per person rather than one per home, so two first time buyers can both receive a bonus when buying together.
- Where an individual already has a Help to Buy ISA they will be able to transfer those savings into the Lifetime ISA in 2017, or continue saving into both. However only the bonus from one account can be used to buy a house.
- Where the funds are withdrawn at any time before the account holder is aged 60 they will lose the government bonus (and any interest or growth on this) and will also have to pay a 5% charge.
- After the account holder's 60th birthday they will be able to take all the savings tax-free.

Junior Individual Savings Account (Junior ISA)

Junior ISAs are available for UK resident children under the age of 18 who do not have a Child Trust Fund account. Junior ISAs are tax advantaged and have many features in common with ISAs. They can be cash or stocks and shares based products. The annual subscription limit for Junior ISA and Child Trust Fund accounts is £4,260 for 2018/19 (£4,128 for 2017/18).

A transfer of savings from a CTF to a Junior ISA is permitted at the request of the registered contact for the CTF.

How we can help

Please contact us if you would like any further information on ISAs.

Inheritance Tax - a Summary

Inheritance tax (IHT) is levied on a person's estate when they die, and certain gifts made during an individual's lifetime.

Gifts between UK-domiciled spouses during their lifetime or on death are exempt from IHT. In this factsheet spouse includes married couples and registered civil partners. Most gifts made more than seven years before death will escape tax. Therefore, if you plan in advance, gifts can be made tax-free and result in a substantial tax saving.

We give guidance below on some of the main opportunities for minimising the impact of the tax.

It is however important for you to seek specific professional advice appropriate to your personal circumstances.

Summary of IHT

Scope of the tax

When a person dies IHT becomes due on their estate. IHT can also fall due on some lifetime gifts but most are ignored providing the donor survives for seven years after the gift.

The rate of tax on death is 40% and 20% on lifetime transfers where chargeable. For 2018/19 the first £325,000 chargeable to IHT is at 0% and this is known as the nil rate band.

Residence nil rate band

An additional nil rate band is introduced for deaths on or after 6 April 2017 where an interest in a qualifying residence passes to direct descendants. The amount of relief is being phased in over four years; starting at £100,000 in the first year, £125,000 for 2018/19 and rising to £175,000 for 2020/21. For many married couples and registered civil partnerships (hereafter referred to as spouses in this factsheet) the relief is effectively doubled as each individual has a main nil rate band and each will also potentially benefit from the residence nil rate band.

The residence nil rate band can only be used in respect of one residential property which does not have to be the main family home but must at some point have been a residence of the deceased. Restrictions apply where estates (before reliefs) are in excess of £2 million.

Where a person died before 6 April 2017, their estate will not qualify for the relief. A surviving spouse may be entitled to an increase in the residence nil rate band if the spouse who died earlier has not used, or was not entitled to use, their full residence nil rate band. The calculations involved are potentially complex but the increase will often result in a doubling of the residence nil rate band for the surviving spouse.

Downsizing

The residence nil rate band may also be available when a person downsizes or ceases to own a home on or after 8 July 2015 where assets of an equivalent value, up to the value of the residence nil rate band, are passed on death to direct descendants.

Charitable giving

A reduced rate of IHT applies where 10% or more of a deceased's net estate (after deducting IHT exemptions, reliefs and the nil rate band) is left to charity. In those cases the 40% rate will be reduced to 36%.

IHT on lifetime gifts

Lifetime gifts fall into one of three categories:

- a transfer to a company or a trust (except a disabled trust) is immediately chargeable
- exempt gifts which will be ignored both when they are made and also on the subsequent death of the donor, eg gifts to charity
- any other transfers will be potentially exempt transfers (PETs) and IHT is only due if the donor dies within seven years of making the gift. An alternative way of looking at this is that they are potentially chargeable until seven years has passed. The primary example of a PET is a gift to another individual.

IHT on death

The main IHT charge is likely to arise on death. IHT is charged on the value of the estate treated as beneficially owned by the deceased. This may include certain types of interest in trust property. Furthermore:

- PETs made within seven years become chargeable
- there may be an additional liability because of chargeable transfers(usually lifetime gifts to trusts) made within the previous seven years.

Estate planning

Much estate planning involves making lifetime transfers to utilise exemptions and reliefs or to benefit from a lower rate of tax on lifetime transfers.

However, careful consideration needs to be given to other factors. For example a gift that saves IHT may unnecessarily create a capital gains tax (CGT) liability. Furthermore the prospect of saving IHT should not be allowed to jeopardise the financial security of those involved.

Gifts to individuals during lifetime

As these gifts are PETs rather than chargeable transfers when made, no tax at all is due if the donor survives for seven years. Even where a death occurs within seven years IHT may be saved as a result of the lifetime gifts because the charge is based on the value at the date of the gift and does not include any growth on value to date of death.

Nil rate band and seven year cumulation

Chargeable transfers (such as lifetime gifts to trusts) covered by the nil rate band can be made without incurring any IHT liability. Once seven years have elapsed between chargeable transfers an earlier transfer is no longer taken into account in determining IHT on subsequent transfers. Therefore every seven years a full nil rate band will be available to make lifetime chargeable transfers.

Transferable nil rate band

It is possible for spouses and civil partners to transfer the nil rate band unused on the first death to the surviving spouse for use on the death of the surviving spouse/ partner. On that second death, their estate will be able to use their own nil rate band and in addition the same proportion of a second nil rate band that corresponds to the proportion unused on the first death. This allows the possibility of doubling the nil rate band available on the second death. This arrangement can apply where the second death happens after 9 October 2007 irrespective of the date of the first death.

Annual exemption

£3,000 per annum may be given by an individual without an IHT charge. An unused annual exemption may be carried forward for use in the immediately following tax year only.

Gifts between spouses

Gifts between spouses are generally exempt, if both are either UK or non UK domiciled. It may be desirable to use the spouse exemption to transfer assets to ensure that both spouses can make full use of lifetime exemptions, the nil rate band and PETs. Special rules apply where only one spouse has a UK domicile.

Small gifts

Gifts to individuals not exceeding £250 in total per tax year per recipient are exempt. The exemption cannot be used to cover part of a larger gift.

Normal expenditure out of income

Gifts which are made out of income which are typical and habitual and do not result in a fall in the standard of living of the donor are exempt. Payments under deed of covenant and the payment of annual premiums on life insurance policies would usually fall within this exemption.

Family maintenance

A gift for family maintenance does not give rise to an IHT charge. This would include the transfer of property made on divorce under a court order, gifts for the education of children or maintenance of a dependent relative.

Wedding presents

Gifts in consideration of marriage are exempt up to £5,000 if made by a parent with lower limits for other donors.

Gifts to charities

Gifts to registered charities are exempt provided that the gift becomes the property of the charity or is held for charitable purposes.

Business property relief (BPR)

When 'business property' is transferred there is a percentage reduction in the value of the transfer. Often this provides full relief. In cases where full relief is available there is little incentive, from a tax point of view, to transfer such assets in lifetime. Additionally no CGT will be payable where the asset is included in the estate on death. Professional advice should be sought to determine whether you have qualifying business property.

Agricultural property relief (APR)

APR is similar to BPR in that it reduces the value of the transfer but it may not give full relief on the value. It is available on the transfer of agricultural property so long as various conditions are met.

Use of trusts

Trusts can provide an effective means of transferring assets out of an estate whilst still allowing flexibility in the ultimate destination and/or permitting the donor to retain some control over the assets. Provided that the donor does not obtain any benefit or enjoyment from the trust, the property is removed from the estate.

We can advise you on whether a trust is suitable for your circumstances and the types of trust arrangements available.

Life assurance

Life assurance arrangements can be used as a means of removing value from an estate and also as a method of funding IHT liabilities.

A policy can also be arranged to cover IHT due on death. It is particularly useful in providing funds to meet an IHT liability where the assets are not easily realised, eg family company shares.

Complexity - is your Will up to date?

From April 2017 we have three nil rate bands to consider. The standard nil rate band has been available for many years. In 2007 the ability to utilise the unused nil rate band of a deceased spouse was introduced which may enable surviving spouses to have a nil rate band of up to £650,000.

From 6 April 2020 some surviving spouses will also have an additional £350,000 in respect of the residence nil rate band to arrive at a total nil rate band of £1 million. However this will only be achieved by careful planning and, in some cases, it may be better for the first deceased spouse to gift some assets to the next generation and use up some or all of the available nil rate bands.

For many individuals, the residence nil rate band will be important but individuals will need to revisit their wills to ensure that the relief will be available and efficiently utilised.

How we can help

Whilst some general tips can be made about IHT planning it is always necessary to tailor the strategy to fit your situation.

Any plan must take account of your circumstances and aspirations. The need to ensure your financial security (and your family's) cannot be ignored. If you propose to make gifts the interaction of IHT with other taxes needs to be considered carefully.

However there can be scope for substantial savings which may be missed unless professional advice is sought as to the appropriate course of action. We would welcome the opportunity to assist you in formulating a strategy suitable for your own requirements. Please do not hesitate to contact us.

Inheritance Tax Avoidance - Pre-Owned Assets

Inheritance tax (IHT) was introduced approximately 30 years ago and broadly charges to tax certain lifetime gifts of capital and estates on death.

With IHT came the concept of 'potentially exempt transfers' (PETs): make a lifetime gift of capital to an individual and, so long as you live for seven years from making the gift, there can be no possible IHT charge on it whatever the value of the gift. The rules create uncertainty until the seven year period has elapsed but, at the same time, opportunity to pass significant capital value down the generations without an IHT charge. Of course this is to over simplify the position and potentially ignore a whole host of other factors, both tax and non-tax, that may be relevant.

However many people are simply not in a position to make significant lifetime gifts of capital. There are a number of reasons for this, the most obvious being that their capital is tied up in assets such as the family home and business interests and/or it produces income they need to live on.

Gifting the family home?

But what is to stop a gift of the family home being made to, say, your (adult) children whilst you continue to live in it? The answer is simple: nothing! However such a course of action is unattractive not to say foolhardy for a number of reasons the most significant being:

- security of tenure may become a problem
- loss of main residence exemption for capital gains tax purposes
- it doesn't actually work for IHT purposes.

The reason such a gift doesn't work for IHT is because the 'gift with reservation' (GWR) rules deem the property to continue to form part of your estate because you continue to derive benefit from it by virtue of living there. This is a complex area so do get in touch if you would like some advice.

Getting around the rules

To get around the GWR rules a variety of complex schemes were developed, the most common being the 'home loan' or 'double trust' scheme, which allowed continued occupation of the family home whilst removing it from the IHT estate. For an individual with a family home worth say £500,000 the prospect of an ultimate IHT saving of £200,000 (being £500,000 x 40%) was an attractive one.

HMRC's response

Over time the schemes were tested in the courts and blocked for the future.

However HMRC wanted to find a more general blocking mechanism. Their approach has been somewhat unorthodox with the GWR rules remaining as they are. Instead a new income tax charge is levied on the previous owner of an asset if they continue to be able to enjoy use of it. The rules are referred to as the Pre-Owned Assets (POA) rules. They are aimed primarily at land and buildings but also apply to chattels and certain interests in trusts.

Scope

In broad outline, the rules apply where an individual successfully removes an asset from their estate for IHT purposes (ie the GWR rules do not apply) but is able to continue to use the asset or benefit from it.

Example 1

Ed gave his home to his son Oliver in 2004 by way of an outright gift and Ed continues to live in the property.

This is not caught by the POA rules because the house is still part of Ed's IHT estate by virtue of the GWR rules.

Example 2

As example 1 but Ed's 'gift' in 2004 was made using a valid 'home loan' scheme.

This is caught by the POA rules because the house is not part of Ed's estate for IHT.

Even if Ed did not live in the property full-time because say it is a holiday home, the rules would still apply.

If Ed had sold the entire property to his son for full market value, the POA rules would not apply, nor would the GWR rules.

The rules also catch situations where an individual has contributed towards the purchase of property from which they later benefit unless the period between the original gift and the occupation of the property by the original owner exceeds seven years.

Example 3

In 2003 Hugh made a gift of cash to his daughter Caroline. Caroline later used the cash to buy a property which Hugh then moved into in 2009. The POA rules apply.

The rules would still apply even if Caroline had used the initial cash to buy a portfolio of shares which she later sold using the proceeds to buy a property for Hugh to live in.

If Hugh's occupation of the property had commenced in 2011, the POA rules would not apply because there is a gap of more than seven years between the gift and occupation.

There are a number of exclusions from the rules, one of the most important being that transactions will not be caught where a property is transferred to a spouse or former spouse under a court order. Cash gifts made after 6 April 1998 are also caught within the rules.

Start date - retrospection?

Despite the fact that the regime is only effective from 6 April 2005, it can apply to arrangements that may have been put in place at any time since March 1986. This aspect of the rules has come in for some harsh criticism. At the very least it means that pre-existing schemes need to be reviewed to see if the charge will apply.

Calculating the charge

The charge is based on a notional market rent for the property. Assuming a rental yield of, say, 5%, the income tax charge for a higher rate taxpayer on a £1 million property will be £20,000 each year.

The rental yield or value is established assuming a tenant's repairing lease.

Properties need to be valued once every five years. In situations where events happened prior to 6 April 2005, the first year of charge was 2005/06 and the first valuation date was 6 April 2005. In these cases a new valuation should have been made on 6 April 2010 and 6 April 2015.

The charge is reduced by any actual rent paid by the occupier – so that there is no charge where a full market rent is paid.

The charge will not apply where the deemed income in relation to all property affected by the rules is less than £5,000.

The rules are more complex where part interests in properties are involved.

Avoiding the charge

There are a number of options for avoiding the charge where it would otherwise apply.

- Consider dismantling the scheme or arrangement. However this may not always be possible and even where it is the costs of doing so may be prohibitively high.
- Ensure a full market rent is paid for occupation of the property - not always an attractive option.
- Elect to treat the property as part of the IHT estate – this election cannot be revoked once the first filing date for a POA charge has passed.

The election

The effect of the election using the example above is that the annual £20,000 income tax charge will be avoided but instead the £1 million property is effectively treated as part of the IHT estate and could give rise to an IHT liability of £400,000 for the donee one day. Whether or not the election should be made will depend on personal circumstances but the following will act as a guide.

Reasons for making the election

Where the asset qualifies for business or agricultural property reliefs for IHT.

Where the value of the asset is within the IHT nil rate band even when added to other assets in the estate.

Where the asset's owner is young and healthy.

Reasons not to make the election

The life expectancy of the donor is short due to age or illness and the income tax charge for a relatively short period of time will be substantially less than the IHT charge.

The amount of the POA charge is below the £5,000 de minimis.

The donor does not want to pass the IHT burden to the donee.

The election must be made by 31 January in the year following that in which the charge would first apply. In other words if it would apply for 2015/16 the election should have been made by 31 January 2017. HMRC will however allow a late election at their discretion.

What now?

The rules undoubtedly make effective tax planning with the family home more difficult. However they do not rule it out altogether and the ideas we mention below may be appropriate depending on your circumstances.

Sharing arrangements

Where a share of your family home is given to a family member (say an adult child) who lives with you, both IHT and the POA charge can be avoided. The expenses of the property should be shared. This course of action is only suitable where the sharing is likely to be long term and there are not other family members who would be compromised by the making of the gift.

Equity release schemes

Equity release schemes whereby you sell all or part of your home to a commercial company or bank have been popular in recent years. Such a transaction is not caught by the POA rules.

If the sale is to a family member, a sale of the whole property is outside the POA rules but the sale of only a part is caught if the sale was on or after 7 March 2005. There is no apparent logic in this date.

The cash you receive under such a scheme will be part of your IHT estate but you may be able to give this away later.

Wills

Wills are not affected by the regime and so it is more important than ever to ensure you have a tax-efficient Will.

Summary

This is a complex area and professional advice is necessary before embarking on any course of action. The POA rules are limited in their application but having said that they have the potential to affect transactions undertaken as long ago as March 1986.

How we can help

Please do contact us if you have any questions or would like some IHT planning advice.

Insuring Your Business

When starting a new business, you will no doubt recognise the need for insurance. It can provide compensation and peace of mind should things go wrong but can also represent a significant cost.

In this factsheet we consider the different types of insurance you need to consider.

Compulsory insurance

Employers' liability insurance is compulsory to cover your employees. By law you must have at least £5 million of cover and come from an authorised insurer, although a minimum of £10 million is now provided by most policies. You must display the certificate of insurance in the workplace. If your business is not a limited company, and you are the only employee or you only employ close family members, you do not need compulsory employers' liability insurance. Limited companies with only one employee, where that employee also owns 50% or more of the company's shares, have also been exempt from compulsory employers' liability insurance.

Motor vehicles liability insurance is also compulsory and must cover third party insurance: this is the legal minimum.

Optional insurance

Other categories of insurance are optional and a decision as to whether or not you need cover under any given heading will depend on the nature of your business and an assessment of the risks.

Public liability

Although strictly this is not compulsory you will almost certainly feel that you need cover under this heading. It covers claims for damages to third parties.

Property

You can think about limiting cover to specific risks such as fire and flood or providing more general cover. Consider the level of cover you would need for the premises (if you own the building), equipment and stock. If you rent your premises then you should check that the landlord has the appropriate cover.

Theft

If your business does not involve expensive items of equipment then you might decide to pass on this one, at least initially. If you do decide to provide cover for theft then an insurer will require a reasonable minimum level of security.

Professional indemnity

This is only likely to be necessary if you give advice which could make you liable. It protects against any loss suffered by your customers as a result of negligent advice. In some professions it is compulsory – examples being the law, accountancy and financial services. However it is common in other sectors such as computer consultancy and publishing.

Business interruption

This covers compensation for lost profits and extra costs if your business is disrupted, due to say a fire. It is also referred to as 'consequential loss' insurance.

Key man

A small business is often dependent on key members of staff. What would happen if they became seriously ill or died? Do you need to consider insurance cover to pay out in such a situation?

Specialised insurance

A whole host of different policies cover a range of specialist situations – for example engineering insurance and computer policies.

Working from home

If you are planning to start your new business from home then don't assume that your normal household insurance will be enough. It will not usually cover business risks. It is possible to obtain special 'working from home' policies.

Shopping around

It may be stating the obvious but it is important to shop around to get the best deal. You should obtain several quotes and always be wary of cheap deals. A personal recommendation may be the best way to decide.

Level of cover

Again it may be stating the obvious but too much cover and your cash flow will suffer, too little and the consequences can be catastrophic.

Consider the level of cover you need. With buildings and equipment make sure you are covered for the full replacement cost.

If there is to be an excess on any policy make sure that it is set at a sensible level.

How we can help

Please talk to us if you would like any further help on insuring your business.

Internet and Email Access Policy

In order to protect the firm, its employees, customers and suppliers, all members of staff should be given a copy of the firm's policy regarding acceptable use of IT resources – particularly internet, email access, and data protection policies. It may also be necessary to have a separate Bring Your Own Device (BYOD) policy covering the use of personal devices and to what extent (if any) these are permitted to connect to corporate information systems.

Any such policies should form part of the contract of employment - to the extent that any breaches of the policy could result in disciplinary action, and in some cases even dismissal.

Having an acceptable use policy not only helps protect the organisation's exposure to rogue software, legal action, and loss of corporate/personal data but can also help in disputes with employees.

Email

Employees need to be wary of the content of all emails they send. One email sent without thought as to the potential repercussions can have unintended consequences for both the employee and organisation.

Illegal material

Due to the uncensored nature of the material on the internet, there are a large number of websites which contain offensive, obscene and illegal (in the UK) material. Employees should not access such sites.

Viruses and phishing

Innocent looking websites and emails have been used to tempt users to download material which has been found to contain a virus, or to disclose company, or personal confidential data they would not normally impart.

Personal phones, personal headsets and use of social networks

Firms may wish to include references to the use of personal phones, personal headsets and social networking. The use of these or restrictions on the use of these will very much depend on the working environment.

Model policy statement

To minimise these kinds of potential problems, employers should consider setting out a policy statement for all employees embracing internet and email access.

A suggested policy statement is shown below which you may find useful as a starting point.

Policy and scope

The company/firm (delete as appropriate) sees the internet and the use of email as an important business tool.

Staff are encouraged to enhance their productivity by using such tools - but only in accordance with the guidelines set out in this document.

The internet is largely unregulated and uncensored and we have a duty of care to protect the security of the company's/firm's internal information, our customers, our suppliers and our employees from malevolent, obscene and illegal material.

Monitoring - Optional paragraphs 1

With this in mind, the company/firm reserves the right to monitor emails and internet sites visited on an employee basis. However, this will only be performed where there is a suspicion of behaviour which breaches the company's 'email and internet access' policy.

Staff under surveillance will be informed, by management, that they are being monitored.

Covert monitoring will only be performed in exceptional circumstances and only when sanctioned by a senior officer(s) of the company/firm.

Monitoring - Optional paragraphs 2

With this in mind, the company/firm reserves the right to monitor email and internet traffic. However, individual users will not be identified in the monitoring process.

It will be assumed that all staff understand and agree to the policies unless a director (partner) is notified otherwise. Any exceptions are to be appended to the employee's contract of employment and signed by a director (partner) and the employee.

All the company's/firm's resources, including computers, access to the internet and email are provided solely for business purposes.

The purpose of this policy is to ensure that you understand to what extent you may use the computer(s) owned by the company/firm for private use and the way in which access to the internet should be used within the company/firm, to comply with legal and business requirements.

This policy applies to all employees of the company/firm and failure to comply may lead to disciplinary action in line with the Disciplinary Procedure. In addition, if your conduct is unlawful or illegal you may be personally liable.

General principles

A computer and internet access is provided to you, to support the company's/firm's activities.

Private use of computers and the internet is permitted subject to the restrictions contained in this policy. Any private use is expected to be in the employee's own time and must not interfere with the person's job responsibilities. Private use must not disrupt IT systems or harm the company/firm's reputation.

You should exercise caution in any use of the internet and should never rely on information received or downloaded without appropriate confirmation of the source.

Access to the internet and email

All/The following users have access to the internet and email from all/the following PCs...

Personal use

The internet may not be accessed for personal use during normal hours of employment. Occasional use for personal reasons is allowed outside working hours, however the restrictions set out in 'Browsing/downloading material' (below) must be adhered to.

Personal emails may not be sent/received unless in an emergency and with prior authority from a manager.

[Optional paragraph on Personal use of mobile phones, personal headsets and social networking]

Emails and email attachments

Emails must conform to the same rules as issuing correspondence on the company's/firm's headed paper.

Optional sentence - Emails must be authorised by either a director/partner (or manager).

Emails must not contain controversial statements/opinions about organisations or individuals. In particular, racial or sexual references, disparaging or potentially libellous/ defamatory remarks and anything that might be construed as harassment should be avoided.

Emails must not contain offensive material.

Emails containing a virus must not knowingly be sent.

Emails coming from an unknown source must not be opened but disclosed to management (see Disclosure).

Emails sent externally, must contain the company's/firm's disclaimer (see sample below)

Emails (sent and received) must be stored in the appropriate client files and use the same naming conventions which are used to store letters and other correspondence.

Browsing/downloading material

Only material from bona fide business, commercial or governmental websites should be browsed/downloaded.

No other material should be browsed/downloaded. This specifically includes games, screensavers, music/video and illegal, obscene or offensive material.

Laptops/portables and portable media devices

a) Travelling with laptops/portables

- Laptops are liable to be inspected by authorities particularly if travelling by air/sea/rail, both within and outside the UK. Where an employee has a company's/ firm's laptop they must ensure that it does not knowingly contain illegal material.
- Laptops containing corporate data should be encrypted.

b) Using laptops/portables on remote connections

- Company's/firm's laptops may be used for email/ internet use without being connected to the corporate server. Appropriate security software to allow such access and to control viruses, should be installed.

c) Using portable media devices

- Portable media devices include USB drive, CDs, DVDs etc
- Where these contain confidential corporate or personal data, the data contained on these devices should be encrypted.

Disclosure

Employees have a duty to report the following to management:

- suspect emails/email attachments/websites
- obscene/illegal material found on a PC
- persistent use of the internet for personal reasons
- persistent downloading of illegal/obscene/offensive material
- loss of corporate data or loss of machines and devices containing corporate data

Disciplinary

A breach of any of the policies is a disciplinary matter.

Illegal activities will also be reported to the relevant authorities.

Inappropriate use

Computers are a valuable resource to our business but if used inappropriately may result in severe consequences to both you and the company/firm. The company/firm is particularly at risk when you have access to the internet. The nature of the internet makes it impossible to define all inappropriate use. However you are expected to ensure that your use of computers and the internet meets the general requirements of professionalism.

Specifically, during any use of the computer or internet you must not:

- copy, upload, download or otherwise transmit commercial software or any copyrighted materials belonging to the company/firm or other third parties
- use any software that has not been explicitly approved for use by the company/firm
- copy or download any software or electronic files without using virus protection measures approved by the company/firm
- visit internet sites or download any files that contain indecent, obscene, pornographic, hateful or other objectionable materials
- make or post indecent, obscene, pornographic, hateful or otherwise objectionable remarks, proposals or materials on the internet
- reveal or publicise confidential or proprietary information (including personal data) about the company/firm, our employees, clients and business contacts.

The following activities are expressly forbidden:

- the deliberate introduction of any form of computer virus
- seeking to gain access via the internet to restricted areas of the company's/firm's computer system or another organisation's or person's computer systems or data without authorisation or other hacking activities
- downloading corporate information onto portable media devices (such as USB drive or CD) unless management has expressly approved this activity
- uploading personal/private information (for example music, films or photographs) from portable media devices (such as USB drive or CD) onto a local or network drive, unless management has expressly approved this activity.

Monitoring

At any time and without notice, we maintain the right and ability to examine any systems and inspect and review any and all data recorded in those systems. Any information stored on a computer, whether the information is contained on a hard drive, computer disk or in any other manner may be subject to scrutiny by the company/firm. This examination helps ensure compliance with internal policies and the law. It supports the performance of internal investigations and assists the management of information systems.

In order to ensure compliance with this policy, the company/firm may employ monitoring software to check on the use of the internet and block access to specific websites to ensure that there are no serious breaches of the policy. We specifically reserve the right for authorised personnel to access, retrieve, read and delete any information that is created by, received or sent as a result of using the internet, to assure compliance with all our policies. Such monitoring will be used for legitimate purposes only.

Sample eMail disclaimer

This email and all attachments it may contain are confidential and intended solely for the use of the individual to whom it is addressed. Any views or opinions presented are solely those of the author and do not necessarily represent those of [the company/firm]. If you are not the intended recipient, be advised that you have received this email in error and that any use, dissemination, printing, forwarding or copying of this email is strictly prohibited.

Please contact the sender if you have received this email in error.

Companies Act 2006 emails and websites

Changes to Company law mean that, every company must include their company registration number, place of registration and registered office address on corporate forms and documentation (this includes emails and websites).

In particular, all external emails must include this information - whether as part of the corporate signature or as part of the corporate header/footer.

How we can help

We will be more than happy to provide you with assistance in formulating an acceptable use policy, or if any additional information is required.

IR35 Personal Service Companies

The 'IR35' rules are designed to prevent the avoidance of tax and national insurance contributions (NICs) through the use of personal service companies and partnerships.

The rules do not stop individuals selling their services through either their own personal companies or a partnership. However, they do seek to remove any possible tax advantages from doing so.

Summary of approach

Removal of tax advantages

The tax advantages mainly arise by extracting the net taxable profits of the company by way of dividend. This avoids any national insurance contributions (NICs) which would generally have been due if that profit had been extracted by way of remuneration or bonus.

The intention of the rules is to tax most of the income of the company as if it were salary of the person doing the work.

To whom does it apply?

The rules apply if, had the individual sold his/her services directly rather than through a company (or partnership), he/she would have been classed (by HMRC) as employed rather than self-employed.

For example, an individual operating through a personal service company but with only one customer for whom he/she effectively works full-time is likely to be caught by the rules. On the other hand, an individual providing similar services to many customers is far less likely to be affected.

Planning consequences

The main points to consider if you are caught by the legislation are:

- the broad effect of the legislation will be to charge the income of the company to NICs and income tax, at personal tax rates rather than corporate tax rates
- there may be little difference to your net income whether you operate as a company or as an individual
- to the extent you have a choice in the matter, do you want to continue to operate through a company?
- if the client requires you to continue as a limited company, can you negotiate with the client for increased fees?
- if you continue as a limited company you need to look at the future company income and expenses to ensure that you will not suffer more taxation than you need to.

The last point is considered in more detail below.

Employment v self-employment

One of the major issues under the rules is to establish whether particular relationships or contracts are caught. This is because the dividing line between employment and self-employment has always been a fine one.

All of the factors will be considered, but overall it is the intention and reality of the relationship that matters.

The table below sets out the factors which are relevant to the decision.

HMRC will consider the following to decide whether a contract is caught under the rules

Mutuality of obligation	the customer will offer work and the worker accept it as an ongoing understanding?
Control	the customer has control over tasks undertaken/hours worked etc?
Equipment	the customer provides all of the necessary equipment?
Substitution	the individual can do the job himself or send a substitute?
Financial risk	the company (or partnership) bears financial risk?

Basis of payment	the company (or partnership) is paid a fixed sum for a particular job?
Benefits	the individual is entitled to sick pay, holiday pay, expenses etc?
Intention	the customer and the worker have agreed there is no intention of an employment relationship?
Personal factors	the individual works for a number of different customers and the company (or partnership) obtains new work in a business-like way?

Exceptions to the rules

If a company has employees who have 5% or less of the shares in their employer company, the rules will not be applied to the income that those employees generate for the company.

Note however that in establishing whether the 5% test is met, any shares held by 'associates' must be included.

How the rules operate

The company operates PAYE & NICs on actual payments of salary to the individual during the year in the normal way.

If, at the end of the tax year - ie 5 April, the individual's salary from the company, including benefits in kind, amounts to less than the company's income from all of the contracts to which the rules apply, then the difference (net of allowable expenses) is deemed to have been paid to the individual as salary on 5 April and PAYE/NICs are due.

Allowable expenses:

- normal employment expenses (eg travel)
- certain capital allowances
- employer pension contributions
- employers' NICs - both actually paid and due on any deemed salary
- 5% of the gross income to cover all other expenses.

Where salary is deemed in this way:

- appropriate deductions are allowed in arriving at corporation tax profits and
- no further tax/NICs are due if the individual subsequently withdraws the money from the company in a HMRC approved manner (see below).

Points to consider from the working of the rules

Income and expenses

The income included in the computation of the deemed payment on 5 April includes the actual receipts for the tax year.

The expenses are those incurred by the company between these two dates.

In order to perform the calculations, you need to have accurate information for the company's income and expenses for this period. You may need to keep separate records of the company expenses which will qualify as 'employee expenses'.

Timing of corporation tax deduction for deemed payment

A deduction is given for the deemed payment against profits chargeable to corporation tax as if an expense was incurred on 5 April. This means that relief is given sooner where the accounting date is 5 April.

Pension contributions

Payments made by your company into a personal pension plan will reduce the deemed payment. This can be attractive as the employer's NICs will be saved in addition to PAYE and employee's NICs.

Other points to consider

Extracting funds from the company

For income earned from contracts which are likely to be caught by the rules, the choices available to extract funds for living expenses include:

- paying a salary
- borrowing from the company and repaying the loan out of salary as 5 April approaches
- paying interim dividends.

The advantage of paying a salary is that the tax payments are spread throughout the year and not left as a large lump sum to pay on 19 April (22 for cleared electronic payment). The disadvantage is fairly obvious!

Borrowing from the company on a temporary basis may mean that no tax is paid when the loan is taken out, but it will result in tax and NICs on the notional interest on the loan. There may also be a need to make a payment to HMRC equal to 32.5% (25% for loans made before 6 April 2016) of the loan under the 'loans to participators' rules.

The payment of dividends may be the most attractive route. If a deemed payment is treated as made in a tax year, but the company has already paid the same amount to you or another shareholder during the year as a dividend, you will be allowed to make a claim for the tax on the dividend to be relieved to avoid double taxation.

The company must submit a claim identifying the dividends which are to be relieved.

Example of payment of dividend

Mr Arthur owns 100% of the share capital of Arthur Ltd. All the income of the company is caught by the IR35 rules. Accounts are prepared to 5 April 2017. An interim dividend of £20,000 is paid on 30 September 2016. The deemed payment on 5 April 2017 is £80,000.

There is no immediate tax cost of the dividends being paid out either to the company or to the shareholder.

The company will pay tax and NICs on the deemed payment of £80,000 in the normal way ie on 19 April 2017.

The company can make a claim for the £20,000 dividend not to be treated as a dividend for tax purposes in Mr Arthur's hands.

Getting ready for 5 April

There is a tight deadline for the calculation of the deemed payment and paying HMRC. The key dates are:

- the deemed payment is treated as if an actual payment had been made by the company on 5 April
- tax and NICs have to be paid to HMRC by 19 April
- final RTI submissions showing details of the deemed payment has to be submitted to HMRC by 19 April.
- Where a provisional payment of tax and National Insurance contributions has been made because it has not been possible to accurately calculate the deemed payment and deductions by 19 April, then any adjustments should be reported via an Earlier Year Update (EYU) submitted electronically to HMRC before the following 31 January. However, interest on overdue tax is chargeable from 19 April if tax and NICs are underpaid on the basis of provisional figures.

It is therefore in your interests to have accurate information on the company's income and expenses on a tax year basis and, in particular, separate records of the amount of the company expenses which will qualify as 'employee expenses'.

Partnerships

Where individuals sell their services through a partnership, the rules are applied to any income arising which would have been taxed as employment income if the partnership had not existed.

In other words, where a partnership receives payment under an 'employment contract':

- income of the partnership from all such contracts in the year (net of allowable expenses as described above) are deemed to have been paid to the individuals on 5 April as salary from a deemed employment with PAYE/NICs due accordingly and
- any amount taxed in this way as if it were employment income is not then taxed as part of the partnership profits.

Partnerships excluded from the rules

Many partnerships are not caught by the rules even if one or more of the partners performs work for a client which may have the qualities of an employment contract.

The rules will only apply to partnerships where:

- an individual, (either alone or with one or more relatives), is entitled to 60% or more of the profits or
- all or most of the partnership's income comes from 'employment contracts' with a single customer or
- any of the partners' profit share is based on the amount of income from 'employment contracts'.

Penalties

Where a personal service company or partnership fails to deduct and account for PAYE/NICs due under the rules, the normal penalty provisions apply.

If the company or partnership fails to pay, it will be possible for the tax and NICs due to be collected from the individual as happens in certain circumstances under existing PAYE and NIC legislation.

Intermediaries - travel and subsistence

From 6 April 2016, changes to the rules are introduced to restrict tax relief for travel and subsistence expenses for workers engaged through an employment intermediary, such as a recruitment agency or a personal service company.

No relief will be allowed for home to work travel and subsistence where a worker:

- personally provides services to another person
- is employed through an employment intermediary
- is under (the right of) the supervision, direction or control of any person, in the manner in which they undertake their work.

Employment intermediary will be defined as a person, other than the worker or the client, who carries on a business (whether or not with a view to profit and whether or not in conjunction with any other business) of supplying labour.

Where a personal service company is also within the scope of the IR35 legislation this measure will only apply to those contracts where a deemed employment payment is made, or would be made if all the individual's remuneration was not being taken as employment income. In these circumstances the supervision, direction or control test will not be used.

Managed Service Companies (MSCs)

MSCs had attempted to avoid the IR35 rules. The types of MSCs vary but are often referred to as 'composite companies' or 'managed PSCs'. HMRC had encountered increasing difficulty in applying the IR35 rules to MSCs because of the large number of workers involved and the labour-intensive nature of the work. Even when the IR35 rules had been successfully applied, an MSC often escaped payment of outstanding tax and NIC as they have no assets and could be wound up.

The government has introduced legislation which applies to MSCs. The rules:

- ensure that those working in MSCs pay PAYE and NIC at the same level as other employees
- alter the travel and subsistence rules for workers of MSCs to ensure they are consistent with those for other employees
- allow the recovery of outstanding PAYE and NIC from 'specified persons', primarily the MSC directors, if the amounts cannot be recovered from the company.

MSCs are required to account for PAYE on all payments received by individuals.

Off-payroll working in the public sector

Changes have been made to the IR35 rules in relation to engagements in the public sector. These changes:

- move the decision of whether to apply the IR35 rules from the individual worker's own service company to the public sector body, agency or third party paying them
- the public sector engager or agency is treated as an employer for the purposes of tax and Class 1 NICs (including employer NICs) and the amount paid to the worker's intermediary will be deemed to be a payment of employment income to that worker
- the 5% allowance used by the worker's intermediary for certain business expenses is removed for those contracts with the public sector.

HMRC have provided a new digital tool to help identify whether engagements fall within the new rules, which will apply to contracts entered into, or payments made, on or after 6 April 2017.

Off-payroll working extension to the private sector

The government will consult in 2018 on how to tackle non-compliance with the IR35 rules in the private sector. A possible next step would be to extend the public sector reforms to the private sector.

How we can help

We can advise as to the best course of action in your own particular circumstances. If IR35 does apply to you we can help with the necessary record keeping and calculations so please do contact us.

Land and Buildings Transaction Tax

Land and Buildings Transaction Tax (LBTT) is payable by the purchaser in a land transaction which occurs in Scotland. These types of transaction would include a simple conveyance of land such as buying a house but also creating a lease or assigning a lease.

Who pays the tax?

LBTT is payable by the purchaser in a land transaction occurring in Scotland.

What is a land transaction?

A transaction will trigger liability if it involves the acquisition of an interest in land. This will include a simple conveyance of land such as buying a house, creating a lease or assigning a lease.

When is the tax payable?

The tax has to be paid when a contract has been substantially performed. In cases where the purchaser takes possession of the property on completion, that will be the date. However, if the purchaser effectively takes possession before completion - known as 'resting on contract' - that will be regarded as triggering the tax.

Land and Buildings Transaction Tax

LBTT is payable on land and property transactions in Scotland with an effective date on or after 1 April 2015.

Residential property	**Rate %**
£0 - £145,000	0
£145,001 - £250,000	2
£250,001 - £325,000	5
£325,001 - £750,000	10
£750,001 and over	12

The rates apply to the portion of the total value which falls within each band.

Higher rates for additional residential properties

Higher rates of LBTT are charged in Scotland on purchases of additional residential properties (above £40,000), such as buy to let properties and second homes.

The main target of the higher rates is purchases of buy to let properties or second homes. However, there will be some purchasers who will have to pay the additional charge even though the property purchased will not be a buy to let or a second home. The 18 month rules set out below will help to remove some transactions from the additional rates (or allow a refund). Care will be needed if an individual already owns, or partly owns, a property and transacts to purchase another property without having disposed of the first property.

The higher rates are three percentage points above the LBTT rates shown in the table above. The higher rates potentially apply if, at the end of the day of the purchase transaction, the individual owns two or more residential properties.

Some further detail:

- purchasers will have 18 months to claim a refund of the higher rates if they buy a new main residence before disposing of their previous main residence
- purchasers will also have 18 months between selling a main residence and replacing it with another main residence without having to pay the higher rates
- a small share in a property which has been inherited within the 18 months prior to a transaction will not be considered as an additional property when applying the higher rates
- there will be no exemption from the higher rates for significant investors
- LBTT has been enacted with 18 month periods rather than 36 months which applies for Stamp Duty Land Tax (SDLT).

Non-residential	Rate %
£0 - £150,000	0
£150,001 - £350,000	3
£350,001 and over	4.5

The Scottish government has LBTT calculators which work out the amount of LBTT payable. The calculators can be found at www.revenue.scot/land-buildings-transaction-tax/tax-calculators.

For transactions prior to 1 April 2015 see the factsheet on SDLT.

LBTT and first-time buyer relief

In the Scottish Draft Budget 2018-19, the Scottish government announced that it will introduce a new LBTT relief for first-time buyers of properties up to £175,000.

The relief will raise the zero tax threshold for first-time buyers from £145,000 to £175,000, and, according to the Scottish government, 80% of first-time buyers in Scotland will pay no LBTT at all. The Scottish government also announced that first-time buyers buying a property above £175,000 will also benefit from the relief on the portion of the price below the threshold.

The Scottish government announced that it will launch a consultation on the policy before introducing the first-time buyer relief in 2018/19. The relief for first-time buyers paying SDLT on first homes was introduced from 22 November 2017.

How we can help

If you are planning to enter into an arrangement to purchase land, we can advise you of the precise impact of LBTT on the transaction so please contact us.

Land Transaction Tax

From 1 April 2018, a new Land Transaction Tax (LTT) replaces Stamp Duty Land Tax (SDLT) in Wales. LTT is broadly consistent with SDLT, but also introduces some key changes. Here, we outline these.

Who pays the tax?

LTT is payable by the purchaser of residential or non-residential property in a land transaction occurring in Wales from 1 April 2018. For land transactions prior to 1 April 2018 see our factsheet on SDLT.

What is a land transaction?

A transaction will trigger liability to LTT if it involves the acquisition of an interest in land. This will include a simple conveyance of land, such as buying a house, creating a lease or assigning a lease.

LTT is operated by the WRA, and individuals who are liable to the tax must complete and submit an LTT return (see later).

When is the tax payable?

Individuals must send an LTT return and pay the tax due to the WRA within 30 days of the day after completion (or other effective date of the transaction). Penalties and interest may be charged if you fail to file your LTT return or pay the necessary tax within the 30 days after the day of completion.

In some circumstances, buyers are not required to send a LTT return or pay LTT. These include instances where:

- no money has exchanged hands
- a property is left to you and you are not required to make a payment for the transfer of the property
- property ownership is transferred to you as a result of a divorce or the dissolution of a civil partnership
- freehold property has been purchased for less than £40,000
- a new or assigned lease of seven years or more is purchased, and the premium is less than £40,000 and the annual rent is less than £1,000
- a new or assigned lease of less than seven years is purchased, and the amount you pay is less than the residential or non-residential LTT zero rate threshold.

What if my property straddles the Wales-England border?

For cross-border cases, a home buyer will only be required to pay SDLT on the English part of the transaction. An individual may have to also pay LTT to the Welsh Revenue Authority (WRA) for the Welsh part of the transaction.

Proposed LTT rates from 1 April 2018

During the 2018/19 Welsh Draft Budget, Finance Secretary for Wales, Mark Drakeford, outlined new LTT rates, which take effect from 1 April 2018. These are shown in the table below:

Residential (£)	Rate (%)	Non-residential (£)	Rate (%)
Up to 180,000	0	Up to 150,000	0
180,000 - 250,000	3.5	150,000 - 250,000	1
250,000 - 400,000	5	250,000 - 1,000,000	5
400,000 - 750,000	7.5	Over 1,000,000	6
750,000 - 1,500,000	10		
Over 1,500,000	12		

Increase in the LTT starting threshold

Unlike SDLT, LTT does not provide any relief for first-time homebuyers in Wales.

However, during the Welsh government's 2018/19 Draft Budget, Finance Secretary for Wales, Mark Drakeford, announced an increase in the starting threshold for LTT from £150,000 to £180,000, effective from April 2018.

Mr Drakeford stated that the increase in the starting threshold will help to 'reduce the tax burden for around 24,000 homebuyers' in Wales.

The Welsh government anticipates that, under LTT, around 80% of first-time homebuyers will pay no tax.

If contracts were entered into after 22 November for the purchase of property in Wales, the following conditions will apply:

- Relief can be claimed if completion occurs before 1 April 2018, provided that the conditions for relief are met;
- If the completion occurs on or after 1 April 2018, the transaction will be liable to LTT.

How we can help

If you are planning to enter into an arrangement to purchase land, we can advise you of the precise impact of LTT on the transaction, so do please contact us.

Legal Working in the UK

In line with the Immigration, Asylum and Nationality Act 2006, it is a criminal offence to employ anyone who does not have an entitlement to work in the UK, or undertake the type of work you are offering. Any employer who does not comply with the law may face a fine of up to £20,000 per offence. Further, if employers knowingly use illegal migrant labour it could carry a maximum five year prison sentence and/or an unlimited fine.

In addition, since December 2016, section 38 of the Immigration Act 2016 allows immigration officers to close a business for up to 48 hours if there is a reasonable suspicion that they employ foreign workers illegally and they have previously committed specific offences of illegal working. The closure notice might then be cancelled or an illegal working compliance order could be sought, one result of which could be closure of the premises for up to 12 months.

Here we provide an overview of the documentation required to ensure that your business does not fall foul of the law.

The rules

The increasing trend of illegal immigrants entering the UK has led to a rise in forged documentation, as well as grounds for certain employers to take advantage of cheap labour.

To combat this, the Home Office reviewed the law in this area and regulations were introduced on 1 May 2004.

Documentation requirements

An employer must obtain and retain a certified copy of any one or combination of the original documents included in List A or List B (Group 1 and 2). Those validated from List A will require no further checks, however, documents provided from List B must be followed up when the document or notice expires.

List A

- an ID Card or British passport identifying the holder is a British citizen; or
- an ID Card or European Economic Area (EEA) national passport or national identity card identifying the holder as a national of the EEA or Switzerland; or
- a registration certificate or document certifying permanent residence issued by the Home Office to a national of an EEA country or Switzerland; or
- a permanent residence card issued by the Home Office or Border and Immigration Agency to a family member of a national of a EEA country or Switzerland; or
- a current Biometric Immigration Document (Biometric Residence Permit) issued by the Home Office indicating their right to stay indefinitely in the UK or has no time limit on their stay; or
- a current passport endorsed to show the holder is exempt from immigration control, is allowed to stay indefinitely in the UK or has no time limit on their stay.

Or a combination of the following:

An official document giving the person's permanent national insurance number and name, plus:

- a current immigration status document issued by the Home Office with an endorsement indicating that the person named in it can stay indefinitely in the UK, or has no time limit on their stay; or
- a full UK birth certificate or a birth certificate issued in the Channel Islands, the Isle of Man, or Ireland; or
- a full adoption certificate issued in the UK which includes the name(s) of at least one of the holder's adoptive parents; or
- an adoption certificate issued in the Channel Islands, the Isle of Man, or Ireland; or
- a certificate of registration or naturalisation stating that the holder is a British citizen.

List B Group 1

- a current passport endorsed to show that the holder is able to stay in the UK and is allowed to do the work in question provided it does not require the issue of a work permit; or
- a current Biometric Immigration Document issued by the Home Office which indicates that the holder is able to stay in the UK and is allowed to do the work in question; or
- a current residence card (including an Accession Residence Card or a Derivative Residence Card) issued by the Home Office to a family member of a national of a EEA country or Switzerland; or

- a current Immigration Status Document issued by the Home Office with an endorsement indicating that the person named in it can stay in the UK and this allows them to do the type of work you are offering when produced in combination with an official document, giving the person's permanent national insurance number and name issued by a Government agency or previous employer.

List B Group 2

- A Certificate of Application issued by the Home Office to a family member of a national of an EEA country or Switzerland stating that the holder is permitted to take employment which is less than 6 months old, when produced in combination with a Positive Verification Notice from the Home Office Employer Checking Service; or
- An Application Registration Card issued by the Home Office stating that the holder is permitted to take employment, when produced in combination with a Positive Verification Notice from the Home Office Employer Checking Service; or
- A Positive Verification Notice issued by the Home Office Employer Checking Service to the employer or prospective employer, which indicates that the named person may stay in the UK and is permitted to do the work in question.

The points-based system

The Government has introduced a merit-based points system for assessing non-EEA nationals wishing to work in the UK. The system consists of five tiers, each requiring different points. Points will be awarded to reflect the migrant's ability, experience, age and, when appropriate, the level of need within the sector the migrant will be working.

The five points-based system tiers consist of:

- **tier 1** - highly-valued skilled workers with exceptional talent, for whom no job offer or sponsoring employer is required (for example, doctors, scientists and engineers);
- **tier 2** - skilled individuals with a proven English language ability who have a job offer to fill gaps in the UK labour force (for example, nurses, teachers and engineers);
- **tier 3 (currently suspended)** - low skilled workers filling specific temporary labour shortages (for example, construction workers for a particular project);
- **tier 4** - students;
- **tier 5** - youth mobility and temporary workers (for example, musicians coming to play in a concert).

Sponsorship

Under tier 2, the employer sponsors the individual, who makes a single application at the British Embassy in his or her home country for permission to come to the UK and take up the particular post. The individual's passport will be endorsed to show that the holder is allowed to stay in the UK (for a limited period) and is allowed to do the type of work in question.

UK based employers wishing to recruit a migrant under tiers 2 or 5: Temporary Workers will have to apply for a sponsor licence. To gain and retain licences, employers are required to comply with a number of duties, such as appointing individuals to certain defined positions of responsibility, having effective HR systems in place, keeping proper records and informing the UK Visas and Immigration (UKVI) if a foreign national fails to turn up for work.

There is a charge of £1,476 (£536 for charities and for employers with no more than 50 employees) for a licence to sponsor tier 2 migrants. This fee buys a four-year licence.

Once an employer has obtained its sponsorship licence, it can access an online system operated by the UKVI through which it can issue its own certificates of sponsorship to potential migrant workers. The UKVI determines the number of certificates to be allocated to a particular employer. Each certificate of sponsorship takes the form of a unique reference number to be provided by the employer to its potential recruit, who will then be able to apply for entry clearance into the UK at the British Embassy in his or her home country.

The fee for each application for a certificate of sponsorship for a tier 2 worker is £199. Certificates are free for citizens of Croatia, Macedonia and Turkey.

Skilled migrant workers who apply to settle in the UK from April 2016 under the tier 2 general and sportsperson categories of the points-based system are required to earn at least £35,000 (or the appropriate amount for their job, if higher). Employers that do not hold a licence cannot recruit non-EEA workers.

From April 2017 there is an additional immigration skills charge of £1,000 per tier 2 worker per year, or £364 for small businesses and charities.

Identity cards

Identity cards for foreign nationals are currently issued to some categories of foreign nationals from outside the EEA and Switzerland. Other immigration applicants continue to receive a sticker (vignette) in their passport.

With effect from 1st January 2014, EEA nationals from Bulgaria and Romania who wish to work in the UK no longer need an accession worker card or registration certificate.

Since July 2013, EEA nationals from Croatia were able to move and reside freely in any EU State. However, the UK is applying transitional restrictions and as such, Croatians wishing to work in the UK will need to obtain an accession worker authorisation document (permit to work). Before starting employment, employers will need to make document checks to confirm if the Croatian has unrestricted access to the UK labour market as they are exempt from work accession or they hold a valid work authorisation document allowing them to carry out the type of work in question.

If you are licensed to sponsor skilled workers or students from outside the EEA or Switzerland under the points-based system, you can use a migrant's identity card - which provides evidence of the holder's nationality, identity and status in the UK - to check their right to work or study here.

Checking procedures

The following checks must also be carried out to ensure that each document also relates to the prospective employee in question:

- ensure that any photograph and date of birth is consistent with the appearance of the individual
- if more than one document is produced, ensure that the names on each are identical. Otherwise further explanation and proof will be necessary (for example, a marriage certificate)
- check expiry dates. Follow-up checks must be conducted on the expiry date. When a Certificate of Application or an Application Registration Card is presented as evidence as right to work, or the employee has no acceptable documents because they have an outstanding application to the Home Office or appeal against an immigration decision, the follow-up verification check is required six months after the date of the initial check
- carry out ongoing checks on individuals who joined on or after 29 February 2008 and who have been granted only limited leave to remain and work in the UK
- take copies of original documents only - sign and date to certify
- before employing an individual who requires a tier 2 visa, be prepared to demonstrate that a recruitment search has been carried out according to the requirements under tier 2 of the points-based system
- where a recruitment agency is used to recruit an overseas national, ask the agency to prove that it has carried out all the necessary checks on the individual to ensure that he or she has the right to work in the UK.

To ensure that there is no discrimination, it is recommended that all potential employees are asked to produce original documents indicating they have the right to work in the UK.

If you have any doubts as to whether documents are genuine or sufficient to prove an employee's entitlement to work in the UK you are encouraged to access the Employer Checking Service, which is provided through the Home Office's Employers' Helpline: 0300 1234 699, or online service www.gov.uk/employee-immigration-employment-status.

How we can help

We will be more than happy to provide you with assistance or any additional information required. Please do not hesitate to contact us.

Limited Liability Partnerships

Most important features of LLPs

The key advantage of a LLP compared with a traditional partnership is that the members of the LLP (it is very important that they should not be called partners but members) are able to limit their personal liability if something goes wrong with the business, in much the same way as shareholders in a company have always been able to do. Of course anyone lending money to the LLP such as a bank may still require personal guarantees from the members, as they frequently do with directors/ shareholders in a company.

Where business owners have wanted to limit their personal liability in the past, they have normally set up companies and any profits made by those companies are subject to corporation tax. Dividends paid by the companies can then be taken as income of the shareholders. LLPs are taxed quite differently in that the profits are treated as the personal income of the members as if they had run their business as a partnership. The taxation of companies and partnerships is very different but taxation should not be the main consideration in choosing a business vehicle. However, some LLP members can be taxed as if they are employees in certain circumstances (see Tax treatment for certain LLP members). We would be very pleased to discuss the impact of this in any particular case.

LLPs must produce and publish financial accounts with a similar level of detail to a similar sized limited company. LLPs must submit accounts and an annual return to the Registrar of Companies each year. This publication requirement is far more demanding than the position for non-incorporated partnerships and specific accounting rules may lead to different profits from those of a normal partnership. The filing deadline is nine months after the period end. Companies House provides a useful guide to the requirements in respect of LLP accounts.

Setting up LLPs or converting an existing partnership

A LLP is set up by a legal incorporation process which involves sending certain documents to the Registrar of Companies along with the relevant fee. Although it is not legally necessary, every LLP should have a thorough and comprehensive members' agreement in place and needs to have taken legal or professional advice about the issues that should be covered by this agreement. In the absence of a members' agreement the law makes a number of assumptions about the LLP which may not reflect what the individual members intended should there be a dispute.

Existing partnerships can convert to a LLP by exactly the same process of incorporation and providing there are no changes in membership or in the way in which the partnership operates, there may well be no impact on the partnership's tax position. Again care and advice needs to be taken before any decisions are made.

It is not possible for a limited company to convert into a LLP and there will be a significant legal and taxation impact where a LLP takes over the business of a company.

Companies House provides a useful guide to the legislation and background to Limited Liability Partnerships.

Which businesses might want to use a LLP?

The types of business that LLPs were originally designed for were professional partnerships such as lawyers, surveyors and accountants. In many of these cases, though not all, they have not been able to operate through limited companies because of restrictions from their professional associations and the option of using a LLP offers some advantages.

However other businesses may also benefit from using LLPs, particularly new start-ups who might otherwise have formed limited companies.

What liability might members of a LLP have if something goes wrong?

Because LLPs are relatively new compared to other forms of businesses, there are no decisions yet by the courts where something has gone wrong. This is therefore a hard question to answer but it looks as if the following describes the position as most people understand it at present:

- if, for example, a member of a LLP were to give bad advice to a client and the client suffered a loss as a result, the client may be able to take the LLP to court and be awarded appropriate compensation
- in certain circumstances it could be possible that the member who actually gave the advice may also be required by a court to pay compensation to the client

- it is however probable that any other members who were not directly involved in the advice will not have any personal liability. In a normal partnership it is quite possible that they would have had a personal liability.

It will still be essential for LLPs (and individual members) who might find themselves in this position to have suitable insurance cover.

The other area that needs to be considered is to do with what the law calls unlawful or insolvent trading. In just the same way as company directors can be prosecuted for these offences, members of a LLP can also be prosecuted (and can be disqualified from being a member of a LLP in the future).

A decision to use a LLP?

Increasing numbers of LLPs are being created, despite take up being relatively slow to begin with. Initially many LLPs were start ups but an increasing number of conversions are being made. Any decision to convert an existing partnership or to set up a new business using a LLP is a complex one, involving legal, accounting and tax issues.

Tax treatment for certain LLP members

The LLP is a unique entity as it combines limited liability for its members with the tax treatment of a traditional partnership. Individual members can be deemed to be self-employed and taxed on their respective profit shares.

However, deemed self-employed status is not automatic for all members. For example, individuals who would normally be regarded as employees in high-salaried professional areas such as the legal and financial services sectors originally benefited from self-employed status for tax purposes which resulted in a loss of employment taxes payable. As a result the tax treatment of certain LLP members was changed so that their taxes are paid under PAYE.

The rules apply when an individual is a member of an LLP and three conditions are met. The conditions are:

- There are arrangements in place under which the individual is to perform services for the LLP, in their capacity as a member, and it would be reasonable to expect that the amounts payable by the LLP in respect of their performance of those services will be wholly, or substantially wholly, disguised salary. An amount is disguised salary if it is fixed or, if variable, it is varied without reference to the overall profits of the LLP.
- The mutual rights and duties of the members and the LLP and its members do not give the individual significant influence over the affairs of the LLP.
- The individual's contribution to the LLP is less than 25% of the disguised salary. The individual's contribution is defined (broadly) as the amount of capital which they contributed to the LLP.

How we can help

We would be delighted to discuss these issues with you and demonstrate what the impact on your business would be. Please contact us for further information.

Managing Absence

Recent surveys indicate that the adverse impact of absence on business profitability today is significant, with thousands of man hours lost every day. Recent statistics show that an average of 4.3 days are lost each year per employee with a median cost of £522 per employee. Approximately two-thirds of working time lost to absence is accounted for by short-term absences of up to seven days.

We consider below the main principles of effective absence management.

Good absence management procedures

The majority of businesses surveyed (94%) confirm that tightening of policies to review attendance has a major influence on controlling levels of absence, particularly when three fifths of all absence is for minor illness of less than five days duration.

The difference between short and long-term absence

When managing sickness absence issues, employers need to distinguish between short-term and long-term absences. Where the absence consists of short but persistent and apparently unconnected absences then, after suitable investigation, disciplinary action may be appropriate. However, this is not a suitable course of action in relation to longer-term sickness absence management.

Short term absence procedures

There are a number of key steps in managing short-term absence.

- Establish a clear procedure that employees must follow, for example, the use of a return to work interview with line management and completion of self-certification forms even for one day of absence. This will ensure that everyone is aware that monitoring takes place and there is a complete record of absence.
- Establish a system of monitoring absence and regularly review this for emerging trends. Frequent absences could perhaps be evidence of malingering but on the other hand could be a symptom of a deeper problem. Tangible statistics can provide useful warning signals to prompt early action and avoid problems in the future.
- Return to work interviews should always be undertaken by the individual's immediate line manager, which will ensure that clear reasons for taking time off from work emerge. This will give managers the opportunity to get to the root cause of an absence which could be a symptom of a deeper problem.
- If the issues are personal and not work related, the employer should decide on the amount of flexibility he or she is prepared to give to enable the individual to address their issue.
- If there may be an underlying medical condition the employer should consider requesting a medical report to support the level of absence; there may be a hidden underlying condition and links to disability discrimination may not be immediately apparent.
- All employees should be made aware that any abuse of the sick pay provisions will result in disciplinary action.
- If there is no good medical reason for the absences the employee should be counselled and told what improvement is expected and warned of the consequences if no improvement is seen.
- If there are medical reasons for the absence, consider any links to the Equality Act 2010, for example, does the absence relate to hospital appointments or treatment required; if so, the employer is required to make reasonable adjustments which includes allowing time off for treatment.
- If the situation reaches a stage where the employee is to be dismissed and there is no defined medical condition, it may be on the grounds of misconduct. Here the employer must be able to show that a fair procedure has been followed taking into account the nature and length of the illness, past service record and any improvement in the attendance record.
- If the employee has a recognised medical condition that is not a disability but the absence rate is unacceptably high, it may be possible to dismiss fairly for some other substantial reason after following the due process. Again length of service and the availability of suitable alternative employment are relevant factors to consider before reaching a decision.

Long-term absence procedures

The key steps in managing long-term absence include:

- absence procedures, monitoring and return to work interviews are as important as in the case of short-term absence

- it is always prudent to gather medical advice to assess whether the employee's condition amounts to a disability and also the capability of the employee to undertake their role going forward
- it is important to be specific about the information required from the medical report for example the nature of the illness, the ability of the individual to undertake their role, having provided a detailed description of responsibilities, the length of time the illness is likely to last, and any reasonable adjustments that would ease the situation
- upon receipt of the medical evidence a process of consultation and discussion should take place with the individual (welfare visit) subject to any recommendation of the doctor
- it is important to listen to the employee's proposals for their return to work
- if the cause of the illness is work related, the root cause should be investigated. Employers should discuss ways to reduce the influencing factors, for example, increased support, training or reallocation of duties. Could the employee return to work on a staged basis or on a part time basis for a short period?
- ensure all steps are recorded in writing to confirm what is expected of the employee and also what steps the employer is going to take, so there is no confusion and all actions taken are seen to be reasonable
- if the employee is to be dismissed it is likely to be on the basis of capability, however care will be needed to ensure all the requirements of the Equality Act 2010 have been considered and to demonstrate that a fair procedure has taken place.

Definition of disability

The definition of what constitutes a disability can be split into three parts:

- the employee must be suffering from a physical or mental impairment
- the impairment must have a substantial effect on the ability to carry out normal day-to-day activities, which would include things like using a telephone, reading a book or using public transport. Substantial means more than minor or trivial
- the effect must be long-term, in other words have already lasted for at least 12 months or be likely to last that long.

The Equality Act 2010 includes new protection from discrimination arising from disability. This includes indirect discrimination, associative discrimination and discrimination by perception.

Discrimination arising from disability

A person discriminates against a disabled person if:

- a person treats a disabled person unfavourably because of something arising in consequence of the disabled person's disability, and
- a person cannot show that the treatment is a proportionate means of achieving a legitimate aim.

However, this does not apply if a person shows that they did not know, and could not reasonably have been expected to know, that a disabled person had the disability.

Reasonable adjustments

If a medical report identifies a disability, in accordance with the Equality Act, an employer has a duty to make reasonable adjustments. This is quite broad and may mean physical adjustments to premises or the provision of equipment to assist the employee in carrying out their duties. It can also mean adjustments to the role itself by removing certain duties and reallocating them, changes in hours or place of work, or the provision of further training and supervision. It may also include transferring to any other vacant post subject to suitability.

In other words quite a number of steps are required of an employer if they are to establish a fair dismissal for capability in relation to an employee who has been absent for a long term of sickness.

How we can help

Please contact us if we can provide any further assistance or additional information.

Micro Entity Accounting

Small companies, which qualify as 'micro-entities', have a choice of accounting standards:

- to use the same accounting standard – FRS 102 – as larger UK companies but using a reduced disclosure regime (section 1A) within the standard, or
- to apply an alternative standard - FRS 105.

FRS 102 introduced some significant accounting challenges including more widespread use of 'fair value' accounting so there may be a temptation to use FRS 105 as fair value accounting must not be applied. However this may not always be the best choice for the company.

Qualifying as a micro-entity

The main criterion is based on size limits. The company has to meet two out of three size limits, for two consecutive years:

- turnover of £632,000,
- total assets of £316,000 and
- 10 or fewer employees (averaged throughout the year).

Certain financial services firms, such as credit institutions and insurers, and also charities, are excluded from qualifying and there are special rules if the company is part of a group.

Simplified accounts

Accounts prepared under FRS 105 need consist of only a simplified Profit & Loss Account (the accounts filed at Companies House need not include this), a Balance Sheet and four notes to the balance sheet.

Company law presumes that micro-entity accounts prepared as above give a true and fair view. This means that the company is not required to add any further disclosure. If instead the company opts for the reduced disclosure regime under FRS 102, there may be a need for extra disclosure to ensure that the accounts give a true and fair view.

Simpler accounting

FRS 105 imposes simpler accounting treatment compared to FRS 102. There are numerous differences between FRSs 102 and 105 but the three most significant are likely to be:

Revaluation / fair value of assets

This is not permitted under FRS 105. By contrast, FRS 102 permits (and in some cases requires) some assets to be measured at fair value annually.

Avoiding the need to obtain regular fair values may prove more convenient and less costly for the business. However, if the company is currently revaluing properties and has significant loans and other debts against these properties, using FRS 105 would mean re-measuring the properties at 'depreciated cost', which could reduce the balance sheet value considerably.

Fewer intangible assets

Under FRS 105, fewer intangible assets are recognised than under FRS 102. For instance, if the company were to acquire a business, the purchase price will be divided between tangible assets and liabilities and goodwill – the company would not need to identify separate individual intangible assets such as customer lists and brand names. It also means, however, that internally-generated intangibles such as development costs cannot be treated as assets; instead, such costs must be expensed through profits as incurred.

No more deferred tax

FRS 105 does not allow companies to recognise deferred tax. By contrast, FRS 102 includes deferred tax more frequently than before.

Other things to consider

The relatively brief information presented within micro-entity accounts means that less financial detail is available to the public (via the filed accounts at Companies House). Directors may find this an advantage; however, it remains to be seen whether this lack of information could damage the company's credit-rating. The shareholders of the company will also receive less information in their members' accounts.

Directors can provide more information in the accounts than the statutory minimum, should they prefer to do so. We will be happy to supplement the minimum statutory information with extra analysis so that directors have enough financial detail to make informed decisions in running the business.

We want to ensure that directors are prepared and informed about the accounting choices for the company, which include (but are not limited to) the issues we have covered above. Please do get in touch.

How we can help

We can help you to find an appropriate source of grant funds and also assist with your business plan and detailed application. Contact us to find out more.

Money Laundering and the Proceeds of Crime

There are tough rules to crack down on money laundering and the proceeds of crime. These rules affect a wide range of people and we consider how your organisation may be affected.

Money laundering - a definition

Most of us imagine money launderers to be criminals involved in drug trafficking or terrorism or to be someone like Al Capone. However, legislation in the last two decades has expanded significantly the definition of what we might have traditionally considered as money laundering. While the general principles remain; money laundering involves turning the proceeds of crime into apparently 'innocent' funds with no obvious link to their criminal origins, what should be remembered is that the definition includes the proceeds of any criminal offence, regardless of the amount involved.

The rules

The key pieces of legislation are:

- the Proceeds of Crime Act 2002 (The Act) as amended by the Serious Organised Crime and Police Act 2005, and
- the Money Laundering Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (The 2017 Regulations).

The Act

When first issued the Act re-defined money laundering and the money laundering offences, to cover the proceeds of any crime (not just serious crime) and created mechanisms for investigating and recovering the proceeds of crime. The Act also revised and consolidated the requirement for those affected to report knowledge, suspicion or reasonable grounds to suspect money laundering. See the panel below for some of the more technical terms of the Act.

The 2017 Regulations

The 2017 Regulations came into effect on 26 June 2017 and replaced the 2007 Regulations. As before, the Regulations contain the detailed procedural requirements for those affected by the legislation, but have been significantly updated and in some areas, expanded compared to the previous version.

Proceeds of Crime Act - technical terms

Under the Act, someone is engaged in money laundering if they:

- conceal, disguise, convert, transfer or remove (from the United Kingdom) criminal property
- enter into, or become concerned in, an arrangement which they know or suspect facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person or
- acquire, use or have possession of criminal property.

Property is criminal property if it:

- constitutes a person's benefit in whole or in part (including pecuniary and proprietary benefit) from criminal conduct or
- represents such a benefit directly or indirectly, in whole or in part and
- the alleged offender knows or suspects that it constitutes or represents such a benefit.

Who is caught by the legislation?

The regulated sector

The legislation relates to anyone in what is termed as the 'regulated sector', which includes but is not limited to:

- credit institutions
- financial institutions
- auditors, insolvency practitioners, external accountants and tax advisers
- independent legal professionals
- trust or company service providers
- estate agents
- high value dealers
- casinos.

The implications of being in the regulated sector

Those businesses that fall within the definition are required to establish procedures to:

- identify and assess the risks of money laundering and terrorist financing to which they are subject and manage that risk
- apply customer due diligence procedures (see below)
- keep appropriate records
- appoint a Money Laundering Nominated Officer (MLNO) to whom money laundering reports must be made
- appoint a member of the board or senior management as the officer responsible for compliance with the Regulations (this may be the same person as the MLNO)
- establish systems and procedures to forestall and prevent money laundering
- monitor and manage compliance with, and communication of, the policies and procedures and
- provide relevant individuals with training on money laundering and awareness of their procedures in relation to money laundering.

If your business is caught by the definition you may have received guidance from your professional or trade body on how the requirements affect you and your business. Those of you who are classified as High Value Dealers may be interested in our factsheet of the same name, which considers how the 2017 Regulations affect those who make or receive high value cash payments.

The implications for customers of those in the regulated sector

As you can see from the list above, quite a wide range of professionals and other businesses are affected by the legislation. Those affected must comply with the laws or face the prospect of criminal liability (both fines and possible imprisonment) where they do not.

Customer due diligence (CDD)

Under The Regulations, if you operate in the regulated sector, you are required to undertake CDD procedures on your customers. These CDD procedures need to be undertaken for both new and existing customers.

CDD procedures involve:

- identifying your customer and verifying their identity. This is based on documents or information obtained from reliable sources independent of the customer
- identifying where there is a beneficial owner who is not the customer. It is necessary for you to take reasonable measures on a risk sensitive basis, to verify the beneficial owner's identity, so that you are satisfied that you know who the beneficial owner is. The objective here is to confirm who the beneficial owners are, so for example obtaining evidence that corroborates the entries in the PSC register (people with significant control – see separate factsheet) and not simply checking the ID of the persons listed. The beneficial owners of the business are those individuals who ultimately own or control the business or who benefit from the transaction.
- obtaining information on the customer's circumstances and business, including the intended nature of the business relationship.

You must apply CDD when you:

- establish a business relationship (this now includes forming a company for the customer)
- carry out an occasional transaction that amounts to a transfer of funds exceeding €1,000
- carry out an occasional transaction (for example a one off transaction valued at €15,000 or more) where not a casino or high value dealer
- carry out a cash transaction of €10,000 or more if a high value dealer
- carry out certain gambling transactions of €2,000 or more if a casino
- suspect money laundering or terrorist financing
- doubt the reliability or adequacy of documents or information previously obtained for identification.

CDD measures must also be applied on a risk sensitive basis at other times to existing customers. This could include when a customer requires a different service, or where there is a change in the customer's circumstances. Businesses must consider why the customer requires the service, the identities of any other parties involved and any potential for money laundering or terrorist financing.

The purpose of the CDD is to confirm the identity of the customer. For the customer's identity to be confirmed, independent and reliable information is required. Documents which give the strongest evidence are those issued by a government department or agency or a Court, including documents filed at Companies House. For individuals, documents from highly rated sources that contain photo identification, eg passports and photo driving licences, as well as written details, are a particularly strong source of verification.

The law requires the records obtained during the CDD to be maintained for five years after a customer relationship has ended. It also requires customers to be notified about how their personal data will be processed and who the data controller is (being the name of the entity/person registered under Data Protection rules).

Enhanced due diligence

Enhanced CDD and ongoing monitoring must be applied where:

- the risk of money laundering or terrorist financing is assessed as high
- the customer is established in a high-risk third country
- the client is a politically exposed person or a family member/known close associate of one (this now includes UK PEPs)

- false or stolen identification documents or information have been provided and there is still an intention to act for the customer
- a transaction is complex and unusually large or has an unusual pattern and there is no apparent legal or economic purpose
- by its nature there is a higher risk of money laundering or terrorist financing
- there is a 'correspondent relationship' with another credit or financial institution.

Additional procedures are required over and above those applied for normal due diligence in these circumstances.

The above list was amended in the 2017 Regulations, particularly in now defining politically exposed persons (PEPs) more widely, including where they are from the UK rather than just a foreign state. With the increased use of internet or other remote transactions the requirement to always apply enhanced due diligence where not meeting the customer face to face has been removed. However, additional checks will be required to give assurance that identity has been correctly ascertained and verified if the customer has not been seen.

Reporting

As mentioned above, the definition of money laundering includes the proceeds of any crime. Those in the regulated sector are required to report knowledge or suspicion (or where they have reasonable grounds for knowing or suspecting) that a person is engaged in money laundering, ie has committed a criminal offence and has benefited from the proceeds of that crime. These reports should be made in accordance with agreed internal procedures, firstly to the MLNO, who must decide whether or not to pass the report on to the National Crime Agency (NCA).

The defences for the MLNO are:

- reasonable excuse (reasons such as duress and threats to safety might be accepted although there is little case law in this area)
- they followed Treasury approved guidance.

The Courts must take such guidance into account.

National Crime Agency (NCA)

The NCA is the UK crime-fighting agency with national and international reach and the mandate and powers to work in partnership with other law enforcement organisations to bring the full weight of the law to bear in cutting serious and organised crime. Part of the role of the NCA is to analyse the suspicious activity reports (SARs) received from those in the regulated sector and to then disseminate this information to the relevant law enforcement agency.

The Regulations require those in the regulated sector to report all suspicions of money laundering to the NCA. By acting as a coordinating body, the NCA collates information from a number of different sources. This could potentially build up a picture of the criminal activities of a particular individual, which only become apparent when looked at as a whole. This information can then be passed on to the relevant authorities to take action. More detail on the activities of the NCA can be found on their website www.nationalcrimeagency.gov.uk/ .

Is your business vulnerable?

Criminals are constantly searching for new contacts to help them with their money laundering or terrorist financing. Certain types of business are more vulnerable than others. For example, any business that uses or receives significant amounts of cash can be particularly attractive. To counter this, the Regulations require businesses that deal in goods and accept cash equivalent to €10,000 or more to register with HMRC and implement anti-money laundering procedures. Such businesses are known as High Value Dealers (HVD).

You can imagine that if a drug dealer went along to a bank on Monday morning and tried to pay in the weekend's takings, the bank would notice it and report it unless the sum was relatively small. If criminals can find a legitimate business to help them by taking the cash and pretending that it is the business's money being paid in (in exchange for a proportion!), then that business can put the cash into the bank without any questions being asked.

Take, for example, the mobile telephone business that has had a fairly steady turnover of £10,000 per week for the last couple of years but suddenly begins to bank £100,000 in cash each week. Without a clear, rational and plausible explanation, this type of suspicious activity would clearly be reported to the NCA.

Perhaps a less obvious example of possible money laundering could be where an individual comes into an antiques shop and offers to buy a piece of furniture for £12,000 in cash. Not too many sellers would have insisted upon a cheque in the past! Now the HVD will need to consider the risk of money laundering and as a minimum carry out customer due diligence before accepting such a cash amount. This person may be a money launderer who then goes to another shop and sells the antique for say £8,000, being quite prepared to suffer the apparent loss. This time the criminal asks for a cheque that can then be paid innocently into a bank account, making the money look legitimate.

The legislation aims to put a stop to this type of activity. Those in the regulated sector are required to report any transactions that they have suspicions about. Also, it is not simply the more obvious examples of suspicious activities that have to be reported. For the majority of those regulated, the government has insisted upon there being no de minimis limits within the legislation. This means that very small proceeds of crime have to be reported to the NCA.

Tipping off

There is also an offence known as 'tipping off' under the Act. This is what would happen if a person in the regulated sector were to reveal that a suspicious activity report had been made, say for example about a customer, to that customer. Where this disclosure would be likely to prejudice any investigation by the authorities, an offence may be committed. A tipping off offence may also be committed where a person in the regulated sector discloses that an investigation into allegations that a money laundering offence has been committed is being contemplated or carried out, and again, that this disclosure would be likely to prejudice that investigation. As you can imagine therefore, if you were to ask an accountant or estate agent whether they had made any reports about you, they would not be able to discuss this with you at all. If they did, they could break the law and could face a fine or imprisonment, or both.

How we can help

The legislation brings a number of professions and businesses into the regulated sector. Complying with the requirements of both the Act and the 2017 Regulations requires those affected to introduce a number of procedures to ensure that they meet their legal responsibilities. If you would like to discuss how the legislation could affect you and your organisation please do contact us.

Money Laundering - High Value Dealers

The Money Laundering Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (the Regulations) apply to a number of different businesses which include (amongst others) accountants and auditors, tax advisers and dealers in high value goods. The Regulations contain detailed procedural anti-money laundering requirements for those affected.

HMRC have been given the responsibility for supervising High Value Dealers. We outline below the main requirements of the Regulations and the registration process.

Which businesses are affected?

Businesses that meet the definition of a High Value Dealer (HVD) are affected by the Regulations.

A business is defined as a HVD where it deals in goods and accepts or makes cash payments equivalent to €10,000 or more in any currency, including where a customer deposits cash directly into the HVD's bank account or when they pay cash to a third party for the benefit of the HVD. This applies whether the transaction is executed as a single transaction or in several instalments which are linked.

Businesses that only occasionally accept or make such transactions are included. Businesses that do not accept large amounts of cash or deal in services are not affected.

Generally the businesses most affected will be those that deal in high value or luxury goods, works of art, cars, jewellery and yachts.

However, the regime applies to everyone who accepts sufficiently large amounts of cash for goods and any business could potentially be registerable.

If a HVD does not intend to accept high value payments it should have a written policy to this effect and ensure that employees and customers are aware of this policy.

How is my business affected?

If your business does deal in goods and does accept or make large cash payments then you are required to:

- put anti money laundering systems in place so that you can identify and prevent money laundering and report any suspicious transactions (see below)
- register with HMRC
- pay an annual fee based on the number of premises through which you trade. There is also an application charge for new registrations
- report any changes through the registration year.

If you are unsure whether you will sell goods for this amount and do not register, you will be obliged to refuse any payments or refunds in cash equivalent to €10,000 (or more) or insist upon payment by another means, such as cheque, credit or debit card.

Background to the requirements

Why was this regime introduced?

The aim of the regime is to help protect society and to combat money laundering and the criminal activity which underlies it, including terrorism.

As money launderers have resorted to more sophisticated ways of disguising the source of their funds, new legislation and regulation aimed at catching those involved became necessary.

The primary legislation is predominantly contained within the Proceeds of Crime Act 2002 and the Terrorism Act 2000 as amended by the Terrorism Act 2006 and subsequently the Counter-Terrorism Act 2008.

The 2017 Regulations implement the EU Fourth Money Laundering Directive which aims to further improve and tighten the regime to tackle money laundering and terrorist financing.

What is money laundering?

Money laundering is the process by which criminally obtained money or other assets (criminal property) are exchanged for 'clean' money or other assets with no obvious link to their criminal origins.

Criminal property

Criminal property represents the proceeds of criminal conduct. This includes any conduct wherever it takes place, which would constitute a criminal offence if committed in the UK. It not only includes, for example, drug trafficking, tax evasion, fraud, forgery and theft but also any other criminal offence committed for profit.

It is important therefore to remember that money laundering includes the proceeds of any crime and not simply the more traditionally associated crimes such as drug trafficking and prostitution.

Under the legislation there are three principal money laundering offences covering criminal activity and two related money laundering offences:

- concealing, disguising, converting, transferring or removing (from the United Kingdom) criminal property
- making arrangements which facilitate the acquisition, retention, use or control of criminal property by or on behalf of another person
- acquiring, using or possessing criminal property
- failure to disclose knowing or suspecting or having reasonable grounds for knowing or suspecting that another person is engaged in money laundering or terrorist funding
- revealing that a disclosure of suspicion of money laundering has been made or that an investigation into money laundering offences is being carried out, or considered, where this is likely to prejudice an investigation. This is known as 'tipping off'.

HVDs must be aware of how these actions could affect their business, for example, as the proceeds of crime are spent (or laundered) within their business.

The importance of the regime

The law imposes very severe penalties on anyone involved in money laundering. The Regulations require HVDs to adopt anti money laundering procedures to protect themselves against abuse by money launderers and the risk of prosecution.

The registration process

HVDs register with HMRC using their online service. If you already have a Government Gateway account you will use this User ID and password to sign in, but otherwise you can register for an account as part of this process.

HMRC will review your application, but this can take up to 45 days. Remember that you cannot accept or make any cash payments over €10,000 until you are registered. You will receive an email when a decision has been made on your application, but you will need to sign into your account to see that decision.

Registration is required where a business:

- accepts or makes payments equivalent of €10,000 or more in cash for a single transaction or in instalments which are linked or
- takes a policy decision to carry out such transactions.

Every legal entity through which a HVD business is run must be registered. From 1 December 2017 an initial fee of £100 is payable for registration and an additional charge of £130 for each premise which is listed on the application. Annual renewals of £130 per premise apply. The 2017 Regulations require approval tests of 'key personnel' to check for relevant criminal convictions. This is a non-refundable charge of £40 per person.

Businesses that fail to register could be liable to a civil penalty if they carry out a HVD transaction.

What anti money laundering policies and procedures are required?

Your business should establish, review and maintain policies and procedures relating to:

- customer due diligence
- risk assessment and management
- the monitoring and management of compliance
- reporting
- record keeping
- internal control
- the internal communication of these policies and procedures.

Customer due diligence (CDD)

HVDs must establish the identity of any customer who makes or is refunded a total cash payment equivalent to €10,000 or more for a single transaction or linked transactions.

Establishing identity requires you to be satisfied that your customer is who they claim to be by obtaining evidence of their name, address and date of birth. For further information on CDD procedures please refer to the Money Laundering and Proceeds of Crime factsheet.

Risk assessment

The HVD must carry out a risk assessment to identify and assess the risks of money laundering and terrorist financing to which the business is subject. You must write this down, together with any underlying information that you used to make that assessment (for instance the countries in which you operate, the goods you sell, the nature of your customers etc).

Appoint an individual as the officer responsible for compliance

The Regulations require, where it is appropriate to the size and nature of your business, a member of the board (or equivalent), or senior management, to be the officer responsible for compliance with the Regulations. HMRC, as your supervisory body, must be informed of the identity of this individual when first appointed and any subsequent changes.

Appoint a Money Laundering Nominated Officer (MLNO)

This is a very important role within a HVD business and should be performed by a suitably senior person. This person can also be the person who is the officer responsible for compliance with the Regulations and again HMRC must be informed of their identity.

The main roles of the MLNO should be to:

- establish the necessary procedures to implement the requirements of the Regulations
- receive and review reports of possible money laundering from others involved in the business
- decide whether to report to the National Crime Agency (NCA).

Establish an independent audit function to assess compliance

HVDs should ensure they check that their policies are appropriate and are being properly implemented. Where necessary changes should be made to ensure everything is working properly. Larger organisations will be expected to achieve this by establishing an independent audit function, but smaller businesses might do this with perhaps an annual internal or external check of their procedures.

Screen relevant employees

When hiring new staff who will be involved in any aspect of compliance with the Regulations (eg taking large cash payments) the HVD must screen them to ensure they have the appropriate knowledge and skills for the job and to assess their conduct and integrity.

NCA

The NCA is the government body to which all suspicions of money laundering should be reported via the NCA website.

There will be times when an internal report of suspected money laundering is received by the MLNO, where the transaction is not yet complete. Under these circumstances there are specific NCA procedures to follow and you must wait until the NCA gives consent for the transaction to go ahead.

Training your staff

All customer facing staff in the business must be trained to be aware of:

- the law regarding money laundering offences and terrorist financing
- how to recognise and deal with suspicious transactions

Staff should be trained regularly on this subject and training should be repeated to ensure that staff knowledge is maintained and they are competent to apply CDD procedures. The ongoing training should ensure that staff are aware of changing money laundering practices.

Managing the risk

HVDs should:

- have a system in place to record all transactions of €10,000 or more on their accounting system and make them identifiable
- have policies and procedures in place concerning the acceptance of these large transactions.

Record keeping

The records that must be kept are:

- a copy of, or the references to, the evidence of the customer's identity obtained under the CDD procedures
- the supporting evidence and records in respect of the business relationships and occasional transactions which are the subject of CDD measures or ongoing monitoring.

In relation to the evidence of a customer's identity, businesses must keep the following records:

- a copy of the identification documents accepted and verification evidence obtained, or
- references to the evidence of a customer's identity.

How long must the records be retained for?

- Evidence of a customer's identity must be kept for 5 years beginning on the date on which the occasional transaction is completed or the business relationship ends.
- Records of transactions must be kept for 5 years beginning on the date on which the transaction is completed.
- All other records must be kept for 5 years beginning on the date on which the business relationship ends.

You must be able to rapidly respond to a query from the police or other appropriate investigator regarding a customer or past customer.

Failure to comply

Businesses may be liable to a civil penalty for failing to comply with a registration requirement. There is no upper limit on the amount of the penalty. Penalties will be for an amount that is considered appropriate for the purposes of being effective, proportionate and dissuasive.

Failing to comply with responsibilities under the Regulations could lead to either prosecution or a civil penalty. Conviction under the Regulations can incur up to two years imprisonment and / or an unlimited fine.

How we can help

If you would like to discuss any of the issues raised above please do contact us. We are able to provide comprehensive assistance with regulation and HMRC matters such as:

- HVD registration
- design and implementation of anti money laundering policies and procedures
- VAT registration and deregistration
- completion of VAT returns.

National Insurance

National insurance contributions (NICs) are essentially a tax on earned income. The NICs regime divides income into different classes: Class 1 contributions are payable on earnings from employment, while the profits of the self-employed are liable to Class 2 and 4 contributions.

National insurance is often overlooked yet it is the largest source of government revenue after income tax.

We highlight below the areas you need to consider and identify some of the potential problems. Please contact us for further specific advice.

Scope of NICs

Employees

Employees are liable to pay Class 1 NICs on their earnings. In addition a further secondary contribution is due from the employer.

For 2018/19 employee contributions are only due when earnings exceed a 'primary threshold' of £162 per week. The amount payable is 12% of the earnings above £162 up to earnings of £892 a week, the Upper Earnings Limit (UEL). In addition there is a further 2% charge on weekly earnings above the UEL. Secondary contributions are due from the employer of 13.8% of earnings above the 'secondary threshold' of £162 per week. There is no upper limit on the employer's payments. For 2017/18 the primary and secondary thresholds are £157 per week and the UEL £866.

Employer NICs for the under 21s

Employer NICs for those under the age of 21 are reduced from the normal rate of 13.8% to 0%. For the 0% rate to apply the employee will need to be under 21 when the earnings are paid.

This exemption will not apply to earnings above the Upper Secondary Threshold (UST) in a pay period. The UST is set at the same amount as the UEL, which is the amount at which employees' NICs fall from 12% to 2%. The weekly UST is £892 for 2018/19 up from £866 a week in 2017/18. Employers will be liable to 13.8% NICs beyond this limit. The employee will still be liable to pay employee NICs.

NICs for apprentices under 25

Employer NICs are also reduced to 0% for apprentices under 25 who earn less than the upper secondary threshold (UST) which is £892 per week and £46,350 per annum for 2018/19 (up from £866 per week and £45,000 per annum for 2017/18). Employers are liable to 13.8% NICs on pay above the UST. Employee NICs are payable as normal.

An apprentice needs to:

- be working towards a government recognised apprenticeship in the UK which follows a government approved framework/standard
- have a written agreement, giving the government recognised apprentice framework or standard, with a start and expected completion date.

Employers need to identify relevant apprentices and generally assign them NICs category letter H to ensure the correct NICs are collected.

Employers need to ensure they amend the contributions letter when the apprenticeship ends or the employee turns 25.

Benefits in kind

Employers providing benefits such as company cars for employees have a further NICs liability under Class 1A. Contributions are payable on the amount charged to income tax as a taxable benefit.

Most benefits are subject to employer's NICs. The current rate of Class 1A is the same as the employer's secondary contribution rate of 13.8% for benefits provided.

The self-employed

NICs are due from the self-employed as follows:

- flat rate contribution (Class 2)
- variable amount based on the taxable profits of the business (Class 4).

From 6 April 2015 liability to pay Class 2 NICs arises at the end of each year, generally collected as part of the final self assessment payment.

The amount of Class 2 NICs due is calculated based on the number of weeks of self-employment in the year and calculated at a rate of £2.95 per week for 2018/19 (£2.85 per week for 2017/18).

Self employed individuals with profits below the Small Profits Threshold of £6,205 are not liable to Class 2 NICs but have the option to pay Class 2 NICs voluntarily at the end of the year so that they may protect their benefit rights.

Class 4

For 2018/19 Class 4 is payable at 9% on profits between £8,424 and £46,350. In addition there is a further 2% on profits above £46,350. The thresholds are £8,164 and £45,000 for 2017/18.

Abolition of Class 2 NICs

In a change to the date originally announced, the government has confirmed that from 6 April 2019 Class 2 contributions will be abolished and Class 4 contributions reformed to include a new threshold (to be called the Small Profits Limit).

Access to contributory benefits for the self-employed is currently gained through Class 2 NICs. After abolition, those with profits between the Small Profits Limit and Lower Profits Limit will not be liable to pay Class 4 contributions but will be treated as if they have paid Class 4 contributions for the purposes of gaining access to contributory benefits. All those with profits at or above the Class 4 Small Profits Limit will gain access to the new State Pension, contributory Employment and Support Allowance and Bereavement Benefit.

Those with profits above the Lower Profits Limit will continue to pay Class 4 contributions.

Class 3 voluntary contributions

Flat rate voluntary contributions are payable under Class 3 of £14.65 per week for 2018/19. They give an entitlement to basic retirement pension and may be paid by someone not liable for other contributions in order to maintain a full NICs record.

From 6 April 2018 Class 3 contributions, which can be paid voluntarily to protect entitlement to the State Pension and Bereavement Benefit, will be expanded to give access to the standard rate of Maternity Allowance and contributory Employment and Support Allowance for the self-employed.

National Insurance - Employment Allowance

The Employment Allowance is available to many employers and can be offset against their employer Class 1 NICs liability. The amount of the Employment Allowance is £3,000 from 2016/17 onwards.

There are some exceptions for employer Class 1 liabilities including liabilities arising from:

- a person who is employed (wholly or partly) for purposes connected with the employer's personal, family or household affairs
- the carrying out of functions either wholly or mainly of a public nature (unless charitable status applies), for example NHS services and General Practitioner services
- employer contributions deemed to arise under IR35 for personal service companies.

From April 2015 the availability of the allowance was extended to those employing care and support workers. Please contact us if this may be relevant to you as there are specific conditions which must be satisfied.

There are also rules to limit the employment allowance to a total of £3,000 where there are 'connected' employers. For example, two companies are connected with each other if one company controls the other company.

The allowance is limited to the employer Class 1 NICs liability if that is less than the Employment Allowance.

The allowance is claimed as part of the normal payroll process. The employer's payment of PAYE and NICs is reduced each month to the extent it includes an employer Class 1 NICs liability until the Employment Allowance limit has been reached.

From 6 April 2016, companies where the director is the sole employee earning above the upper secondary threshold are no longer be able to claim the Employment Allowance.

Potential problems

Time of payment of contributions

Class 1 contributions are payable at the same time as PAYE ie monthly. Class 1A contributions are not due until 19 July (22nd for cleared electronic payment) after the tax year in which the benefits were provided.

It is therefore important to distinguish between earnings and benefits.

Earnings

Class 1 earnings will not always be the same as those for income tax. Earnings for NI purposes include:

- salaries and wages
- bonuses, commissions and fees
- holiday pay
- certain termination payments.

Problems may be encountered in relation to the treatment of:

- expense payments
- benefits.

Expense payments will generally be outside the scope of NI where they are specific payments in relation to identifiable business expenses. Round sum allowances give rise to a NI liability.

In general benefits are not liable to Class 1 NICs. There are however some important exceptions including:

- most vouchers
- stocks and shares
- other assets which can be readily converted into cash
- the payment of an employee's liability by an employer.

Directors

Directors are employees and must pay Class 1 NICs. However directorships can give rise to specific NICs problems. For example:

- directors may have more than one directorship
- fees and bonuses are subject to NICs when they are voted or paid whichever is the earlier
- directors' loan accounts where overdrawn can give rise to a NICs liability.

We can advise on the position in any specific circumstances.

Employed or self-employed

The NICs liability for an employee is higher than for a self-employed individual with profits of an equivalent amount. Hence there is an incentive to claim to be self-employed rather than employed.

Are you employed or self-employed? How can you tell? In practice it can be a complex area and there may be some situations where the answer is not clear.

In general terms the existence of the following factors would tend to suggest employment rather than self-employment:

- the 'employer' is obliged to offer work and the 'employee' is obliged to accept it
- a 'master/servant' relationship exists
- the job performed is an integral part of the business
- there is no financial risk for the 'employee'.

It is important to seek professional advice at an early stage and in any case prior to obtaining a written ruling from HMRC.

If HMRC discover that someone has been wrongly treated as self-employed, they will re-categorise them as employed and are likely to seek to recover arrears of contributions from the employer.

Enforcement

HMRC carry out compliance visits in an attempt to identify and collect arrears of NICs. They may ask to see the records supporting any payments made.

HMRC have the power to collect any additional NICs that may be due for both current and prior years. Any arrears may be subject to interest and penalties.

Please contact us for advice on NICs compliance and ways to minimise the effect of a HMRC visit.

How we can help

Whether you are an employer or employee, employed or self-employed, awareness of NICs matters is vital.

HMRC have wide enforcement powers and anti-avoidance legislation available to them. Consequently it is important to ensure that professional advice is sought so that all compliance matters are properly dealt with.

We would be delighted to advise on any compliance matters relevant to your own circumstances so please contact us.

National Minimum Wage

The National Minimum Wage (NMW) and National Living Wage (NLW) are the legal minimum wage rates that must be paid to employees. Employers are liable to be penalised for not complying with the NMW and NLW rules. HMRC are the agency that ensures enforcement of the NMW and NLW.

We highlight below the main principles of the minimum wage regulations.

Please contact us for further specific advice.

What are the rates of the NMW and NLW?

There are different levels of NMW and NLW, depending on your age and whether you are an apprentice. The rates are given in the following table:

	Rate from **1 April 2018**
NLW for workers aged 25 and over	£7.83
the main rate for workers aged 21-24	£7.38
the 18-20 rate	£5.90
the 16-17 rate for workers above school leaving age but under 18	£4.20
the apprentice rate *	£3.70

*for apprentices under 19 or 19 or over and in the first year of their apprenticeship

There are no exemptions from paying the NMW on the grounds of the size of the business.

What is the National Living Wage?

The National Living Wage (NLW) is the single hourly rate for adults aged 25 years and above. The NLW rate is not connected to the rate used by the Living Wage Foundation.

Who does the apprentice rate apply to?

The apprentice rate applies to:

- apprentices under 19
- apprentices aged 19 and over, but in the first year of their apprenticeship.

If you are of compulsory school age you are not entitled to the NMW.

Fair piece rate

In addition, there is a fair piece rate which means that employers must pay their output workers the minimum wage for every hour they work based on an hourly rate derived from the time it takes a worker working at average speed to produce the work in question. The entitlement of workers paid under this system is uprated by 20%. This means that the number reached after dividing the NMW by the average hourly output rate must be multiplied by 1.2 in order to calculate the fair piece rate.

Key questions

Who does not have to be paid the National Minimum Wage?

- The genuinely self-employed.
- Child workers - anyone of compulsory school age (ie. until the last Friday in June of the school year they turn 16).
- Company directors who do not have contracts of employment.
- Some other trainees on government funded schemes or programmes supported by the European Social Fund.
- Students doing work experience as part of a higher education course.
- People living and working within the family, for example au pairs.
- Friends and neighbours helping out under informal arrangements.
- Members of the armed forces.
- Certain government schemes at pre-apprenticeship level, such as:
  - in England, Programme Led Apprenticeships
  - in Scotland, Get Ready for Work or Skillseekers

- in Northern Ireland, Programme Led Apprenticeships or Training for Success
- in Wales, Skillbuild.

- Government employment programmes.
- European Community Leonardo da Vinci, Youth in Action, Erasmus and Comenius programmes.
- Share fishermen.
- Prisoners.
- Volunteers and voluntary workers.
- Religious and other communities.

Please note that HMRC have the power to serve an enforcement notice requiring the payment of at least the NMW, including arrears, to all family members working for a limited company.

What is taken into account in deciding whether the NMW has been paid?

The amounts to be compared with the NMW include basic pay, incentives, bonuses and performance related pay and also the value of any accommodation provided with the job.

Overtime, shift premiums, service charges, tips, gratuities, cover charges and regional allowances are not to be taken into account and benefits other than accommodation are also excluded.

What records are needed to demonstrate compliance?

There is no precise requirement but the records must be able to show that the rules have been complied with if either the HMRC or an Employment Tribunal requests this to be demonstrated. Where levels of pay are significantly above the level of the NMW, special records are not likely to be necessary.

It is recommended that the relevant records are kept for at least six years.

Normally there is not likely to be any serious difficulty in demonstrating compliance where employees are paid at hourly, weekly, monthly or annual rates but there may be difficulties where workers are paid on piece-rates and where, for example, they work as home-workers.

Where piece rates are used, employers must give each worker a written notice containing specified information before the start of the relevant pay period. This includes confirmation of the 'mean' hourly output and pay rates for doing their job.

What rights do workers have?

Workers are allowed to see their own pay records and can complain to an Employment Tribunal if not able to do so.

They can also complain to HMRC or to a Tribunal if they have not been paid the NMW. They can call the confidential helpline: 0800 917 2368.

What are the penalties for non-compliance?

The government can impose penalties on employers that underpay their workers in breach of the minimum wage legislation. The penalty can be as much as 200% of arrears owed to workers. The maximum penalty is £20,000 per worker.

The penalty is reduced by 50% if the unpaid wages and the penalty are paid within 14 days.

Periodically the government publishes a list of employers who have not complied. The reasons employers fail to comply vary and include topping up pay with tips and deducting sums for uniforms, among others.

How we can help

We will be more than happy to provide you with assistance or any additional information required. We also offer a full payroll service - please contact us if you would like more information.

Non-Domiciled Individuals

This factsheet sets out the rules which deal with the taxation in the UK of income arising outside the UK, for non UK domiciled individuals.

The issue

An individual who is resident in the UK but is not domiciled (referred to as 'non-dom') may opt to be taxed on what is termed the 'remittance basis' in respect of income and capital gains arising outside the UK. What this means is that instead of being taxed on their actual income/gain arising in the year, they are taxed on the amount of that income/gain actually brought into the UK in the tax year.

Every non-dom must give very careful consideration to their UK tax position and take extreme care in planning their overseas income and capital gains.

Claiming the remittance basis

The starting point of liability for all non-doms is that overseas income/gains are taxable on the arising basis just as they are for any UK domiciled individual. The non-dom will have the option of making a claim for the remittance basis to apply, but if they make this claim, they will automatically forfeit their personal allowance for income tax purposes and their annual exemption for CGT. This will obviously impact on their total tax liability including any UK income/gains.

The main situation where a non-dom will be able to benefit from the remittance basis without making a claim and will therefore retain their allowances is when they remit to the UK all but a maximum of £2,000 of their income and gains arising abroad in the year.

Example

Jan, who is domiciled in Poland but who has been living in the UK for five years, has rental income arising from the letting of property in Poland. Let's pose two different scenarios for 2018/19 assuming his overseas income is £5,000.

Scenario 1: He remits £1,000 to the UK – he can pay tax on the full £5,000 as it arises and he will retain his personal allowance against that and any UK source income. If he claims the remittance basis he will pay tax on £1,000 but will lose his personal allowance against that and any UK source income.

Scenario 2: He remits £3,000 to the UK. He can have the benefit of the remittance basis and pay tax on only £3,000 because he has left no more than £2,000 unremitted. He will retain his personal allowance.

Claiming the remittance basis - long term residents

What is a long term resident?

Matters become more complex and serious when an individual falls within the definition of a long term UK resident. This will arise when the individual has been resident in the UK for at least seven out of the nine UK tax years preceding the one for which liability is being considered. For these purposes a part year of residence counts as a full year. In considering the position for 2018/19 it is necessary to look at the individual's UK residence position going back as far as 2009/10 (ie to 6 April 2009). If they have been UK resident for at least seven of those years then they will be classed as a long term resident for the purpose of the remittance basis.

Example

Sanjay first came to the UK in July 2011. He will be classed as resident here from 2011/12 which will mean that he meets the seven year rule and will therefore be treated as a long term resident in 2018/19. If his residence had not commenced until July 2012 he would only have six years of residence and would not become a long term resident until 2019/20.

What are the implications of being a long term resident?

Essentially the long term resident (who must be 18 years of age or over at some time in the tax year concerned) can only claim the benefit of the remittance basis if they pay an additional £30,000 in addition to the tax on any income or gains remitted. This sum is known as the 'remittance basis charge' (RBC).

The rules surrounding this charge are complex but the 'bare bones' are as follows:

- the charge effectively represents tax on unremitted income or gains
- the non-dom nominates specific income/gains to represent this charge
- the sums nominated cannot then be charged to UK tax even if they are subsequently remitted to the UK in a later year
- the nominated income/gains are deemed to be remitted only after all other unremitted income/gains have come into the UK
- tax on the sums nominated may be eligible for relief under a double tax agreement (DTA).

The RBC is not avoided where there is a failure to nominate specific income/gains and such failure may result in duplicate or higher taxation in future years.

Example

Let us assume that Sanjay is then a long term resident for 2018/19 and that he has overseas income arising in India of £6,000. He can only secure the remittance basis for 2018/19 if he pays the RBC. Clearly it would be nonsensical for him to pay that charge to avoid tax on say for example £4,000 of income which was unremitted. He will therefore not elect for the remittance basis and will pay UK tax on the full £6,000 of income arising from India. If that income has been subject to tax in India he may be entitled to set any Indian tax against his UK liability.

Example

Sergio is a very wealthy Spaniard who has been living in the UK for seven years. He is a higher rate UK tax payer. In 2018/19 he has income of £150,000 arising in Spain and also makes a capital gain of £500,000 on the sale of a Spanish commercial property. He remits none of this to the UK in 2018/19.

He claims the remittance basis and obviously has no liability on remitted income because there is none. He will have to pay the RBC of £30,000 and must nominate income or gains to represent this sum. He could nominate £150,000 of the capital gain which, taxed at 20%, would represent a liability of £30,000.

That would satisfy the RBC and would mean that £150,000 of the gains would not be taxed if it is subsequently remitted. It would also mean, subject to the terms of the UK / Spanish DTA, that he may be eligible for relief in respect of any Spanish tax on this sum.

Higher RBC charges for some

A higher RBC charge applies for an individual that has been UK resident for 12 out of the previous 14 years. This charge is currently £60,000.

Example

If Sergio (from the previous example) has been living in the UK for say 12 years then given the same circumstances he may decide that £60,000 is too high a price to pay.

If he did decide to claim the remittance basis there is still no liability on remitted income because there is none. He would have to pay the increased RBC of £60,000 and must nominate income or gains to represent this sum. He could nominate £300,000 of the capital gain which, taxed at 20%, would represent a liability of £60,000.

That would satisfy the RBC and would mean that £300,000 of the gains would not be taxed if it is subsequently remitted. It would also mean, subject to the terms of the UK / Spanish DTA, that he may be eligible for relief in respect of any Spanish tax on this sum.

What is a remittance?

HMRC take the view that whatever method an individual uses to bring income or gains into the UK it may be treated as a remittance. The rules are very detailed and it is only possible here to give a brief outline.

Relevant person

Essentially a remittance can be caught if it is for the benefit of any person who, in relation to the taxpayer (ie the non-dom with overseas income/gains), is within the definition of a relevant person. That list includes:

- the taxpayer
- their spouse or civil partner
- a partner with whom they are living as a spouse or civil partner
- any child or grandchild under 18 years of age
- a close company in which any relevant person is a shareholder
- a trust in which any relevant person is a beneficiary.

Basic concept of a remittance

Two conditions must be in place for a remittance to arise. Firstly property, money, or consideration for a service, must be brought into the UK for the benefit of a relevant person and secondly, the funds for that property etc must be derived directly or indirectly from the overseas income and gains. These rules are much wider than the old rules. Some examples will help to explain the scope.

Example

Alex, a wealthy Canadian lives in the UK with his wife and young children. He has a significant bank deposit in Jersey which generates a large amount of income each year. Any of the following uses of that income would constitute a remittance for UK tax purposes:

- he buys an expensive car in Germany and brings it into the UK
- he opens a bank account in the UK for each of his children with funds from Jersey
- he sends his wife on an expensive weekend at a spa and the bill for the break is sent direct to Jersey for settlement
- he uses a credit card in the UK which is settled on a monthly basis out of the Jersey income.

There are some exceptions for example clothes, watches and jewellery for personal use and other goods up to a value of £1,000.

A more indirect route is also caught

In the past it had been possible to use a route known as 'alienation' to avoid the remittance basis. This would involve an individual giving someone else their overseas income and then that individual bringing the money into the UK. In the recipient's hands it would have represented capital and the remittance would have been avoided. Now such a route is not possible. Any attempt at 'alienation' which involves the funds ultimately being brought into the UK for the benefit of a relevant person will be caught as a remittance by the taxpayer. This rule is likely to cause some difficult situations.

Example

Alex gifts some of the Jersey income to an adult son. He uses the money to pay for a UK school trip for his own son. The grandson is a relevant person as far as Alex is concerned and this payment will constitute a remittance on which Alex is taxable in the UK.

Other issues

There are a number of other issues covered by the rules such as:

- transitional arrangements to deal with property acquired before 6 April 2008
- transitional arrangements to deal with payment of interest on overseas loans used to fund the purchase of a UK property
- the identification of remittances from mixed funds
- dealing with gains arising in offshore trusts.

Relief for business investment

Where a non-dom remits funds to the UK which are then invested in a qualifying business in the UK those funds are not treated as a remittance so the remittance basis may be more attractive. It should be noted, however, that a claim for the remittance basis still involves paying the appropriate RBC which may be due.

The rules for Business Investment Relief are detailed but the key elements are:

- the investment must be in shares or loans to a trading company or a company which will invest in trading companies,or a company which is a combination of the two
- the company must be unquoted
- the non-dom (or any relevant person in relation to the non-dom) must not receive any benefit from the company which is directly or indirectly attributable to the investment
- when the investment is subsequently realised the non-dom will have 45 days to either reinvest in another qualifying company or remove the funds from the UK otherwise they will be treated as a remittance in that later year.

Key changes for the long term resident non-UK domicile

A number of fundamental changes have been introduced and apply from from 6 April 2017:

- for individuals who are non-UK domiciled but who have been resident for 15 of the previous 20 tax years or
- where an individual was born in the UK with a UK domicile of origin and resumes UK residence having obtained a domicile of choice elsewhere.

Such individuals will be classed as 'deemed' UK domiciles for income tax, CGT and IHT purposes and will be assessable on worldwide income, gains and assets. They are not able to access the remittance basis.

IHT matters

The concept of deemed UK domicile has existed for many years but for IHT only. A UK deemed domicile is chargeable on worldwide assets for UK IHT rather than only on UK assets if non-UK domicile. An individual will become deemed UK domiciled for IHT at the start of their sixteenth consecutive year of UK residence (rather than at the start of their seventeenth year of residence under the rules which applied to 5 April 2017). For IHT purposes only a deemed domicile will lose deemed domicile status at the start of the fourth year of non UK residence.

IT and CGT matters

A non-UK domiciled individual who has been taxed on the remittance basis is allowed to rearrange and transfer amounts between overseas mixed fund bank accounts without being subject to the offshore transfer rules. This will allow the different elements within the accounts to be separated, thereby allowing clean capital to be remitted to the UK in priority to income and gains.

Under the rules the market value of an asset at 5 April 2017 may be used as the acquisition cost for CGT purposes when computing the gain or loss on its disposal where the asset was situated outside the UK between 16 March 2016 and 5 April 2017. This applies to any individual who becomes deemed UK domicile in April 2017, other than one who is born in the UK with a UK domicile of origin, provided that individual has been subject to a remittance basis charge for any tax year prior to 2017/18.

UK residential property

Changes are also proposed for UK residential property. Currently all residential property in the UK is within the charge to IHT if owned by a UK or non-UK domiciled individual. It is proposed that all residential properties in the UK will be within the charge to IHT where they are held within an overseas structure. This charge will apply whether the overseas structure is held by an individual or trust.

How can we help

Each individual's situation is going to have different problems. Please contact us if you would like to discuss how these rules impact on you and the steps you can take to mitigate their impact.

Occupational Pension Schemes: Trustees' Responsibilities

Many employers offer their staff an opportunity to save for their retirement through an occupational (or company) pension scheme.

Those employees who join the scheme need to have confidence that the scheme is being well run.

The role of pension scheme trustees is very important in ensuring that the scheme is run honestly and efficiently and in the best interests of the members.

We outline in this factsheet the main responsibilities of occupational pension scheme trustees.

Background

The Pensions Act 1995 (the Act) brought about a number of major changes to the way occupational pension schemes are run. The 2004 Pensions Act brought about further change and introduced, in April 2005, The Pensions Regulator (TPR) as the UK regulator of work-based pension schemes.

TPR has an important role in the pension sector. Its objectives, as set out in legislation, are to:

- protect the benefits of members of work-based pension schemes
- protect the benefits of members of personal pension schemes (where there is a direct payment arrangement)
- promote, and to improve understanding of the good administration of work-based pension schemes
- reduce the risk of situations arising which may lead to claims for compensation being payable from the Pension Protection Fund
- maximise employer compliance with employer duties and the employment safeguards introduced by the Pensions Act 2008
- minimise any adverse impact on the sustainable growth of an employer (in relation to the exercise of the regulator's functions under Part 3 of the Pension Act 2014).

TPR has three core powers that underpin its regulatory approach:

- investigating schemes by gathering information that helps them identify and monitor risks
- putting things right where problems have been identified
- acting against avoidance to ensure that employers do not sidestep their pension obligations.

In fulfilling its role, TPR produces important guidance for those involved with pension schemes including trustees as well as auditors and actuaries. This guidance is available from TPR's website www.thepensionsregulator.gov.uk.

The Pensions Act 2008 introduced a requirement on UK employers to automatically enrol all employees in a 'qualifying auto-enrolment pension scheme' and to make contributions to that scheme on their behalf. Enrolment may be either into an occupational pension scheme or a contract based scheme.

Many contract based schemes are group personal pensions where an employer appoints a pension provider, often an insurance company, to run the scheme. The National Employment Savings Trust (NEST) is a government backed pension scheme that employers can use for auto enrolling employees.

Compliance with the regulations started from 2012 for the largest employers. The deadline for being compliant (an employer's 'staging date') is determined by the number of people in their PAYE scheme and for smaller employers is between 2012 and 2018.

Further information is available at www.tpr.gov.uk/autoenrolment.

Pension scheme classification

Employers can help promote retirement benefits for their employees in a number of ways including:

- occupational schemes
- group personal pension schemes
- stakeholder schemes.

Group personal pension schemes and stakeholder schemes are personal plans in individual member's names, where the employer simply acts as an administrator. There are no accounting or audit requirements for these types of schemes.

An occupational pension is an arrangement an employer can use to provide benefits for their employees when they leave or retire.

There are two main types of occupational pension scheme in the UK:

- salary-related schemes
- money purchase schemes.

Whatever the type of scheme, it will usually have trustees.

The role of trustees

Most company pension schemes in the UK are set up as trusts. There are two main reasons for this:

- it is necessary in order to gain most of the tax advantages
- it makes sure that the assets of the pension scheme are kept separate from those of the employer.

A trustee is a person or company, acting separately from an employer, who holds assets for the beneficiaries of the pension scheme. Trustees are responsible for ensuring that the pension scheme is run properly and that members' benefits are secure.

In fulfilling their role, trustees must be aware of their legal duties and responsibilities. The law requires trustees to have knowledge and understanding of, amongst other things, the law relating to pensions and trusts, the funding of pension schemes and the investment of scheme assets.

The law also requires trustees to be familiar with:

- certain pension scheme documents including the trust deed and rules
- the statements of investment principles and funding principles.

A code of practice has been issued by TPR explaining what trustees need to do in order to comply with the law in this area. Trustees should arrange appropriate training as soon as they are appointed and should then continue with their learning to keep their knowledge up to date. New trustees have six months from their appointment date to comply with this requirement.

Trustees' duties and responsibilities

Trustees have a number of very important duties and responsibilities, which include:

- acting impartially, prudently, responsibly and honestly and in the best interests of scheme beneficiaries
- acting in line with the trust deed, scheme rules and the legal framework surrounding pensions.

In addition to these general duties, trustees also have a number of specific duties and tasks that they must carry out. The main tasks are to ensure the following happen.

Contributions

- The employer accurately pays over contributions on time. There are strict rules covering this area.

Financial records and requirements

- The right benefits are paid out on time.
- An annual report is prepared (see annual report below).
- An auditor's statement is obtained confirming details of the payment of contributions to the scheme and, if required, an audit of the scheme accounts is arranged.

Investment

- The pension fund is properly invested in line with the scheme's investment principles and relevant law.

Professional advisers

- Suitable professional advisers are appointed as running a pension scheme is complicated and often specialist advice will be needed.

Pension scheme records

- Full and accurate accounting records are kept, which include records of past and present members, transactions into, and out of, the scheme and written records of trustees' meetings.

Members

- Members and others are provided with information about the scheme and their personal benefits.

Registration, the scheme return and collecting the levy

- TPR is provided with information required by law for the register, that the scheme's annual return is completed and the annual levy for the scheme is paid.

Related matters

Reporting to TPR

Where a breach of law takes place and it is likely to be materially significant to TPR, trustees and indeed others involved in running the scheme have a legal duty to report the breach to the regulator. Code of practice 01, 'Reporting breaches of the law' provides guidance on the factors that should be considered when deciding to make a report.

In addition, trustees also have to notify TPR when particular scheme-related events happen. These are known as 'notifiable events', also the subject of a code of practice.

The annual report

The trustees of most schemes must make an annual report available within seven months of the scheme year end. The report usually includes:

- a trustees report, containing investment, legal and administrative information about the scheme
- actuarial information, if applicable
- governance information, if applicable
- the audited accounts and audit report.

Trustees' liability

If something does go wrong with the pension scheme, trustees may be held personally liable for any loss caused as a result of a breach of trust. This could happen when, for example:

- a trustee carried out an act which is not authorised under the trust deed and scheme rules
- a trustee fails to do something that should have been done under the trust deed and scheme rules
- a trustee does not perform one or more of their duties under trust law or pension legislation or does not perform them with sufficient care.

The rules of the pension scheme might protect trustees from personal liability for a loss caused by breach of trust, except where it is due to their own actual fraud. In some cases, the employer may provide indemnity insurance for the trustees.

How we can help

We would be pleased to discuss your role as a company pension scheme trustee in more detail. We are also able to advise on the accounting and audit requirements of your scheme. Please contact us for further information.

Payroll - Basic Procedures

New employer

In order to set up a Pay As You Earn (PAYE) scheme with HMRC it is necessary to contact the New Employer's Helpline on 0300 200 3211 or register online via the GOV.UK website.

As an employer you will be responsible for operating PAYE and calculating National Insurance Contributions (NICs). There are also certain statutory payments you may have to make from time to time which you need to be aware of. These include:

- statutory sick pay (SSP)
- statutory maternity pay (SMP) and
- ordinary statutory paternity pay (OSPP)
- shared parental pay (ShPP).

A vast amount of information is available on the GOV.UK website detailing the operation of PAYE together with online calculators these can be accessed as part of the HMRC Basic PAYE tools at www.gov.uk/business-tax/paye

If requested HMRC will send you several booklets and tables to enable you to make the relevant deductions and payments to your employees. However the majority of employers use the HMRC Basic PAYE tools or equivalent software.

Real Time Information reporting

Employers, or their agents, are generally required to make regular online payroll submissions for each pay period during the year detailing payments and deductions made from employees on or before the date they are paid to the employees.

More detailed guidance and information on operating your payroll under Real Time Information can be found at www.gov.uk/paye-for-employers or in our Payroll Real Time Information factsheet.

What tax do I have to deduct?

By using the calculators provided on HMRC's website or equivalent software, you should be able to calculate the tax and NICs due in respect of your employees.

The tax due for a particular employee is calculated by reference to their gross pay with a deduction for their tax free pay which reflects their particular circumstances (using their coding notice and the pay date). The remainder of the pay is subject to tax and this is calculated using the Basic PAYE tools or software.

Tax is generally calculated on a cumulative basis, looking at the individual's circumstances for the tax year to date.

What about NICs?

NICs are payable by the employee and the employer on the employee's gross pay for a particular tax week or month and are calculated on a non cumulative basis. The NICs can be calculated using the HMRC Basic PAYE tools or equivalent software.

When do the tax and NICs have to be paid to HMRC?

The tax and NICs should be paid to HMRC by the 19th of the month following the payment. Tax months run from the 6th to the 5th of the month, so if an employee was paid on 25 July (tax month being 6 July to 5 August) the tax and NI would need to be paid over to HMRC by 19th August.

Any employer can pay electronically, if they wish, taking advantage of the cleared electronic payment date of 22nd as opposed to the usual 19th.

Employers whose average monthly payments are less than £1,500 are allowed to pay quarterly rather than monthly.

Large employers, with more than 250 employees, must pay tax and other deductions electronically.

Forms you will need to complete

You will need to complete the following forms or maintain the equivalent digital records:

- **P11 Deductions working sheet**
  This form (or a computer generated equivalent) must be maintained for each employee. It details their pay and deductions for each week or month of the tax year.
- **P60 End of year summary**
  This form has to be completed for and given to all employees employed in a tax year.

- **P45 Details of employee leaving**
  This form needs to be given to any employee who leaves and details the earnings and tax paid so far in the tax year. New employees should let you have the form from their previous employer.
- **Starter Checklist**
  When a new employee starts you will need to advise HMRC so that you can pay them under RTI. Some of the necessary information may be obtained from the P45 if the employee has one from a previous job.

Penalties

HMRC impose penalties on employers who fail to:

- make the online submissions on time
- pay the liabilities on time
- keep the necessary records
- operate PAYE or NI correctly
- make the correct statutory payments
- provide HMRC or the employees with the relevant forms on time.

It is important that employers comply with all the regulations.

Automatic enrolment pensions

Automatic enrolment places duties on employers to automatically enrol 'workers' into a work based pension scheme from a specified 'staging date'. The main duties are:

- assess the types of workers in the business
- provide a qualifying automatic enrolment pension scheme for the relevant workers
- write to most of their workers explaining what automatic enrolment into a workplace pension means for them
- automatically enrol all 'eligible jobholders' into the scheme and pay employer contributions
- complete the declaration of compliance and keep records.

More information on Pensions - Automatic Enrolment can be found in the factsheet.

How we can help

The operation of PAYE can be a difficult and time consuming procedure for those in business. We will be happy to show you how to operate PAYE correctly, offer ongoing advice on particular issues, or to carry out your payroll for you so please do contact us.

Payroll Real Time Information

We set out below details of how payroll information has to be submitted to HMRC under Real Time Information (RTI).

RTI - an introduction

Under RTI, employers or their agents are required to make regular payroll submissions for each pay period during the year, detailing payments and deductions made from employees each time they are paid. There are two main returns which an employer needs to make which are detailed below.

Full Payment Submission

The Full Payment Submission (FPS) must be sent to HMRC **on or before** the date employees are paid. This submission details pay and deductions made from an employee. The FPS must reach HMRC on or before the date of payment of the wages to employees.

Employer Payment Summary

Employers may also have to make a further return to HMRC each month, the Employer Payment Summary (EPS) to cover the following situations:

- where no employees were paid in the tax month
- where the employer has received advance funding to cover statutory payments
- where statutory payments are recoverable (such as Statutory Maternity Paternity or Shared Parental Pay) together with the National Insurance Compensation payment; or
- where CIS deductions are suffered which could be offset (companies only).

HMRC will offset the amounts recoverable against the amount due from the FPS to calculate what should be payable. The EPS needs to be with HMRC by the 19th of the month to be offset against the payment due for the previous tax month.

Payments to HMRC

Please bear in mind that under RTI HMRC are aware of the amount due on a monthly/quarterly basis. This will be part of the information reported to HMRC through the FPS and EPS.

HMRC will expect to receive the PAYE and NIC deductions less the payments each month or quarter (small employers only).

Year end procedures

At the end of the tax year a final FPS or EPS return must be made to advise HMRC that all payments and deductions have been reported to HMRC.

Some further complications

Wages

Under RTI it is not possible to put through wages at the year end of the business and assume this has been paid throughout the year, for example to utilise a family member's national insurance lower earnings limit which gives them a credit for state pension and statutory payment purposes.

Wages should be paid regularly and details provided to HMRC through the RTI system on a timely basis.

Payments which are impractical to report 'on or before'

HMRC have issued guidance covering issues such as payments made on the day of work (which vary depending on the work done) where it is impractical to report in real time. The regulations allow up to an additional seven days for reporting the payment in specified circumstances.

HMRC have also made available some guidance on exceptions to reporting PAYE information 'on or before' paying an employee which can be found at www.gov.uk/running-payroll/fps-after-payday.

Please do contact us if you would like any further help or advice on payroll procedures.

Penalties

Penalties apply where employers fail to meet their RTI filing and payment obligations.

In essence, late filing penalties apply to each PAYE scheme, with the size of the penalty based on the number of employees in the scheme. Monthly penalties of between £100 and £400 may be applied to micro, small, medium and large employers as shown below:

- 1-9 employees - £100
- 10-49 employees - £200
- 50-249 employees - £300; and
- 250 or more employees - £400.

Each scheme is subject to only one late filing penalty each month regardless of the number of returns submitted late in the month. There will be one unpenalised default each year with all subsequent defaults attracting a penalty. Rather than issue late filing penalties automatically when a deadline is missed, HMRC have confirmed that they will *'take a more proportionate approach and concentrate on the more serious defaults on a risk-assessed basis'*.

HMRC charge daily interest on all unpaid amounts from the due and payable date to the date of payment, and will raise the charge when payment in full has been made. They may also charge penalties to employers who fail to pay their PAYE liabilities on time. These penalties are 'risk assessed' and range between 1% and 4% of the amounts paid late. The first late payment will not attract a penalty.

How we can help

The operation of PAYE under RTI can be a difficult and time consuming procedure for those in business. We will be happy to show you how to operate PAYE correctly, offer ongoing advice on particular issues, or to carry out your payroll for you so please do contact us.

Pensions - Automatic Enrolment

What is automatic enrolment?

Automatic enrolment places duties on employers to automatically enrol 'workers' into a work based pension scheme. The main duties are:

- assessing the types of workers in the business
- providing a qualifying automatic enrolment pension scheme for the relevant workers
- writing to most of their workers explaining what automatic enrolment into a workplace pension means for them
- automatically enrolling all 'eligible jobholders' into the scheme and paying employer contributions
- completing the declaration of compliance and keeping records.

Assessing the types of workers in the business

Whether this is an easy or difficult task depends on the type of business. A business which uses the services of casual workers, very young or very old workers will need to spend some time in analysing its workforce. A business which only employs salaried staff will have an easier task.

A 'worker' is:

- an employee; or
- a person who has a contract to provide work or services personally and is not undertaking the work as part of their own business.

The second category is defined in the same way as a 'worker' in employment law. Such people, although not employees, are entitled to core employment rights such as the National Minimum Wage (NMW). Individuals in this category include some agency workers and some short-term casual workers.

There are three categories of workers: eligible jobholders; non-eligible jobholders; and entitled workers.

An 'eligible jobholder' is a worker who is:

- aged between 22 years and the State Pension Age
- earning over the minimum earnings threshold (currently £10,000)
- working or ordinarily working in the UK
- not already in a qualifying pension scheme.

Most workers will be eligible jobholders unless the employer already has a qualifying pension scheme. These are the workers for which automatic enrolment will be required.

Other workers (non-eligible jobholders) may have the right to 'opt in' (i.e. join a scheme) and should therefore be treated as eligible jobholders. 'Entitled workers' are entitled to join the scheme but there is no requirement on the employer to make employer contributions in respect of these workers.

The categorisation of workers can be difficult in some circumstances. Please contact us if you are unsure of how to assess the types of workers you have.

What is a qualifying automatic enrolment pension scheme?

Employers are able to comply with their obligations by using an existing qualifying pension scheme, setting up a new scheme or using the government low cost scheme - the National Employment Savings Trust (NEST).

It is important that the pension scheme chosen will deliver good outcomes for the employee's retirement savings. This may mean that an employer's existing scheme may not be appropriate as it may have been designed for the needs of higher paid and more senior employees. This may mean that NEST for example may be an appropriate scheme for employees who are not currently entitled to be a member of an existing employer scheme.

To be a qualifying automatic enrolment scheme, a scheme must meet the qualifying criteria and the automatic enrolment criteria.

The main part of the qualifying criteria requires the pension scheme to meet certain minimum standards, which differ according to the type of pension scheme. Most employers will want to offer a defined contribution pension scheme. The minimum requirements for such schemes are a minimum total contribution based on qualifying earnings, of which a specified amount must come from the employer.

To be an automatic enrolment scheme, the scheme must not contain any provisions that:

- prevent the employer from making the required arrangements to automatically enrol, opt in or re-enrol a 'jobholder'
- require the jobholder to express a choice in relation to any matter, or to provide any information in order to remain an active member of the pension scheme.

The second point above means, for example, that the pension scheme has a default fund into which the pension contributions attributable to the jobholder will be invested. The jobholder should however have a choice of other funds if they want.

We may be able to advise you on an appropriate route to take. Please contact us.

Does automatic enrolment apply to all employers?

The law came into force for very large employers on 1 October 2012 and has been rolled out with staggered implementation dates or 'staging date' by reference to the number of employees.

From October 2017, all new employers have automatic enrolment duties from the date they employ their first member of staff.

An employer can find out more about their duties at www.thepensionsregulator.gov.uk.

Communicating with your workers

Employers are required to write to all workers (except those aged under 16, or 75 and over) explaining what automatic enrolment into a workplace pension means for them.

There are different information requirements for each category of worker. For an eligible jobholder, the letter must include details of how the employee can opt out of the scheme if they wish. The letter must not, however, encourage the employee to opt out.

The Pensions Regulator (TPR) has developed a set of letter templates to help you when writing to your employees.

Automatic enrolment of eligible jobholders and payment of contributions

As part of the automatic enrolment process, employers will need to make contributions to the pension scheme for eligible jobholders. In principle, contributions will be due from the staging date but it is possible to postpone automatic enrolment for some or all employees for a period of up to three months. This may, for example, be used to avoid calculation of contributions on part-period earnings.

All businesses will need to contribute at least 3% on the 'qualifying pensionable earnings' for eligible jobholders. However, to help employers adjust, compulsory contributions will be phased in, starting at 1% before eventually rising to 3%.

There will also be a total minimum contribution which will need to be paid by employees if the employer does not meet the total minimum contribution. If the employer only pays the employer's minimum contribution, employees' contributions started at 1% of their salary, and will eventually rise 4%. An additional 1% in the form of tax relief will mean that there is a minimum 8% contribution rate.

Period	Duration	Employer minimum	Total minimum contribution
1	Employer's staging date to 5 April 2018	1%	2%
2	6 April 2018 to 5 April 2019	2%	5%
6 April 2019 onwards		3%	8%

What are qualifying pensionable earnings?

Earnings cover cash elements of pay including overtime and bonuses (gross) but minimum contributions are not calculated on all the earnings. Contributions will be payable on earnings between the lower and higher thresholds of £6,032 and £46,350 for 2018/19. The earnings between these amounts are called qualifying earnings. The thresholds are reviewed by the government each tax year.

If we do your payroll, we can help you make these calculations and tell you the deductions from pay and the payments required to the pension scheme.

Declaration of Compliance

TPR was established to regulate work-based pensions.

An employer must complete the Declaration of Compliance within five months of the staging date (or from taking on their first employee). In essence the Declaration of Compliance process requires the employer to:

- confirm the correct auto enrolment procedures have been followed; and
- provide various pieces of information such as the number of eligible jobholders enrolled.

Employers' ongoing duties

Employers continue to have ongoing duties in respect of auto-enrolment, even after their initial staging date.

Re-enrolment

Employers have a legal duty to re-enrol certain employees back into an automatic pension scheme every three years. The process involves reassessing the workforce and re-enrolling certain employees into their chosen qualifying automatic pension scheme. Employers are also required to complete the re-declaration of compliance with TPR, even if they do not have any staff to re-enrol. Re-enrolment should take place approximately three years after the original staging date.

As part of their re-enrolment responsibilities, employers are required to carry out the following tasks:

- **Choose a re-enrolment date** – there is a six month window from which to choose a date for re-enrolment. This can be either three months before or after the third anniversary of the original staging date. There is no option to postpone the re-enrolment date.
- **Reassess the workforce** – the employer will only need to assess employees who were previously auto-enrolled and have subsequently either: asked to leave (opted out) of the pension scheme; left the pension scheme after the end of the opt-out period; stopped or reduced their pension contributions to below the minimum level (and who meet the age and earnings criteria to be re-enrolled). Once the assessment is complete, employers should re-enrol eligible staff into a qualifying pension and start making contributions within six weeks of their re-enrolment date.
- **Write to those who have been re-enrolled** – the employer will need to write to each employee who has been re-enrolled into the pension scheme. This should be done within six weeks of the re-enrolment date. Template letters are available on TPR website.
- **Complete the re-declaration of compliance** – the employer is required to complete and submit the re-declaration of compliance with TPR to let them know that they have met their legal duties. This should be done within five months of the third anniversary of the staging date. An employer is required to do this even if they have not re-enrolled any staff into the pension scheme.

Remember, re-enrolment and re-declaration is a legal requirement and failure to comply with the regulations may result in a fine.

The penalties for non-compliance

Employers who fail to comply with their legal duties may be subject to enforcement action. TPR has a range of powers it can utilise when taking action for non-compliance. This can range from warning letters and statutory notices to financial penalties. Fines range from a £400 fixed penalty, to a varying daily escalating penalty of between £50 and £10,000, depending on the number of employees. In the most extreme cases the Regulator may seek a criminal prosecution.

Keeping records

Finally, an employer must keep records which will enable them to prove that they have complied with their duties. Keeping accurate records also makes good business sense because it can help an employer to:

- avoid or resolve potential disputes with employees
- help check or reconcile contributions made to the pension scheme.

Duties checker TPR guidance

TPR guidance is available for employers to help them comply with their automatic enrolment duties on their website: www.thepensionsregulator.gov.uk/en/employers.

Using the duties checker and the guidance, employers can follow a step-by-step process to comply with their duties. The guidance also includes links to tools and resources.

Changes ahead

In December 2017, following a review of the auto-enrolment system by the Department for Work and Pensions, the government proposed to change the lower age limit from 22 to 18 (while maintaining the upper age limit at the SPA). Under the proposals, those aged between 18 and the SPA would be automatically enrolled into a workplace pension scheme if they earned above £10,000 per year. Workers aged 16 to 18 and employees over the SPA would remain eligible to opt into their workplace pension scheme.

The government is also proposing to remove the lower threshold for qualifying pensionable earnings (£6,032 in 2018/19). Under the plans, employers and employees contributing to pensions via automatic enrolment would make contributions from £1 of earnings rather than from the lower threshold.

The government plans to implement the proposals in the mid-2020s.

How we can help

As you can see pensions automatic enrolment is not straightforward. Please do contact us for help and advice. We can help you to manage the road to automatic enrolment and help you to comply with the requirements when you are in automatic enrolment.

Pensions - Tax Reliefs

Types of pension schemes

There are two broad types of pension schemes from which an individual may eventually be in receipt of a pension:

- Workplace pension schemes
- Personal Pension schemes.

A Workplace pension scheme may either be a defined benefit scheme or a money purchase scheme.

A defined benefit scheme pays a retirement income related to the amount of your earnings, while a money purchase scheme instead reflects the amount invested and the underlying investment fund performance.

The number of defined benefit pension schemes has declined in recent years in part due to the regulations imposed upon the schemes and the cost of such schemes to the employer.

All employers will soon need to provide a workplace pension scheme due to auto-enrolment legislation and these are likely to be money purchase schemes.

A Personal Pension scheme is a privately funded pension plan but can also be funded by an employer. These are also money purchase schemes. Self-employed individuals can have a Personal Pension.

We set out below the tax reliefs available to members of a money purchase Workplace scheme or a Personal Pension scheme.

It is important that professional advice is sought on pension issues relevant to your personal circumstances.

What are the tax breaks and controls on the tax breaks?

To benefit from tax privileges all pension schemes must be registered with HMRC. For a Personal Pension scheme, registration will be organised by the pension provider.

A money purchase scheme allows the member to obtain tax relief on contributions into the scheme and tax free growth of the fund. If an employer contributes into the scheme on behalf of an employee, there is, generally no tax charge on the member and the employer will obtain a deduction from their taxable profits.

When the 'new' pension regime was introduced from 6 April 2006 no limits were set on either the maximum amount which could be invested in a pension scheme in a year or on the total value within pension funds. However two controls were put in place in 2006 to control the amount of tax relief which was available to the member and the tax free growth in the fund.

Firstly, a lifetime limit was established which set the maximum figure for tax-relieved savings in the fund(s) and has to be considered when key events happen such as when a pension is taken for the first time.

Secondly, an annual allowance sets the maximum amount which can be invested with tax relief into a pension fund. The allowance applies to the combined contributions of an employee and employer. Amounts in excess of this allowance trigger a charge.

There are other longer established restrictions on contributions from members of money purchase schemes (see below).

Key features of money purchase pensions

- Contributions are invested for long-term growth up to the selected retirement age.
- At retirement which may be any time from the age of 55 the accumulated fund is generally turned into retirement benefits - an income and a tax-free lump sum.
- Personal contributions are payable net of basic rate tax relief, leaving the provider to claim the tax back from HMRC.
- Higher and additional rate relief is given as a reduction in the taxpayer's tax bill. This is normally dealt with by claiming tax relief through the self assessment system.
- Employer contributions are payable gross direct to the pension provider.

Persons eligible

All UK residents may have a money purchase pension. This includes non-taxpayers such as children and non-earning adults. However, they will only be entitled to tax relief on gross contributions of up to £3,600 per annum.

Relief for individuals' contributions

An individual is entitled to make contributions and receive tax relief on the higher of £3,600 or 100% of earnings in any given tax year. However tax relief will generally be restricted for contributions in excess of the annual allowance.

Methods of giving tax relief

Tax relief on contributions are given at the individual's marginal rate of tax.

An individual may obtain tax relief on contributions made to a money purchase scheme in one of two ways:

- a net of basic rate tax contribution is paid by the member with higher rate relief claimed through the self assessment system
- a net of basic rate tax contribution is paid by an employer to the scheme. The contribution is deducted from net pay of the employee. Higher rate relief is claimed through the self assessment system.

In both cases the basic rate is claimed back from HMRC by the pension provider.

A more effective route for an employee may be to enter a salary sacrifice arrangement with an employer. The employer will make a gross contribution to the pension provider and the employee's gross salary is reduced. This will give the employer full income tax relief (by reducing PAYE) but also reducing National Insurance Contributions.

There are special rules if contributions are made to a retirement annuity contract. (These are old schemes started before the introduction of personal pensions.)

The annual allowance

For 2017/18 onwards the annual allowance is £40,000.

Any contributions in excess of the £40,000 annual allowance are potentially charged to tax on the individual as their top slice of income. Contributions include contributions made by an employer.

The stated purpose of the charging regime is to discourage pension saving in tax registered pensions beyond the annual allowance. Most individuals and employers actively seek to reduce pension saving below the annual allowance, rather than fall within the charging regime.

Individuals who are eligible to take amounts out of their pension funds under the flexibilities introduced from 6 April 2015 but who continue to make contributions into their schemes may trigger other restrictions in the available annual allowance. This is explained later in this factsheet in 'Money Purchase Annual Allowance'.

Lower annual allowance for those with 'adjusted annual incomes' over £150,000

From April 2016 a taper has been introduced which restricts the annual allowance available for those with 'adjusted annual incomes' over £150,000. Adjusted income means, broadly, a person's net income and pension contributions made by an employer. For every £2 of adjusted income over £150,000, an individual's annual allowance will be reduced by £1, down to a minimum of £10,000.

The rate of charge if annual allowance is exceeded

The charge is levied on the excess above the annual allowance at the appropriate rate in respect of the total pension savings. There is no blanket exemption from this charge in the year that benefits are taken. There are, however, exemptions from the charge in the case of serious ill health as well as death.

The appropriate rate will broadly be the top rate of income tax that you pay on your income.

Example

Anthony, who is employed, has taxable income of £120,000 in 2018/19. He makes personal pension contributions of £50,000 net in March 2019. He has made similar contributions in the previous three tax years.

He will be entitled to a maximum £40,000 annual allowance for 2018/19. The charge will be:

Gross pension contribution	£62,500
Less annual allowance	(£40,000)
Excess	£22,500 taxable at 40% = £9,000

Anthony will have had tax relief on his pension contributions of £25,000 (£62,500 x 40%) and now effectively has £9,000 clawed back. The tax adjustments will be made as part of the self assessment tax return process.

Carry forward of unused annual allowance

To allow for individuals who may have a significant amount of pension savings in a tax year but smaller amounts in other tax years, a carry forward of unused annual allowance is available.

The carry forward rules apply if the individual's pension savings exceed the annual allowance for the tax year. The annual allowance for the current tax year is used before any unused allowance brought forward. The earliest year unused allowance is then used before a later year.

Unused annual allowance carried forward is the amount by which the annual allowance for that tax year exceeded the total pension savings for that tax year.

This effectively means that the unused annual allowance of up to £40,000 can be carried forward for the next three years. Importantly no carry forward is available in relation to a tax year preceding the current year unless the individual was a member of a registered pension scheme at some time during that tax year.

Example

Assume it is March 2019. Bob is a self employed builder. In the previous three years Bob has made contributions of £30,000, £10,000 and £30,000 to his pension scheme. As he has not used all of the £40,000 annual allowance in earlier years, he has £50,000 unused annual allowance that he can carry forward to 2018/19.

Together with his current year annual allowance of £40,000, this means that Bob can make a contribution of £90,000 in 2018/19 without having to pay any extra tax charge.

The lifetime limit

The lifetime limit sets the maximum figure for tax-relieved savings in the fund at £1,030,000

If the value of the scheme(s) exceeds the limit when benefits are drawn there is a tax charge of 55% of the excess if taken as a lump sum and 25% if taken as a pension.

Accessing your pension - freedom

The government have amended the rules for how individuals use their pensions savings. Back in 2014, George Osborne announced 'pensioners will have complete freedom to draw down as much or as little of their pension pot as they want, anytime they want'. The changes came into effect on 6 April 2015 for individuals who have money purchase pension funds.

Individuals have flexibility to choose how to access their pension funds from the age of 55. The options include:

- a tax free lump sum of 25% of fund value
- purchase of an annuity with the remaining fund, or
- income drawdown (see below for options available regarding flexi access accounts and lump sum payments).

An annuity is taxable income in the year of receipt. Similarly any monies received from the income drawdown fund are taxable income in the year of receipt.

Flexi access accounts and lump sums

Where a lump sum and annuity are not taken access to the fund can be achieved in one of two ways:

- allocation of a pension fund (or part of a pension fund) into a 'flexi-access drawdown account' from which any amount can be taken over whatever period the person decides
- taking a single or series of lump sums from a pension fund (known as an 'uncrystallised funds pension lump sum').

When an allocation of funds into a flexi-access account is made the member typically will take the opportunity of taking a tax free lump sum from the fund.

The person will then decide how much or how little to take from the flexi-access account. Any amounts that are taken will count as taxable income in the year of receipt.

Access to some or all of a pension fund without first allocating to a flexi-access account can be achieved by taking an uncrystallised funds pension lump sum.

The tax effect will be:

- 25% is tax free
- the remainder is taxable as income.

Money Purchase Annual Allowance (MPAA)

The government is alive to the possibility of people taking advantage of the flexibilities by 'recycling' their earned income into pensions and then immediately taking out amounts from their pension funds. Without further controls being put into place an individual would obtain tax relief on the pension contributions but only be taxed on 75% of the funds immediately withdrawn.

The MPAA sets the maximum amount of tax efficient contributions in certain scenarios. The allowance is currently set at £4,000 per annum and was £10,000 per annum prior to April 2017.

There is no carry forward of any of the annual allowance to a later year if it is not used in the year.

The main scenarios in which the reduced annual allowance is triggered are if:

- any income is taken from a flexi-access drawdown account, or
- an uncrystallised funds pension lump sum is received.

However just taking a tax-free lump sum when funds are transferred into a flexi-access account will not trigger the MPAA rule.

How we can help

This information sheet provides general information on the making of pension provision. Please contact us for more detailed advice if you are interested in making provision for a pension.

Pensions - Tax Treatment on Death

Alongside the changes from April 2015 to the access of pension funds, significant changes were made to the tax treatment of pension funds on death. This factsheet summarises the rules which may allow a pension fund to pass free of all taxes on the estate of the deceased and free of all taxes on the beneficiaries of the pension fund.

IHT and pension funds

If an individual has not bought an annuity, a defined contribution pension fund remains available to pass on to selected beneficiaries. Inheritance tax (IHT) can be avoided by making a 'letter of wishes' to the pension provider suggesting to whom the funds should be paid. If an individual's intention has not been expressed the funds may be paid to the individual's estate resulting in a potential IHT liability.

Other tax charges on pension funds

Prior to 6 April 2015, there were other tax charges on death to reflect the principle that income tax relief would have been given on contributions into the pension fund and therefore some tax should be payable when the fund is paid out. For example:

- if the fund was paid as a lump sum to a beneficiary, tax at 55% of the fund value was payable
- if the fund was placed in a drawdown account to provide income to a 'dependant' (for example a spouse), the income drawn down was taxed at the dependant's marginal rate of income tax.

There were some exceptions from the 55% charge. It was (and still is) possible to pass on a pension fund as a tax free lump sum where the individual has not taken any tax free cash or income from the fund and they die under the age of 75.

Other tax charges on pension funds

The government has introduced significant exceptions from the tax charges for benefits first paid on or after 6 April 2015.

Under the revised rules, anyone who dies under the age of 75 will be able to give their remaining defined contribution pension fund to anyone completely tax free, whether it is in a drawdown account or untouched.

The fund can be paid out as a lump sum to a beneficiary or taken out by the beneficiary through a 'flexi-access drawdown account'.

Those aged 75 or over when they die will be able to pass their defined contribution pension fund to any beneficiary who will then be able to draw down on it as income at their marginal rate of income tax. Beneficiaries will also have the option of receiving the pension as a lump sum payment, subject to a tax charge of 45%. From 6 April 2016 the lump sum will be charged to tax at the recipient's marginal rate of income tax.

The new tax treatment does not apply to the extent that the pension fund exceeds the Lifetime Allowance (£1 million from 6 April 2016).

Tax treatment of inherited annuities

Beneficiaries of individuals who die under the age of 75 with a joint life or guaranteed term annuity will be able to receive any future payments from such policies tax free. The tax rules will also be changed to allow joint life annuities to be passed on to any beneficiary.

How we can help

These changes may for some turn traditional IHT planning on its head. Please do contact us for guidance on the options available and the effect on your current IHT plans.

Personal Tax - Dividends and Interest

Dividend and savings allowances are available. We consider the opportunities and pitfalls of the personal tax rules.

Dividend income

When dividends are received by an individual the amount received is the gross amount subject to tax. The availability of the Dividend Allowance (DA), means that the first £2,000 for 2018/19 (£5,000 in 2017/18) of dividends are charged to tax at 0%. Dividends received above this allowance are taxed at the following rates:

- 7.5% for basic rate taxpayers
- 32.5% for higher rate taxpayers
- 38.1% for additional rate taxpayers.

Dividends within the allowance still count towards an individual's basic or higher rate band and so may affect the rate of tax paid on dividends above the £2,000 allowance.

Dividends are treated as the top slice of income and the basic rate tax band is first allocated against other income.

Example

Mr A has non-dividend income of £41,000 and receives dividends of £12,000. The non-dividend income is taxed first. Of the £41,000 non-dividend income, it would be advantageous to utilise £6,500 of the £11,850 available Personal Allowance, leaving £34,500 to be taxed at the basic rate.

The basic rate band for 2018/19 is fully utilised against the taxable non-dividend income. The remaining £5,350 of Personal Allowance is used against the dividends and £2,000 of dividends are covered by the Dividend Allowance. The remaining £4,650 of dividends (£12,000 less £5,350 Personal Allowance and £2,000 of DA) fall in the higher rate tax band and are therefore taxed at 32.5%.

Savings income

Some individuals qualify for a 0% starting rate of tax on savings income up to £5,000. However this rate is not available if non-savings income (broadly earnings, pensions, trading profits and property income) exceeds the starting rate limit.

The Savings Allowance (SA), available from 2016/17 onwards, taxes savings income within the SA at 0%. The amount of SA depends on the individual's marginal rate of tax. An individual taxed at the basic rate of tax has an SA of £1,000 whereas a higher rate taxpayer is entitled to a SA of £500. Additional rate taxpayers receive no SA.

Savings income includes:

- interest on bank and building society accounts
- interest on accounts with credit unions or National Savings and Investments
- interest distributions from authorised unit trusts, open-ended investment companies (OEICs) and investment trusts
- income from government or corporate bonds
- most types of purchased life annuity payments.

Is savings income received net or gross of tax?

Interest is generally received gross. Following the introduction of the SA the government no longer requires banks, building societies, unit trusts and OEICs to deduct tax from interest they pay to customers.

Switching investments

Given the lower amount of SA, higher and additional rate taxpayers could seek to maximise their use of the DA by moving investments out of interest bearing investments to ones which pay out dividends. This could be through direct shareholdings or through dividend distributing equity funds in unit trusts or OEICs.

In addition, assets held for capital growth could be transferred to dividend paying investments. Any gains realised by the investors on the sale of assets would be exempt up to the CGT exemption which is £11,700 for

2018/19 (£11,300 for 2017/18). Further gains over this amount are only charged to tax at 20% for higher and additional rate taxpayers following the reduction in CGT rates from 6 April 2016.

Interaction between DA and SA

If the amount of dividends an individual receives is covered by the DA but those dividends would have meant that they were higher rate taxpayers without the DA, then this would affect the amount of SA they would receive.

Example

Mrs B has a salary of £42,000, interest income of £1,000 and dividends of £2,000. Although the dividends are covered by the DA, Mrs B's total income is £45,000 so she is a higher rate taxpayer. She would therefore only receive £500 of SA against the £1,000 of interest income.

Check your coding

Where savings income exceeds the SA, there will be tax to pay on the excess. HMRC have indicated that they will normally collect this tax by changing individual's tax codes. To allow them to do this they will use information from banks and building societies. However in some cases HMRC have been overestimating the amount of interest people are likely to earn and adjusting their coding accordingly. So it is worth checking coding notices when they come through.

Gift Aid donations

Take care if you make Gift Aid donations. A charity can reclaim the tax on a Gift Aid donation only if the individual has paid the amount of tax being reclaimed. Prior to April 2016 this tax would have included dividend tax credits and tax deducted at source on interest income.

Following the introduction of the SA and DA, any income within these allowances is not taxed so the tax reclaim by the charity does not relate to tax paid. Where this happens the individual is responsible for ensuring that the donation is covered and HMRC have powers to recover any shortfall from the taxpayer.

So people with lower levels of income and dividends or savings below the DA or SA amounts who make Gift Aid donations could be affected. Individuals will need to withdraw any Gift Aid declarations that they have made to ensure that they do not get hit with a tax bill.

Planning for spouses

The introduction of Dividend and Savings Allowances may also mean it is time to consider the allocation of investments between husband and wives or civil partners. If just one partner has investments generating dividends or savings it could be beneficial to transfer part of the investments to the other partner to ensure they receive income which utilises their DA or SA. Any transfer of assets between husbands and wives or between civil partners who are living together can be made without any capital gains tax being charged.

With savings rates generally being at about 1.5% - 2% utilising the £1,000 basic rate SA would mean having interest earning assets of between £50,000 and £66,667. For dividends, assuming an average yield of 3%, the investment level would be £166,667 to fully utilise the £5,000 DA.

How we can help

With more allowances available to taxpayers it is important to make sure full use is being made of the tax free amounts. There are a number of areas where you may need specific advice depending on your circumstances so please do not hesitate to contact us.

Personal Tax - Self Assessment

Under the self assessment regime an individual is responsible for ensuring that their tax liability is calculated and any tax owing is paid on time.

The self assessment cycle

Tax returns are issued shortly after the end of the fiscal year. The fiscal year runs from 6 April to the following 5 April (thanks to switch from the Julian to the Gregorian calendar in 1752), so 2018/19 runs from 6 April 2018 to 5 April 2019. Tax returns are issued to all those whom HMRC are aware need a return including all those who are self employed or company directors. Those individuals who complete returns online are sent a notice advising them that a tax return is due. If a taxpayer is not issued with a tax return but has tax due they should notify HMRC who may then issue a return.

A taxpayer has normally been required to file his tax return by 31 January following the end of the fiscal year. The 2018/19 return must be filed by 31 October 2019 if submitted in 'paper' format. Returns submitted after this date must be filed online otherwise penalties will apply.

Penalties

Late filing penalties apply for personal tax returns as follows:

- £100* penalty immediately after the due date for filing (even if there is no tax to pay or the tax due has already been paid)

* The full penalty of £100 will always be due if your return is filed late even if there is no tax outstanding. Generally if filing by ‘paper’ the deadline is 31 October and if filing online the deadline is 31 January.

Additional penalties can be charged as follows:

- over 3 months late – a £10 daily penalty up to a maximum of £900
- over 6 months late – an additional £300 or 5% of the tax due if higher
- over 12 months late – a further £300 or a further 5% of the tax due if higher. In particularly serious cases there is a penalty of up to 100% of the tax due.

Calculating the tax liability and ‘coding out’ an underpayment

The taxpayer does have the option to ask HMRC to compute their tax liability in advance of the tax being due in which case the return must be completed and filed by 31 October following the fiscal year. This is also the statutory deadline for making a return where you require HMRC to collect any underpayment of tax through your tax code, known as ‘coding out’. However if you file your return online HMRC will extend this to 30 December. Whether you or HMRC calculate the tax liability there will be only one assessment covering all your tax liabilities for the tax year.

Changes to the tax return

Corrections/Amendments

HMRC may correct a self assessment within nine months of the return being filed in order to correct any obvious errors or mistakes in the return.

An individual may, by notice to HMRC, amend their self assessment at any time within 12 months of the filing date.

Enquiries

HMRC may enquire into any return by giving written notice. In most cases the time limit for HMRC is within 12 months following the filing date.

If HMRC does not enquire into a return, it will be final and conclusive unless the taxpayer makes an overpayment relief claim or HMRC makes a discovery.

It should be emphasised that HMRC cannot query any entry on a tax return without starting an enquiry. The main purpose of an enquiry is to identify any errors on, or omissions from, a tax return which result in an understatement of tax due. Please note however that the opening of an enquiry does not mean that a return is incorrect.

If there is an enquiry, we will also receive a letter from HMRC which will detail the information regarded as necessary by them to check the return. If such an eventuality arises we will contact you to discuss the contents of the letter.

Keeping records

HMRC wants to ensure that underlying records to the return exist if they decide to enquire into the return.

Records are required of income, expenditure and reliefs claimed. For most types of income this means keeping the documentation given to the taxpayer by the person making the payment. If expenses are claimed records are required to support the claim.

Checklist of books and records required for HMRC enquiry

Employees and Directors

- Details of payments made for business expenses (eg receipts, credit card statements)
- Share options awarded or exercised
- Deductions and reliefs

Documents you have signed or which have been provided to you by someone else:

- Interest and dividends
- Tax deduction certificates
- Dividend vouchers
- Gift aid payments
- Personal pension plan certificates.

Personal financial records which support any claims based on amounts paid eg certificates of interest paid.

Business

- Invoices, bank statements and paying-in slips
- Invoices for purchases and other expenses
- Details of personal drawings from cash and bank receipts

How we can help

We can prepare your tax return on your behalf and advise on the appropriate tax payments to make.

If there is an enquiry into your tax return, we will assist you in answering any queries HMRC may have. Please do contact us for help.

Personal Tax - When is Income Tax and Capital Gains Tax Payable?

Under the self assessment regime an individual is responsible for ensuring that their tax liability is calculated and any tax owing is paid on time.

Payment of tax

The UK income tax system requires the payer of key sources of income to deduct tax at source which removes the need for many taxpayers to submit a tax return or make additional payments. This applies in particular to employment and savings income. However this is not possible for the self employed or if someone with investment income is a higher rate taxpayer. As a result we have a payment regime in which the payments will usually be made in instalments.

The instalments consist of two payments on account of equal amounts:

- the first on 31 January during the tax year and
- the second on 31 July following.

These are set by reference to the previous year's net income tax liability (and Class 4 NIC if any).

A final payment (or repayment) is due on 31 January following the tax year.

In calculating the level of instalments any tax attributable to capital gains is ignored. All capital gains tax is paid as part of the final payment due on 31 January following the end of the tax year.

A statement of account similar to a credit card statement is sent to the taxpayer periodically which summarises the payments required and the payments made.

Example

Sally's income tax liability for 2017/18 (after tax deducted at source) is £8,000. Her liability for the following year is £10,500. Payments for 2018/19 will be:

	£
31.1.2019 First instalment (50% of 2017/18 liability)	4,000
31.7.2019 Second instalment (50% of 2017/18 liability)	4,000
31.1.2020 Final payment (2018/19 liability less sums already paid)	2,500
	£10,500

There will also be a payment on 31 January 2020 of £5,250, the first instalment of the 2018/19 tax year (50% of the 2018/19 liability).

Late payment penalties and interest

Using the late payment penalties HMRC may charge the following penalties if tax is paid late:

- A 5% penalty if the tax due on the 31 January 2020 is not paid within 30 days (the 'penalty date' is the day following)
- A further 5% penalty if the tax due on 31 January 2020 is not paid within 5 months after the penalty date
- Additionally, there will be a third 5% penalty if the tax due on 31 January 2020 is not paid within 11 months after the penalty date.

These penalties are additional to the interest that is charged on all outstanding amounts, including unpaid penalties, until payment is received.

Nil payments on account

In certain circumstances the two payments on account will be set at nil. This applies if either:

- income tax (and NIC) liability for the preceding year - net of tax deducted at source and tax credit on dividends - is less than £1,000 in total or
- more than 80% of the income tax (and NIC) liability for the preceding year was met by deduction of tax at source and from tax credits on dividends.

Claim to reduce payments on account

If it is anticipated that the current year's tax liability will be lower than the previous year's, a claim can be made to reduce the payments on account.

How can we help

We can prepare your tax return on your behalf and advise on the appropriate payments on account to make.

We can advise you whether a claim to reduce payments on account should be made and to what amount. Please do contact us for help.

Preparing for your Accountant

Whether we are producing your accounts or carrying out your annual audit, being prepared for us will ensure our work is carried out smoothly and efficiently and with the minimum disruption to yourselves.

You may also be able to help by preparing some of the routine schedules for us. This will mean our time can be better spent advising you on the running of your business.

We highlight below many of the ways in which you can help.

It is however important for you to discuss these ideas with us since all of the suggestions may not be applicable.

Setting the scene

Keeping us informed

We will be better prepared ourselves if we know of any changes within your business which could affect our work. These could include changes in your:

- product or market
- business strategy eg pricing policy
- bookkeeping system
- key personnel.

What we need

If you know what information we need to be able to complete our work you can make sure it is available.

We can decide together what you can prepare for us and what we will need to prepare for ourselves.

Better communication between us will help to minimise misunderstandings and avoid unnecessary work.

Timetable

We need to agree a suitable timetable in advance. This gives us both a chance to be properly prepared.

However, if you find yourself behind schedule let us know as soon as possible so that the timetable can be rearranged if necessary.

How you can help

Books and records

Setting up and maintaining your books in an organised manner will help us to extract quickly and easily the information needed to prepare or audit your accounts. It will also enable you to see at a glance the state of your business.

Consideration of the following points may improve the organisation of your records:

- totalling and balancing your books at regular intervals will help you spot and correct any mistakes
- analysing your payments and receipts so that information can be easily extracted
- filing your invoices in a logical order (numerical, alphabetical or date) to make it easy to find any one of them.

Procedures

By establishing and maintaining certain procedures you will be able to keep a better control over your records and your business. It will also mean we can cut down on the work we need to do which may save you some money.

We can help you set up these procedures initially and once established you will be able to carry them out yourself. These procedures will include control accounts, reconciliations and stocktaking.

Control accounts

Control accounts record the movements of cash, debtors and creditors by using the monthly totals from your cash book and sales and purchases summaries.

The cash control account will show how much cash the business has at the end of each month.

The debtors or sales ledger control account will show how much your customers owe you at the end of each month.

The creditors or purchase ledger control account will show how much you owe your suppliers at the end of each month.

Reconciliations

Reconciliations help to ensure that the figures in your books are complete and accurate. Therefore if produced on a regular basis they will help you spot any errors which can then be corrected before we examine your records. Some of the records which will need reconciling are:

- bank accounts
- control accounts
- suppliers' statements.

Stocktake

If your business carries any stock you will need to count it at least once a year. To ensure that the count is carried out efficiently and accurately you should consider the following points:

- stock items should be stored neatly and logically to make counting easier
- all staff involved in counting should be given clear instructions
- try to minimise the movement of stock during the count. If possible deliveries in and out should be withheld until the counting has finished
- spot checks should be performed during the count.

If you hold large amounts of stock we may need to attend the stocktake and perform our own checks.

Schedules

There are a number of schedules which have to be produced in order that the accounts can be prepared and/ or audited. We can prepare all of these schedules ourselves but obviously if you were to produce them it would save time and money.

You may wish to consider the preparation of some of the following schedules:

- a detailed list of additions and disposals of fixed assets with a copy of the appropriate sales and purchase invoices attached
- schedules showing each item of stock held, the quantity, unit value and total value. Indicate any stock items which are old or damaged
- a list of your debtors at the year end including how much they owe you and how long they have been outstanding. Indicate any which are unlikely to pay you
- a schedule of all bank and cash balances at the year end, together with all the bank statements for each bank account
- a list of creditors which should include HMRC as well as the usual business suppliers.

Not all of these schedules will be applicable to your business and therefore before doing anything you may wish to discuss this with us.

How we can help

There are undoubtedly many advantages to be gained if you are better prepared before we commence our work.

We will be able to complete our work in less time. This will mean less disruption to you and your staff. In addition we will be better placed to provide you with useful and constructive advice regarding the development of your business.

However, perhaps the most rewarding of all these advantages will be the fact that your books and records will provide you with more useful information which will help you make better informed business decisions.

If you would like to discuss these procedures any further or would like us to provide further assistance with your monthly or quarterly accounts please contact us.

Property Investment - Buy to Let

In recent years, the stock market has had its ups and downs. Add to this the serious loss of public confidence in pension funds as a means of saving for the future and it is not surprising that investors have looked elsewhere.

The UK property market, whilst cyclical, has proved over the long-term to be a very successful investment. This has resulted in a massive expansion in the buy to let sector.

Buy to let involves investing in property with the expectation of capital growth with the rental income from tenants covering the mortgage costs and any outgoings.

However, the gross return from buy to let properties - ie the rent received less costs such as letting fees, maintenance, service charges and insurance - is no longer as attractive as it once was. Investors need to take a view on the likelihood of capital appreciation exceeding inflation.

Factors to consider

Do

- think of your investment as medium to long-term
- research the local market
- do your sums carefully
- consider decorating to a high standard to attract tenants quickly.

Don't

- purchase anything with serious maintenance problems
- think that friends and relatives can look after the letting for you - you're probably better off with a full management service
- cut corners with tenancy agreements and other legal documentation.

Which property?

Investing in a buy to let property is not the same as buying your own home. You may wish to get an agent to advise you of the local market for rented property. Is there a demand for say, two bedroom flats or four bedroom houses or properties close to schools or transport links? An agent will also be able to advise you of the standard of decoration and furnishings which are expected to get a quick let.

Agents

Letting property can be very time consuming and inconvenient. Tenants will expect a quick solution if the central heating breaks down over the bank holiday weekend! Also do you want to advertise the property yourself and show around prospective tenants? An agent will be able to deal with all of this for you.

Tenancy agreements

This important document will ensure that the legal position is clear.

Taxation

When buying to let, taxation aspects must be considered.

Tax on rental income

Income tax will be payable on the rents received after deducting allowable expenses. Currently allowable expenses include mortgage interest, repairs, agent's letting fees and an allowance for furnishings. Changes were announced in the Summer Budget which impact on the allowable expenses for landlords.

Restriction loan interest relief for 'buy to let' landlords

Rules have been introduced which restrict the amount of income tax relief landlords can get on residential property finance costs to the basic rate of income tax. Finance costs include mortgage interest, interest on loans to buy furnishings and fees incurred when taking out or repaying mortgages or loans. No relief is available for capital repayments of a mortgage or loan.

Landlords will no longer be able to deduct all of their finance costs from their property income. They will instead receive a basic rate reduction from their income tax liability for their finance costs. To give landlords time to adjust, the change is being introduced gradually from April 2017, over four years. The restriction in the relief is being phased in as follows:

- in 2017/18, the deduction from property income will be restricted to 75% of finance costs, with the remaining 25% being available as a basic rate tax reduction

- in 2018/19, 50% finance costs deduction and 50% given as a basic rate tax reduction
- in 2019/20, 25% finance costs deduction and 75% given as a basic rate tax reduction
- from 2020/21, all financing costs incurred by a landlord will be given as a basic rate tax reduction.

This restriction will not apply to landlords of furnished holiday lettings.

Replacement of furnishings

A relief enables all landlords of residential dwelling houses to deduct the costs they actually incur on replacing furnishings, appliances and kitchenware in the property. This measure gives relief for the cost of replacing furnishings to a wide range of property businesses.

Examples of eligible capital expenditure are:

- furniture
- furnishings
- appliances (including white goods)
- kitchenware

but would exclude items which are fixtures.

However the relief is limited to the cost of an equivalent item if there is an improvement on the old item. The deduction will not be available for furnished holiday lettings or where rent-a-room relief is claimed.

Tax on sale

Capital gains tax (CGT) will be payable on the eventual sale of the property. The tax will be charged on the disposal proceeds less the original cost of the property, certain legal costs and any capital improvements made to the property. This gain may be further reduced by any annual exemption available.

CGT is generally charged at 10%, within the basic rate and 20% for higher rates. However 18% and 28% rates apply to chargeable gains arising on the disposal of residential property that does not qualify for private residence relief.

CGT is payable on 31 January after the end of the tax year in which the gain is made.

From April 2019, a payment on account of any CGT due on the disposal of residential property will be required to be made within 30 days of the completion of the disposal. This will not affect gains on properties which are not liable for CGT due to Private Residence Relief.

Student lettings

Buy to let may make sense if you have children at college or university. It is important that the arrangement is structured correctly. The student should purchase the property (with the parent acting as guarantor on the mortgage). There are several advantages to this arrangement.

Advantages

This is a cost effective way of providing your child with somewhere decent to live.

Rental income on letting spare rooms to other students should be sufficient to cover the mortgage repayments from a cash flow perspective.

As long as the property is the child's only property it should be exempt from CGT on its eventual sale as it will be regarded as their main residence.

The amount of rental income chargeable to income tax is reduced by a deduction known as 'rent a room relief' (£7,500). In this situation no expenses are tax deductible. Alternatively expenses can be deducted from income under normal letting rules where this is more beneficial.

Furnished holiday lettings

Furnished holiday letting (FHL) is another type of investment that could be considered. This form of letting is short holiday lets as opposed to letting for the residential market.

The favourable tax regime for furnished holiday letting accommodation includes qualifying property located anywhere in the European Economic Area (EEA). In order to qualify for FHL treatment certain conditions have to be met. These include the property being available for letting for at least 210 days in each tax year and being actually let for 105 days. Provided that there is a genuine intention to meet the actual letting requirement it will be possible to make an election to keep the property as qualifying for up to two years even though the condition may not be satisfied in those years. This will be particularly important to preserve the special CGT treatment of any gain as qualifying for the lower CGT rate of 10% where the conditions for Entrepreneurs' Relief are satisfied.

Losses arising in an FHL business cannot be set against other income of the taxpayer. Separate claims would need to be made for UK losses and EEA losses. Each can only be offset against profits of the same or future years in each relevant sector.

FHL property has some advantages but it has other disadvantages which should also be considered.

Advantages

You will be able to take a holiday in your own property, or make it available some of the time to your family or friends. However, care would need to be taken to adjust the level of expenses claimed to reflect this private use.

Generally however the rules for allowable expenditure are more generous.

Disadvantages

Holiday letting will have higher agent's fees, advertising costs, and maintenance fees (for example more regular cleaning).

Owning a holiday property may be more time consuming than you think and you may find yourself spending your precious holiday sorting out problems.

If you would like any further advice in this area please get in touch.

Tax allowance for property and trading income

Two £1,000 allowances for property and trading income are available and take effect for income arising from 6 April 2017.

Where the allowances cover all of an individual's relevant income (before expenses) then they will no longer have to declare or pay tax on this income. Those with higher amounts of income will have the choice, when calculating their taxable profits, of deducting the allowance from their receipts, instead of deducting the actual allowable expenses. The trading allowance will also apply for Class 4 NICs.

The allowances do not apply to income on which rent a room relief is given. Neither do the allowances apply to partnership income from carrying on a trade, profession or property business in partnership.

The trading allowance may also apply to certain miscellaneous income from providing assets or services to the extent that the £1,000 trading allowance is not otherwise used.

How we can help

Whilst some generalisations can be made about buy to let properties it is always necessary to tailor any advice to your personal situation. Any plan must take into account your circumstances and aspirations.

Whilst a successful buy to let cannot be guaranteed, professional advice can help to sort out some of the potential problems and structure the investment correctly.

We would be happy to discuss buy to let further with you. Please contact us for more detailed advice.

Property Investment - Tax Aspects

Investment in property has been and continues to be a popular form of investment for many people. It is seen as a route by which:

- relatively secure capital gains can be made on eventual sale
- income returns can be generated throughout the period of ownership
- mortgage finance is covered in repayment terms by the security of the eventual sale of the property and in interest terms by the rental income.

Of course, the net returns in capital and income will depend on a host of factors. But on the basis that the investment appears to make commercial sense, what tax factors should you take into account?

Who or what should purchase the property?

An initial decision needs to be made whether to purchase the property:

- as an individual
- as joint owner or via a partnership (often with a spouse)
- via a company.

There are significant differences in the tax effects of ownership by individuals or a company.

Deciding the best medium will depend on a number of factors.

Commercial property

You are currently trading as a limited company

The personal purchase of new offices or other buildings and the charging of rent for the use of the buildings to your company is very tax efficient from an income tax position as:

- the rental you receive from the company allows sums to be extracted without national insurance
- the company will be able to claim a corporate tax deduction for the rent
- finance costs are currently deductible from the rents.

Capital gains

Capital gains on the disposal of an asset are generally calculated by deducting the cost of the asset from the proceeds on disposal and reducing this by the annual exemption. Gains are treated as an individual's top slice of income and generally taxed at 10% and 20% or a combination of the two. However gains on residential property are charged at 18% and 28%.

Capital gains tax (CGT) and Entrepreneurs' Relief (ER)

Unfortunately ER is unlikely to be available on the disposal of business premises used by your company where rent is paid. This is due to the restrictions on obtaining the relief on what is known as an 'associated disposal'. These restrictions include the common situation where a property is currently in personal ownership, but is used in an unquoted company or partnership trade in return for a rent. Under the ER provisions such relief is restricted where rent is paid.

Residential property

The decision as to who should own a residential property to let is a balancing act depending on overall financial objectives.

The answer will be dependent on the following factors:

- do you already run your business through your own company?
- how many similar properties do you want to purchase in the future?
- do you intend to sell the property and when?

Company versus personal ownership - eventual disposal

If you already run your business through a company it may be more tax efficient to own the property personally as you will be able to make use of your CGT annual exemption (and your spouse's annual exemption if jointly owned) on eventual disposal to reduce the gain.

In contrast, a company can still use indexation allowance to reduce a capital gain. This effectively uplifts the cost of the property by the increase in the Retail Price Index (RPI) over the period of ownership. For disposals of assets on or after 1 January 2018, indexation allowance will be calculated using the Retail Price Index factor for December 2017 irrespective of the date of disposal of the asset.

Indexation is not available to reduce the gain on the disposal by an individual so in situations where indexation allowance is substantial, this could result in lower gains.

Company versus personal ownership - rental income

For personally-owned property the net rental income will be taxed at your marginal rate of tax, but if you are financing the purchase with a high percentage of bank finance, the income tax bill will be relatively small. However for rented property with personal ownership the deduction for finance costs is restricted to basic rate relief from April 2017. This restriction is to be phased in over a four year period and will impact higher and additional rate taxpayers.

The net rental income will be taxed at the current corporation tax rate of 19%, which is generally lower than for an individual. Where the purchase is being financed with a high percentage of loan/bank finance, the corporation tax bill will be relatively small.

But there are other factors to consider:

- there is frequently a further tax charge should you wish to extract any of the proceeds from the company
- inserting the property into an existing company may result in your shareholding in that company not qualifying for ER. You could however form another company to protect the trading status of the existing company.

If you do not have a company at present

Personal or joint ownership may be the more appropriate route but there are currently other significant advantages of corporate status particularly if you expect that:

- you will be increasing your investment in residential property
- you are unlikely to be selling the properties on a piecemeal basis; or
- you are mainly financing the initial purchases of the property from your own capital.

If so, the use of a company as a tax shelter for the net rental income can be attractive.

Use of a company as a tax shelter

Profits will be taxed at the current corporation tax rate of 19%. This rate applies to trading companies or property investment companies.

Where profits are retained, the income may be suffering around half of the equivalent income tax bills. That means there are more funds available to buy more properties in the future.

Tax efficient long-term plans

There are two potential long-term advantages of the corporate route for residential property:

- is there an intention to sell the properties at all? Maybe the intention is to retain them into retirement (see below, **'using the company as a retirement fund'**)
- can the shares be sold rather than the property? (See below for issues regarding **selling the shares.**)

Using the company as a retirement fund

A potentially attractive route is to consider the property investment company as a 'retirement fund'. If the properties are retained into retirement, it is likely that any initial financing of the purchases of the property has been paid off and there will be a strong income stream. The profits of the company (after paying corporation tax) can be paid out to you and/or your spouse as shareholders.

Changes to the taxation of dividends mean that:

- the cash dividend is the gross amount potentially subject to tax (no tax credits are available)
- a Dividend Allowance charges the first £2,000 of dividends received in a tax year at 0%
- for dividends above £2,000, dividend income will be taxed at 7.5% for basic rate taxpayers, 32.5% for higher rate taxpayers and 38.1% for additional rate taxpayers.

Selling the shares

CGT will be due on the gain on the eventual sale of the shares.

The share route may also be more attractive to the purchaser of the properties rather than buying the properties directly, as they will only have 0.5% stamp duty to pay rather than the potentially higher sums of Stamp Duty Land Tax (SDLT) on the property purchases.

Stamp duty land tax (SDLT) and devolved property taxes

SDLT is payable by the purchaser of the property although Land and Buildings Transaction Tax is payable in Scotland. Land Transaction Tax is payable on purchases of land and property in Wales from 1 April 2018.

Corporate investment in expensive residential property

Where expensive residential property, valued at more than £500,000, is purchased by a 'non natural person', broadly a company, there is a potential charge - the Annual Tax on Enveloped Dwellings (ATED). The ATED is payable by those purchasing and holding their homes through corporate envelopes, such as companies. In addition a higher rate of SDLT of 15% applies to the purchase.

There are exemptions from the higher rate of SDLT and the ATED charge; in particular, property companies letting out residential properties to third parties.

CGT is charged at 28% on disposals of properties liable to ATED and valued at more than £500,000.

How we can help

This factsheet has concentrated on potentially long-term tax factors to bear in mind.

You need to decide which is the best route to fit in with your objectives. We can help you to plan an appropriate course of action so please do contact us.

Raising Finance

Who needs finance?

Every business from its commencement and through its development and growth will need finance.

But what type of finance is best suited to the development of your business, and who should you approach for funding?

We provide guidance below on types of finance available and outline the planning required before approaching any lending institution.

Planning for growth

Is finance required?

Finance is very often necessary but consider what it will entail. Additional funding requires a commitment in terms of capital and interest payments. Embarking on this course of action must therefore be planned carefully.

The business must be capable of sustaining any additional commitment to growth or expansion, and consideration will need to be given to effects on manpower, materials and space.

Tapping existing resources

Before seeking outside finance, a business must consider whether it could improve its working capital from within.

Particular attention should be given to stock and debtors to ensure that both are kept to a minimum. Consider how long it takes to bill customers and collect debts and look at ways to reduce this time.

If there are periods of time when surpluses of cash arise, review your affairs to try and ensure these are being used to generate income by investing on temporary short term deposit.

We can advise you on all these matters.

Business plan

Assuming external funding is necessary, planning is essential in achieving success. A well drawn up business plan not only crystallises in your own mind the nature of the project and the timing of any required funding, but is vital to any lending institution. They are unlikely to provide any assistance without a properly drawn up business plan.

The plan will include details of:

- the objectives and aims of the business
- the purpose of the required funding
- the business ownership and history
- management and responsibilities
- products and market share
- sales plan and strategy
- the financial position of the business with detailed cash flow forecasts and past accounts.

Types of finance

General

Finance is available in many forms, but it is important to make sure that it is right for your business. Onerous terms and inflexibility can often hinder a growing business.

The more obvious sources of finance include bank overdrafts and medium to long term loans and mortgages, but rates of interest can vary considerably. Therefore we advise you to consult with us before making your final decision.

Specific

Specific methods of finance are available for acquiring assets or releasing cash from debtors. Carefully consider the options available which include:

- leasing assets
- hire purchase
- outright purchase
- debt factoring
- invoice discounting.

Each method of funding has advantages and disadvantages including implications for tax purposes.

Other

Other means of finance may be available for your business from government sources, through the issue of shares or even your own pension scheme.

Government assistance can be in the form of grants, loan guarantees or an enterprise capital fund. Other grants may be available on a regional or local level. The British Business Bank is a government owned company which aims to make finance markets work better for small businesses and works with partners such as banks, leasing companies and venture capital funds.

Raising finance by issuing shares may be another option to consider.

Security

Whatever form of finance is offered, the lender will always require some form of security. However the level of security sought may vary - beware the lender asking for unreasonable guarantees.

Fixed and floating charges

Most bank loans and overdrafts are secured by way of a fixed charge over land and buildings with floating charges over other assets of the company such as stock and debtors.

Personal guarantees

For some businesses little security may be available because of insufficient assets. Consequently the security will be given in the form of personal guarantees. Take extreme care before signing these guarantees as they can be difficult to amend at a later stage and many borrowers have suffered as a consequence. In particular, personal guarantees are best if they are limited by time or amount. Unlimited guarantees are the most dangerous.

General

It may be possible to use other assets as collateral such as life insurance policies or by taking a second mortgage over your home.

Whatever the means of security pledged, it should be carefully considered and advice sought.

How we can help

The means by which finance is obtained will vary enormously according to:

- the amounts required
- the nature of the business
- the risk exposure to the lender
- the period for which finance is required.

Accordingly whilst some generalisations apply, individual circumstances require specific consideration. Time invested in formulating a funding strategy, whilst not guaranteeing success, will provide a structure to guide the growing business.

Our experience and contacts can enable you to achieve the means to help your business grow.

We would welcome the opportunity to assist you in formulating a business plan and obtaining any necessary finance.

Recruitment Procedures – Seven Steps for Good Procedures

In order to avoid the danger of discriminating in some way, particularly unconsciously, employers must take care to develop and use recruitment procedures which will avoid the risk. Using sensible procedures will also inevitably improve recruitment decisions and the quality of the people taken on.

Professional advice should be sought before any action is taken.

Seven Steps

Sensible procedures would include the following:

1. Always produce **clear job descriptions** which identify both the essential activities of the job and the skills and attributes needed by candidates. It should be possible to see from this whether a disabled candidate would be able to deal with those essential activities. Avoid gender references such as he or she and only refer to qualifications and/or experience which are clearly required by the job. The danger is that any such attributes which cannot be shown to be essential could be inferred as being there to deter women, candidates from ethnic minorities or those with a disability.
2. In seeking candidates ensure that **any wording used does not imply that some category** (such as men or women) **are favoured candidates**, and be careful with words like energetic (unless this is a genuine requirement of the role) which might deter candidates with disabilities. The process for seeking candidates must also be non-discriminatory and not restricted in a way which could be seen to be discriminatory. An obvious error would be to put an advertisement in a place where it would only be seen by, for example, males (such as an all male golf club).
3. **Selection methods must be chosen** which will enable the appropriate skills and attributes to be assessed but should avoid anything which would in effect be discriminatory. An example could be written tests involving English comprehension for a basic cleaning job where the skills assessed by the test would be irrelevant. Where tests are used all candidates need to be given the same tests to avoid any suggestion of discrimination.
4. Be careful to **avoid discriminatory questions** at interview (eg when do you expect to have a family?) and generally try to ensure that all candidates are asked the same questions.
5. Do not ask candidates **health related questions** during the interview process or **before** an offer of a job is made, this would include questionnaires or general questions such as 'the number of days sickness during the last 12 months'. Enquiries as to whether any adjustments are required to enable candidates to attend an interview are permitted.
6. Consider **modifying the workplace** to make it suitable for candidates with disabilities - the code refers to a reasonable cost as being what the extra costs involved in recruiting a non-disabled person might be. You should also look critically at the physical arrangements for recruitment to assist candidates with disabilities to apply more easily (eg wheelchair ramps) and consider whether changes may need to be made to application forms. These should not ask questions which do not impact on the suitability of the candidate for the particular job and should not ask if a candidate is registered disabled.
7. It is essential that **good records** are kept for an appropriate period of time about applications, reasons for rejection and performance in any assessments and at interviews, and that these complement the job description and the skill requirements for the job. Obviously such processes help with selection anyway but these records may be essential if anything goes to an Employment Tribunal. The time limit for a candidate claiming discrimination is three months from the date of the last discriminatory act, which could be, for instance, when they were rejected or given feedback.

How we can help

We will be more than happy to provide you with assistance or any additional information required so please do contact us.

Recruitment Procedures - Employment Law

Most claims for discrimination in recruitment have no maximum limit.

Can your business afford compensation of perhaps £20,000 because you made a simple mistake?

How do you make sure you don't break the law?

We set out below the main principles involved in the recruitment of employees. We have written this factsheet in an accessible and understandable way but some of the issues may be very complicated.

Professional advice should be sought before any action is taken.

Good recruitment procedures

Employers recruiting staff can make simple but very expensive mistakes in all sorts of ways when trying to take on new staff. Sound recruitment procedures help avoid mistakes, as well as ensure that your recruitment process improves and you take on better staff as well.

Where can things go wrong?

You can easily make mistakes at various stages in the recruitment process that would probably mean you would lose your case at an Employment Tribunal.

These stages include:

- defining the job itself or identifying the person required
- attracting candidates by advertising
- how you assess the candidates you see
- making the actual selection decision
- the terms of employment that you offer.

The danger, quite apart from the cost of recruiting the wrong person and then having to get rid of them and recruit again, is that someone whom you have turned down at some point in the process may complain to an Employment Tribunal that you discriminated against them in accordance with the Equality Act 2010. If the Tribunal finds the claim to be valid then compensation can be awarded not just for actual loss but also to compensate for projected future loss and what is known as 'injury to feelings'.

Equality Act 2010

The Equality Act 2010 replaces all previous equality legislation, and covers age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity. These are now called 'protected characteristics'.

Discrimination

Discrimination occurs when someone is treated less favourably than another person because of their protective characteristic. There are four definitions of discrimination:

Direct Discrimination: treating someone less favourably than another person because of their protective characteristic

Indirect Discrimination: having a condition, rule, policy or practice in your company that applies to everyone but disadvantages people with a protective characteristic

Associative Discrimination: directly discriminating against someone because they associate with another person who possesses a protected characteristic

Perceptive Discrimination: directly discriminating against someone because others think they possess a particular protected characteristic

Acts of discrimination would involve either establishing different, unjustifiable and therefore discriminatory recruitment criteria or deliberately excluding certain categories, for example, 'men only may apply'. Indirect Discrimination is not as obvious (and indeed employers can find themselves committing indirect discrimination quite unintentionally and innocently).

Examples of indirect discrimination would include:

- setting recruitment criteria which are not actually justified by the job or job description but which have the effect of discriminating against certain groups of people (eg requiring exam qualifications suggesting skills which are not actually needed by the job and which could discriminate against individuals with learning difficulties)

- using assessment tests measuring abilities not required by the job but which could discriminate against groups of people (ie reasoning ability tests for unskilled manual jobs which could discriminate against those without English as a first language)
- setting different tests for different applicants for a job (eg female applicants cannot be asked to carry out tests of physical strength if male applicants are not asked to do the same)
- asking questions of some applicants and not of others (the classic and very common example being that of asking a female applicant when she intends starting a family).

In considering whether an act of indirect discrimination has occurred or not, an Employment Tribunal can draw reasonable inferences from an employer's normal practices in addition to looking at the facts of the particular case. The Tribunal members might for example, in the case of a claim for racial discrimination, look at the ethnic makeup of the existing workforce and compare this with the ethnic makeup of the local community. A significant difference between these proportions could suggest to the Tribunal that discrimination is more likely to have happened.

Possible but strictly limited exceptions where applicants can be chosen on grounds of sex, sexual orientation, religion, race or age.

Whilst direct and indirect discrimination are generally prohibited, the legislation accepts that in some occupations it may be necessary to be of a particular sex, sexual orientation, religion, racial group or age. These limited exceptions are referred to as being Genuine Occupational Reasons (GORs) (there are no such exceptions for disability). None of the legislation actually allows discrimination to be used to maintain a balance between the sexes, the religious or the racial mix.

If a discrimination claim is brought, the burden of proof is on the employer to prove there is a GOR. You must decide whether a GOR exists before advertising the job. All roles in an organisation must be considered separately; if there is a GOR relating to one role, it will not necessarily apply to all roles within the organisation.

GORs should be reviewed each time the job becomes vacant, as circumstances may change. If only a few tasks require that the employee has a particular characteristic, you should consider whether duties could be reallocated to other employees who do meet the requirement.

Examples of GOR's in relation to varying types of discrimination are as follows:

Sex

- physiology - for example in modelling
- decency or privacy - where there is likely to be physical contact between the job holder and persons of the opposite sex to which the latter might object such as lavatory attendants - care needs to be taken here if there are a number of posts meaning that such contact would not necessarily happen
- single sex establishments - such as prisons
- working outside the UK
- where a job involves living in and the premises which are available do not allow for appropriate privacy or decency - again care needs to be taken as the GOR will not be upheld if the employer could reasonably be expected to make suitable facilities available
- personal services such as welfare/personal/educational where these can best be provided by a man or woman - this GOR is used by social services and welfare providers.

Religion or Belief

- A hospital wishes to appoint a chaplain to minister the spiritual needs of the patients and staff. The hospital is not a religious organisation but decides a chaplain ought to have a religion or similar belief. The hospital may be able to show that it is a GOR within the context of the job for the post holder to have a religion or similar belief
- A Christian school may be able to show that being a Christian is a requirement of the teachers whatever subject they teach.

Sexual Orientation

A scenario where a business is advertising an opportunity to work in a middle eastern country. Because gay sex (even between consenting adults) is criminalised in that country, the business may be able to demonstrate it is a GOR for the person taking the job not to be gay, lesbian or bisexual.

Age

Where there is a requirement for a position as an actor for an old or young part.

Race

- dramatic performance where an individual of a particular ethnic background is required
- authenticity such as the requirements for a particular modelling assignment
- providing welfare services to people of a particular racial group, where services can most effectively be provided by a member of the same racial group due to their understanding of cultural needs and sensitivities.

Positive Discrimination

Since April 2011 Section 159 of the Equality Act 2010, permits employers to treat individuals with a protected characteristic more favourably than others in connection with recruitment or promotion. This applies only to candidates of equal merit and the more favourable treatment must enable or encourage an individual to overcome or minimise a disadvantage or participate in an activity where he or she is under-represented in that activity.

Disability

The definition of what constitutes a disability can be split into three parts:

- the employee must be suffering from a physical or mental impairment
- the impairment must have a substantial effect on the ability to carry out normal day-to-day activities, which would include things like using a telephone, reading a book or using public transport. Substantial means more than minor or trivial
- the effect must be long-term, in other words have already lasted for at least 12 months or be likely to last that long.

The Equality Act 2010 includes new protection from discrimination arising from disability. This includes indirect discrimination, associative discrimination and discrimination by perception.

The meaning of disability

The Equality Act 2010 covers discrimination against disability which insists that employers may not treat a person with a disability less favourably than other persons without justifiable reasons. However, this does not apply if an employer shows that they did not know, and could not reasonably have been expected to know, that a disabled person had the disability.

The Act requires employers to make 'reasonable adjustments' to the workplace where these would overcome the practical effects of an individual's disability. If an applicant for a position believes that he/she has been discriminated against they may make a complaint to an Employment Tribunal.

What are 'reasonable adjustments'?

In this context the word reasonable means whether or not such steps would be practicable and would actually have an effect, and are reasonable given the resources of the employer. For example the local branch of Marks & Spencer would probably be expected to have more resources than would a small local retailer.

Reasonable adjustments to the workplace that employers might be expected to make include:

- making adjustments to interview/selection process such as allowing extra time for assessments
- transferring the individual to fill another vacancy or to a different place of work
- altering working hours
- allowing them time during working hours for rehabilitation or treatment
- allocating some duties to another person
- arranging for special training
- acquiring or modifying premises, equipment, instructions or manuals
- providing readers or supervision.

Claims against employers for discrimination

Applications can be made to an Employment Tribunal from someone who was not selected for an initial interview, for a final short-list or offered the job, and who believes it was because of age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, trade union membership or lack of such membership. The application must be made within three months of the alleged discrimination and the Tribunal will take into account reasonable inferences from the actual employment practices of the employer as well as from the particular facts of the individual case.

How we can help

We will be more than happy to provide you with assistance or any additional information required so please do contact us.

Redundancy Procedures

There have been many changes to employment law and regulations in the last few years. A key area is the freedom or lack of freedom to make an individual redundant.

An employee's employment can be terminated at any time but unless the redundancy is fair an Employment Tribunal may find the employer guilty of unfair dismissal.

We set out below the main principles involved concerning the redundancy of employees. We have written this factsheet in an accessible and understandable way but some of the issues may be very complicated.

Professional advice should be sought before any action is taken.

What is redundancy?

Under the Employment Rights Act 1996, redundancy arises when employees are dismissed because:

- the employer has ceased, or intends to cease to carry on the business for the purposes of which the employee was so employed or
- the employer has ceased, or intends to cease, to carry on the business in the place where the employee was so employed or
- the requirements of the business for employees to carry out work of a particular kind has ceased or diminished or are expected to cease or diminish or
- the requirements of the business for the employees to carry out work of a particular kind, in the place where they were so employed, has ceased or diminished or are expected to cease or diminish. This may occur where the employee, whose job is redundant, is reallocated to another employee's job for which they have the necessary skills. The employee whose job remains is 'bumped' out of a job by the person whose job became redundant.

In other words, the business reasons for redundancy do not relate to an individual but to a position(s) within the business.

Consultation - legal requirements

Employers who propose to dismiss as redundant 20 or more employees at one establishment have a statutory duty to consult representatives of any recognised independent trade union, or if no trade union is recognised, other elected representatives of the affected employees.

Consultation should begin in good time and must begin:

- at least 30 days before the first dismissal takes effect if 20 to 99 employees are to be made redundant at one establishment over a period of 90 days or less
- at least 45 days before the first dismissal takes effect if 100 or more employees are to be made redundant at one establishment over a period of 90 days or less.

Employees on a fixed-term contract which come to a natural end will be excluded from collective redundancy. However, where such a contract is being terminated early because of a redundancy situation the exemption will not apply.

Employers also have a statutory duty to notify the Department for Business, Energy and Industrial Strategy (BEIS) if they propose to make 20 or more workers redundant at one establishment over a period of 90 days or less.

If an employer fails to consult, a Tribunal has discretion to make a protective award of up to 90 days pay.

It is good practice in all organisations however, regardless of size and number of employees to be dismissed, for employers to consult with employees or their elected representatives at an early enough stage to allow discussion as to whether the proposed redundancies are necessary at all. Then they should ensure that individuals are made aware of the contents of any agreed procedures and of the opportunities available for consultation and for making representations. It must be remembered that redundancy is a form of dismissal and although it is not a requirement to follow a disciplinary and dismissal procedure which satisfies the requirements of the ACAS Code of Practice, namely to include a letter setting out the reasons for the potential redundancy, a meeting and an appeal process, it is best practice to do so.

Disclosure of information

Employers have a statutory duty to disclose in writing to the appropriate representatives the following information so they can play a constructive part in the consultation process:

- the reasons for the proposals
- the number and descriptions of employees it is proposed to dismiss as redundant
- the total number of employees of any such description employed at the office in question
- the way in which employees will be selected for redundancy
- how the dismissals will be carried out and over what timescale
- the method of calculating the amount of redundancy payments (other than statutory redundancy pay) to be made.

To ensure that employees are not unfairly selected for redundancy, the selection criteria should be objective, fair and consistent. They should be agreed with employee representatives and an appeals procedure should be established.

Examples of such criteria include attendance and live disciplinary records, experience and capability. The chosen criteria should be measurable and consistently applied. Non-compulsory selection criteria include voluntary redundancy and early retirement, although it is sensible to agree management's right to decide whether or not such an application is accepted or not.

Employers should also consider whether employees likely to be affected by redundancy could be offered suitable alternative work within the organisation or any associate company.

Employees who are under notice of redundancy and have been continuously employed for more than two years, qualify for a reasonable amount of paid time off to look for another job or to arrange training.

Unfair selection for redundancy

An employee will be deemed to have been unfairly selected for redundancy for the following reasons:

- participation in trade union activities
- carrying out duties as an employee representative for purposes of consultation on redundancies
- taking part in an election of an employee representative
- taking action on health and safety grounds as a designated or recognised health and safety representative
- asserting a statutory employment right
- by reasons of discrimination
- maternity-related grounds.

The right to a redundancy payment

Employees who have at least two years' continuous service qualify for a redundancy payment

The entitlement is as follows:

- For each complete year of service until the age of 21 - half a week's pay
- For each complete year of service between the ages of 22 and 40 inclusive - one week's pay
- For each complete year of service over the age of 41 - one and a half weeks' pay.

A week's pay is that to which the employee is entitled under his or her terms of contract as at the date the employer gives minimum notice to the employee. The maximum statutory limit for a week's pay is £508 from 6 April 2018, and the maximum service to be taken into account is 20 years. This means that the maximum statutory payment cannot exceed 30 weeks' pay or £15,240. Employers may, of course, pay in excess of the statutory minimum.

The employee is also entitled to a period of notice or payment in lieu of notice by statute and their contract of employment.

How we can help

We will be more than happy to provide you with assistance or any additional information required so please do contact us.

Register of People with Significant Control

All companies (except certain listed companies) are required to keep a register of people with significant control (PSC register) and, file relevant information at Companies House. This requirement is in addition to those in respect of existing registers.

The requirement to keep a PSC register has the objective of increasing transparency over control and ownership of UK companies. However, this places additional obligations on companies, their officers and the people with significant control over them.

What are the requirements?

The requirements include:

- taking reasonable steps to find out whether there are people with significant control (PSCs)
- contacting people identified as relevant, or others who may know them, to confirm whether they are a PSC
- obtaining or confirming relevant information to put in the PSC register
- putting information obtained into the PSC register
- keeping the PSC register up to date.

Though the company's own register must be kept up to date, initially changes were recorded annually at Companies House using the Confirmation Statement. The company would 'check and confirm' that the information held at a given due date was accurate. Now each change has to be updated on the register within 14 days and notified to Companies House within a further 14 days.

Where companies have elected to hold their own register on the public record at Companies House instead of in statutory records at their registered office, they must update this information in real time.

What is meant by a PSC?

A PSC is defined as an individual that:

- holds, directly or indirectly, more than 25% of the shares or voting rights in the company
- holds the right, directly or indirectly, to appoint or remove a majority of the board of directors of the company
- has the right to exercise, or actually exercises, significant influence or control over the company
- where a trust or firm would satisfy any of the above conditions, any individual that has the right to exercise, or actually exercises, significant influence or control over the activities of that trust or firm.

A company must take reasonable steps to identify its PSCs. Some companies may have no PSCs or find it easy to ascertain who the PSCs are, but others may have to carefully follow all the steps laid to out to try to establish if there are any PSCs and, if so, their identity and details.

What information is required to be kept on the register?

The PSC register must be kept, and it cannot be blank! Where, for example, a company is in the process of obtaining information or confirming, a specific statement to that effect is required by law to be made in the PSC register.

New information must be entered on your company's PSC register within 14 days and filed with Companies House within a further 14 days. Failure to comply with these requirements is a criminal offence.

The particulars of a relevant individual that are required to be obtained and confirmed for inclusion in a company's PSC register include:

- their name
- their date of birth
- their nationality
- the country, state (or part of the UK) in which the PSC usually resides
- a service address
- their usual residential address (if different to the service address)
- the date on which the individual became a PSC in relation to the company
- the nature of the PSC's control over the company
- any restrictions on disclosing the PSC's information that are in place.

A specific statement is also required in the PSC register if you believe the company has no PSCs.

Do PSCs have any obligations?

There are a number of legal obligations on a PSC. For example, a relevant individual that does not respond to requests for PSC information may be committing a criminal offence. A company is also entitled to apply restrictions to shares or rights in the company held by the individual who is not responding.

Is information held on the PSC register publicly available?

Almost all of the information on the central PSC register is available to the public. The only information that will not be available is the PSC's usual residential address (unless this has been supplied as the service address) and the day of the PSC's date of birth. The PSC register that you keep must be available for public inspection, but you should not provide the usual residential address of any PSC when it is inspected.

If you choose to keep your PSC register only at Companies House then all of the information that would otherwise appear in the company's PSC register will be available publicly. This means your PSC's full date of birth will appear, but the residential address will still be suppressed.

In exceptional circumstances (where there is a serious risk of violence or intimidation) there is a regime for suppressing all information relating to the PSC from the PSC register and the central register for public inspection or for preventing their residential address being shared with credit rating agencies.

Of course all of the information will be available to law enforcement agencies and Companies House will supply information regarding residential addresses and days of dates of birth to credit reference agencies and certain public authorities in certain circumstances.

What happens if the company does not comply with the requirements?

Failure to comply with the requirements of the PSC regime could lead to the company or directors, or identified PSCs committing a criminal offence. The company and its directors could face a fine or imprisonment, or both.

Is further guidance available?

The Department for Business, Energy & Industrial Strategy has issued a significant amount of additional information in the form of summary, statutory and non-statutory guidance in this area. This guidance contains, for example, further detail of the requirements and processes involved at various stages of keeping the PSC register, official wording for entering on the PSC register and example notices relating to obtaining and confirming PSC information.

The guidance can be obtained from www.gov.uk/government/organisations/companies-house.

How we can help

These changes may give rise to a complicated set of initial and ongoing obligations for you and your company.

If you would like to discuss these requirements in more detail, or require assistance with this or other company secretarial requirements, please contact us.

Research and Development

Research and development (R&D) by UK companies is being actively encouraged by Government through a range of tax incentives. The government views investment in research and development ('R&D') as a key to economic success. It is therefore committed to encouraging more smaller and medium sized ('SME') companies to claim R&D tax relief

The incentives are only available to companies and include:

- increased deduction for R&D revenue spending and
- a payable R&D tax credit for companies not in profit.

The government is committed to improving access to R&D highlights the need for more SME companies to understand what relief is available and how the process of claiming tax relief works. Recent changes to R&D scheme rates have increased the relief available so a clear understanding is needed to ensure that companies are aware of how the tax rules work.

What are the tax reliefs available for SME companies?

A company can claim enhanced deductions against its taxable profits for expenditure which is qualifying R&D expenditure. The amount of the enhancement has increased over the years. The rate was 125% for expenditure incurred before 31 March 2015 and has increased to 130% from 1 April 2015. This amount is in addition to the actual expenditure (ie a 230% total deduction from 1 April 2015). R&D enhanced relief represents an additional corporation tax reduction of 26% of the expenditure incurred.

If the R&D claim creates a tax loss, then the company may be able to surrender the loss for a cash repayment. This is 14.5% for expenditure incurred on or after April 2014. A surrendered loss could therefore give a repayment of up to 33.35% of the expenditure.

Where the company incurs qualifying R&D expenditure before it starts to trade, it can elect to treat 230% of that expenditure as a trading loss for that pre-trading period. The pre-trading loss created by the R&D relief can then be surrendered, as above, which could provide much needed cash flow for new companies.

Qualifying R&D capital expenditure incurred by a company would be eligible for 100% research and development allowance. Details of this allowance are not provided in this summary.

Example of R&D claim

A company has adjusted net profits of £50,000 before an R&D claim and allowable R&D expenditure of £70,000.

The enhanced claim is therefore £70,000 x 130% = £91,000.

Deducting this from the adjusted profits gives a loss of £41,000.

The company decides to surrender this loss for a cash repayment. The amount they would receive is £41,000 x 14.5% = £5,945.

Research and Development Expenditure Credit scheme (RDEC)

R&D relief under the SME scheme is not available if the R&D project has had the benefit of a grant or subsidy. There may, however, be an alternative claim available to the company. This is known as the Research and Development Expenditure Credit scheme (RDEC). RDEC allows the SME to claim a taxable credit of 11% of eligible expenditure. As this amount is taxable it is known as an 'above the line' credit. The government has announced an increase in the rate of the R&D expenditure credit which applies from 11% to 12% where expenditure is incurred on or after 1 January 2018. The credit received is used to settle corporation tax liabilities of the current, future or prior periods subject to certain limitations and calculations. Where there is no corporation tax due the amount can be used to settle other tax debts or can be repaid net of tax.

The RDEC relief is also available to an SME for expenditure incurred on R&D that is contracted to it by a large company.

Qualifying projects

R&D relief can only be claimed by companies that have incurred expenditure on qualifying R&D projects that are relevant to the company's trade. A project should address an area of scientific or technological uncertainty and be innovative. The innovation needs to be an improvement in the overall knowledge in the relevant field of research, not just an advancement for the company. Qualifying projects could include those which:

- increase the life of a battery
- create a new type of material in an item of clothing
- develop new spark plugs for use in an existing engine.

An important point to appreciate is that the activity does not have to create something completely new from scratch. It could include:

- developing a product that exists but where there is some technological uncertainty which can be improved
- making an improvement to a product or process eg exploring new cost effective materials which will allow a product to perform better.

Companies should document the uncertainties and planned innovation at the start of a project to provide evidence to support an R&D claim.

Relevant activities on R&D

Once the company is comfortable that R&D is taking place, then the next step is to identify the activities of the business that relate to the R&D activity.

There are essentially two types of activities:

- those that contribute directly to achieving the advancement
- certain activities that indirectly contribute to achieving the advancement.

Examples of direct activities are:

- scientific or technological planning
- scientific or technological design, testing, and analysis
- activities which design or adapt software, materials or equipment.

Examples of indirect activities are:

- information services eg preparation of R&D reports
- indirect supporting services eg maintenance, security, clerical
- ancillary services eg paying staff, leasing laboratories and equipment.
- Indirect activities would all have to be undertaken for the R&D project.

Once the project begins to be involved in the production process, any R&D activities are treated as having stopped as development has finished. It is therefore beneficial for companies to keep a timeline of activities and their purposes to detail when the business starts to move into the production phase and therefore optimise their claims.

Types of expenditure

Qualifying expenditure which is incurred on activities which are either directly or indirectly related to the R&D project fall into different categories. These are as follows:

- staffing costs
- software
- expenditure on consumable or transformable materials
- costs of work done by subcontractors and externally provided workers
- costs of clinical trial volunteers.

To be eligible, expenditure must be revenue in nature and paid by the time that the R&D claim is accepted. This means any accruals for expenditure have to be monitored carefully after the year end to make sure that they are paid and not written back to profit.

Further detail on some of these categories is provided below.

Staffing costs

The staff costs include employees and director staff costs ie salaries, employer pension contributions, employers' NIC but not non-cash benefits-in-kind. Where an employee or director only spends part of their time on an R&D project then the costs are apportioned. The relevant staff are those involved in the directly and indirectly related activities highlighted above.

The indirect activity list included categories for 'supporting' and 'ancillary' services. The staff who perform these services should be providing supporting or ancillary services for the R&D project and not for the other people who are directly involved in the R&D project.

Examples

- The salary costs of a maintenance worker working full time on maintaining laboratory equipment used for R&D can be claimed.
- The salary costs of an accountant keeping a record of the maintenance work done including the laboratory maintenance cannot be claimed.

If directors are taking dividends from the company rather than salaries it may be more beneficial to change this for any directors involved in R&D.

Consumable transformable materials

Materials that are consumed or transformed in the R&D activity are eligible expenditure. Items included would have to be items which were consumed or transformed so that they were no longer usable in their original form. This would therefore include:

- water
- power
- fuel
- a chemical substance which is transformed
- an electrical component.

For expenditure on or after 1 April 2015, any consumables or transformable materials that are included in a product that is sold, transferred or hired out will not be qualifying expenditure for R&D relief.

Costs of work subcontracted out and externally provided workers

Where the SME subcontracts qualifying R&D work to a subcontractor, the SME can claim a deduction for the cost of the subcontractor work. The amount that can be claimed depends on whether the SME is connected to the subcontractor but generally it is 65% of qualifying costs. Similar rules apply to externally provided workers.

Methods of claiming tax relief

Companies can claim R&D tax relief in the tax return for the period when the expenditure is charged in the accounts of the company. HMRC have specialist offices which are able to offer advice on R&D claims.

Further support for businesses

.A number of measures have been announced in the Autumn Budget 2017 to support business investment in R&D including:

- a pilot for a new Advanced Clearance service for R&D expenditure credit claims to provide a pre-filing agreement for three years
- a campaign to increase awareness of eligibility for R&D tax credits among SMEs
- working with businesses that develop and use key emerging technologies to ensure that there are no barriers to them claiming R&D tax credits.

How we can help

There are a number of areas in this briefing where you may need specific advice depending on the circumstances of R&D activities and expenditure so please do not hesitate to contact us.

Securing Business Success

As many as half of all businesses fail in their first three years of trading. A contributor to ensuring business success and avoiding failure is to know your enemies.

Generally the main reason for the high failure rate of small newly established businesses is when the owner lacks experience in managing all aspects of the business. Interestingly, new businesses appear to survive better in economic downturns than older more established businesses. This may be because they are more adaptable to change, or possibly perhaps they were set up in the recession and therefore were not surprised by the sudden weakening in trading conditions.

There are many more specific reasons for business failure.

Common reasons cited by many owner managers for business failure

Increased competition from larger businesses

Competition from larger businesses can cause problems as they make use of their size and buying power to reduce costs and therefore selling prices to levels which smaller businesses simply cannot compete against.

As a small business, one of the best ways to protect against this threat is to carry out industry research to ensure that you know who your competitors are, what size they are in relation to your business, and what support network they have, such as whether they are part of a large group.

As a business owner, you need to identify the threats that competitors pose to your business and try to mitigate those threats by developing your strengths against the weaknesses of the competitor.

For example, a small local grocery shop may be under threat from a large supermarket chain opening a store on the edge of town. It would be unrealistic to consider trying to compete on price so the grocer needs to differentiate their business from that of the superstore by building on the strengths it has, such as:

- focusing on local produce from local suppliers
- offering a personal service and knowing customers and their families by name
- introduce a local delivery service where goods can be ordered by phone rather than online
- order in specific goods for customers with special requirements.

Lack of sales

A lack of sales is not only a particular problem for a new business but can also apply when new product lines or services are introduced in existing businesses.

Carrying out market research will help to eliminate as many problems as possible in the early stages. By researching the target market and local conditions, inappropriate products or incorrect pricing should be identified and corrected before, or soon after, the business commences.

Market research is an expense which many business owners try to avoid, but it can provide valuable information and prove to be cost effective. It may even be possible to conduct your own market research surveys rather than paying an expensive agency to do it on your behalf.

For example you could visit local businesses which you may want as your customers to canvass opinion on your product, or if your target market is made up of consumers, you could survey shoppers in the local town centre.

Gaining credibility for a business venture can be extremely difficult and so market research is important to assist in obtaining finance for the business.

To protect your business against loss of customers, you should try to have a mixed range of customers, in different industries and avoid over reliance on just one or a few key customers. By doing this, your business will be naturally protected against one customer going bust, or a dip in a particular industry.

Failing to keep up with technological advances in your market can also lead to lack of sales, as your business loses out to more up to date products sold by competitors. It is imperative to stay up to date for the sustainability of the business unless you choose to operate in a specialist niche market, which may have a finite life or limited market.

Poor cashflow

Poor cashflow is a key problem for many owner managed businesses as many owner managers tend to have good knowledge in their field but little experience of managing other aspects of the business, including cashflow.

It is important to ensure that the business has enough working capital to meet day to day cashflow requirements.

Day to day cashflow can be improved by:

- making sure the business is not carrying too much stock, particularly old or slow moving stock
- having disciplined credit control procedures to chase up overdue debts
- undertaking credit checks on new customers before offering credit facilities.

Common reasons cited by many professional advisers for business failure

Lack of monitoring of performance and results

Many small businesses do not prepare management accounts, so the only time they review the results of their business is when the year end accounts are prepared, which is typically at least six months after the year end. Year end accounts do not carry much detail which means that the business is often lacking in detailed information. Consequently a business cannot use this for comparisons to actual and expected performance.

All businesses should carry out reviews of their results periodically during the year, and compare the actual results to last year and expected figures. This will help to identify any potential problems so that corrective action can be taken on a timely basis.

Turnover instead of profit led

It is easy for business owners to focus on sales growth and be over optimistic about the level of sales which can be achieved, especially in the early years. Very few such entrepreneurs actually have any solid facts behind their projected turnover figures. As previously mentioned, market research is very important to ensure that the expected market share is realistic.

Many business owners also tend to focus on trying to increase sales, instead of focusing on controlling costs and increasing profits.

As a business owner you must put together a proper budget to ensure that all costs are covered. Typical errors made include setting sales prices based on the direct costs of the product and not including any of the overheads of the business such as rent and rates.

Preparing an annual business plan to include a forecast profit and loss account can help to identify all potential costs to ensure they are considered when calculating selling prices. This will also give you a valuable measurement tool to compare with the actual performance of the business.

Taking too much out of the business

Some business owners like to take large amounts out of their business, either by way of drawings, salaries, bonuses or dividends. If your business is struggling it may be worth reviewing personal drawings and reducing them for a short period, to help the long term viability of the business.

It is better to have lower income from a sustainable business than higher income over a short term.

Other issues

Taxation

Some businesses struggle to meet their tax liabilities on time. The Business Payments Support Service provided by HMRC allows a business to negotiate ‘time to pay arrangements’ across the various taxes. However, this service is only offered to businesses who are likely to be able to pay their tax liabilities if they are given more time to pay and not to those which can no longer feasibly pay at all.

Therefore, if your business is struggling to meet its tax liabilities, it may be worth contacting the service to see if you can agree a time to pay arrangement before matters reach a crisis level.

Management skills

Management skills are necessary to develop a strategy and to train and manage people. Owner/managers are usually specialists in the product and services their business offers, so issues are dealt with on a day to day basis.

These individuals often have a passion for their business however they may not possess expertise in the area of management and, as a result, long term planning is neglected. It may be worth investing in a training session or online course to develop management skills to obtain the best results from your staff.

A happy, motivated workforce can drive the success of a business.

It is especially important to have the right people in key roles within your business, so you must consider how to retain them within the business over the long term.

Every business should also have a ‘succession plan’ in place to cover roles if a key person leaves. This helps the business to survive when it loses a key member of staff, whether permanently or temporarily if for example, they are off sick for a long period.

If a business is being run single-handedly by the owner/manager, you should have a succession plan and insurance in place in case of personal emergencies.

Legislation

Small businesses often do not have the necessary in house expertise to ensure compliance with legislation for issues such as employment law, health and safety law and environmental standards.

Complying with all the legislative requirements can be a major problem for the small business. Form filling and staying up to date with all of the changes is unlikely to be a priority for the owner, and yet it is essential if the business is to survive and continue successfully. Occasionally new legislation can remove a market or actually make it too costly to continue to serve it.

This can lead to costly consultancy fees for the business. Unfortunately, it is difficult to avoid these fees for complex issues.

There are government agencies which offer free, impartial support to businesses, such as Acas which offers advice regarding employment issues. Health and safety information can be found on the internet and consultants may only be needed if trading in a high risk environment.

Location

The choice of location can have a big influence on your business. If your business depends on customers visiting the premises, it must be based somewhere which is easily accessible for customers, and not somewhere which is too remote or in a bad area. If the business depends on passing traffic, such as a shop, it must be situated somewhere with a lot of people passing on foot or with easy parking.

Finance and business plans

It can be difficult to obtain financing for a business or even to keep your existing facilities.

When applying for finance it is very important to submit a business plan to demonstrate the viability of your business and lend credibility to your application. This business plan should include forecast financials (profit and loss account, cashflows) as well as market research backing up your sales figures.

Even if you do not require finance, it is a good idea for any business to prepare a business plan. This will give the business a strategic direction and something to monitor actual results against.

Planning is extremely important. It can be said that 'failing to plan, is planning to fail'. The business plan should include external and internal issues to see if the owner/ manager can cope with the potential 'worse case scenario' that could arise. Comprehensive discussions with an adviser can prevent (or at least highlight) a wide range of problems and methods of minimising or overcoming their impact.

When things go wrong

It can be extremely difficult and traumatic to face up to the failure of your own business. Many owners are tempted to bury their heads in the sand and hope that things will somehow improve. However, the best way to get things to improve is to face up to the fact that the business is struggling as soon as possible - the earlier you identify there is a problem, the earlier you can take remedial action to try to save the business before it is too late. If you think that your business is struggling, seek help and advice immediately.

How we can help

There are undoubtedly many advantages to securing business success.

We are able to assist you in the areas where businesses generally fail and assist in ensuring that you have the right mix of skills suitable to making your business a success.

We can assist with preparing management accounts, cashflow forecasts and finance and business plans and, if things go wrong we can assist with remedial action.

If you would like to discuss these procedures any further please contact us.

Seed Enterprise Investment Scheme

The Seed Enterprise Investment Scheme (SEIS) provides tax relief for individuals prepared to invest in new and growing companies. It is the junior version of the Enterprise Investment Scheme (EIS). Investors can obtain generous income tax and capital gains tax (CGT) breaks for their investment and companies can use the relief to attract additional investment to develop their business.

Key features

The key features of the relief can be summarised as follows:

- a qualifying investor will be able to invest up to £100,000 into qualifying companies in a tax year
- they will receive income tax relief of up to 50% of the sum invested
- unused relief in one tax year can be carried back to the preceding tax year if there is unused relief available for that year
- the maximum amount that a company can attract in investment qualifying for the SEIS is £150,000 in total
- the company must not have net assets of more than £200,000 before any SEIS investment
- an individual who makes a capital gain on another asset and uses the amount of the gain in making a SEIS investment will not pay tax on 50% of the liability for 2013/14 and beyond subject to certain conditions
- there is a huge amount of anti-avoidance legislation to prevent exploitation for tax avoidance purposes.

Who can invest?

The official term is a ‘qualifying investor’. The primary requirement is that the investor or someone who is associated with them must not be an employee of the company in which the investment is being made. They can however be a director. They must also ensure that they do not have (directly or indirectly) a substantial interest in the company. This is defined by reference to holding more than 30% of any of the following (in either the company itself or a 51% subsidiary of the company):

- ordinary shares
- issued shares
- voting rights
- assets in a winding up.

Which shares qualify?

The shares must be ordinary shares which have been subscribed for wholly in cash and are fully paid up. They must be held for a three year period from the date of issue. The company must have issued the shares for the purpose of raising money to fund a qualifying business activity which either involves the carrying on (or preparations to carry on) a new trade. Using the funds to meet the costs of research and development intended to create or benefit a new qualifying trade will also be acceptable. The money must be spent within three years of the date of issue of the shares. The anti-avoidance requirement is that there must be no pre-arranged exit for the investor involving the purchase of the shares, or the disposal of assets.

Which companies qualify?

The rules are intended to benefit new companies. The basic requirements are that the company must be unquoted. The trade must be a 'new' qualifying trade. This is one not carried out by either the company or any other person for longer than two years at the date the shares are issued. The company must exist wholly for the purpose of carrying out one or more qualifying trades throughout the three year period from the date of issue of the shares. If the company goes into receivership or administration or is wound up during this period, this will not prevent the relief being given, provided there was a commercial justification for the action.

The other main conditions relating to the company can be summarised as follows:

- the company must have a permanent establishment in the UK
- the company must be effectively solvent at the date of issue of the shares
- the company may have a qualifying subsidiary
- the company must not be a member of a partnership

- immediately before the investment, the gross assets of the company plus the value of any related entity (one that holds more than 25% of the capital or voting power in the issuing company) must not exceed £200,000
- there are less than 25 full-time employee equivalents in the company and any related entity
- the company must not have had EIS or Venture Capital Trust (VCT) investment before the SEIS shares are issued; and
- the total amount of investment made under the SEIS in the company must not exceed an aggregate of £150,000.

Which trades qualify?

The primary requirement is that the company must carry on a genuine new trading venture. There may be a problem if the same activities had been carried on as part of another trade. Basically, any trading activity will qualify unless it is an excluded activity within the definitions used for the EIS. This means that activities such as property development, retail distribution, hotels, nursing homes and farming will not qualify. The trade must be carried out on a commercial basis.

How is relief obtained?

The relief is given as a reduction against the total tax liability for the year but cannot turn a tax liability into a tax repayment. In that situation the individual would be able to carry back the unused relief to the preceding tax year for use if there was any tax unrelieved for that year.

Examples

Samantha invests £60,000 under the SEIS in 2018/19. Potentially her tax relief is 50% of her investment which is therefore worth £30,000. As her tax liability for the year is £45,000, the maximum relief is available to reduce her tax liability to £15,000.

Richard also invests £60,000 under the SEIS in 2018/19. His forecast tax liability for 2018/19 is only £20,000 so the claim to relief under the SEIS will be limited to £20,000 for that tax year. However, Richard can in addition make a claim to carry back the unused relief of £10,000 (£30,000 less £20,000 relieved in 2018/19) to the preceding tax year 2017/18.

The relief must be claimed and requires a certificate from the company issuing the shares.

Can the relief be withdrawn?

The short answer is yes if certain events happen within three years of the date on which the shares are issued. The most obvious event is the disposal of the shares in that period. There are complex rules that will cause the relief to be withdrawn if the investor receives value from the company during this period.

What about the CGT position?

Where shares are sold more than three years after the date on which they are issued, then any resulting gain is free of CGT. Shares sold within three years would be chargeable but may qualify for Entrepreneurs' Relief (ER) if the various conditions are met.

Where a disposal is exempt for gains purposes, this would normally mean that a loss would not be allowable for CGT purposes, but an allowable loss is available under the scheme. Where SEIS income tax relief has been obtained and is not withdrawn then the capital loss is reduced so that tax relief is not duplicated.

Example

Murat invested £25,000 in the SEIS in 2014/15 for which he received £12,500 relief against his income tax liability of £35,000. If 4 years later the company is unsuccessful and is liquidated with no value returned to the shareholders then his allowable capital loss will be £12,500 being the amount invested of £25,000 less the income tax relief obtained of £12,500.

Clearly investors will hope that they are not in a capital loss position but where this does happen, the allowable loss qualifies for relief against either gains or income. The facility to use a capital loss against income is only available in certain specified circumstances which include a capital loss on the SEIS. It can be used in the year of the loss and/or the preceding year to relieve net income and can therefore potentially save tax at the individual's highest rate of tax.

A bonus exemption

There is also an additional exemption where assets are disposed of at a gain in that year and funds equal to the amount of the gain are invested in SEIS shares. Reinvestment relief is available at 50% of the matched gain where the proceeds are invested in SEIS shares.

Where only part of the gain is invested in such shares then only that part is exempt. The maximum gain to be relieved is capped at £100,000. Further, this relief will only be allowed where the investment also qualifies for income tax relief and a claim is made. If for any reason the SEIS relief is withdrawn on the shares then the gain will be reinstated.

Example

Isaac sells some more quoted shares in 2018/19 for £200,000, making a gain of £80,000. He invests £80,000 of the proceeds in new shares which qualify under the SEIS. He will be able to claim a reduction of £40,000 (being 50% of the amount invested in the SEIS) in the chargeable gain on the shares.

Comparison to EIS

The SEIS supplements the long established EIS. Some aspects of both schemes are similar but there are also key differences. These are not considered in detail here, however, consider the position of the individual investor. Under the EIS those investing up to £1 million receive income tax relief at up to 30%. From a tax relief perspective on investments up to £100,000, the SEIS is more favourable but it clearly cannot be used for larger investments.

How we can help

SEIS compliments the EIS and related Venture Capital Trust investment schemes as it may be an alternative way of attracting funds at a time when it is still difficult to obtain finance from traditional sources such as banks. Great care will be required to ensure that all opportunities to use it are obtained for investor and qualifying company alike. Please do contact us if this is an area of interest.

Share Ownership for Employees - EMI

Enterprise Management Incentives (EMI)

Retaining and motivating staff are key issues for many employers. Research in the UK and USA has shown a clear link between employee share ownership and increases in productivity. The government has therefore introduced a variety of ways in which an employer can provide mechanisms for employees to obtain shares in the employer company without necessarily suffering a large tax bill. Provided the company meets the qualifying conditions, EMI can be one of the most tax efficient and flexible means available.

EMI allows selected employees (often key to the employer) to be given the opportunity to acquire a significant number of shares in their employer through the issue of options. Whilst an EMI can offer significant tax advantages, the key driver for any incentive arrangement should be the commercial objectives of the business.

This factsheet outlines the rules for EMI.

Tax problems under normal rules

If shares are simply given to an employee the market value of the shares will be taxed as earnings from the employment. This is expensive for the employee as he may not have any cash to pay the tax arising.

In order to avoid this immediate charge, options could be granted to an employee. An option gives the employee the right to obtain shares at a later date. Provided that the terms of the option are that it must be exercised within ten years, any tax liabilities will be deferred until the time the options are exercised.

This may still be expensive for the employee if he is not then in a position to sell some of the shares in order to pay the tax arising.

What does EMI offer?

EMI allows options to be granted to employees which may allow the shares to be received without any tax bill arising until the shares are sold.

How does it work?

Selected employees are granted options over shares of the company. The options should be capable of being exercised within ten years of the date of grant.

In order to qualify for the income tax and national insurance contribution (NIC) reliefs, the options awarded need to be actually exercised within ten years of the date of the grant. There is also a statutory limit of £250,000 in respect of options granted on or after 16 June 2012, which maximises the value of the options which may be granted to any one employee. No employee may hold unexercised qualifying EMI options with a market value of more than £250,000. The market value is taken at the date of grant.

What are the tax benefits to employees?

The grant of the option is tax-free.

There will be no tax or NICs for the employee to pay when the option is exercised so long as the amount payable for the shares under the option is the market value of the shares when the option is granted.

The EMI rules allow the grant of nil cost and discounted options. However, in these circumstances, there is both an income tax and an NIC charge at the time of exercise on the difference between what the employee pays on exercise and the market value of the shares at the date of grant.

Following the acquisition of the shares, when the option is exercised, an employee may immediately dispose of, or may retain the shares for a period before selling them. At such time there will be a chargeable gain on any further increase in value. The CGT liability will depend on the availability of any reliefs and annual exemption.

- CGT at the rate of 10% applies to gains where net total taxable gains and income are below the income tax basic rate band
- CGT on any part of gains above this limit will be charged at 20%.

In certain circumstances, in respect of shares acquired through exercising EMI options, Entrepreneurs' Relief may be available to reduce the CGT liability to 10%. Although the Entrepreneurs' Relief conditions have to be satisfied they are modified so that:

- the 5% minimum shareholding requirement does not apply
- and the 12 month minimum holding requirement is allowed to commence on the date the option is granted.

These rules apply to shares acquired on or after 6 April 2012.

What are the benefits to employers?

- Employees have a potential stake in their company and therefore retention and motivation of these employees will be enhanced.
- Options will not directly cost the employer any money in comparison to paying extra salary.
- There will normally be no NICs charge for the employer when the options are granted or exercised or when the employee sells the shares.
- A corporation tax deduction for the employer company broadly equal to employees' gains.

EMI: Points to consider

There are a number of issues to consider in deciding whether EMI is suitable for your company.

- Does the company qualify?
- Which employees are eligible and who should be issued options?
- What type of shares will be issued?
- When will the rights to exercise options arise?
- The costs of setting up the option plans are not tax deductible.

Does the company qualify?

EMI was introduced by the government to help small higher risk companies recruit and retain employees with the skills that will help them grow and succeed. The company must therefore:

- exist wholly for the purpose of carrying on one or more 'qualifying trades'
- have gross assets of no more than £30 million
- not be under the control of another company (so if there is a group of companies, the employee must be given an option over shares in the holding company).

The main trades excluded from being qualifying trades are asset backed trades such as:

- property development
- operating or managing hotels
- farming or market gardening.

Which employees are eligible and who should be issued options?

An employee cannot be granted options if they control more than 30% of the ordinary share capital of the company. They must spend at least 25 hours a week working for the company or the group, or if the working hours are shorter, at least 75% of their total working time must be spent as an employee of the company or group.

Subject to the above restrictions, an employer is free to decide which employees should be offered options. The sole test is that options are offered for commercial reasons in order to recruit or retain an employee.

What type of shares will be issued?

EMI provides some flexibility for employers. For example, it is possible to limit voting rights, provide for pre-emption or set other conditions in respect of shares which will be acquired on exercise of an EMI option. The shares must, however, be fully paid ordinary shares so that employees have a right to share in the profits of the company.

When will the rights to exercise options arise?

The options must be capable of being exercised within ten years of the date of grant but there does not have to be a fixed date.

Examples of circumstances in which the options could be exercised include:

- fixed period
- profitability target or performance conditions are met
- takeover of company
- sale of company
- flotation of company on a stock market.

Options can be made to lapse if certain events arise, for example the employee leaves the employment.

How we can help

Whilst an EMI can offer significant tax advantages, the key driver for any incentive arrangement should be the commercial objectives of the business. There are a variety of alternative arrangements which can be used each with their own conditions and advantages. We can help you decide whether EMI is appropriate for your business and whether the business will qualify. Please contact us for advice on the best options available for your business.

Small Company Accounting

The required format of statutory accounts that small companies have to prepare and send to Companies House has changed. This factsheet sets out the choices that small companies now have. The nature of the company's activities, the types of assets which it has and whether external scrutiny is required / desired will need to be considered.

We would be happy to assist you in providing specific advice for your company.

New UK GAAP for small companies

Small companies, depending on size, have the following options:

- to use the same accounting standard as non-small UK companies - FRS 102
- to use the FRS 102 reduced disclosure regime (section 1A), or
- where relevant, to apply an alternative standard - The Financial Reporting Standard applicable to the Micro-entities - FRS 105.

Increased size limits for small companies

Many more companies now qualify as small as a result of the substantially increased company size limits:

	Previous	**Current**
Turnover	£6.5m	£10.2m
Total assets	£3.26m	£5.1m
Employees	50	50

The size limits to qualify as a micro-entity are set out below:

	Current
Turnover	£632,000
Total assets	£316,000
Employees	10

A company needs to meet two out of three of the above criteria for two consecutive years to qualify as a small or micro company, unless it is the first year of the company's existence, in which case only that year has to be considered. The turnover limit is adjusted if the financial year is longer or shorter than twelve months.

There are certain exclusions from the above small and micro-entity size limits which are set out in the Companies Act 2006. Certain types of entity are prohibited from preparing micro-entity accounts for example charities.

The previous option of filing abbreviated accounts has been withdrawn, however, small companies continue to have the option of not filing their profit and loss account and/or directors' report at Companies House.

Small companies have the option of preparing less detailed accounts (abridged accounts) for members, providing every member agrees annually, and will be able to choose to abridge the balance sheet, the profit and loss account or both. Charities are also prohibited from preparing abridged accounts.

Contents of micro-entity accounts

The accounts of a micro-entity are considerably shorter and simpler than those otherwise required for a small company. Micro-companies are no longer required to prepare a Directors' report.

The profit and loss account and balance sheet include less detail. For example current assets are shown in aggregated total on the balance sheet rather than being analysed into stocks, debtors and cash.

Notes of the following should be disclosed at the foot of the balance sheet:

- off balance sheet arrangements
- average monthly employees
- directors' advances, credits and guarantees, and
- guarantees, contingencies and other financial commitments.

Only the balance sheet and the footnotes need to be filed at Companies House. The profit and loss account does not need to be filed.

The company does not need to produce (nor file) typical small company notes such as:

- accounting policies
- post balance sheet events, and
- related party transactions.

Fair value accounting and alternative accounting rules cannot be applied in micro-entity accounts, meaning no revaluations or measurement at fair value is permitted.

Contents of FRS 102 1A accounts

The financial statements of a small entity must give a true and fair view of the assets, liabilities, financial position and profit or loss of the small entity for the reporting period.

A complete set of financial statements of a small entity must include all of the following:

- a statement of financial position as at the reporting date
- an income statement for the reporting period, and
- notes to the accounts.

A statement of cashflows is not required.

The following may however be required in order to show a true and fair view:

- when a small entity recognises gains or losses in other comprehensive income it is encouraged to present a statement of total comprehensive income, and
- when a small entity has transactions with equity holders it is encouraged to present a statement of changes in equity or a statement of income and retained earnings.

In relation to the notes of the accounts one significant exemption is available in relation to related party transactions. Only material related party transactions which are not concluded under normal market conditions will need to be considered for disclosure.

Comparison of FRS 102 1A accounts and FRS 105

The table below sets out the requirements including those encouraged for FRS 102 Section 1A and FRS 105:

	FRS 102 (Section 1A)	**FRS 105**
Directors' report	Yes	no
Profit and loss account	Yes	Yes
Statement of comprehensive income / Statement of total recognised gains/losses	Encouraged	No
Statement of changes in equity / Statement of income & retained earnings / shareholders' funds note	Encouraged	No
Balance sheet	Yes	Yes
Statement of cash flows	No	No

FRS 105 imposes simpler accounting treatment compared to FRS 102 Section 1A. There are numerous differences between FRS 102 Section 1A and FRS 105 but the most significant are as follows:

Revaluation / fair value of assets

Fair value accounting is not permitted under FRS 105. By contrast, FRS 102 Section 1A permits (and in some cases requires) some assets to be measured at fair value annually.

The following assets and liabilities are most significantly impacted by fair value accounting under Section 1A:

- Investment properties, for example those properties held to earn rental income, should be revalued every year to fair value.
- Forward foreign currency contracts require restatement to their fair value at the balance sheet date.
- Loans payable or receivable (for example to or from a director) falling due more than one year, with a nil or below market rate of interest, must be measured at the present value of future cash flows, however there is an optional relaxation of this requirement permitted within FRS 102 for small entities, in certain circumstances.

Deferred tax

FRS 105 does not allow companies to recognise deferred tax. By contrast, FRS 102 Section 1A requires deferred tax to be provided on fair value adjustments, and therefore likely to occur more frequently than before.

How we can help

We will be very pleased to discuss the impact on your small company of which accounting standard is to be used. If you would like to discuss these issues in more detail, please contact us.

Social Enterprise Entity Structures

A social enterprise entity is a business with primarily social objectives. Any surpluses made are reinvested into the main principle of that entity (or into the community) rather than maximising profit for shareholders. Examples of types of objectives are regeneration of the local environmental area, promoting climate change awareness and training for disadvantaged people. There are various legal forms that should be considered when setting up this type of entity. Which one you choose will depend upon what the social enterprise actually does and the style of management of those running it.

The possible options available are as follows:

- Limited company
- Trust
- Unincorporated association
- Community interest company (CIC)
- Charitable incorporated organisation (CIO)
- Co-operative or community benefit society

Limited company

A limited company is a separate legal entity from its members and gives them limited liability. A limited company set up with a social purpose needs to set out its objectives which can also include commercial objectives. There are two choices of limited companies for social enterprise entities, a company limited by shares and a company limited by guarantee. In the case of a company limited by shares, dividends can be paid to the shareholders.

Limited company accounts need to be filed at Companies House and consideration needs to be given as to whether an audit is required.

If the limited company's objectives are exclusively charitable and for the public benefit it may also be set up as a charity. Where this is the case the company will need to consider whether it needs to register with the relevant charity regulator. If it is a charity then it will need to follow the relevant charities legislation (eg Charities Act 2011 in England and Wales) and the charity regulator will require the submission of Annual Returns. In return, however it will have the benefits of being a charity such as potentially qualifying for a number of tax exemptions and reliefs on income and gains, and on profits for some activities.

Trust

Trusts are unincorporated bodies which do not distribute profits. The trust is set up as a legal entity which governs how its assets are to be used and as such can hold property and other assets for the community. Trustees act on behalf of the community in looking after the assets but it is important to note that the trust does not have its own legal identity The trustees are therefore liable for the trust's liabilities.

Trust deeds are set up to protect the trust's objectives. The trust is able to write an asset lock into its rules in order to secure assets for its intended community.

Like limited companies trusts can also be charities. The same points which are noted above for charitable limited companies should be considered for charitable trusts.

Unincorporated association

The simplest form for a social enterprise entity is an unincorporated association and it should be used when a number of individuals come together for a common 'social' purpose. There are very few formalities to setting up this way which is the key advantage. The members can set their own rules and a management committee is elected to run the entity on behalf of any members it may have. Associations are also able to carry out commercial activities.

The problem with the unincorporated association is that it has no separate legal identity. If there are any debts, the members are legally liable to pay those debts down to their last worldly possession. This type of entity is not likely to be suitable if you wish to employ staff, raise finance, take on leases or purchase property, apply for grants or enter into contractual arrangements.

Like limited companies and trusts, unincorporated associations can also be charities. The same points which are noted above for charitable limited companies should be considered for charitable unincorporated associations.

Community interest company (CIC)

These are specific limited companies that provide benefits to the community and the legal form has only been available since 2005. The reason behind the development of CICs was the lack of legal structures for non-charitable social enterprises. They can be set up as either companies limited by shares or companies limited by guarantee and thus have the benefits of limited liability. CICs need to be registered and comply with the CIC Regulations. They need to pass the 'community interest test' before they can register as CICs. Thus the main difference compared to other companies is that they are operating for the benefit of the community and not for the benefit of shareholders. An existing company can be converted to a CIC although a CIC cannot hold charitable status.

Like trusts, they have an asset lock which restricts profit distribution in certain circumstances and ensures that the assets are used for the community purpose. On winding up a CIC, all of the assets must be transferred to another similar asset-locked body.

A key advantage of a CIC (rather than a charity) is that the directors of a CIC can be remunerated (charity trustees generally are not remunerated). They are also not as heavily regulated (although are still regulated under a 'light touch' regime). They obviously do not have the taxation advantages that charities are entitled to and they have to file a community interest report annually with the CIC regulator (which is made available publicly).

Charitable incorporated organisation (CIO)

The charity regulators for England and Wales and Scotland have been registering new CIOs / SCIOs (Scottish Charitable Incorporated Organisations) for a number of years. CIOs and SCIOs have benefits similar to a limited company charity. This means that the members and trustees are usually personally safeguarded from the financial liabilities of the charity and that the charity has its own legal personality which means trustees do not have to take out contracts in their own names. CIOs and SCIOs do not have to register with Companies House but they do need to register with their relevant charity regulator.

Co-operative or community benefit society

Community benefit societies (BenComs) are incorporated registered societies which operate for the benefit of the community in which they operate. They must be able to demonstrate their social objectives and these must continue to be met. Registration is with the Financial Conduct Authority for an applicable fee which will depend upon its rules.

BenComs are not the same as co-operatives as these operate primarily for the benefit of members. Depending on how they distribute profits and what activities they undertake, co-operatives can also be social enterprise entities.

How we can help

All of the above structures require specialist advice so please contact us to find out more. We will be happy to discuss your plans and the most appropriate structure with you. The most appropriate structure will depend on a number of factors including consideration of taxation implications, the legal entity, regulation and management style.

Sources of Finance

The financing of your business is the most fundamental aspect of its management. Get the financing right and you will have a healthy business, positive cash flows and ultimately a profitable enterprise. The financing can happen at any stage of a business's development. On commencement of your enterprise you will need finance to start up and, later on, finance to expand.

Finance can be obtained from many different sources. Some are more obvious and well-known than others. The following are just some of the means of finance that are open to you and with which we can help.

Bank loans and overdrafts

The first port of call that most people think about when trying to obtain finance is their own bank. Banks are very active in this market and seek out businesses to whom they can lend money. Of the two methods of giving you finance, the banks, especially in small and start-up situations, invariably prefer to give you an overdraft or extend your limit rather than make a formal loan. Overdrafts are a very flexible form of finance which, with a healthy income in your business, can be paid off more quickly than a formal loan. If, during the period you are financing the overdraft, an investment opportunity arises, then you could look to extend the options on your overdraft facility to finance the project.

Many businesses appreciate the advantages of a fixed term loan. They have the comforting knowledge that the regular payments to be made on the loan make cash flow forecasting and budgeting more certain. They also feel that, with a term loan, the bank is more committed to their business for the whole term of the loan. An overdraft can be called in but, unless you are failing to make payments on your loan, the banks cannot take the finance away from you.

Many smaller loans will not require any security but, if more substantial amounts of money are required, then the bank will certainly ask for some form of security. It is common for business owners to offer their own homes as security although more risk-averse borrowers may prefer not to do this. Anyone offering their house as security should consult with any co-owners so that they are fully aware of the situation and of any possible consequences. Another source of security may be the Enterprise Finance Guarantee Scheme. A start-up business unable to provide any other form of security may be able to get a guarantee for loans up to £1,200,000. Under the scheme, you pay a 2% premium on the outstanding balance of the loan, and in return, the government guarantees to repay the bank (or other lender) up to 75% of the loan if you default.

Savings and friends

When commencing a new business, very often the initial monies invested will come from the individual's personal savings. The tendency of business start-ups to approach relatives and friends to help finance the venture is also a widespread practice. You should make it clear to them that they should only invest amounts they can afford to lose. Show them your business plan and give them time to think it over. If they decide to invest in your business, always put the terms of any agreement in writing.

Issue of shares

Another way of introducing funds to your corporate business is to issue more shares. This is always a welcome addition to business funds and is also helpful in giving additional strength to the company's balance sheet. However, you need to consider where the finance is coming from to subscribe for the new shares. If the original proprietor of the business wishes to subscribe for these shares, then he or she may have to borrow money in a similar way to that discussed earlier. Typically, however, shareholders in this position are often at the limit of funds that they can borrow. Therefore, it may be necessary to have a third party buy those shares. This may mean a loss of either control or influence on how the business is run. An issue of shares in this situation can be a very difficult decision to make.

Venture capital

Approaching venture capital houses for finance will also mean an issue of new shares. The advantage of going to such institutions is the amount of capital they can introduce into the business. The British Private Equity and Venture Capital Association offers useful free publications (www.bvca.co.uk). Because of the size of their investment, you can expect them to want a seat on your Board. They will also make available their business expertise which will help to strengthen your business, although inevitably this will come with an additional pressure for growth and profits.

On a smaller scale, the government has introduced various tax-efficient schemes for entrepreneurs to invest in growing businesses. The current schemes available are called the Enterprise Investment Scheme (EIS), Seed Enterprise Investment Scheme (SEIS) and Venture Capital Trusts (VCT). We have separate factsheets providing details on these areas.

The SEIS is designed to help small, early-stage companies to raise equity finance by offering a range of tax reliefs to individual investors who purchase new shares in those companies. It complements the EIS which offers tax reliefs to investors in higher-risk small companies. The SEIS is intended to recognise the particular difficulties which very early stage companies face in attracting investment, by offering tax relief at a higher rate than that offered by the EIS.

Retained earnings and drawings

Since ultimately the well-being of a business is connected with the cash flow of that enterprise, if a proprietor would like more liquidity, then it is sometimes necessary to re-examine the amount of money they are withdrawing from the business for their personal needs. In this way, additional funds earned by the business can be retained for future use.

Other sources of finance

Other possible sources of finance are outlined below.

Factoring

Factoring provides you with finance against invoices that your customers have not yet paid. Typically you can receive up to 85% of the value of the invoice immediately and the balance (less costs) when the customer pays.

Hire Purchase (HP)

This is used to finance the purchase of equipment. Your business buys the equipment but payments of capital and interest are spread over an agreed period.

Leasing

This is a method of financing equipment you do not need to own. It is often used for vehicle finance. The equipment is rented rather than owned and the rental payments spread over several years. There can also be the option to fix maintenance costs as part of the agreement (contract hire).

Matching

It makes sense to match the finance you are seeking to the purpose for which it will be used.

- Working capital - overdraft or factoring
- Equipment and vehicles - fixed-term loan, HP or leasing
- Property - long-term mortgage
- Development/start-up - investment finance

How we can help

We have the expertise and the contacts to help you at all stages of your business development and to help you finance the business along the way. If you have any questions or proposals, please contact us as we would be happy to discuss them with you.

Stamp Duty Land Tax

Who pays the tax?

SDLT is payable by the purchaser in a land transaction occurring in England and Northern Ireland. Scotland has its own Land & Buildings Transactions Tax and from April 2018 Wales has its own Land Transaction Tax.

What is a land transaction?

A transaction will trigger liability if it involves the acquisition of an interest in land. This will include a simple conveyance of land such as buying a house, creating a lease or assigning a lease.

When is the tax payable?

The tax has to be paid when a contract has been substantially performed. In cases where the purchaser takes possession of the property on completion, that will be the date. However, if the purchaser effectively takes possession before completion - known as 'resting on contract' - that will be regarded as triggering the tax.

How much tax is payable on residential property?

Each SDLT rate is payable on the portion of the property value which falls within each band. The current rates and thresholds are:

Residential property **Purchase price of property**	**Rates (%)**
£0 - £125,000	0
£125,001 - £250,000	2
£250,001 - £925,000	5
£925,001 - £1,500,000	10
£1,500,001 and over	12

First time buyer relief

From 22 November 2017 first time buyers will pay 0% SDLT on residential properties on consideration up to and including £300,000. The excess beyond this and up to £500,000 will be charged at 5% with ordinary SDLT rates applying beyond £500,000.

Each SDLT rate is payable on the portion of the property value which falls within each band. The current rates and thresholds are:

Property value	**Rate (%)**
£0 - £300,000	0
£300,001 - £500,000	5
Over £500,000	Standard rates apply

Additional residential properties

Higher rates of SDLT are charged on purchases of additional residential properties (above £40,000).

The main target of the higher rates is purchases of buy to let properties or second homes. However, there will be some purchasers who will have to pay the additional charge even though the property purchased will not be a buy to let or a second home. The proposed 36 month rules set out below will help to remove some transactions from the additional rates (or allow a refund).

Care will be needed if an individual already owns, or partly owns, a property and transacts to purchase another property without having disposed of the first property.

The higher rates are three percentage points above the SDLT rates shown in the table above. The higher rates potentially apply if, at the end of the day of the purchase transaction, the individual owns two or more residential properties.

Some further detail:

- Purchasers will have 36 months to claim a refund of the higher rates if they buy a new main residence before disposing of their previous main residence.

- Purchasers will also have 36 months between selling a main residence and replacing it with another main residence without having to pay the higher rates.
- A small share in a property which has been inherited within the 36 months prior to a transaction will not be considered as an additional property when applying the higher rates.
- There will be no exemption from the higher rates for significant investors.

What about non-residential and mixed property?

The rates for non-residential and mixed property are set out in the table below.

The SDLT rates are payable on the portion of the property value which falls within each band.

Non-residential and mixed	Rate %
£0 - £150,000	0
£150,001 - £250,000	2
£250,001 and over	5

Broadly speaking, 'residential property' means a building that is suitable for use as a dwelling. Obviously it includes ordinary houses. Buildings such as hotels are not residential.

More than one dwelling

There is a relief available for purchasers of residential property who acquire interests in more than one dwelling at the same time. Where the relief is claimed the rate of SDLT is determined not by the aggregate consideration but instead by the mean consideration (ie by the aggregate consideration divided by the number of dwellings) subject to a minimum rate of 1%.

Are there any exemptions?

Yes. There are a number of situations in which the transfer of land will not be caught for SDLT. These include:

- a licence to occupy
- a gift of land
- transfers of land in a divorce
- transfer of land to a charity
- transfers of land within a group of companies.

What is the tax charged on?

Tax is chargeable on the consideration. This will usually be the actual cash that passes on the sale. However the definition is very wide and is intended to catch all sorts of situations where value might be given other than in cash: for example, if the purchaser agrees to do certain work on the property.

You mentioned that leases are caught. How does the tax work on them?

If an existing lease is purchased, SDLT is calculated in the same way as the purchase of a freehold property. If a lease is created for the payment of a premium ie a lump sum in addition to any rent, then the amount of the premium is the consideration subject to SDLT and is also calculated in the same way as the purchase of a freehold property.

However, there is also a potential charge to SDLT on the rental element. The calculation takes account of various factors including the rent that will be paid under the lease. If the calculated value exceeds £125,000 for residential property and £150,000 for non-residential, the excess is charged at 1%.

A 2% rate applies to rent paid under a non-residential lease where the NPV of the rent is above £5 million.

The government has SDLT calculators which work out the amount of SDLT payable. The calculators can be found at www.gov.uk/stamp-duty-land-tax-calculators.

How do I tell HMRC about a liability?

The purchaser must complete an SDLT1 return and this must be submitted to a special HMRC office within 30 days of the transaction. You must also send a cheque for the tax at the same time so this means that you have to calculate the tax due. A late return triggers an automatic penalty of £100, and late payment of the tax will mean a charge to interest.

What will HMRC do then?

A certificate will be sent to you to show that you have paid the tax. You will need this in order to change the details of the property ownership at the Land Registry. The fact that HMRC has given you the certificate does not mean your calculations are agreed. HMRC has nine months in which to decide whether or not to enquire into your return and challenge your figures.

How we can help

If you are planning to enter into an arrangement to purchase land, we can advise you of the precise impact of SDLT on the transaction so please contact us. We can also help you complete the SDLT1 and submit it to HMRC.

Starting Up In Business

It is the ambition of many people to run their own business. Some may have been made redundant and find themselves with free time and financial resources. Others make the decision to start up in business to be more independent and obtain the full financial reward for their efforts.

Whatever the reason, a number of dangers exist. Probably the greatest concern is the possibility of business failure.

Read on for guidance on some of the factors which need to be considered before trading begins.

This factsheet cannot cater for every possibility and any decisions should be supported by professional advice.

Initial considerations

In order to make your business a success there are a number of key factors which should be considered:

- commitment - starting a business is demanding. Determination and enthusiasm are essential
- skills - you will need managerial, financial, technical and marketing skills. If you do not have these skills personally, they can be found in a partner or employee, or acquired through training
- your product or service should have a proven or tested market, but must not conflict with the patent or rights of an existing business.

In addition to these general considerations there are a number of more specific matters.

The business plan

The business plan is the key to success. If you need finance, no bank manager will lend money without a sensible plan.

Your plan should provide a thorough examination of the way in which the business will commence and develop. It should describe the business, product or service, market, mode of operation, capital requirements and projected financial results.

Business structure

There are three common types of business structure:

- **Sole trader**
  This is the simplest form of business since it can be established without legal formality. However, the business of a sole trader is not distinguished from the proprietor's personal affairs.

- **Partnership**
  A partnership is similar in nature to a sole trader but because more people are involved it is advisable to draw up a written agreement and for all partners to be aware of the terms of the partnership. Again the business and personal affairs of the partners are not legally separate. A further possibility is to use what is known as a Limited Liability Partnership (LLP).

- **Company**
  The business affairs are separate from the personal affairs of the owners, but there are legal regulations to comply with.

The appropriate structure will depend on a number of factors, including consideration of taxation implications, the legal entity, ownership and liability.

Business stationery

There are minimum requirements for the contents of business stationery, both paper and electronic, which will depend on the type of business structure.

Books and records

All businesses need to keep records. They can be maintained by hand or may be computerised but should contain details of payments, receipts, credit purchases and sales, assets and liabilities. If you are considering purchasing computer software to maintain your records, obtain professional advice.

Accounts

The books and records are used to produce the accounts. If the records are well kept it will be easier to put together the accounts. Accounts must be prepared for HMRC and if a company is formed there are strict legal requirements as to their layout. The accounts and company tax return must be submitted electronically to HMRC in a specific format (iXBRL).

A company and a LLP may need to have an audit and will need to make the accounts publicly available by filing them at Companies House within a strict time limit.

Taxation

When starting in business, taxation aspects must be considered.

- **Taxation on profits**
  The type and rate of taxation will depend on the form of business structure. However, the taxable profit will normally differ from the profit shown in the accounts due to certain expenses which are not allowed for tax purposes and the timing of some tax allowances. Payment of corporation tax must be made online.

- **National Insurance (NI)**
  The rates of NI contributions are generally lower for a sole trader or partnership than for a director of a company but the entitlements can also differ. In a company, it may be possible to avoid NI by paying dividends rather than salary.

- **Value Added Tax (VAT)**
  Correctly accounting for VAT is an essential part of any business and neglect may result in a significant loss.

When starting a business you should consider the need to register for VAT. If the value of your taxable sales or services exceeds the registration limit you will be obliged to register.

Employing others

For the business to get off the ground or to enable expansion, it may be necessary to employ staff.

It is the employer's responsibility to advise HMRC of the wages due to employees and to deduct income tax and national insurance and to account for student loan deductions under PAYE. The deductions must then be paid over to HMRC. Payroll records should be carefully maintained.

Under Real Time Information an employer must advise HMRC of wages and deductions ‘on or before’ the time they are paid over to the employee.

Employers are also required to automatically enrol all eligible employees in a pension scheme and to make contributions to that scheme on their behalf. Enrolment may be either into an occupational pension scheme or the National Employment Savings Trust (NEST).

You will also need to be familiar with employment law.

Premises

There are many pitfalls to be avoided in choosing a property. Consideration should be given to the following:

- suitability for the purpose
- compliance with legal regulations
- local by-laws
- physical restrictions such as access.

Insurance

Comprehensive insurance for business motor vehicles and employer's liability insurance are a legal requirement. Other types of insurance such as public liability, consequential loss, business assets, Keyman and bad debts should be considered.

Pensions

Putting money into a pension scheme can be a way of saving for retirement because of the favourable tax rules.

How we can help

Whilst some generalisation can be made about starting up a business, it is always necessary to tailor the strategy to fit your situation. Any plan must take account of your circumstances and aspirations.

Whilst business success can never be guaranteed, professional advice can help to avoid some of the problems which befall new businesses.

We would welcome the opportunity to assist you in formulating a strategy suitable for your own requirements. We can also provide key services such as bookkeeping, management accounts, VAT return and payroll preparation at an early stage. Please contact us to find out more.

Statutory Sick, Statutory Maternity and Statutory Paternity Pay

Statutory Sick Pay (SSP), Statutory Maternity Pay (SMP) Statutory Paternity Pay (SPP) and Shared Parental Pay (ShPP) are important regulations to understand as they enforce minimum legal requirements on employers. Each operates in a different way.

This factsheet sets out the main principles of the regulations and what an employer needs to consider.

Statutory Sick Pay (SSP)

SSP applies to all employers, regardless of size and represents the minimum payments which should be paid by law.

It is possible to opt out of the scheme but only if an employer's occupational sick pay scheme is equal to or more than SSP. There would still be a requirement to keep appropriate records, etc.

We have outlined the general principles below but first we need to explain some of the special terms used.

Glossary of terms

Period of incapacity for work (PIW)

A PIW consists of four or more calendar days of sickness in a row. These do not have to be normal working days.

Linking

Where one PIW starts within eight weeks of the end of a previous PIW the periods can be linked.

Qualifying days (QDs)

These are usually the employee's normal working days unless other days have been agreed.

SSP is paid for each qualifying day once the waiting days have passed.

Waiting days (WDs)

The first three QDs in a PIW are called WDs. SSP is not payable for WDs.

Where PIWs are linked it is only the first three days of the first PIW which are WDs.

Who qualifies for SSP?

All employees who, at the beginning of a PIW or linked PIWs, have had average weekly earnings above the Lower Earnings Limit (LEL) of £116 for 2018/19.

Employees must have notified you about their sickness - either within your own time limit or within seven days.

They must give evidence of their incapacity. Employees can self-certify their absence for the first consecutive seven days; thereafter, form Med3 (Fit Note) is required from their General Practitioner.

How much SSP is payable?

The weekly rate of SSP is £92.05 for 2018/19 but it is computed at a daily rate.

The daily rate

The daily rate may vary for different employees. It is calculated by dividing the weekly rate by the number of qualifying days in a week. For example an employee with a five day working week would have a daily rate of £18.41 for 2018/19.

Only QDs qualify for SSP and remember the first three days (WDs) do not qualify.

Maximum SSP

The maximum entitlement is 28 weeks in each period of sickness or linked PIW.

Employers are not able to recover SSP paid for sickness absences.

Pay as You Earn (PAYE) and records

SSP is included in gross pay and PAYE is operated as normal.

Employers should monitor sickness absence and maintain detailed records as these will be required for PAYE purposes.

Statutory Maternity Pay (SMP)

SMP is paid to female employees or former employees who have had or are about to have a baby.

The payment of SMP is compulsory where the employee fulfils certain requirements.

The requirements

SMP is payable provided the employee has:

- started her maternity leave
- given 28 days notice of her maternity leave (unless with good reason)
- provided medical evidence with a form (MATB1)
- been employed continuously for 26 weeks up to and including her qualifying week
- had average weekly earnings (AWE) above the LEL in the relevant period.

It is important to note that mothers have a legal entitlement to take up to 52 weeks off around the time of the birth of their baby, whether or not they qualify for SMP. This means that mothers can choose to take up to one year off in total.

The amount payable

The rates of SMP, SPP, statutory shared parental pay and statutory adoption pay are at £145.18 per week (or 90% of the person's average weekly earnings if that is less than £145.18 for 2018/19.

SMP is payable for a maximum of 39 weeks. The date the baby is due, as shown on the MATB1 certificate, determines the maternity pay period entitlement and not the date the baby is born. The rates of SMP are as follows:

- first six weeks at 90% of AWE (see below)
- up to a further 33 weeks at the lower of:

- 90% of AWE
- £145.18 for 2018/19.

SMP is treated as normal pay.

Average weekly earnings (AWE)

AWE need to be calculated for two purposes:

- to determine if the employee is entitled to SMP (earnings must be above the LEL)
- to establish the rate of SMP.

The average is calculated by reference to the employee's relevant period. This is based on an eight week period up to the end of the qualifying week, which is 15 weeks before the baby is due. In some instances, subsequent pay rises have to be taken into account when calculating SMP. Earnings, for this purpose, are the same as for Class 1 NICs and include SSP.

Recovery of SMP

92% of SMP paid can be recovered by deduction from the monthly PAYE payments.

Employers may qualify for Small Employers' Relief (SER). SER is 100% of SMP plus 3% compensation.

To qualify for SER, the current limits are:

- total gross Class 1 NICs for the employee's qualifying tax year must be less than £45,000
- the employee's qualifying tax year is the last complete tax year that ends before the start of her qualifying week.

Glossary of terms

Week baby due

The week in which the baby is expected to be born. This starts on a Sunday.

Qualifying week (QW)

The 15th week before the week the baby is due.

The week the baby is due and the QW are easy to establish using software or online calculators which are available through gov.uk basic PAYE tools.

Maternity Pay Period (MPP)

The period of up to 39 weeks during which SMP can be paid.

MATB1

Maternity certificate provided by a midwife or doctor. This is available up to 20 weeks before the baby is due. SMP cannot be paid without this.

Ordinary Statutory Paternity Pay (OSPP)

OSPP is paid to partners who take time off to care for the baby or support the mother in the first few weeks after the birth. OSPP was previously known as SPP.

It is available to:

- a biological father
- a partner/husband or civil partner who is not the baby's biological father
- a mother's female partner in a same sex couple.

The partner must have:

- given 28 days' notice of their paternity leave (unless with good reason)
- provided a declaration of family commitment on form SC3
- been employed continuously for 26 weeks up to and including their qualifying week
- had average weekly earnings above the LEL in the relevant period.

The amount payable

OSPP is payable for a maximum of two weeks: it must be taken as a block either one week or a complete fortnight but not two single weeks at the following rates:

- the lower of:
- 90% of AWE
- £145.18 for 2018/19.

OSPP is treated as normal pay.

The calculation of AWE and the recovery of OSPP are subject to the same rules as for SMP.

Fathers have the right to take unpaid leave to attend up to two antenatal appointments.

Adoptive parents

To qualify for Statutory Adoption Pay (SAP), an employee must meet the same earnings and service criteria as an employee seeking to qualify for SMP. An employee must provide his or her employer with evidence of the adoption and a declaration that he or she has elected to receive SAP. HMRC form SC4 provides a declaration form that can be used. A matching certificate from the adoption agency must be produced to the employer. SAP is paid at the same rates as SMP and follows the same rules with regard to recovery.

Shared Parental Leave (SPL)

SPL is available to parents whose babies are due on or after 5 April 2015. In the case of adoptions SPL applies in relation to children matched with a person or placed for adoption on or after 5 April 2015.

Employed mothers are still entitled to 52 weeks of maternity leave. The mother can curtail her right to SMP and leave and opt to take SPL and Shared Parental Pay (ShPP). SPL and ShPP will be available provided the parents satisfy the eligibility requirements. The main elements of the scheme are:

- In the 52 week period there will be two weeks' compulsory Statutory Maternity Leave (SML) (four weeks if they are manual workers) which the mother must take
- Eligible parents will then be able to share the remaining leave and pay in the form of ShPP and SPL between themselves as they choose
- Fathers are still entitled to two weeks of OSPP basic paternity leave
- Mothers with partners (who must also meet the qualifying conditions) are able to end the mother's leave and pay and share the untaken balance as SPL and ShPP
- Employees who take SPL are protected from less favourable treatment as they will have the right to return to the same job if the total leave taken is 26 weeks or less in aggregate, even if the leave is taken in discontinuous blocks
- Any subsequent leave will attract the right to return to the same job, or if that is not reasonably practicable, a similar job
- It is up to the parents how they share SPL – they can take it in turns or take time off together, provided they take no more than 52 weeks of this leave, combined in total
- Additional paternity leave and pay was abolished for babies due from 5 April 2015
- ShPP is calculated in the same way as SMP.

Plans to extend SPL to grandparents

Proposals have been announced to extend SPL to allow grandparents to take time off work. The system of shared grandparental leave will allow a mother to share her leave with one nominated working grandparent. SPL is currently limited to the mother's partner. No start date has been set for this extension.

How we can help

As the scheme payments are statutory it is important that rules are adhered to and we will be more than happy to provide you with assistance or any additional information required. Please do not hesitate to contact us.

Statutory Residence Test

The concept of residence in the United Kingdom is fundamental to the determination of UK tax liability for any individual. The Statutory Residence Test (SRT) provides, through a series of tests, a definitive process to determine the UK residence status of any individual. That status applies for income tax, capital gains tax and inheritance tax purposes.

Once that status has been established then other rules determine the extent of an individual's liability to UK taxes. These other rules may include not just UK statute but also double tax treaties with other countries. These rules are not covered in this factsheet.

Counting days

The SRT relies heavily on the concept of counting 'days of presence' in the UK in the relevant tax year and so it is important to understand what this term means. The basic rule is a day of presence is one where the individual was in the country at midnight. There are two exceptions to this:

- the individual only arrives as a passenger on that day and leaves the UK the next day and in between does not engage in activities that are to a substantial extent unrelated to their passage through the UK and
- the individual would not be present in the UK at the end of the day but for exceptional circumstances beyond their control which prevent them from leaving and they would intend to leave as soon as those circumstances permit.

A further rule applies where an individual has been resident in the UK in at least one of the three previous tax years and has at least three 'ties' with the UK. It will then be necessary to add to the total of 'midnight days' the excess over 30 of any other days where the individual spent any time at all in the UK.

Three tests

The SRT is based on a series of three tests which must be considered in a particular order in every case. The tests are applied to the facts in the 'relevant tax year' i.e. the year for which residence status is being determined:

- first consider the Automatic Overseas Test (AOT). If this test is satisfied the individual will be not resident in the UK in the relevant tax year and no further tests are required. If the AOT is not satisfied then move on to
- the Automatic Residence Test (ART). If this test is satisfied the individual will be resident in the UK in the relevant tax year and no further tests are required. If the test is not satisfied move on to
- the Sufficient Ties Test (STT). If this test is satisfied the individual will be resident in the UK and if it is not satisfied they will be not resident.

The detailed conditions relating to each test are discussed below. There are further tests which only apply if the individual has died in the year but these are not dealt with here.

The Automatic Overseas Test (AOT)

There are three possible tests in the AOT and if an individual satisfies any one of these they will be not resident in the UK in the relevant tax year. The conditions are that the individual:

- was resident in the UK in one or more of the previous three tax years and they are present in the UK for fewer than 16 days in the relevant tax year
- was not resident in the UK in all of the previous three tax years and they are present in the UK for fewer than 46 days in the relevant tax year
- works full time abroad for at least a complete tax year and they are present in the UK for fewer than 91 days in the relevant tax year and no more than 30 days are spent working (currently defined as more than 3 hours) in the UK in the tax year.

The first two tests are simply based on a day count and ignore the existence of other factors such as other links with the UK like the availability of accommodation in the UK.

There are conditions for the third test which need to be considered by those planning to go abroad to work either as an employee or on a self-employed basis. Obviously the days of presence and the working days must be considered carefully. In addition it should be noted that:

- full time work is defined as an average of 35 hours a week over the whole period of absence. Account can be taken of a range of factors such as holidays and sick leave to effectively improve the average
- working days in the UK do not have to be the same as the days of presence so a day where there is UK work and the individual leaves the UK before the end of the day may well count as a working day

HMRC will expect evidence to be provided if it is claimed that the time limit for a working day has not been exceeded.

The way in which the subsequent tests are structured mean that it is really important that a working expatriate can pass the AOT and be treated as not resident otherwise they are likely to find a real problem under the later tests.

The Automatic Residence Test (ART)

If the AOT is not met then the individual must next consider the conditions of the ART. This test will be satisfied if any of the following apply to the individual for the relevant tax year:

- they are present in the UK for 183 days or more in a tax year
- they have a home in the UK and they are present in that home on at least 30 separate days in the relevant year. There must be a period of at least 91 consecutive days during which the home is available and at least 30 of those days must fall within the relevant tax year
- they carry out full time work in the UK for a period of 365 days during which at least 75% of their time is spent in the UK.

The 'home' test may be of real significance because, if that test applies, the number of days in the UK is irrelevant. The legislation makes clear that a home can be a building or part of a building and can include a vessel or vehicle. It must have a degree of permanence or stability to count as a home but specific circumstances may have to be considered. If the individual also has a home abroad, the second test above will not apply if the person spends more than 30 days at the home abroad in the tax year.

The Sufficient Ties Test

If no conclusive answer to residence status has arisen under the first two tests, the individual must then look at how the STT applies to them for the relevant tax year. The test will be satisfied if the individual has sufficient UK ties for that year. This will depend on two basic conditions:

- whether the individual was resident in the UK for any of the previous three tax years and
- the number of days the individual spends in the UK in the relevant tax year.

The STT reflects the principle that the more time someone spends in the UK, the fewer connections they can have with the UK if they want to be not resident. It also incorporates the principle that residence status should adhere more to those who are already resident than to those who are not currently resident.

Under the STT an individual compares the number of days of presence in the UK against five connection factors. Individuals who know how many days they spend in the UK and how many relevant connection factors they have can then assess whether they are resident.

The five ties are summarily set out as:

- a family tie - this will apply if either a spouse or minor child is resident in the UK in the relevant tax year
- an accommodation tie - where there is accommodation which is available for at least 91 days in the tax year and is actually used at least once
- a work tie - where there are at least 40 working days of three hours or more in the UK in the relevant tax year
- a 90-day tie - more than 90 days were spent in the UK in either or both of the two immediately preceding UK tax years and
- a country tie - more time is spent in the UK than in any other single country in the relevant tax year.

An individual who has been resident in the UK in any of the three preceding tax years must consider all five ties and they will be resident if any of the following apply:

Days in UK	Number of ties sufficient to establish residence
16 - 45	at least 4
46 - 90	at least 3
91 - 120	at least 2
121 - 182	at least 1

An individual who has not been resident in any of the three preceding years must consider all the ties apart from the country tie and they will be resident in any of the following situations:

Days in UK	Number of ties sufficient to establish residence
46 - 90	all 4
91 - 120	at least 3
121 - 182	at least 2

Special rules for international transport workers

The SRT rules are adapted where an individual is an 'international transport worker' This is defined as someone who:

- holds an employment, the duties of which consist of duties to be performed on board a vehicle, aircraft or ship, while it is travelling or
- carries on a trade, the activities of which consist of the provision of services on board a vehicle, aircraft or ship as it is travelling.

In either case substantially all the journeys must be across international boundaries. The individual has to be present on board the respective carrier as it makes international journeys in order to provide those services.

An individual who has some duties on purely domestic journeys will still be regarded as within the definition if the international duties are substantial (probably at least 80%).

Where an individual falls within this group the implications for the SRT are (broadly) that the individual:

- cannot be non-UK resident on the grounds of working full time overseas
- cannot be UK resident on the grounds of working full time in the UK and
- in considering the work day tie for the STT an international transport worker is regarded as doing more than three hours work where any journey that day commences in the UK and fewer than three hours on any other day.

Split year rules

The basic rule will be that if an individual satisfies the conditions of the SRT to be treated as resident for a part of the UK tax year then they are resident for the whole of that year. Special rules will apply in certain circumstances to allow a year of arrival or departure to be split into resident and non-resident parts as appropriate. We shall be pleased to discuss whether your plans or circumstances will be eligible for such treatment.

Anti-avoidance rules

The government wants to ensure that individuals are not able to exploit the rules to become not resident for a short period during which they receive certain types of income or make capital gains. Basically an individual with a history of at least four out of the previous seven years as a sole UK resident will need to maintain not resident status for at least five UK tax years otherwise certain income and all capital gains made in the period of absence will become taxable in the UK in the next year in which they are resident.

How we can help

A change of tax residence is always a major decision and detailed advice is necessary. Please do contact us for any advice you may need.

Tax-Free Childcare

The government has introduced a tax incentive for childcare Tax-Free Childcare (TFC).

Overview

Under TFC the tax relief available is 20% of the costs of childcare up to a total of childcare costs of £10,000 per child per year. The scheme will therefore be worth a maximum of £2,000 per child (£4,000 for a disabled child). Parents are able to apply for TFC for children under 12 (up to 17 for children with disabilities).

To qualify for Tax-Free Childcare all parents in the household must generally meet a minimum income level, based on working 16 hours a week (on average £120 a week) and each earn less than £100,000 a year and not already be receiving support through Tax Credits or Universal Credit.

Online account

Parents are able to register with the government and open an online account. The government will then 'top up' payments into this account at a rate of 20p for every 80p that families pay in.

Self-employed

Self-employed parents are able to get support with childcare costs using the TFC scheme, unlike employer supported childcare scheme. To support newly self-employed parents, the government have introduced a 'start-up' period. During this period a newly self-employed parent will not have to earn the minimum income level.

Roll out of TFC and service issues

In April 2017, HMRC started rolling out the childcare service via a single website through which parents can apply for both 30 hours free childcare and TFC. All parents of eligible children are now able to apply for TFC. Parents can apply online through the childcare service which can be accessed via the Childcare Choices website.

HMRC acknowledge that over the summer some parents did not receive the intended level of service when using the website and that they have subsequently made significant improvements. For those parents who have had difficulties in accessing the service, compensation may be available: see childcare service compensation.

Childcare providers

Only childcare providers registered with a regulator can receive Tax-Free Childcare payments.

How does this relate to employer supported childcare?

The existing scheme, ESC, will remain open to new entrants until at least September 2018 to support the transition between the schemes. ESC continues to be available for current members if they wish to remain in it or they can switch to the new scheme but parents cannot be in both ESC and TFC at the same time.

How we can help

If you would like to discuss childcare in further detail, please do not hesitate to contact us.

Taxation of the Family

Individuals are subject to a system of independent taxation so husbands and wives are taxed separately. This can give rise to valuable tax planning opportunities. Furthermore, the tax position of any children is important.

Marriage breakdowns can also have a considerable impact for tax purposes.

We highlight below the main areas of importance where advance planning can help to minimise overall tax liabilities.

It is important that professional advice is sought on specific issues relevant to your personal circumstances.

Setting the scene

Married couples

Independent taxation means that husbands and wives are taxed separately on their income and capital gains. The effect is that both have their own allowances, savings and basic rate tax bands for income tax, annual exemption for capital gains tax purposes and are responsible for their own tax affairs. The same tax treatment applies to same-sex couples who have entered into a civil partnership under the Civil Partnership Act.

Children

A child is an independent person for tax purposes and is therefore entitled to a personal allowance and the savings and basic rate tax band before being taxed at the higher rate. It may be possible to save tax by generating income or capital gains in the children's hands.

Marriage breakdown

Separation and divorce can have significant tax implications. In particular, the following areas warrant careful consideration:

- available tax allowances
- transfers of assets between spouses.

Tax planning for married couples

Income tax allowances and tax bands

Everyone is entitled to a basic personal allowance. This allowance cannot however be transferred between spouses except for the circumstances outlined below.

Transferable Tax Allowance or Marriage Allowance

From 6 April 2015 married couples and civil partners may be eligible for a new Transferable Tax Allowance.

The Transferable Tax Allowance (also referred to as the Marriage Allowance) will enable spouses and civil partners to transfer a fixed amount of their personal allowance to their spouse. The option to transfer is not available to unmarried couples.

The option to transfer is available to couples where neither pays tax at the higher or additional rate. If eligible, one partner is able to transfer 10% of their personal allowance to the other partner, which is £1,190 for 2018/19 (£1,150 for 2017/18).

Couples will be entitled to the full benefit in their first year of marriage.

For those couples where one person does not use all of their personal allowance the benefit will be worth up to £238 in 2018/19 (£230 in 2017/18).

Eligible couples can apply for the marriage allowance at www.gov.uk/marriage-allowance. The spouse or partner with the lower income applies to transfer some of their personal allowance by entering some basic details.

Those who do not apply via the government gateway will be able to make an application at a later date and still receive the allowance.

If either you or your spouse were born before 6 April 1935, then a married couple's allowance is available. This is given to the husband, although it is possible, by election, to transfer it to the wife.

Joint ownership of assets

In general, married couples should try to arrange their ownership of income producing assets so as to ensure that personal allowances are fully utilised and any higher rate liabilities minimised.

Generally, when husband and wife jointly own assets, any income arising is assumed to be shared equally for tax purposes. This applies even where the asset is owned in unequal shares unless an election is made to split the income in proportion to the ownership of the asset.

Married couples are taxed on dividends from jointly owned shares in 'close' companies according to their actual ownership of the shares. Close companies are broadly those owned by the directors or five or fewer people. For example if a spouse is entitled to 95% of the income from jointly owned shares they will pay tax on 95% of the dividends from those shares. This measure is designed to close a perceived loophole in the rules and does not apply to income from any other jointly owned assets.

We can advise on the most appropriate strategy for jointly owned assets so that tax liabilities are minimised.

Capital gains tax (CGT)

Each spouse's CGT liability is computed by reference to their own disposals of assets and each is entitled to their own annual exemption of £11,700 for 2018/19 (£11,300 for 2017/18). Some limited tax savings may be made by ensuring that maximum advantage is taken of any available capital losses and annual exemptions.

This can often be achieved by transferring assets between spouses before sale - a course of action generally having no adverse CGT or inheritance tax (IHT) implications. Advance planning is vital, and the possible income tax effects of transferring assets should not be overlooked.

Further details of how CGT operates are outlined in the factsheet Capital Gains Tax.

Inheritance tax (IHT)

When a person dies IHT becomes due on their estate. Some lifetime gifts are treated as chargeable transfers but most are ignored providing the donor survives for seven years after the gift.

The rate of IHT payable is 40% on death and 20% on lifetime chargeable transfers. The first £325,000 is not chargeable and this is known as the nil rate band.

Transfers of property between spouses are generally exempt from IHT. Rules were introduced which allow any nil rate band unused on the first death to be used when the surviving spouse dies. The transfer of the unused nil rate band from a deceased spouse, irrelevant of the date of death, may be made to the estate of their surviving spouse who dies on or after 9 October 2007.

The amount of the nil rate band available for transfer will be based on the proportion of the nil rate band which was unused when the first spouse died. Key documentary evidence will be required for a claim, so do get in touch to discuss the information needed.

IHT residence nil rate band

An additional nil rate band is available for deaths on or after 6 April 2017 where an interest in a main residence passes to direct descendants. The amount of relief is being phased in over four years; starting at £100,000 in the first year, £125,000 for 2018/19 and rising to £175,000 for 2020/21. For many married couples and civil partners the relief is effectively doubled as each individual has a main nil rate band and each will potentially benefit from the residence nil rate band.

The additional band can only be used in respect of one residential property which does not have to be the main family home but must at some point have been a residence of the deceased. Restrictions apply where estates are in excess of £2 million.

Where a person dies before 6 April 2017, their estate will not qualify for the relief. A surviving spouse may be entitled to an increase in the residence nil rate band if the spouse who died earlier has not used, or was not entitled to use, their full residence nil rate band. The calculations involved are potentially complex but the increase will often result in a doubling of the residence nil rate band for the surviving spouse.

The residence nil rate band may also be available when a person downsizes or ceases to own a home on or after 8 July 2015 where assets of an equivalent value, up to the value of the residence nil rate band, are passed on death to direct descendants.

From April 2017 we have three nil rate bands to consider. The standard nil rate band has been a part of the legislation from the start of IHT in 1986. In 2007 the ability to utilise the unused nil rate band of a deceased spouse was introduced, enabling many surviving spouses to have a nil rate band of up to £650,000. By 6 April 2020 some surviving spouses will be able to add £350,000 in respect of the residence nil rate band to arrive at a total nil rate band of £1 million. However this will only be achieved by careful planning and, in some cases, it may be better for the first deceased spouse to have given some assets to the next generation and use up some or all of the available nil rate bands.

For many individuals, the residence nil rate band will be important but individuals will need to revisit their wills to ensure that the relief will be available and efficiently utilised.

Gifts

A gift for family maintenance does not give rise to an IHT charge. This would include the transfer of property made on divorce under a court order, gifts for the education of children or maintenance of a dependent relative.

Gifts in consideration of marriage are exempt up to £5,000 if made by a parent with lower limits for other donors.

Small gifts to individuals not exceeding £250 in total per tax year per recipient are exempt. The exemption cannot be used to cover part of a larger gift.

Gifts which are made out of income which are typical and habitual and do not result in a fall in the standard of living of the donor are exempt. Payments under deed of covenant and the payment of annual premiums on life insurance policies would usually fall within this exemption.

Children

Use of allowances and lower rate tax bands

It may be possible for tax savings to be achieved by the transfer of income producing assets to a child so as to take advantage of the child's personal allowance.

This cannot be done by the parent if the annual income arising is above £100. The income will still be taxed on the parent. However, transfers of income producing assets by others (eg grandparents) will be effective.

A parent can however allow a child to use any entitlement to the CGT annual exemption by using a 'bare trust'.

Child Tax Credit and Universal Credit

Child Tax Credit (CTC) and Universal Credit may be available to some families. To see whether you are entitled to claim visit www.gov.uk/child-tax-credit and www.gov.uk/universal-credit

Junior Individual Savings Accounts (Junior ISA)

The Junior ISA is available for UK resident children under the age of 18 who do not have a Child Trust Fund account. Junior ISAs are tax advantaged and have many features in common with existing ISAs. They are available as cash or stocks and share-based products.

High Income Child Benefit Charge

A charge applies to a taxpayer who has adjusted net income over £50,000 in a tax year where either they or their partner are in receipt of Child Benefit for the year. Where both partners have adjusted net income in excess of £50,000 the charge will apply to the partner with the higher income.

The income tax charge will apply at a rate of 1% of the full Child Benefit award for each £100 of income between £50,000 and £60,000. The charge on taxpayers with income above £60,000 will be equal to the amount of Child Benefit paid.

Child Benefit claimants can elect not to receive Child Benefit if they or their partner do not wish to pay the charge.

Example

The Child Benefit for two children amounts to £1,788.

The taxpayer's adjusted net income is £54,000.

The income tax charge will be £715.

This is calculated as £17.88 for every £100 above £50,000.

For a taxpayer with adjusted net income of £60,000 or above the income tax charge will equal the Child Benefit.

Marriage breakdown

Maintenance payments

An important element in tax planning on marriage breakdown used to involve arrangements for the payment of maintenance. Generally no tax relief is due on maintenance payments.

Asset transfers

Marriage breakdown often involves the transfer of assets between husbands and wives. Unless the timing of any such transfers is carefully planned there can be adverse CGT consequences.

If an asset is transferred between a husband and wife who are living together, the asset is deemed to be transferred at a price that does not give rise to a gain or a loss. This treatment continues up to the end of the tax year in which the separation takes place.

CGT can therefore present a problem where transfers take place after the end of the tax year of separation but before divorce, although gifts holdover relief is usually available on transfers of qualifying assets under a Court Order.

IHT on the other hand will not cause a problem if transfers take place before the granting of a decree absolute on divorce. Transfers after this date may still not be a problem as often there is no gratuitous intent.

How we can help

Some general points can be made when planning for efficient taxation of the family.

Any plan must take into account specific circumstances and it is important that any proposed course of action gives consideration to all areas of tax that may be affected by the proposals.

Tax savings can only be achieved if an appropriate course of action is planned in advance. It is therefore vital that professional advice is sought at an early stage. We would welcome the chance to tailor a plan to your own personal circumstances so please do contact us.

Travel and Subsistence for Directors and Employees

Travelling and subsistence expenditure incurred by or on behalf of employees gives rise to many problems.

We highlight below the main areas to consider in deciding whether tax relief is available on travel and subsistence.

Employees with a Permanent Workplace

Many employees have a place of work which they regularly attend and make occasional trips out of the normal workplace to a temporary workplace. Often an employee will travel directly from home to a temporary workplace and vice versa.

An employee can claim full tax relief on business journeys made.

Business journey

A business journey is one which either involves travel:

- from one place of work to another or
- from home to a temporary workplace or
- to home from a temporary workplace.

Journeys between an employee's home and a place of work which he or she regularly attends are not business journeys. These journeys are 'ordinary commuting' and the costs of these have to be borne by the employee. The term 'permanent workplace' is defined as a place which the employee 'regularly' attends. It is used in order to fix one end of the journey for ordinary commuting. Home is the normal other end of the journey for ordinary commuting.

Example 1

An employee usually commutes by car between home in York and a normal place of work in Leeds. This is a daily round trip of 48 miles.

On a particular day, the employee instead drives from home in York to a temporary place of work in Nottingham. A round trip of 174 miles.

The cost here is the cost of the travel undertaken (174 miles). A deduction would be available for that amount.

Example 2

An employee who normally drives 40 miles in a northerly direction to work is required to make a 100 mile round trip south to a client's premises. His employer reimburses him for the cost of the 100 miles trip.

A deduction would be available for that amount.

Subsistence payments

Subsistence includes accommodation and food and drink costs whilst an employee is away from the permanent workplace. Subsistence expenditure is specifically treated as a product of business travel and is therefore treated as part of the cost of that travel.

Anti-avoidance

Some travel between a temporary workplace and home may not qualify for relief if the trip made is 'substantially similar' to the trip made to or from the permanent workplace.

'Substantially similar' is interpreted by HMRC as a trip using the same roads or the same train or bus for most of the journey.

Temporary postings

Where an employee is sent away from his permanent workplace for many months, the new workplace will still be regarded as a temporary workplace if the posting is either:

- expected to be for less than 24 months, or
- if it is expected to be for more than 24 months, the employee is expected to spend less than 40% of his working time at the new workplace.

The employee must still retain his permanent workplace.

Example 3

Edward works in New Brighton. His employer sends him to Wrexham for 1.5 days a week for 28 months.

Edward will be entitled to relief. Any posting over 24 months will still qualify provided that the 40% rule is not breached.

Site-based Employees

Some employees do not have a normal place of work but work at a succession of places for several days, weeks or months. Examples of site-based employees include construction workers, safety inspectors, computer consultants and relief workers.

A site-based employee's travel and subsistence can be reimbursed tax free if the period spent at the site is expected to be, and actually is, less than two years.

There are anti-avoidance provisions to ensure that the employment is genuinely site-based if relief is to be given. For example, temporary appointments may be excluded from relief where duties are performed at that workplace for all or almost all of that period of employment. This is aimed particularly at preventing manipulation of the 24 month limit through recurring temporary appointments.

Other Employees with no Permanent Workplace

Travelling appointments

For some employees, travelling is an integral part of their job. For example, a travelling salesman who does not have a base at which he works, or where he is regularly required to report. Travelling and subsistence expenses incurred by such an employee are deductible.

Home based employees

Some employees work at home occasionally, or even regularly. This does not necessarily mean that their home can be regarded as a place of work. There must be an objective requirement for the work to be performed at home rather than elsewhere.

This may mean that another place becomes the permanent workplace for example, an office where the employee ‘regularly reports’. Therefore any commuting cost between home and the office would not be an allowable expense. But trips between home and temporary workplaces will be allowed.

If there is no permanent workplace then the employee is treated as a site-based employee. Thus all costs would be allowed including the occasional trip to the employer's office.

The home may still be treated as a workplace under the objective test above. If so, trips between home and any other workplace in respect of the same employment will be allowable.

How we can help

Full tax relief can be given for travel and subsistence costs but there are borderline situations.

We can help you to decide whether an employee can be paid expense payments which are covered by tax relief and do not result in a taxable benefit.

Please note that if you do make payments for which tax relief is not available, there may be PAYE compliance problems if the payments are made free of tax.

Please contact us if you require advice whether payments can be made to employees tax free.

Trusts

What are trusts?

Trusts are a long established mechanism which allow individuals to benefit from the assets whilst others (the trustees) have the legal ownership and day to day control over the assets. A trust can be extremely flexible and have an existence totally independent of the person who established it and those who benefit from it.

A person who transfers property into a trust is called a settlor. Persons who enjoy income or capital from a trust are called beneficiaries.

Trusts are separate persons for UK tax purposes and have specific rules for all the main taxes. There are also a range of anti-avoidance measures aimed at preventing exploitation of potential tax benefits.

Trust Registration Service

The Trust Registration Service ('TRS') requires all trusts and 'complex estates' (broadly those with a value of more than £2.5m or involving a capital sale with proceeds of more than £500,000) to be registered centrally. In addition to this the trust must update the register every year when there has been a taxable event. The most common instance of this will be the submission of annual income tax returns to be completed by 31 January following the relevant tax year; the TRS register must be updated by the same deadline. However, it is not just the imposition of annual income tax liabilities which necessitates an annual TRS update, any liability of any tax (including IHT and SDLT) will require the TRS to be updated. Only if the trust has no tax liability at all is a TRS update unnecessary.

The TRS is available via www.gov.uk/trusts-taxes/trustees-tax-responsibilities

Types of trusts

There are two basic types of trust in regular use for individual beneficiaries:

- life interest trusts (sometimes referred to as interest in possession trusts and in Scotland known as life renter trusts)
- discretionary trusts.

Life interest trusts

A life interest trust has the following features:

- a nominated beneficiary (the life tenant or life renter in Scotland) has an interest in the income from the assets in the trust or has the use of trust assets. This right may be for life or some shorter period (perhaps to a certain age)
- the capital may pass onto another beneficiary or beneficiaries.

A typical example is where a widow is left the income for life and on her death the capital passes to the children.

Discretionary trusts

A discretionary trust has the following features:

- no beneficiary is entitled to the income as of right
- the settlor gives the trustees discretion to pay the income to one, some or all of a nominated class of possible beneficiaries
- income can be retained by the trustees
- capital can be gifted to nominated individuals or to a class of beneficiaries at the discretion of the trustees.

Inheritance tax consequences

Importance of 22 March 2006

Major changes were made in the IHT regime for trusts with effect from 22 March 2006. The old distinction between the tax treatment of discretionary and life interest trusts was swept away. The approach now is to identify trusts which fall in the so-called 'relevant property' regime and those which do not.

Relevant property trusts

Trusts which fall in the relevant property regime are:

- all discretionary trusts whenever created
- all life interest trusts created in the settlor's lifetime after 22 March 2006
- any life interest trust created before 22 March 2006 where the beneficiaries were changed after 6 October 2008. A key exception exists where a change occurs after 6 October 2008 in favour of a spouse on the death of a life tenant.

If a relevant property trust is set up in the settlor's lifetime, this gives rise to an immediate charge to inheritance tax but at the lifetime rate of 20%. If the value of the gift (and certain earlier gifts) is below £325,000 no tax is payable. Discretionary trusts set up under a will attract the normal inheritance tax charge at the death rate of 40%.

Relevant property trusts are charged to tax every ten years (known as the periodic charge) at a maximum rate of 6% of the value of the assets on each tenth anniversary of the setting up of the trust. A fair prorate charge of less than 6% (and often much lower) is also made if assets are appointed out of the trust known as an 'exit charge'.

Benefits of a relevant property trust

Whilst the inheritance tax charges do not look attractive, the relevant property trust has a significant benefit in that no tax charge will arise when a beneficiary dies because the assets in the trust do not form part of a beneficiary's estate for IHT purposes. There can be significant long-term IHT advantages in using such trusts.

Trusts which are not relevant property

Within this group are:

- life interest trusts created before 22 March 2006 where the pre-2006 beneficiaries remain in place or were changed before 6 October 2008 or where a second spouse has taken over the life interest on the death of the first spouse
- the trust was created after 22 March 2006 under the terms of a will and gives an immediate interest (cannot be replaced by another) in the income to a beneficiary and the trust is neither a bereaved minor's nor a disabled person's trust; or
- the trust is created in the settlor's lifetime or on death for a disabled person.

In these circumstances a lifetime transfer into a life interest trust will be a potentially exempt transfer (PET) and no inheritance tax would be payable if the settlor survived for 7 years. Transfers into a trust on death would be chargeable unless the life tenant was the spouse of the settlor. There is no periodic charge on such trusts. There will be a charge when the life tenant dies because the value of the assets in the trust in which they have an interest has to be included in the value of their own estate for IHT purposes.

Capital gains tax consequences

If assets are transferred to trustees, this is considered a disposal for capital gains tax purposes at market value but in many situations any capital gain arising can be deferred and passed on to the trustees.

Gains made by trustees are chargeable at 20%. There is an exception for residential property gains which are charged at 28%.

Where assets leave the trust on transfer to a beneficiary who becomes legally entitled to them, there will be a CGT charge by reference to the then market value. Again it may be possible to defer that charge.

Income tax consequences

Life interest trusts are taxed on their income at 7.5% on dividends and 20% on other income. Discretionary trusts pay tax at 38.1% (dividends) and 45% (other income).

Income paid to life interest beneficiaries has an appropriate tax credit available with the effect that the beneficiaries are treated as if they receive the income as the owners of the assets.

If income is distributed at trustee discretion from discretionary trusts, the beneficiaries will receive the income net of 45% tax. They are generally able to obtain refunds of any overpaid tax and if they pay tax at 45%, they will get credit for the tax paid. Refund exceptions may apply in certain settlor trust situations.

Could I use a trust

Trusts can be used in a variety of situations both to save tax and also to achieve other benefits for the family. Particular benefits are as follows:

- if you transfer assets into a trust in your lifetime you can remove the assets from your estate but could act as trustee so that you retain control over the assets (always remembering that they must be used for the beneficiaries)
- a transfer of family company shares into a trust in lifetime (or on death) can be a way of ensuring that the valuable business property relief is utilised
- by putting assets into a trust you can give the beneficiary the income from the asset without actually giving them the asset which could be important if the beneficiary is likely to spend the capital or the capital could be at risk from predators such as a divorced spouse
- trusts (particularly discretionary trusts) can give great flexibility in directing benefit for different members of the family without incurring significant tax charges
- if you want to make some IHT transfers in your lifetime but are not sure who you would like to benefit from them, a transfer to a discretionary trust can enable you to reduce your estate and leave the trustees to decide how to make the transfers on in later years. It also means that the assets transferred do not now hit the estates of the beneficiaries.

How we can help

This factsheet briefly covers some aspects of trusts. If you are interested in providing for your family through the use of trusts please contact us.

We will be more than happy to provide you with additional information and assistance.

Valuing Your Business

There are many reasons why you may need to calculate the value of your business. Here we consider the range of methods available as well as some of the factors to consider during the process.

It is important to remember throughout that valuing a business is something of an art, albeit an art backed by science!

Why value your business?

One of the most common reasons for valuing a business is for sale purposes. Initially a valuation may be performed simply for information purposes, perhaps when planning an exit route from the business. When the time for sale arrives, owners need a starting point for negotiations with a prospective buyer and a valuation will be needed.

Valuations are also commonly required for specific share valuation reasons. For example, share valuations for tax purposes may be required:

- on gifts or sales of shares
- on the death of a shareholder
- on events in respect of trusts which give rise to a tax charge
- for capital gains tax purposes
- when certain transactions in companies take place, for example, purchase of own shares by the company.

Share valuations may also be required:

- under provisions in a company's Articles of Association
- under shareholders' or other agreements
- in disputes between shareholders
- for financial settlements in divorce
- in insolvency and/or bankruptcy matters
- measuring investments for the annual financial statements.

When a business needs to raise equity capital a valuation will help establish a price for a new share issue.

Valuing a business can also help motivate staff. Regular valuations provide measurement criteria for management in order to help them evaluate how the business is performing. This may also extend to share valuations for entry into an employee share option scheme for example, again used to motivate and incentivise staff.

Valuation methods

While there is a ready made market and market price for the owners of listed public limited company shares, those needing a valuation for a private company need to be more creative.

Various valuation methods have developed over the years. These can be used as a starting point and basis for negotiation when it comes to selling a business.

Earnings multiples

Earnings multiples are commonly used to value businesses with an established, profitable history.

Often, a price earnings ratio (P/E ratio) is used, which represents the value of a business divided by its profits after tax. To obtain a valuation, this ratio is then multiplied by current profits. Here the calculation of the profit figure itself does depend on circumstances and will be adjusted for relevant factors.

A difficulty with this method for private companies is in establishing an appropriate P/E ratio to use - these vary widely. P/E ratios for quoted companies can be found in the financial press and one for a business in the same sector can be used as a general starting point. However, this needs to be discounted heavily as shares in quoted companies are much easier to buy and sell, making them more attractive to investors.

As a rule of thumb, typically the P/E ratio of a small unquoted company is 50% lower than a comparable quoted company. Generally, small unquoted businesses are valued at somewhere between five and ten times their annual post tax profit. Of course, particular market conditions can affect this, with boom industries seeing their P/E ratios increase.

A similar method uses EBITDA (earnings before interest, tax, depreciation and amortisation), a term which essentially defines the cash profits of a business. Again an appropriate multiple is applied.

Discounted cashflow

Generally appropriate for cash-generating, mature, stable businesses and those with good long-term prospects, this more technical method depends heavily on the assumptions made about long-term business conditions.

Essentially, the valuation is based on a cash flow forecast for a number of years forward plus a residual business value. The current value is then calculated using a discount rate, so that the value of the business can be established in today's terms.

Entry cost

This method of valuation reflects the costs involved in setting up a business from scratch. Here the costs of purchasing assets, recruiting and training staff, developing products, building up a customer base, etc are the starting point for the valuation. A prospective buyer may look to reduce this for any cost savings they believe they could make.

Asset based

This type of valuation method is most suited to businesses with a significant amount of tangible assets, for example, a stable, asset rich property or manufacturing business. The method does not however take account of future earnings and is based on the sum of assets less liabilities. The starting point for the valuation is the assets per the accounts, which will then be adjusted to reflect current market rates.

Industry rules of thumb

Where buying and selling a business is common, certain industry-wide rules of thumb may develop. For example, the number of outlets for an estate agency business or recurring fees for an accountancy practice.

What else should be considered during the valuation process?

There are a number of other factors to be considered during the valuation process. These may help to greatly enhance, or unfortunately reduce, the value of a business depending upon their significance.

Growth potential

Good growth potential is a key attribute of a valuable business and as such this is very attractive to potential buyers. Market conditions and how a business is adapting to these are important - buyers will see their initial investment realised more quickly in a growing business.

External factors

External factors such as the state of the economy in general, as well as the particular market in which the business operates can affect valuations. Of course, the number of potential, interested buyers is also an influencing factor. Conversely, external factors such as a forced sale, perhaps due to ill health or death may mean that a quick sale is needed and as such lower offers may have to be considered.

Intangible assets

Business valuations may need to consider the effect of intangible assets as they can be a significant factor. These in many cases will not appear on a balance sheet but are nevertheless fundamental to the value of the business.

Consider the strength of a brand or goodwill that may have developed, a licence held, the key people involved or the strength of customer relationships for example, and how these affect the value of the company.

Circumstances

The circumstances surrounding the valuation are important factors and may affect the choice of valuation method to use. For example, a business being wound up will be valued on a break up basis. Here value must be expressed in terms of what the sum of realisable assets is, less liabilities. However, an on-going business (a 'going concern') has a range of valuation methods available.

How we can help

With any of the valuation methods discussed above, it is important to remember that valuing a business is not a precise science. In the end, any price established by the methods described above will be a matter for negotiation and more than one of the methods above will be used in the process. Ultimately, when the time for sale comes, a business is worth what someone is prepared to pay for it at that point in time.

Please contact us to discuss how we can help value your business as well as help you develop an exit strategy to maximise the value of your business.

VAT

VAT registered businesses act as unpaid tax collectors and are required to account both promptly and accurately for all the tax revenue collected by them.

The VAT system is policed by HMRC with heavy penalties for breaches of the legislation. Ignorance is not an acceptable excuse for not complying with the rules.

We highlight below some of the areas that you need to consider.

It is however important for you to seek specific professional advice appropriate to your circumstances.

What is VAT?

Scope

A transaction is within the scope of VAT if:

- there is a supply of goods or services
- made in the UK
- by a taxable person
- in the course or furtherance of business.

Inputs and outputs

Businesses charge VAT on their sales. This is known as output VAT and the sales are referred to as outputs. Similarly VAT is charged on most goods and services purchased by the business. This is known as input VAT.

The output VAT is being collected from the customer by the business on behalf of HMRC and must be regularly paid over to them.

However the input VAT suffered on the goods and services purchased can be deducted from the amount of output tax owed. Please note that certain categories of input tax can never be reclaimed, such as that in respect of third party UK business entertainment and for most business cars.

Points to consider

Supplies

Taxable supplies are mainly either standard rated (20%) or zero rated (0%). There is in addition a reduced rate of 5% which applies to a small number of certain specific taxable supplies.

There are certain supplies that are not taxable and these are known as exempt supplies.

There is an important distinction between exempt and zero rated supplies.

- If your business is making only exempt supplies you cannot register for VAT and therefore cannot recover any input tax.
- If your business is making zero rated supplies you should register for VAT as your supplies are taxable (but at 0%) and recovery of input tax is allowed.

Registration - is it necessary?

You are required to register for VAT if the value of your taxable supplies exceeds a set annual figure (frozen at £85,000 since 1 April 2017).

If you are making taxable supplies below the limit you can apply for voluntary registration. This would allow you to reclaim input VAT, which could result in a repayment of VAT if your business was principally making zero rated supplies.

If you have not yet started to make taxable supplies but intend to do so, you can apply for registration. In this way input tax on start up expenses can be recovered.

Taxable person

A taxable person is anyone who makes or intends to make taxable supplies and is required to be registered. For the purpose of VAT registration a person includes:

- individuals
- partnerships
- companies, clubs and associations
- charities.

If any individual carries on two or more businesses all the supplies made in those businesses will be added together in determining whether or not the individual is required to register for VAT.

Administration

Once registered you must make a quarterly return to HMRC showing amounts of output tax to be accounted for and of deductible input tax together with other statistical information. All businesses have to file their returns online.

Returns must be completed within one month of the end of the period it covers, although generally an extra seven calendar days are allowed for online forms.

Electronic payment is also compulsory for all businesses.

Businesses who make zero rated supplies and who receive repayments of VAT may find it beneficial to submit **monthly** returns.

Businesses with expected annual taxable supplies not exceeding £1,350,000 may apply to join the **annual accounting scheme** whereby they will make monthly or quarterly payments of VAT but will only have to complete one VAT return at the end of the year.

Record keeping

It is important that a VAT registered business maintains complete and up to date records. This includes details of all supplies, purchases and expenses.

In addition a VAT account should be maintained. This is a summary of output tax payable and input tax recoverable by the business. These records should be kept for six years.

Inspection of records

The maintenance of records and calculation of the liability is the responsibility of the registered person but HMRC will need to be able to check that the correct amount of VAT is being paid over. From time to time therefore a VAT officer may come and inspect the business records. This is known as a control visit.

The VAT officer will want to ensure that VAT is applied correctly and that the returns and other VAT records are properly written up.

However, you should not assume that in the absence of any errors being discovered, your business has been given a clean bill of health.

Offences and penalties

HMRC have wide powers to penalise businesses who ignore or incorrectly apply the VAT regulations. Penalties can be levied in respect of the following:

- late returns/payments
- late registration
- errors in returns.

Cash accounting scheme

If your annual turnover does not exceed £1,350,000 you can account for VAT on the basis of the cash you pay and receive rather than on the basis of invoice dates.

Retail schemes

There are special schemes for retailers as it is impractical for most retailers to maintain all the records required of a registered trader.

Flat Rate scheme

This is a scheme allowing smaller businesses to pay VAT as a percentage of their total business income. Therefore no specific claims to recover input tax need to be made. The aim of the scheme is to simplify the way small businesses account for VAT, but for some businesses it can also result in a reduction in the amount of VAT that is payable.

Making Tax Digital for Business: VAT

HMRC is phasing in its landmark Making Tax Digital (MTD) regime, which will ultimately require taxpayers to move to a fully digital tax system. Regulations have now been issued which set out the requirements for MTD for VAT. Under the new rules, businesses with a turnover above the VAT threshold (currently £85,000) must keep digital records for VAT purposes and provide their VAT return information to HMRC using MTD functional compatible software.

The new rules have effect from 1 April 2019, where a taxpayer has a 'prescribed accounting period' which begins on that date, and otherwise from the first day of a taxpayer's first prescribed accounting period beginning after 1 April 2019.

HMRC is piloting MTD for VAT during 2018, ahead of its introduction in April 2019.

Keeping digital records and making quarterly updates will not be mandatory for taxes other than VAT before April 2020, although businesses below the VAT threshold which have voluntarily registered for VAT can opt to join the scheme.

As with electronic VAT filing at present, there will be some exemptions from MTD for VAT. However, the exemption categories are tightly-drawn and unlikely to be applicable to most VAT registered businesses.

How we can help

Ensuring that you comply with all the VAT regulations is essential. We can assist you in a number of ways including the following:

- tailoring your accounting systems to bring together the VAT information accurately and quickly
- ensuring that your business is VAT efficient and that adequate finance is available to meet your VAT liability on time
- providing assistance with the completion of VAT returns

- negotiating with HMRC if disagreements arise and in reaching settlement
- advising as to whether any of the available schemes may be appropriate for you.

If you would like to discuss any of the points mentioned above please contact us.

VAT Annual Accounting Scheme

HMRC have introduced a number of VAT schemes over the years designed to reduce the administrative burden on small businesses. One such scheme is the annual accounting scheme.

What is the annual accounting scheme?

The annual accounting scheme helps small businesses by allowing them to submit only one VAT return annually rather than the normal four. During the year they pay instalments based on an estimated liability for the year with a balancing payment due with the return. The scheme is intended to help with budgeting and cash flow and reduce paperwork.

Joining the scheme

A business can apply to join the scheme if it expects taxable supplies in the next 12 months will not exceed £1,350,000.

Businesses must be up to date with their VAT returns and cannot register as a group of companies.

Application to join the scheme must be made on form 600(AA) which can be found on the GOV.UK website or via a link in the VAT Notice 732. HMRC will advise the business in writing if the application is accepted.

Paying the VAT

Businesses that have been registered for 12 months or more will pay their VAT in nine monthly instalments of 10% of the previous year's liability. The instalments are payable at the end of months 4-12 of the current annual accounting period.

Alternatively such businesses may choose to pay their VAT in three quarterly instalments of 25% of the previous year's liability falling due at the end of months 4, 7 and 10.

The balance of VAT for the year is then due together with the VAT return two months after the end of the annual accounting period.

Businesses that have not been registered for at least 12 months may still join the scheme but each instalment – whether monthly or quarterly – is based on an estimate of the VAT liability.

In all cases HMRC will advise the amount of the instalments to be paid.

The annual accounting period will usually begin at the start of the quarter in which the application is made. If the application is made late in a quarter it may begin at the start of the next quarter.

All businesses are able to apply to HMRC to change the level of the instalments if business has increased or decreased significantly.

Leaving the scheme

Any business can leave the scheme voluntarily at any time by writing to HMRC.

A business can no longer be in the scheme once its annual taxable turnover exceeds £1,600,000.

Advantages of the scheme

- A reduction in the number of VAT returns needed each year from four to one.
- Because the liability to be paid each month is known and certain, cash flow can be managed more easily.
- There is an extra month to complete the VAT return and pay any outstanding tax.
- It should help to simplify calculations where the business uses a retail scheme or is partially exempt.

Potential disadvantages

Interim payments may be higher than needed because they are based on the previous year. However, they can be adjusted if the difference is significant.

A business is obliged to notify HMRC if the VAT liability is likely to be significantly higher or lower than in the previous year.

How we can help

We can help you to plan your VAT administration and consider with you whether the annual accounting scheme would be beneficial for your business.

VAT - Bad Debt Relief

It is quite possible within the VAT system for a business to be in the position of having to pay over VAT to HMRC while not having received payment from their customer.

Bad debt relief allows businesses, that have made supplies on which they have accounted for and paid VAT but for which they have not received payment, to claim a refund of the VAT by reference to the outstanding amount.

The Conditions for Relief

In order to make a claim a business must satisfy the following conditions:

- goods and services have been supplied and the VAT in question has been accounted for and paid
- six months has elapsed since the later of the date of supply and the due date for consideration, whichever is the later
- all or part of the outstanding amount must have been written off in the accounting records as a bad debt (in the 'refunds for bad debts account').

Making the Claim

A claim is made by entering the appropriate amount in Box 4 of the VAT return for the period in which entitlement to the claim arises (or any permissible later period).

Records

Businesses making bad debt relief claims must keep records for four years from the date of the claim to show:

- the time and nature of supply, purchaser and consideration - normally a VAT invoice will show this
- the amount of VAT and the accounting period it was paid to HMRC
- any payment received for the supply
- details of entries in the 'refunds for bad debts account'.

Repayment of Input Tax by Purchaser

Where a customer has not paid a supplier within six months of the date of the supply or, if later, the date payment is due, VAT previously claimed as input tax, must be repaid. This puts a burden on all VAT registered traders to monitor their transactions to anticipate whether they need to reverse any input tax recovered on goods received from suppliers.

How we can help

We would be pleased to help with further advice in this area.

VAT - Cash Accounting

Cash accounting enables a business to account for and pay VAT on the basis of cash received and paid rather than on the basis of invoices issued and received.

Advantages and Disadvantages of the Scheme

The advantages of the scheme are as follows.

- Output tax is not due until the business receives payment of its sales invoices. If customers pay promptly, the advantage will be limited. Even so, the gain may be material.
- There is automatic bad debt relief because, if no payment is received, no output tax is due.
- Most businesses find it easier to think in terms of cash flows in and out of their business than invoiced amounts.

The potential disadvantages are as follows.

- There is no input tax recovery until payment of suppliers' invoices.
- The scheme will not be beneficial for net repayment businesses - for example, a business just starting up, which has substantial initial expenditure on equipment, stocks etc so that input tax exceeds the output tax, should delay starting to use the scheme. That way, it recovers the initial input tax on the basis of input invoices as opposed to payments.

Key Rules

A business can join the scheme if it has reasonable grounds for believing that taxable turnover in the next 12 months will not exceed £1,350,000 provided that it:

- is up to date with VAT returns
- has paid over all VAT due or agreed a basis for settling any outstanding amount in instalments
- has not in the previous year been convicted of any VAT offences.

All standard and zero-rated supplies count towards the £1,350,000 except anticipated sales of capital assets previously used within the business. Exempt supplies are excluded.

When a business joins the scheme, it must be careful not to account again for VAT on any amounts already dealt with previously on the basis of invoices issued and received.

A business can start using the scheme without informing HMRC. It does not cover:

- goods bought or sold under lease or hire-purchase agreements
- goods bought or sold under credit sale or conditional sale agreements
- supplies invoiced where full payment is not due within six months
- supplies invoiced in advance of delivering the goods or performing the services.

Once annual turnover reaches £1,600,000 the business must leave the scheme immediately.

On leaving the scheme, VAT is due on all supplies on which it has not already been accounted for. However outstanding VAT can be accounted for on a cash basis for a further six months after leaving the scheme.

Accounting for VAT

Output tax must be accounted for when payment is received.

Cheque
Treated as received on the date the cheque is received or if later the date on the cheque. If the cheque is not honoured an adjustment can be made.

Credit/debit card
Treated as received/paid on the date of the sales voucher.

Standing order/direct debits
Treated as received/paid on the day the bank account is credited.

Part payments
VAT must be accounted for on all receipts/payments even where they are part payments. Part payments are allocated to invoices in date order (earliest first) and any part payment of an invoice allocated to VAT by making a fair and reasonable apportionment.

Records

Under the cash accounting scheme the prime record will be a cash book summarising all payments made and received with a separate column for VAT. The payments need to be clearly cross-referenced to the appropriate purchase/sales invoice.

In addition the normal requirements regarding copies of VAT invoices and evidence of input tax apply.

How we can help

We can advise on whether the cash accounting scheme would be suitable for your business.

VAT Flat Rate Scheme

The flat rate scheme for small businesses was introduced to reduce the administrative burden imposed when operating VAT.

Under the scheme a set percentage is applied to the turnover of the business as a one-off calculation instead of having to identify and record the VAT on each sale and purchase you make.

Who can join?

The scheme is optional and open to businesses that do not breach the relevant limits. A business must leave the scheme when income in the last twelve months exceeds £230,000, unless this is due to a one off transaction and income will fall below £191,500 in the following year. A business must also leave the scheme if there are reasonable grounds to believe that total income is likely to exceed £230,000 in the next 30 days.

The turnover test applies to your anticipated turnover in the following 12 months. Your turnover may be calculated in any reasonable way but would usually be based on the previous 12 months if you have been registered for VAT for at least a year.

To join the scheme you can apply by post, email or phone and if you are not already registered for VAT you must submit a form VAT1 at the same time.

You may not operate the scheme until you have received notification that your application has been accepted and HMRC will inform you of the date of commencement.

When is the scheme not available?

The flat rate scheme cannot be used if you:

- use the second hand margin scheme or auctioneers' scheme
- use the tour operators' margin scheme
- are required to operate the capital goods scheme for certain items.

In addition the scheme cannot be used if, within the previous 12 months, you have:

- ceased to operate the flat rate scheme
- been convicted of an offence connected with VAT
- been assessed with a penalty for conduct involving dishonesty.

The scheme will clearly be inappropriate if you regularly receive VAT repayments.

How the scheme operates

VAT due is calculated by applying a predetermined flat rate percentage to the business turnover of the VAT period. This will include any exempt supplies and it will therefore not generally be beneficial to join the scheme where there are significant exempt supplies.

The percentage rates are determined according to the trade sector of your business and range from 4% to 14.5%. The table in the appendix to this factsheet summarises the percentages. In addition there is a further 1% reduction off the normal rates for businesses in their first year of VAT registration. If your business falls into more than one sector it is the main business activity as measured by turnover which counts. This can be advantageous if you have a large percentage rate secondary activity and a modest major percentage trade. You should review the position on each anniversary and if the main business activity changes or you expect it to change during the following year you should use the appropriate rate for that sector.

Although you pay VAT at the flat rate percentage under the scheme you will still be required to prepare invoices to VAT registered customers showing the normal rate of VAT. This is so that they can reclaim input VAT at the appropriate rate.

Example of the calculation

Cook & Co is a partnership operating a café and renting out a flat. If its results are as follows:

VAT inclusive turnover:	£
Standard rated catering supplies	70,000
Zero rated takeaway foods	5,500
Exempt flat rentals	3,500
Total	£79,000

Flat rate 12.5% x £79,000 = £9,875

Normally £70,000 x 20/120 = £11,667 less input tax

Limited cost trader

A new 16.5% rate applies from 1 April 2017 for businesses with limited costs, such as many labour-only businesses. Businesses using the FRS, or considering joining the scheme, will need to decide if they are a 'limited cost trader'.

A limited cost trader will be defined as one whose VAT inclusive expenditure on goods is either:

- less than 2% of their VAT inclusive turnover in a prescribed accounting period

- greater than 2% of their VAT inclusive turnover but less than £1,000 per annum if the prescribed accounting period is one year (if it is not one year, the figure is the relevant proportion of £1,000).

Goods, for the purposes of this measure, must be used exclusively for the purpose of the business but exclude the following items:

- capital expenditure
- food or drink for consumption by the flat rate business or its employees
- vehicles, vehicle parts and fuel (except where the business is one that carries out transport services - for example a taxi business - and uses its own or a leased vehicle to carry out those services)

These exclusions are part of the test to prevent traders buying either low value everyday items or one off purchases in order to inflate their costs beyond 2%.

The government has introduced anti-forestalling legislation designed to prevent any business defined as a limited cost trader from continuing to use a lower flat rate beyond 1 April 2017. These provisions will affect a business that supplies a service on or after 1 April 2017 but either issues an invoice or receives a payment for that supply before 1 April 2017.

Treatment of capital assets

The purchase of capital assets costing more than £2,000 (including VAT) may be dealt with outside the scheme. You can claim input VAT on such items on your VAT return in the normal way. Where the input VAT is reclaimed you must account for VAT on a subsequent sale of the asset at the normal rate instead of the flat rate.

Items under the capital goods scheme are excluded from the flat rate scheme.

Transactions within the European Community

Income from sales of goods is included in your turnover figure.

Where there are acquisitions from EC member states you will still be required to record the VAT on your VAT return in the normal way even though you will not be able to reclaim the input VAT unless it is a capital item as outlined above.

The rules on services are complex. Please get in touch if this is an issue so that we can give you specific advice.

Records to keep

Under the scheme you must keep a record of your flat rate calculation showing:

- your flat rate turnover
- the flat rate percentage you have used
- the tax calculated as due.

You must still keep a VAT account although if the only VAT to be accounted for is that calculated under the scheme there will only be one entry for each period.

Summary

The scheme is designed to reduce administration although it will only be attractive if it does not result in additional VAT liabilities. The only way to establish whether your business will benefit is to carry out a calculation and comparison of the normal rules and the flat rate rules.

How we can help

We can advise as to whether the flat rate scheme would be beneficial for your business and help you to operate the scheme. Please do not hesitate to contact us.

Appendix: Table of sectors and rates

Trade Sector	Appropriate %
Accountancy or book-keeping	14.5
Advertising	11
Agricultural services	11
Any other activity not listed elsewhere	12
Architect, civil and structural engineer or surveyor	14.5
Boarding or care of animals	12
Business services that are not listed elsewhere	12
Catering services including restaurants and takeaways	12.5
Computer and IT consultancy or data processing	14.5
Computer repair services	10.5
Dealing in waste or scrap	10.5
Entertainment or journalism	12.5
Estate agency or property management services	12
Farming or agriculture that is not listed elsewhere	6.5
Film, radio, television or video production	13
Financial services	13.5
Forestry or fishing	10.5
General building or construction services*	9.5
Hairdressing or other beauty treatment services	13
Hiring or renting goods	9.5
Hotel or accommodation	10.5
Investigation or security	12
Labour-only building or construction services*	14.5
Laundry or dry-cleaning services	12

Lawyer or legal services	14.5
Library, archive, museum or other cultural activity	9.5
Management consultancy	14
Manufacturing fabricated metal products	10.5
Manufacturing food	9
Manufacturing that is not listed elsewhere	9.5
Manufacturing yarn, textiles or clothing	9
Membership organisation	8
Mining or quarrying	10
Packaging	9
Photography	11
Post offices	5
Printing	8.5
Publishing	11
Pubs	6.5
Real estate activity not listed elsewhere	14
Repairing personal or household goods	10
Repairing vehicles	8.5
Retailing food, confectionary, tobacco, newspapers or children's clothing	4
Retailing pharmaceuticals, medical goods, cosmetics or toiletries	8
Retailing that is not listed elsewhere	7.5
Retailing vehicles or fuel	6.5
Secretarial services	13
Social work	11
Sport or recreation	8.5

Transport or storage, including couriers, freight, removals and taxis	10
Travel agency	10.5
Veterinary medicine	11
Wholesaling agricultural products	8
Wholesaling food	7.5
Wholesaling that is not listed elsewhere	8.5

* 'Labour-only building or construction services' means building or construction services where the value of materials supplied is less than 10 per cent of relevant turnover from such services; any other building or construction services are 'general building or construction services'.

VAT – Seven Key Points for the Smaller Business

This factsheet focuses on VAT matters of relevance to the smaller business. A primary aim is to highlight common risk areas as a better understanding can contribute to a reduction of errors and help to minimise penalties. Another key ingredient in achieving that aim is good record keeping, otherwise there is an increased risk that the VAT return could be prepared on the basis of incomplete or incorrect information.

This aspect is not considered further here but useful guidance can be found on the GOV.UK website www.gov.uk/vat-record-keeping.

Input VAT matters

Only registered traders can reclaim VAT on purchases providing:

- the expense is incurred for business purposes and
- there is a valid VAT invoice for the purchase.

Only VAT registered businesses can issue valid VAT invoices. VAT cannot be reclaimed on any goods or services purchased from a business that is not VAT registered. Proforma invoices should not be used as a basis for input tax recovery as this can accidentally lead to a duplicate VAT recovery claim.

Most types of supply on which VAT recovery is sought must be supported by a valid VAT invoice. This generally needs to be addressed to the trader claiming the input tax. A very limited list of supplies do not require a VAT invoice to be held to support a claim, providing the total expenditure for each taxable supply is £25 or less (VAT inclusive). The most practical examples of these are car park charges and certain toll charges.

The following common items however never attract input VAT and so no VAT is reclaimable - stamps, train, air and bus tickets, on street car parking meters and office grocery purchases like tea, coffee and milk!

Business purpose

This is often an area of contention between taxpayers and HMRC as VAT is not automatically recoverable simply because it has been incurred by a VAT registered person.

In assessing whether the use to which goods or services are put amounts to business use (for the purpose of establishing the right to deduct input tax), consideration must be given as to whether the expenditure relates directly to the function and operation of the business or merely provides an incidental benefit to it.

Private and non-business use

In many businesses, personal and business finances can be closely linked and input tax may be claimed incorrectly on expenditure which is partly or wholly for private or non-business purposes.

Typical examples of where claims are likely to be made but which do not satisfy the 'purpose of the business' test include:

- expenditure related to domestic accommodation
- pursuit of personal interests such as sporting and leisure orientated activities
- expenditure for the personal benefit of company directors/proprietors and
- expenditure in connection with non-business activities.

Where expenditure has a mixed business and private purpose, the related VAT should generally be apportioned and only the business element claimed. Special rules apply to recover input tax claimed on assets and stock (commonly referred to in VAT as goods) when goods initially intended for business use are then put to an alternative use.

Example

Three laptops are initially bought for the business and input VAT of £360 in total is reclaimed.

One is then gifted by the business owner to his son so VAT will have to be accounted for to HMRC of £120 (1/3 x £360)

Business entertainment

VAT is not reclaimable on many forms of business entertainment but VAT on employee entertainment is recoverable. The definition of business entertainment is broadly interpreted to mean hospitality of any kind which therefore includes the following example situations:

- travel expenses incurred by non employees but reimbursed by the business, such as self employed workers and consultants
- hospitality elements of trade shows and public relations events.

Business gifts

A VAT supply takes place whenever goods change hands, so in theory any goods given away result in an amount of VAT due. The rule on business gifts is that no output tax will be due, provided that the VAT exclusive cost of the gifts made does not exceed £50 within any 12 month period to the same person.

Where the limit is exceeded, output tax is due on the full amount. If a trader is giving away bought-in goods, HMRC will usually accept that he can disallow the tax when he buys the goods, which may be more convenient than having to pay output tax every time he gives one away.

Routine commercial transactions which might be affected include such things as:

- long service awards
- Christmas gifts
- prizes or incentives for sales staff.

Cars and motoring expenses

Input tax errors often occur in relation to the purchase or lease of cars and to motoring expenses in general. Some key issues are:

- Input VAT is generally not recoverable on the purchase of a motor car because it is not usually exclusively for business use. This prohibition does not apply to commercial vehicles and vans, provided there is some business use.
- Where a car is leased rather than purchased, 50% of the VAT on the leasing charge is not claimed for the same reason.
- Where a business supplies fuel or mileage allowances for cars, adjustments need to be made to ensure that only the business element of VAT is recovered. There are a number of different methods which can be used, so do get in touch if this is relevant to you.

Output VAT issues

Bad debts

Selling on credit in the current economic climate may carry increased risk. Even where credit control procedures are strong there will inevitably be bad debts. As a supplier, output VAT must normally be accounted for when the sale is initially made, even if the debt is never paid, so there is a risk of being doubly out of pocket.

VAT regulations do not permit the issue of a credit note to cancel output tax simply because the customer will not pay! Instead, where a customer does not pay, a claim to recover the VAT on the sale as bad debt relief can be made six months after the due date for payment of the invoice.

Example

A trader supplies and invoices goods on 19 October 2017 for payment by 18 November 2016 (ie a normal 30 day credit period). The earliest opportunity for relief if the debt is not settled would be 18 May 2017. The relief would be included in the return into which this date fell, depending on the return cycle of the business.

The amount of the claim

The taxpayer can only claim relief for the output tax originally charged and paid over to HMRC, no matter whether the rate of VAT has subsequently changed. The claim is entered as additional input VAT - treating the uncollected VAT as an additional business expense - rather than by reducing output VAT on sales.

The customer

A customer is automatically required to repay any input VAT claimed on a debt remaining unpaid six months after the date of the supply (or the date on which payment is due if later). Mistakes in this area are so common that visiting HMRC officers have developed a programme enabling them to review Sage accounting packages and to list purchase ledger balances over 6 months old for disallowance.

Preventing the problem?

Small businesses may be able to register under the Cash Accounting Scheme, which means you will only have to account for VAT when payment is actually received.

How we can help

Please contact us if you require any further guidance on VAT issues for your business.

Venture Capital Trusts

Venture Capital Trusts (VCTs) are complementary to the Enterprise Investment Scheme (EIS), in that both are designed to encourage private individuals to invest in smaller high-risk unquoted trading companies affected by the equity gap. While the EIS requires an investment to be made directly into the shares of the company, VCTs operate by indirect investment through a mediated fund. In effect they are very like the investment trusts that are obtainable on the stock exchange, albeit in a high-risk environment.

What is a VCT?

VCTs themselves are quoted companies which are required to hold at least 70% of their investments in shares or securities that they have subscribed for in qualifying unquoted companies. VCTs have a certain time period in which to meet the percentage test.

Other conditions are:

- they must distribute 85% of their income
- they must have a spread of investments with no single holding accounting for more than 15% of the value of total.

VCTs are exempt from tax on their capital gains and there is no relief for capital losses.

Reliefs available to investors

Income tax relief of 30% is currently available on subscriptions for VCT shares up to a limit per tax year of £200,000.

To qualify for income tax relief the shares must be held for a minimum of five years.

Investors are exempt from tax on any dividends received from a VCT although the credits are not repayable.

Capital gains arising on disposal of the shares are also exempt and for this relief, there is no minimum period of ownership. There is no relief for any capital losses.

Qualifying companies which a VCT can invest in

The definition of a qualifying company for VCT purposes is very similar to that applying for EIS. The company:

- must be unquoted, although shares on the Authorised Investment Market (AIM) are deemed unquoted for this purpose. They may become quoted later.
- must not deal in land, leased assets or financial, legal or accountancy services. In addition it must not be a trade that has a large capital aspect to it, such as property development, farming, hotels or nursing homes.

Over the years, governments make amendments to what are regarded as qualifying companies for a VCT to invest in. The thrust of the changes is to ensure well-targeted support for investment into small and growing companies, with a particular focus on innovative companies.

How we can help

It is not possible to cover all the detailed rules in a factsheet of this nature. If you are interested in investing in a VCT please contact us for further information.v