Information Index

Clear and concise factsheets on business and personal issues

STARTING UP IN BUSINESS

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 you 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 relatively cheaply in a ready-made form - usually referred to as 'off the shelf' companies. 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.

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 or 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 creditor's 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.

Continued >>>

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.

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 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 at least third party, fire and theft.

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 to 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.

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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.

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 funds. Other grants may be available on a regional or local level.

Raising finance by issuing shares may be another option to consider.

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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 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.

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. Start-up business unable to provide any other form of security may be able to get a guarantee for loans up to £1,000,000. 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 above. 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 detail in these areas.

The SEIS scheme 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 continues to offer tax reliefs to investors in higher-risk small companies. 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.

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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 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 we would be happy to discuss them with you.

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). Presently Companies House do not require annual accounts to be submitted electronically in iXBRL format, however there is software available to cater for electronic filing if preferred.

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.

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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.

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.

The latest reforms, under Pensions Act 2008, have brought about a requirement on UK employers to automatically enrol all employees in a pension scheme and to make contributions to that scheme on their behalf. Enrolment may be either in to an occupational pension scheme or the National Employment Savings Trust (NEST).

Compliance with the new 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.

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.

Contact us to find out more.

GENERAL BUSINESS

Bribery Act 2010

The Bribery Act 2010 (the Act) applies across the UK and all businesses need to be aware of its requirements which came into effect on 1 July 2011.

The Act introduced a new '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, once you are familiar with the requirements of the new Act, 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 replaces, updates and extends the existing 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 extra-territorial 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 new Act there are two general offences:

1. **Active Bribery** – Section 1 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.
2. **Passive Bribery** – Section 2 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:

3. **Bribery of foreign public officials (FPO)** – Section 6 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.
4. **Failure of commercial organisations to prevent bribery** – Section 7 of the Act introduces a new 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 1 of the Act) or bribery of an FPO (section 6 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 new 'corporate' offence is the most significant and controversial change to existing law and it is primarily this new offence that you must now consider and prepare your business for as necessary.

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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, ie 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 new Act it is necessary to be familiar with a number of key definitions.

Relevant commercial organisation

The new 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 new corporate offence also refers to a person 'associated' with a commercial organisation. While there is a 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 new '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 9 of the Bribery Act 2010).
- It has also produced non-statutory guidance for small businesses, providing a concise introduction to how they can meet the requirements of the new Act:
- The Bribery Act 2010 – Quick start guide.
- 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 new legislation. Illustrative case studies, which do not form part of the guidance issued under section 9 of the Act, are also included.

The guidance was published on 30 March 2011. Copies can be located at http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf.

Defending your business against failing to prevent bribery

As you can see from the new legislation, all businesses will need to pay some attention to the new 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 guidance should be considered.

The 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

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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 new 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 new 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 new 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 above will help you understand the implications of the Bribery Act 2010. If you would like to discuss the implications of the new Act for you and your business in more detail please 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 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?

There is no longer a requirement for all companies to appoint a company secretary. Private companies (whose name ends in ltd) do not generally need to appoint a company secretary to deal with this paperwork, unless they either wish to do so or their Articles of Association (their governing document) requires them to do so.

Public limited companies (whose name ends in plc) must still 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 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 nowadays will be online using a computer package or through the Companies House dedicated website. Companies House is hoping to move 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.

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.

These 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.

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.

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Many of the more common types of information can be submitted on line 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.
- the company's annual return is completed and filed. This is a snapshot of the information held by the Registrar of Companies about the company, which must be checked and amended if necessary within 28 days of a given due date. If this information is returned late or not returned at all, the company, director(s) and secretary (if appointed) may be prosecuted.
- If a company does not deliver its annual return the Registrar might assume that the company is no longer carrying on business and take steps to strike it from the register.
- all changes to the way the company is organised are notified to Companies House. The most common changes might include:
  - changes in directors, secretaries and their particulars
  - a change of accounting reference date
  - a change of registered office
  - allotments of shares.
- the current version of the company's Articles of Association is filed whenever a change in the company's internal rules is made.

Often this information must be filed at Companies House within a specified period of between 14 to 28 days following the change.

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 indeed 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 please do contact us. We are able to provide comprehensive assistance with company secretarial matters such as:

- the maintenance and safekeeping of the company registers
- the processing and filing of minutes
- the preparation and filing of resolutions
- the completion and filing of statutory forms
- the filing of the annual accounts
- filing online.

Even though the need to appoint a company secretary in 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.

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.

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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 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.

Franchising

Franchising is becoming increasingly popular in Britain with an annual turnover of around £13.7 billion, up 2.4% on last year's figure. The business community now takes franchising very seriously and it is accepted across a range of sectors. 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. Fewer than one in ten franchises fail. 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, trade marks 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 is likely to be a sensible starting point. They are at Centurion Court, 85f Milton Park, Abingdon, OX14 4RY (01235 820470) www.thebfa.org.

A directory of all franchises available in the UK is available at www.franchiseadvice.com

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Having narrowed down your choice, you will then need to think about writing to 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 the economic slowdown, 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 an iPod!

Information could also be vulnerable to attack from outside. Advances in technological developments mean that all businesses connected to the internet need to consider the risks associated with this. The same advances in technology sometimes lead us to believe 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.

Continued >>>

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.

Continued >>>

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.

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.

Continued >>>

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.

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

Continued >>>

- 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 overoptimistic 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 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.

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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, cashflow statement) 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, cash flow 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.

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.

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.

Continued >>>

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.

We would be pleased 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.

CORPORATE AND BUSINESS TAX

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 varies depending on the period of the accounts. The current AIA is £500,000 which is set to reduce to £25,000 from 1 January 2016.

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.

Capital allowance boost for low-carbon transport

A 100% first year allowance is currently available for capital expenditure on new electric vans.

Writing Down Allowances (WDA)

The writing down allowance rates are 18% on the main rate pool and 8% which applies to some 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. The 100% write off is only available where the CO_2 emissions of the car do not exceed 95 grams per kilometre (g/km) for purchases from April 2013. 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 2013 onwards
- or between April 2009 and April 2013
- or prior to April 2009.

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

For purchases from April 2013

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

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.

Continued >>>

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%.

For purchases from April 2009 to April 2013:

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

- Cars between 111 - 160 gm/km are placed in the main rate pool and will qualify for an annual WDA of 18%.
- Cars in excess of 160 gm/km are placed in the special rate pool and will qualify for an annual WDA of 8%.

If a used car is purchased with CO_2 emissions of 110 g/km or less, this will be placed in the main pool and will receive an annual allowance of 18%.

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 2015. The dates of purchase and CO_2 emissions are as follows:

White car	Blue car
1 May 2014	1 May 2014
125	145

Allowances in the year to 31 March 2015 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 2016 the allowances will be:

White	Blue
£16,400 @ 18% = £2,952	£18,400 @ 8% = £1,472

For purchases before April 2009 the following rules apply:

Cars costing up to £12,000 were included in the main plant pool and get the annual 18% reducing allowance only.

Cars costing more than £12,000 (so called expensive cars) usually had to be allocated to a separate single asset pool. Each qualifies for the annual allowance of 18% but with a maximum annual allowance on each car of £3,000.

Any cars used by the self employed with part non business use were also separately allocated to a single asset pool so that any private use element can be restricted. This does not apply to employee provided cars.

The single asset treatment of old expensive cars (where there is no private use) comes to an end in the first accounting period to end on or after 5 April 2015. Any unrelieved expenditure will be allocated to the Main rate pool.

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:

- cars which cost more than £12,000 prior to April 2009
- 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 (160 gm/km for leases entered into prior to April 2013.)

A different system of adjustment applies to cars where the lease agreement was entered into prior to April 2009.

Example

Contract signed 1 April 2014 by a company:

The car has CO_2 emissions of 146 gm/km and a £6,000 annual lease charge. The disallowed portion would be £900 (15%) so £5,100 would be tax deductible.

Contract signed pre 1 April 2012 by a company:

The car has CO_2 emissions of 146 gm/km, a retail list price of £20,000 and an annual lease charge of £6,000 There would be no adjustment due as the CO_2 emissions are less than the relevant CO_2 limit of 160gm/km.

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

Continued >>>

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 of £3,090 for the unrestricted private use plus an additional £581 for 2014/15 for private fuel.

How we can help

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

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 changes in the amount of the AIA can be summarised as follows:

Period from:	Annual limit
*1 April 2012	£25,000
1 January 2013	£250,000
*1 April 2014	£500,000
1 January 2016	£25,000

*From 6 April for unincorporated businesses

Where a business has an accounting period that straddles the date of change the allowances have to be apportioned on a time basis.

Example

For example a single company with a 12 month accounting period to 31 December 2014 could obtain overall relief for the period of £437,500 (£250,000 x 3/12 plus £500,000 x 9/12). There is a restriction of £250,000 for expenditure incurred in that part of the accounting period which falls before 1 April 2014.

According to the Government the increased AIA will mean that up to 99.8% of businesses could receive 100% upfront relief on their qualifying investment in plant and machinery.

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.

Continued >>>

- 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 main rate 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:

From April 2013

Currently 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 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

Acquisitions from April 2009 up to April 2013

Type of car purchase	Allocate	Allowance
New low emission car not exceeding 110g/km CO_2	Main rate pool	100% allowance
Not exceeding 160 g/km CO_2 emissions	Main rate pool	18% WDA
Exceeding 160 g/km CO_2 emissions	Special rate pool	8% WDA

Pre April 2009 acquisitions

Type of car purchase	Allocate	Allowance
New low emission car not exceeding 110g/km CO_2	Main rate pool	100% allowance
Not exceeding £12,000 cost and not low emissions	Main rate pool	18% WDA
Exceeding £12,000 cost and not low emissions	Single asset pool for each car	18% WDA but restricted to £3,000 max. pa

Cars purchased pre April 2009 that are used wholly for business use will attract WDA as detailed above. However any expenditure remaining in a single asset pool after a transitional period of around 5 years (unless there is any non-business use of the car) will then be transferred to the main rate capital allowances pool.

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 94g/km CO_2 emission car which costs £15,000 with 80% business use will attract an allowance of £12,000 (£15,000 x100% 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 cars with CO_2 emissions up to 95 g/km (110g/km prior to 1 April 2013).

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

- www.etl.decc.gov.uk 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.

Capital allowance boost for low-carbon transport

A 100% first year allowance is available for capital expenditure on new electric vans from 1 April 2010 for companies and 6 April 2010 for an unincorporated business.

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. For assets acquired prior to April 2011 the deadline is the fourth anniversary of the end of the period in which it was acquired.

Continued >>>

Long life assets

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

Cash Basis for the Self-Employed

We consider the optional rules which have been introduced for 2013/14 onwards and 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 VAT registration threshold in force at the end of the relevant tax year. The current registration threshold is £81,000. For those individuals who intend to make a Universal Credit claim the threshold is set at twice the VAT registration threshold.

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.

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 which provides 100% relief on expenditure on plant and machinery (excluding cars). The amount of AIA available for a particular accounting period varies depending on the accounting period.

Periods from:	Annual limit
1 April 2012	£25,000
1 January 2013	£250,000
1 April 2014	£500,000
1 January 2016	£25,000

There are special rules where accounting periods straddle one of the above dates.

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 annual investment allowance. Details can be found at www.etl.decc.gov.uk

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 forward and set against trading profits arising in future years
- they can be carried back for up to one year and set against total profits.

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.

Note however that company profits extracted as a dividend remain chargeable to corporation tax at a minimum of 20%.

Continued >>>

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. If the shareholder is a higher/additional rate taxpayer, a dividend payment 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 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 25% 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

For the 2014 financial year:

- If annual taxable profits do not exceed £300,000, they are charged at the small profits rate of 20%.
- If the profits exceed £1,500,000, the full rate of 21% applies.
- If profits fall between these limits, marginal relief is given. All the profits are charged to tax at a rate between 20% and 21%.

For the 2015 financial year the full rate of corporation tax will be 20% and unified with the small profits rate.

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.

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 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.

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 a 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. Even if no subcontractors have been paid during a month, contractors still have to make a nil 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.

Continued >>>

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.

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
- contractor's employers' 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 deduction 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.

Continued >>>

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.

Currently 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 £200,000 for the whole partnership
- £30,000 for each director of a company, or at least £200,000 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.

Proposed changes to CIS

The government will implement a package of improvements to the CIS. The aim of the changes is to reduce the administrative burden and related cost burden on construction businesses. The measures should result in more subcontracting businesses being able to achieve and maintain gross payment status so improving their cashflow. These changes are to be implemented in stages by the issue of Statutory Instruments.

From 6 April 2015 the following amendments will be made to the system:

- The requirement for a contractor to make a return to HMRC even if the contractor has not made any payments in a tax month will be removed. Contractors may make a voluntary nil return but will no longer be obliged to do so.
- The requirements for joint ventures to gain gross payment status will be relaxed where one member already has this status and that firm or company has a right to at least 50% of the assets or the income or holds at least 50% of the shares or the voting power in the joint venture.
- Earlier repayments can be made to liquidators in insolvency proceedings. Currently where a subcontractor is a company, no repayment of any amount deducted and paid over to HMRC by a contractor can be made to the subcontractor until after the end of the tax year in which the deduction was made. These rules will be amended so that in certain cases where the amount deducted by the contractor is excessive, a repayment can be made during the tax year.

From 6 April 2016 further changes are proposed:

- Mandatory online filing of CIS returns will be introduced with the offer of alternative filing arrangements for those unable to access an online channel by reason of age, disability, remote location or religious objection.
- The directors' self assessment filing requirements will be removed from the initial and annual compliance tests.
- The threshold for the turnover test will be reduced to £100,000 in multiple directorship situations from the current threshold of £200,000.

From 6 April 2017 mandatory online verification of subcontractors will be introduced

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 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
- if no enquiry is started within this time limit, the company's return becomes final - subject to the possibility of a 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.

Continued >>>

Summary of self assessment process

Example

A company prepares accounts for the 12 months ended 31 May 2013 and submits the return by 31 December 2013.

Key dates under CTSA are:

01.03.14	Payment of corporation tax
31.05.14	Deadline for filing the return
31.12.14	End of period for HMRC to open enquiry (being 12 months from the date the return was actually filed)

On 31 December 2014 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 25% of the loan. 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.

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 and it therefore pays its tax at the main rate. The URMA is currently £1.5 million, and the main rate of corporation tax is 23% from 1 April 2013, 21% from 1 April 2014 and 20% from 1 April 2015).

Associated companies

Where a company has associated companies, the URMA is reduced to the figure found by dividing that amount by one plus the number of associates. The URMA is also proportionately reduced for short accounting periods.

A company is associated with another company if one is under the control of the other, or if both are under the control of the same person or persons, and the companies have financial, economic or organisational links. Control is, broadly, defined by reference to ownership of share capital or voting power.

So, if a company has three associates, 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 associated 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, the £10 million threshold is divided by one plus the number of associates 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.

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.

Continued >>>

A company with a 31 December year end was large in 2013 for the first time and is expected to be large in 2014. Its tax payments will be as follows:

- for the 2013 accounting period, the tax liability is payable on 1 October 2014.
- for the 2014 accounting period, 25% of its tax for 2014 in each of July and October 2014 and January and April 2015.

As can be seen, the first instalment for 2014 is payable before the tax liability for 2013. 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 accounting 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.

Fixed Rate Expenses

An optional system of fixed rate expenses has been introduced for some businesses. We consider the rules which take effect for 2013/14 onwards.

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 businesses premises each month (or part of a month) as a private home.

Continued >>>

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 addbacks 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.

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.

Continued >>>

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 trade or partnership is an important decision. In this factsheet, we summarise the relevant tax changes and show the potential tax savings currently available from operating as a company.

This factsheet calculates the position for 2014/15.

In addition we consider other relevant factors including potential disadvantages.

Tax savings

The examples below give an indication of the 2014/15 tax savings that may be achievable for husband and wife who are currently in partnership.

Profits:	£30,000	£50,000	£100,000
Tax and NI payable:	£	£	£
As partners	3,554	9,354	25,970
As company	2,818	6,818	18,376
Potential saving	736	2,536	7,594

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 partners take a salary of £7,956 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

Rate of corporation tax for small companies

Profits up to £300,000 are taxed at 20% from 1 April 2014.

National Insurance

The rate of employees' NIC is 12%. In addition, a 2% charge applies to all earnings over the NIC upper earnings limit (which is £41,865 from 6 April 2014). The rate of NIC for the self-employed is 9%, and 2% on profits above £41,865 from 6 April 2014.

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 exclusive rule. For further details of the tax position of pension provision for individuals see the factsheet on Pensions – Tax Reliefs. Such contributions are deemed to be a private expense for sole traders or partners.

Other tax issues

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. If goodwill is sold to the company for cash or debt on or after 3 December 2014, individuals will be prevented from claiming Entrepreneurs' Relief. Capital gains tax will be payable on the gain at the normal rates of 18% or 28% rather than 10%.

We will need to discuss in detail with you the most appropriate mechanism for your business.

Stamp Duty Land Tax (SDLT)

There may be SDLT 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.

Continued >>>

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 PAYE and returns of benefits forms (P11Ds). As a company, you will need to complete PAYE records for salary payments and 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 eg for late filing of accounts or for breaking the insolvency rules.

How we can help

There may be a number of good reasons currently for considering use of a company as part of a tax planning strategy. However as you can see from this factsheet, 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.

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 opposite.

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.

Continued >>>

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 25% 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 2013. An interim dividend of £20,000 is paid on 30 September 2013. The deemed payment on 5 April 2014 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 2014.

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.

Continued >>>

HMRC have announced relaxations from the strict requirements above allowing provisional figures to be calculated and submitted. 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.

HMRC guidance

HMRC have released some guidance setting out their risk-based approach to checking compliance with IR35. It lays out the approach to compliance and how to work out which 'risk band' a business may be in. It also gives example scenarios to illustrate when and why IR35 will apply to an engagement.

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.

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.

Patent Box

The Patent Box provides a reduced rate of corporation tax for companies exploiting patented inventions or certain other innovations protected by particular intellectual property (IP) rights.

How it works

The reduced rate applies to a proportion of the profits derived from the licensing or sale of the patent rights or from the sale of the patented invention or products which incorporate the patented invention. Profits derived from routine manufacturing, development or exploitation of brands and marketing intangible assets are excluded.

The reduced rate of tax is given by providing an additional deduction in the corporation tax computation.

To minimise administrative costs, Patent Box profits for many claims can be calculated using a formulaic approach which is intended to identify, in most circumstances, a reasonable figure for profit derived from the patent. Companies can opt to identify the profit through a more detailed calculation (not considered in this factsheet).

The election allows a deduction to be made in calculating the profits of the trade period. The amount of the deduction is:

$$RP \times \frac{(MR - IPR)}{MR}$$

where:

- RP is the relevant IP profits of the trade of the company,
- MR is the main rate of corporation tax, and
- IPR is the special IP rate of corporation tax (10%).

HMRC Example

If a company has trade corporation tax profits of £1,000, which qualify in full for the Patent Box when the main rate of tax is 22%, then instead of arriving at a tax charge of £100 by multiplying £1,000 by 10%, the calculation proceeds as follows:

Profits of Company's trade chargeable to CT	£1,000
Patent Box Deduction 1,000 x (22-10)/22	545
Profit Chargeable to corporation tax	455
Tax Payable £455 x 22%	£100

This approach is used, rather than directly charging the relevant profits at 10%, to avoid complications if the company claims losses or other reliefs and to simplify the way the Patent Box will be administered on corporation tax returns.

The formula is the same for companies charged at the main rate of corporation tax and for companies charged at the small profits rate, or at the main rate with marginal relief. This means that in some cases Patent Box profits may be charged at a little below 10%.

Phasing in of the regime

The regime applies to accounting periods commencing on or after 1 April 2013 and is to be phased in over the following four financial years.

The phasing in is achieved by applying the appropriate percentage to the relevant IP profits of the company for each accounting period as follows:

2013	60%
2014	70%
2015	80%
2016	90%

Conditions

The company must be a qualifying company and own or hold a license for a UK or European patent. There are two main conditions:

- the company must have undertaken qualifying development by making a significant contribution to the creation or development of the item protected by the patent or a product incorporating this item; and
- if the company holds a license in patent rights, the license must give it exclusivity for those rights. This must extend at least country-wide.

There are a number of detailed conditions and qualifying criteria within the scheme. We will be happy to discuss this matter in more detail.

How we can help

Please contact us if you would like more information on the Patent Box regime.

Research and Development

Research and development (R&D) by UK companies is being actively encouraged by Government through a range of tax incentives.

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 relief

The R&D revenue relief increases the amount a company can obtain tax relief on to more than the normal 100% revenue deduction. This relief is 225% for expenditure incurred by a SME on or after 1 April 2012 (230% from 1 April 2015). Large companies are subject to a different regime not considered here.

Alternatively a SME may claim a payable R&D tax credit for an accounting period in which it has a surrenderable loss. For expenditure incurred on or after 1 April 2014 the amount of payable tax credit that a company is entitled to for an accounting period is 14.5% of the surrenderable loss for that period. For accounting periods ending on or after 1 April 2012 the R&D credit is no longer restricted to the PAYE/NIC liabilities of the company.

Example

The following is an example of the relief in operation.

Neuf Ltd is an SME and incurs qualifying R&D expenditure during the year to 31 March 2015 of £100,000.

Assuming Neuf Ltd is profitable it will be able to claim a deduction in respect of its R&D expenditure of £225,000. This will reduce its corporation tax liability by £45,000 (assuming a 20% rate), giving the company effective relief on the actual expenditure of 45%.

If, on the other hand, Neuf Ltd is making losses, the £225,000 attributable to the R&D expenditure can either be carried forward for relief against future trading profits or converted into a payable R&D tax credit. The rate of conversion is currently set at 14.5% so this would generate a payment to the company of £32,625 (£225,000 x 14.5%) which equates to 32.63% of the original expenditure.

Considerations

There are two main considerations to establish whether the reliefs for R&D are available. These are concerned with the activity and also the conditions relating to the expenditure incurred.

Is the activity qualifying R&D?

The first essential matter to determine is whether HMRC would accept that the particular activities constitute R&D.

Relief is available if a project seeks to achieve an advance in overall knowledge or capability in a field of science or technology through the resolution of scientific or technological uncertainty and not simply an advance in its own state of knowledge or capability.

Furthermore it must be related to your company's trade either an existing one, or one that you intend to start up based on the results of the R&D.

HMRC guidance suggests when making the claim for relief that a company should answer the following questions, so they can see how your view of the definition applies to your project.

- What is the scientific or technological advance?
- What were the scientific or technological uncertainties involved in the project?
- How and when were the uncertainties actually overcome?
- Why was the knowledge being sought not readily deducible by a competent professional?

Please do get in touch if you would like advice on R&D so we can maximise the reliefs available.

Does the expenditure qualify?

The second consideration is to ensure the relevant tax conditions are met, the most important being:

- the expenditure must be from a qualifying revenue category and not be capital expenditure
- the spending must not be incurred in carrying out activities contracted to the company by another person (however a slightly different form of R&D tax credit may apply - you may still be able to claim, as a subcontractor, under the Large Company Scheme which is not considered further in this factsheet)
- the expenditure must not have been met by another person (if the R&D project is funded in whole or part by 'State Aid' such as a government grant, none of the spending on that project can qualify for R&D tax credits).

The R&D does not have to be undertaken in the UK.

You must make a claim for R&D relief in your Company Tax Return. The normal time limit for making a claim is two years after the end of the relevant Corporation Tax accounting period.

Continued >>>

Changes ahead

In the Autumn Statement the Government announced that it is proposing to restrict qualifying expenditure for R&D tax credits from 1 April 2015 so that the costs of materials incorporated in products that are sold are not eligible. There will be a package of measures to streamline the application process for smaller companies investing in R&D.

How we can help

If this is something that you would like to discuss in more detail, please contact us.

VAT

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 you need to consider

Supplies

Taxable supplies are mainly either standard rated (20%) or zero rated (0%). The standard rate was 17.5% prior to 4 January 2011.

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 (£81,000 from 1 April 2014).

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.

Continued >>>

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.

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 settlements
- 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 that 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 at the back of 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 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 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

From 1 April 2007 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.

Continued >>>

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 which have recently changed due to the increase in the standard rate of VAT. From 4 January 2011, 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. The percentages used in the scheme changed from 4 January 2011 to reflect the increase to 20% in the standard rate of VAT.

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 for 2012 are as follows:

VAT inclusive turnover:	**£**
Standard rated catering supplies	70,000
Zero rated takeaway foods	5,500
Exempt flat rentals	3,500
	£79,000

Flat rate 12.5% x £79,000 = £9,875

Normally £70,000 x 20/120 = £11,667 less input tax

Continued >>>

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 % from 4 January 2011
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 in www.hmrc.gov.uk/factsheet/record-keeping.pdf

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.

Continued >>>

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 2012 for payment by 18 November 2012 (ie a normal 30 day credit period). The earliest opportunity for relief if the debt is not settled would be 18 May 2013. 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.

EMPLOYMENT ISSUES (TAX)

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

The percentage charge for the majority of cars is between 11% and 35%. The emissions table for 2014/15 is set out below.

2014/15	
CO_2 emissions in grams per kilometre (round down to nearest 5gm/km except *)	**% of car's price taxed**
0*	0
1 – 75*	5
76 – 94*	11
95	12
100	13
105	14
110	15
115	16
120	17
For every additional 5g thereafter add 1%	
210 and above	35 (max)

Examples

Jane was provided with a new company car, a Mercedes CLK 430, on 6 April 2014. The list price is £50,000. The CO_2 emissions are 240 gm/km.

Jane's benefit in 2014/15 and later years will be £50,000 x 35% = £17,500

Phil has a company car, a BMW 318i, which had a list price of £21,000 when it was provided new on 6 April 2014. The CO_2 emissions are 117 grams per kilometre. Note: The CO_2 emissions are rounded down to the nearest 5 grams per kilometre - in this case 115.

Phil's benefit for 2014/15 is: £21,000 x 16% = £3,360

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 3% of the list price generally applies to diesel cars. For 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%. The maximum charge for diesel is capped at 35%.

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 http://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%).

The exceptions

Imports

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 too are taxed according to engine size.

Continued >>>

Engine size (cc)	% of list price charged to tax
0 - 1400	15%
1401 - 2000	25%
Over 2000	35%

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 £21,700 for 2014/15. 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 have published guidelines on fuel only mileage rates for employer provided cars. The advisory rates are not binding and an employer may be able to agree higher rates with HMRC via a dispensation, perhaps where employees need to use particular types of car such as 4x4s to cover rough terrain. Employers can adopt the rates in the following table but may pay lower rates if they choose.

	PETROL			DIESEL		
	1400cc or less	1401 to 2000cc	Over 2000cc	1600cc or less	1601-2000cc	Over 2000cc
From 1 December 2014	13p	16p	23p	11p	13p	16p

Separate rates are available for cars which run on LPG. These can be found on HMRC's website at https://www.gov.uk/government/publications/advisory-fuel-rates/current-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.

Employer Supported Childcare

Employer supported childcare, commonly by way of childcare voucher, is for many employers and employees and 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 of £55 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 2014/15, the personal allowance for most employees is £10,000 and the basic rate limit will be £31,865, a combined figure of £41,865. 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 (generally £41,865 as explained above), 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 (generally £41,865 as above) but falls below the limit at which tax becomes payable at the 45% rate limit for the year (currently £150,000), the employee is entitled to relief on £28 exempt income for each qualifying week.

Continued >>>

If the level of estimated earnings and taxable benefits exceed the equivalent of the additional tax rate limit for the year (currently £150,000), 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.

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 www.hmrc.gov.uk/thelibrary/esc-qa.htm

New Tax-Free Childcare scheme

In Budget 2013, the Government announced new tax incentives for childcare. Following consultation on the design and operation of the scheme, the Government has announced improvements.

The relief will be 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. The original proposal had a cap of 20% of £6,000 per child.

The scheme will be launched in autumn 2015. All children under 12 within the first year of the scheme will be eligible. Under the original proposal only children under five would have been eligible in the first year of the scheme.

To qualify for Tax-Free Childcare all parents in the household must:

- meet a minimum income level based on working eight hours per week at the National Minimum Wage (around £50 a week at current rates)
- each earn less than £150,000 a year, and
- not already be receiving support through Tax Credits or Universal Credit.

Self-employed

Self-employed parents will be able to get support with childcare costs in the Tax-Free Childcare scheme, unlike the current employer supported childcare scheme. To support newly self-employed parents, the Government is introducing a 'start-up' period. During this period a newly self-employed parent will not have to earn the minimum income level.

The current system of employer supported childcare will continue to be available for current members if they wish to remain in it or they can switch to the new scheme. Employer supported childcare will continue to be open to new joiners until the new scheme is available.

Online account

It is proposed that parents register with the Government and open an online account. The scheme will be delivered by HMRC in partnership with National Savings and Investments, the scheme's account provider. The Government will then 'top up' payments into this account at a rate of 20p for every 80p that families pay in.

How we can help

If you would like to discuss setting up a childcare scheme 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 or reimbursed expense must be reported on this form. However, where the reimbursed amounts represent genuine business expenses a claim can be submitted by the taxpayer on his or her tax return, (or in writing to HMRC if they do not receive a tax return) thus resulting in a nil liability.

Dispensations

Many expense payments do not involve a tax liability as a corresponding claim is made by the employee for amounts expended wholly, exclusively and necessarily in the performance of their employment.

A dispensation, granted by HMRC, allows certain expenses to be ignored when completing P11Ds. Commonly, a dispensation covers travelling and subsistence expenses and routine entertaining. Correspondingly, the employee cannot make an expenses claim to HMRC.

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 (the amount may be lower for higher and additional rate taxpayers joining a scheme from April 2011) 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.

Continued >>>

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 10% - 35% 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 £21,700 for 2014/15 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 £3,090 for 2014/15. 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 £581 also applies for 2014/15. 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 (£5,000 prior to 6 April 2014).

- **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.

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 applying for dispensations

- 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.

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 (ie 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!

Continued >>>

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 and 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 100-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.

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 NIC on their earnings. In addition a further secondary contribution is due from the employer.

For 2014/15 employee contributions are only due when earnings exceed a 'primary threshold' of £153 per week. The amount payable is 12% of the earnings above £153 up to earnings of £805 a week. In addition there is a further 2% charge on weekly earnings above £805. The equivalent thresholds are £155 and £815 for 2015/16.

Secondary contributions are due from the employer of 13.8% of earnings above the 'secondary threshold' of £153 per week for 2014/15 (£155 for 2015/16). There is no upper limit on the employer's payments.

Benefits in kind

Employers providing benefits such as company cars for employees have a further NIC 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 NI. 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).

Class 2 contributions are currently paid by direct debit at a rate of £2.75 per week for 2014/15 (£2.80 for 2015/16). Class 4 contributions are collected with the income tax liability payable on the profits of the business.

For 2014/15 Class 4 is payable at 9% on profits between £7,956 and £41,865. In addition there is a further 2% on profits above £41,865. The equivalent thresholds are £8,060 and £42,385 for 2015/16.

Voluntary contributions

Flat rate voluntary contributions are payable under Class 3 of £13.90 per week for 2014/15 increasing to £14.10 for 2015/16. 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.

National Insurance - £2,000 employment allowance

The Employment Allowance of up to £2,000 per year is available to many employers and can be offset against their employer Class 1 National Insurance Contributions (NIC) liability from 6 April 2014.

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 will be extended to those employing care and support workers.

There are also rules to limit the employment allowance to a total of £2,000 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 NIC liability if that is less than £2,000.

The allowance is claimed as part of the normal payroll process. The employer's payment of PAYE and NIC is reduced each month to the extent it includes an employer Class 1 NIC liability until the £2,000 limit has been reached.

Continued >>>

Employer NIC for the under 21s

From 6 April 2015 employer NIC for those under the age of 21 will be 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 a new term for this new NIC exemption. It is set at the same amount as the Upper Earnings Limit, which is the amount at which employees' NIC fall from 12% to 2%. The weekly UST is £815 for 2015/16 which is equivalent to £42,385 per annum. Employers will be liable to 13.8% NIC beyond this limit. The employee will still be liable to pay employee national insurance contributions.

NIC for apprentices under 25

The government will abolish employer NIC up to the upper earnings limit for apprentices aged under 25. This will come into effect from 6 April 2016.

Class 3A Voluntary National Insurance

From October 2015 a new class of voluntary NIC (Class 3A) will be introduced that gives those who reach State Pension age before 6 April 2016 an opportunity to boost their Additional State Pension.

The Government expects that Class 3A will give pensioners an option to top up their pension in a way that will protect them from inflation and offer protection to surviving spouses. In particular, it could help women, and those who have been self-employed, who tend to have low Additional Pension entitlement. The top up will be available to those who reach State Pension Age before 6 April 2016 including those who have already started to draw their state pension.

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 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 NIC 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 NIC 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.

Continued >>>

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.

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 HMRC website.

As an employer you will be responsible for operating PAYE and National Insurance (NI). 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 and additional statutory paternity pay (OSPP and ASPP).

A vast amount of information is available on the HMRC website detailing the operation of PAYE together with online calculators these can be found on HMRC's website www.hmrc.gov.uk and as part of HMRC Basic PAYE tools.

If requested HMRC will send you several booklets and tables to enable you to make the relevant deductions and payments to your employees. The majority of employers however use the HMRC Basic PAYE tools or equivalent software.

Real Time Information reporting

Under RTI which was implemented from April 2013 employers, or their agents, are generally required to make regular 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 http://www.hmrc.gov.uk/payerti/index.htm 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 NI 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 NI?

NI is payable by the employee and the employer on the employee's gross pay for a particular tax week or month and is calculated on a non cumulative basis. The NI can be calculated using the HMRC Basic PAYE tools or equivalent software.

When does the tax and NI have to be paid to HMRC?

The tax and NI 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.

Continued >>>

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.

More detailed guidance and information on operating your payroll under Real Time Information can be found at http://www.hmrc.gov.uk/payerti/index.htm or in our Payroll Real Time Information factsheet.

Penalties

HMRC impose penalties on employers who fail to:

- 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
- make online submissions where required
- pay on time.

It is important that employers comply with all the regulations.

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 and 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 (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 SSP, SMP, OSPP and ASPP) together with the SMP NIC 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 will be 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. This final return details whether for example, forms P11D reporting employment benefits or expenses are due.

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 http://www.hmrc.gov.uk/payerti/on-or-before.pdf

A relaxation of the rules for micro employers

A relaxation applies to some micro employers to the RTI reporting requirement that payments to employees should be reported on or before the amount is paid to the employee. The relaxation applies to micro employers (those with fewer than 10 employees) who pay employees weekly, or more frequently, but only process their payroll monthly and who made use of the small employer relaxation in 2013/14.

Continued >>>

The relaxation means that micro employers, who find it difficult to report every payment to employees at the time of payment, may send information to HMRC by the date of their regular payroll run but no later than the end of the tax month.

Please do contact us if you would like any further help or advice on payroll procedures

Penalties

HMRC are introducing automatic in-year penalties for RTI to encourage compliance with the information and payment obligations.

In essence late filing penalties will 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 will apply to micro, small, medium and large employers.

Each scheme will be 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. This regime commences on 6 October 2014 for employers with 50 or more employees with small employers being liable for the penalty from 6 March 2015.

For tax years 2014/15 onwards, HMRC will 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.

Another change is more imminent. For tax years 2014/15 onwards, HMRC will 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.

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.

Share Ownership for Employees - EMI

EMI and SIPs

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 two ways in which an employer can provide mechanisms for employees to obtain shares in the employer company without necessarily suffering a large tax bill.

The two routes are:

- Enterprise Management Incentives (EMI) and
- Share Incentive Plans (SIPs).

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.

A SIP is designed to allow all employees to participate in their business and to encourage long-term shareholding by them.

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.

For chargeable gains:

- CGT at the rate of 18% 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 28%.

In certain circumstances, in respect of shares acquired through exercising EMI options, Entrepreneurs' Relief may be available to reduce the CGT liability to 10%. The law has been amended to extend the relief to EMI shares by removing the 5% minimum shareholding requirement and allowing the 12 month minimum holding requirement to commence on the date the option is granted. This measure applies to shares acquired on or after 6 April 2012 that are disposed of on or after 6 April 2013. The other Entrepreneurs' Relief requirements apply.

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.

Continued >>>

- 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

We can help you decide whether EMI is appropriate for your business and whether the business will qualify.

We are also able to help you with the necessary documentation required to establish and operate EMI and advise on the costs 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.

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.

Continued >>>

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.

EMPLOYMENT AND RELATED MATTERS

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 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'

Continued >>>

- 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 BIS website www.bis.gov.uk

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 right is to treatment in relation to these relevant facilities that is no less favourable than that given to a comparable worker, which 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.

Continued >>>

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 BIS 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.

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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 recent ruling by the European Court of Justice, when commission is related to the number of sales made whilst at work, these should also be included in the calculation of holiday pay. The method of calculating such payments is not yet defined and will be a matter for the national courts to decide when the case is heard next year, but is likely to be an average of previous month's commission. Voluntary overtime payments are excluded.

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 and maternity

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).

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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 day 1.

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.

Dismissal Procedures

There have been many changes to employment law and regulations over the 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 for employees who joined on or after 6th April 2012. 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. Since 29 July 2013 the government has introduced fees for claimants bringing tribunal claims.

There are two levels of claim, depending on the complexity of the case. For straightforward claims with one claimant there will be two fee points, an issue fee of £160 and a hearing fee of £250, for more complex claims (including unfair dismissal and discrimination claims) these figures rise to £230 and £950, for multiple claims the fee per claimant is discounted on a sliding scale. The tribunal may order the fees to be repaid to the claimant if he or she is successful with his or her claim. Fees are also payable for appeals submitted to the Employment Appeal Tribunal. These are £400 on submitting a notice of appeal and a further £1200 hearing fee. Claimants can benefit from the remission system which provides a complete exemption for those on certain state benefits and partial remission on a sliding scale for those on low incomes.

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.

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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 accordinglyfailure 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.

Health and Safety

It is very likely that owners and managers of many smaller businesses are not aware of just how demanding health and safety regulations can be.

We provide an overview of these below and highlight some practical tips and processes on how your business can remain (or become!) compliant.

Legislation governing health and safety

The main statutes are:

- The Health and Safety at Work Act 1974 (HSWA)
- The Management of Health and Safety at Work Regulations 1999 (Risk Assessment)
- Regulatory Reform (Fire Safety) Order 2005
- The Health and Safety (Consultation with Employees) Regulations 1996
- Safety Representatives and Safety Committee Regulations 1977
- Corporate Manslaughter and Corporate Homicide Act 2007

There are many other regulations relating to specific areas of health and safety, for example, manual handling, safety signs, employment of children, display screen equipment, control of substances hazardous to health, reporting of incidents, control of noise and first aid. There are also approved codes of practice (ACOPS) which provide practical advice on compliance and have special legal status.

Minimum requirements

A business with at least five employees must have all of the following in place to avoid problems with a health and safety inspector:

- a written health and safety policy, which should be specifically tailored for the employer
- assessments of risks from workplace activities
- records of any significant findings from such assessments
- consultations with employees or their representatives on health and safety matters
- health and safety training programmes
- employer's liability insurance, evidence of which is on display
- health and safety posters on display
- a competent person appointed to assist with health and safety responsibilities.

Sanctions for Non-Compliance

If inspectors arrive from either the Health and Safety Executive (the HSE is responsible for factories, farms and building sites) or the local authority (responsible for offices, shops, hotels and catering) and find a business in breach of health and safety regulations there are a number of types of enforcement action they can take, in increasing order of severity, as follows:

- offer advice, either face to face or in writing
- issue a warning, highlighting a failure to comply with the law
- serve an improvement notice
- withdraw approvals to undertake certain activities
- vary licencing conditions or exemptions
- issue formal cautions (a formal statement of an offence having been committed, acknowledged by the recipient)
- serve a prohibition notice (to stop activities in order to prevent serious personal injury)
- prosecute at the magistrates or Crown Court. This may lead to fines from £5,000 up to a maximum of £20,000 in the lower courts and unlimited fines in the Crown Court and/or up to 2 years imprisonment.

At the same time employees may take civil actions against their employer if they suffer injury or illness and the employer has breached the Management of Health and Safety at Work Regulations 1999.

Why managing health and safety makes sense

In addition to avoiding legal sanction, statistics in 2011/12 show:

- **1.1 million** working people were suffering from a work-related illness.
- **173** workers killed at work.
- **111,000** injuries were reported under RIDDOR.
- **212,000** reportable injuries (over 3 day absence) occurred (LFS).
- **27 million** working days were lost due to work-related illness and workplace injury.
- Workplace injuries and ill health (excluding cancer) cost society an estimated £13.4 billion (in 2010/11)

Accidents and ill health can be very damaging to business because, in addition to personal injury claims and the direct costs, productivity can be severely compromised. The less visible costs are many and varied and include increased overtime working and temporary labour, stress

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and more staff absence, production delays, repairs to equipment, costs of management time, customer dissatisfaction and loss.

These are compelling reasons why it makes sense to manage health and safety proactively.

Five-step process to managing health and safety

The HSE has produced 'Successful health and safety management' (HSG65) which is an excellent guide on how to plan for and audit health and safety.

It suggests a five-step process as set out below.

Step 1

Set your policy. This demonstrates to staff that you take health and safety issues seriously, have identified the risks associated within your business, have assessed those risks and will continue to eliminate or control them.

Step 2

Organise your staff. The effectiveness of your policy depends upon the involvement and commitment of your staff.

Step 3

Plan and set standards. This involves setting health and safety objectives, identifying hazards, assessing risks and implementing standards of performance.

Step 4

Measure your performance. This is about looking at whether your assessments are showing an improvement or the same issues are repeating themselves. Regular inspections and checks should be made to ensure your standards are being met.

Step 5

Learn from experience. If things have gone wrong, this is about reviewing how effective your procedures are and then making changes to improve the effectiveness of these policies and procedures.

Practical tips

The following are some practical actions you could and should be taking today:

- removing items from the work area such as cables and other loose items, which can cause tripping and slipping accidents
- repairing torn carpets and broken edges on staircases to avoid the risk of serious falls
- making sure that workstations are stable, don't give off a reflective glare and ensuring there is suitable seating and hand and foot-rests so that staff maintain good posture whilst working
- insisting that staff take regular breaks, particularly if working for long stretches at a VDU screen
- undertaking regular fire drills and ensuring first aid training is updated regularly
- keeping the first aid box(es) fully stocked and readily available
- ensuring that health and safety signs are kept relevant and up to date, including the display of non-smoking signs at each staff entrance
- setting up a system to regularly check all electrical appliances and fire extinguishers
- ensuring that staff are aware of the potential risks of performing certain tasks and checking that they are fit to undertake those tasks or know how to do them safely.

How we can help

Health and safety is an important, if sometimes neglected, area. To help you meet your responsibilities we have provided a simple checklist that you may wish to complete to identify areas within your business that need attention.

Please contact us if you would like any additional information.

Health and Safety Checklist

If not already in place, the following are practical steps you should take today:

UNDERTAKEN BY: ______________________________ DATE: ______________

		Yes	No
1	Is an Employer's Liability Insurance Certificate displayed?		
2	Is a Health and Safety Poster displayed?		
3	Have all outstanding tasks from previous risk assessments been completed?		
4	Are there sufficient Fire Marshals?		
5	Are there sufficient Fire Action Notices displayed to inform staff of the procedures to take in the event of a fire?		
6	Are all new recruits advised of the Health and Safety procedures?		
7	Is the fire alarm tested regularly?		
8	When was it last tested and by whom?		
9	When were the fire extinguishers last tested?		
10	Is the first aid box complete and available to all staff?		
11	Are there sufficient trained First Aiders?		
12	Is there an accident book and is it being used?		

	Yes	No
13 When was the last time portable electrical equipment was tested by an electrician?		
14 Is the electrical equipment labelled and dated with the test?		
15 Have risk assessments of display equipment been undertaken within the last 12 months?		
16 Is everyone aware of their right to free eye tests?		
17 Are all items of mechanical cutting equipment adequately guarded (shredders, guillotines etc.)?		
18 Are filing cabinets where more than one drawer can be opened at a time bolted down?		
19 Have staff been advised to take precautions when changing toner cartridges?		
20 Are trolleys etc. provided to assist in the manual handling of loads?		
21 Are heavy, frequently used items stored on waist level shelves?		
22 Are steps available for reaching items stored at height?		
23 Is lighting adequate and in good working order?		
24 Is there a suitably marked drinking water supply available?		
25 Are passage ways clear of tripping hazards eg cables, boxes, rubbish etc.?		
26 Are the tops of cabinets clear of heavy items that could fall?		
27 Are all entrances and exits in good working order (no grease, broken slabs, poor lighting etc.)?		

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 be facing a fine of up to £20,000 per offence. Further, if employers knowingly use illegal migrant labour it could carry a maximum 2 year prison sentence and/or unlimited fine.

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. Those validated from List A will require no further checks, however, documents provided from List B must be followed up at least once every 12 months.

List A

- an ID Card or British passport identifying the holder is a British citizen; or
- an ID Card or 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 a 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

- 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 European Economic Area country or Switzerland; or
- an Application Registration Card issued by the Home Office stating 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 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.

Continued >>>

The points-based system

The Government has introduced a merit-based points system for assessing non-European Economic Area (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 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 Border Agency if a foreign national fails to turn up for work.

There is a charge of £1,545 (£515 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 UK Border Agency through which it can issue its own certificates of sponsorship to potential migrant workers. The UK Border Agency 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 £184.

Employers that do not hold a licence cannot recruit non-EEA workers.

Identity cards

Identity cards for foreign nationals are currently issued to some categories of foreign nationals from outside the European Economic Area (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). Therefore, 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 before starting employment.

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 taken 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 6 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

Continued >>>

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 Border and Immigration Agency's Employers' Helpline – 0300 1234 699.

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.

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 7.6 days are lost each year per employee with a median cost of £595 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

Continued >>>

- 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.

Health and Work Service

The Government plans to introduce a new Health and Work Service (HWS), which is expected to be available by the end of 2014. The HWS will make independent expert health and work advice more widely available to employers, employees and general practitioners.

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 can we help

Please contact us if we can provide any further assistance or additional information.

National Minimum Wage

The National Minimum Wage (NMW) was introduced on 1 April 1999 and is reviewed each year by the Low Pay Commission. Any changes normally take place on 1 October. There have already been a number of instances of employers being penalised for not complying with the legislation. HMRC are the agency that ensures enforcement of the NMW.

We highlight below the main principles of the minimum wage regulations.

Please contact us for further specific advice.

What is the National Minimum Wage?

There are different levels of NMW, depending on your age and whether you are an apprentice. The rates are given in the following table:

	Rate from 1 October 2013	Rate from 1 October 2014
the main rate for workers aged 21 and over	£6.31	£6.50
the 18-20 rate	£5.03	£5.13
the 16-17 rate for workers above school leaving age but under 18	£3.72	£3.79
the apprentice rate, for apprentices under 19 or 19 or over and in the first year of their apprenticeship	£2.68	£2.73

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.

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.

There are no exemptions from paying the NMW on the grounds of the size of the business.

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.

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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?

Enforcement notices can be issued if underpayments are discovered and there can be a penalty equivalent to twice the hourly amount of the NMW for each worker that has been underpaid multiplied by the number of days that enforcement notices are not complied with.

There could also be a maximum fine of £20,000 for having committed a criminal offence.

Employers who refuse to pay the NMW may also face a fine in excess of £200 for every worker they underpay. Employers have to pay back arrears they owe to workers and those who refused to pay up could be penalised.

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.

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)

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- 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 have a particular characteristic, you should consider whether duties could be reallocated so 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 whereby a business 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
- ambience - such as an ethnic restaurant
- 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

Continued >>>

- 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:

- 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.

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 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.

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.

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.

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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.

Continued >>>

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 £464, 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 £13,920. 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.

Statutory Sick, Statutory Maternity and Statutory Paternity Pay

Statutory Sick Pay (SSP), Statutory Maternity Pay (SMP) and Statutory Paternity Pay (SPP) 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 (£111 in 2014/15).

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 for the 2014/15 tax year is £87.55 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 normally have a daily rate of £17.51 for 2014/15.

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.

Recovery of SSP

With effect from 6 April 2014 the Percentage Threshold Scheme (PTS) which enables employers falling within certain limits of the scheme to recover some of their SSP is to be abolished.

The PTS enables employers to recover some of the SSP paid to their employees if the total SSP paid in a tax month is greater than 13% of their gross Class 1 NICs (employers' and employees') liability for that month.

After the PTS is abolished, employers will have until the end of 2015/16 to recover SSP paid for sickness absences occurring before the end of 2013/14.

Continued >>>

PAYE and records

SSP is included in gross pay and PAYE operated as normal.

In line with the abolition of the Percentage Threshold Scheme and the introduction of the Statutory Sick Pay (Maintenance of Records) (Revocation) Regulations, with effect from 6 April 2014, employers will no longer be required to maintain minimum statutory SSP records to demonstrate compliance with SSP obligations. However, it is best practice to continue to 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 Lower Earnings Limit 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

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% AWE (see below)
- up to a further 33 weeks at the lower of:
  - 90% of AWE
  - £138.18 per week for 2014/15

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 Lower Earnings Limit)
- 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. 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 NIC 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 for 2014/15.

To qualify for SER, the current limits are:

- total gross Class 1 NIC 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 baby due.

The week baby due and QW are easy to establish from HMRC SMP tables or online calculators.

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 Statutory Paternity Pay.

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 Lower Earnings Limit in the relevant period.

Continued >>>

The amount payable

OSPP is payable for a maximum of 2 weeks, it must be taken as a block either 1 week or a complete fortnight but not 2 single weeks at the following rates:

- the lower of:
- 90% of AWE
- £138.18 for 2014/15

OSPP is treated as normal pay.

The calculation of average weekly earnings and the recovery of OSPP are subject to the same rules as for SMP.

With effect from 1st October 2014, fathers will have the right to take unpaid leave to attend up to two antenatal appointments.

Additional Statutory Paternity Pay (ASPP) and leave

Employees can start their additional paternity leave any time from 20 weeks after the child is born. The leave must have finished by the child's first birthday. A minimum of two weeks and a maximum of 26 continuous weeks' leave can be taken.

For an employee to qualify for additional statutory paternity leave they must:

- be the father of the baby and/or the husband or partner (including same-sex partner or civil partner) of a woman who is due to give birth or who has received notification that they have been matched with a child on or after 3 April 2011
- have, or expect to have, the main responsibility for the baby's upbringing, apart from any responsibility of the mother
- have at least 26 weeks' continuous employment with the employer ending with the qualifying week
- continue to work for you from the qualifying week into the week before they wish to take additional paternity leave - weeks run Sunday to Saturday
- be taking the time off to care for the baby

The baby's mother must also:

- be entitled to statutory maternity leave, SMP or maternity allowance
- return to work at least two weeks after the child's birth, but with at least two weeks of unexpired statutory maternity leave entitlement remaining.

ASPP is payable to eligible workers who meet the eligibility criteria for additional paternity leave and:

- they are taking time off to care for their child during their partner's 39 week SMP period
- their partners have returned to work

The current rate is the lower of either:

- the standard weekly rate - £138.18 for 2014/15
- 90% of their average weekly earnings

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 lower rate of SMP and follows the same rules with regard to recovery.

Shared parental leave (SPL) - proposed changes

With effect from 5th April 2015 the new Shared Parental Leave will come into place and will apply to parents whose babies are due on or after 5 April 2015. In the case of adoptions SPL will apply in relation to children matched with a person or placed for adoption on or after 5 April 2015.

Details of the scheme are yet to be confirmed however indications are that employed mothers will still be entitled to 52 weeks of maternity leave. The mother can switch part of her statutory maternity leave and pay into SPL and shared parental pay. SPL and shared parental pay 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 maternity leave (four weeks if they are manual workers) which the mother must take.
- Eligible parents will then be able to share the remaining maternity leave and pay between themselves.
- Fathers will still be entitled to two weeks basic paternity leave.
- Mothers with partners (who must also meet the qualifying conditions) will be able to end the mother's maternity leave and pay and share the untaken balance as SPL and shared parental pay.
- Employees who have taken 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 will be up to the parents how they share SPL – they could 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 will be abolished.

Full details of the eligibility requirements will be available nearer the time.

How we can help

As the schemes 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.

PERSONAL TAX

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 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 in 2014/15 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 (tax credits on dividend income will count towards the tax paid)
- 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.

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.

Continued >>>

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)

From April 2013, 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 Community Amateur Sports Clubs (CASC) 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 £5,000 per year. Claiming for £5,000 of small donations will result in a repayment of £1,250 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 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 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.

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) over £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.

And when does the new charge apply?

The charge was introduced from 7 January 2013 and for 2012/13 will apply to the weekly Child Benefit paid from that date onwards.

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 2014. His results for that year will form his taxable profit for 2013/14. 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 2015 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 2013/14 and is therefore responsible for paying the charge by 31 January 2015 and she will need to contact HMRC about this.

For couples who do not share their financial details there is a problem as it will be 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 come 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 becomes 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.

Continued >>>

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 2013/14

The Child Benefit for two children amounts to £1,752 per annum. The taxpayer's adjusted net income is £55,000. The income tax charge will be £876. This is calculated as £1,752 x 50% (£55,000 - £50,000 = £5,000/£100 x 1%).

How will 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 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.

There are concerns about how HMRC will be able to effectively administer this change. HMRC have written to taxpayers earning over £50,000 alerting them to the possibility of them being affected by this tax charge.

So should you continue to claim Child Benefit?

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

On the other hand Child Benefit claimants will be 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 has been made when the child is 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 do not currently receive a tax return but this may need to change. Remember the need to tell HMRC by 6 October 2014 if you think a charge may be due for 2013/14.

Guidance

HMRC have issued some guidance on the charge and the options available which can be found at www.hmrc.gov.uk/childbenefitcharge/. 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.

Child Tax Credit

This factsheet explains whether you or your spouse/partner are entitled to the Child Tax Credit and the childcare element of the Working Tax Credit.

Claims for the Working Tax Credit other than the childcare element are not covered in detail here. It is aimed at low income workers. As the amount of Child Tax Credit may be dependent on the potential benefits payable under the Working Tax Credit, you may need to look at the benefits under the Working Tax Credit system. The rates of Working Tax Credits are shown as an appendix to this factsheet. A tax credit claim could affect other state benefits (but not child benefit). Such impact is not further considered here.

The credit and the childcare element of the Working Tax Credit are paid direct to the main carer, usually the mother.

Claiming Child Tax Credit

Who makes the claim?

Couples must make a joint tax credits application. If you are part of a couple, you cannot decide to apply as a single person. A couple is:

- a man or a woman who are married and living together, or
- a man and a woman living together as if they are married, or
- a same sex couple who have entered into a civil partnership, or
- a same sex couple who live together as if in a civil partnership.

The income of couples must be added together for the threshold tests below.

Qualifying child

Child Tax Credit is for people who are legally responsible for at least one child or qualifying young person. (See appendix.)

The childcare element of the Working Tax Credit

Who makes the claim?

Couples with children must work at least 24 hours a week between them, with at least one of them working 16 or more hours. If only one member of the couple works, that person must work at least 24 hours.

There are some exceptions to the 24 hours rule. Couples with children will still qualify for WTC if:

- one partner who is working at least 16 hours per week is eligible for the disabled worker element of WTC, or is aged 60 or over; or
- one partner works at least 16 hours a week and the other partner is 'incapacitated', an in-patient in hospital, or in prison.

Qualifying child

The child or children you are claiming for must be under the qualifying age. (See appendix.)

What type of childcare?

Payments must be made to a 'childcare provider'. (See appendix.)

How much are these credits worth?

This depends on your circumstances.

Amounts and income tests - for full Child Tax Credit

To compute the full potential Child Tax Credit the following credits are added to the Working Tax Credit but then may be reduced by the level of your family income:

	2014/15 Annual £
Child element per child	2,750
Disabled child element	3,100
Severely disabled child element	1,255
Family (one only)	545

Childcare costs are added to the above rates at a rate of 70% of eligible costs to maximum eligible costs of £175 per week (£300 if two or more children).

The annual income threshold for the full Child Tax Credit and childcare costs is currently £6,420 with a reduction of 41p for every extra £1 of income. This threshold and reduction applies where your entitlement consists of both CTC and WTC elements. If you are only eligible for the Child Tax Credit as you are not working then the annual income threshold is £16,010 before any reduction is applied.

Continued >>>

Example

Oscar and Izzy work full time and have two children. Oscar has self employment income of £10,400 p.a. and Izzy is employed with income of £26,000 p.a during 2013/14. They pay eligible childcare costs of £180 per week.

Their provisional entitlement to Working Tax Credit / Child Tax Credit in 2014/15 will be:

	2014/15
	£
Basic (Working Tax Credit)	1,940
Couple addition (Working Tax Credit)	1,990
30 hours per week (Working Tax Credit)	800
Childcare 70% of £180 x 52 weeks	6,552
Child Tax Credit - 2 children @ £2,750	5,550
Child Tax Credit - Family element	545
	17,327
Less (10,400 + 26,000 - 6,420) @ 41%	(12,292)
Child Tax Credit	£5,035

Which year's income?

The initial claim to Child Tax Credit for 2014/15 is based on income for the tax year 2013/14. So, for example it includes the taxable business profits or employment income as stated in your tax return for that year. Other income is also included to the extent that it exceeds £300.

Personal pension contributions and Gift Aid payments (the grossed up amounts) are deductible.

There are other special rules but adding together your 'family' income on this basis will give you an idea as to whether it is worthwhile making a claim.

The amount of tax credit that you are entitled to can change if your income in the year to 5 April 2015 is significantly different from your income in the year to 5 April 2014. If the income for the later year is more than £5,000 higher than income in the initial claim, then you may end up with less tax credit and have to make a repayment of the amount you were overpaid to HMRC.

If your income is significantly reduced, by more than £2,500 you may be entitled to claim further tax credits once your actual income is known.

Renewals process

Claimants will have to make an annual declaration to HMRC detailing their actual income position.

Deadline

The renewal deadline for 2014/15 claims is 31 July 2015. It is possible to renew using estimated figures and then provide final figures by 31 January 2016.

Protective claims

As previously stated, the initial claim to credit for a given year is based on income of the previous year - eg. the initial claim for 2014/15 is based on income of 2013/14. However, the final credit to which a family is entitled is based on the actual income for 2014/15. Of course, you do not yet know your actual income for the year to 5 April 2015. You are unlikely to know your actual income for a given tax year until the end of the year. However, it may be best to make a claim sooner rather than later due to restrictions on backdating late claims.

A claim can only be backdated by one month. This means that a claim made on 6 August can only be backdated to 6 July.

Protective claims are likely to be of most interest to people with children whose income levels are variable perhaps because they are self employed or because there is the threat of redundancy.

How do I claim?

The tax credits website www.hmrc.gov.uk/taxcredits allows people to make their claim online. It also gives more information on the various elements of the tax credits and the opportunity to go through a quick calculation that gives an indication of what you might be entitled to.

If you would prefer to make a paper-based claim, you can telephone a helpline (0845 300 3900) and ask for a claim pack.

How we can help you

As the claim has to be made jointly by you and your spouse/partner, we can only make claims on your behalf if each of you has previously signed a form authorising us to act.

If we do not currently act for your spouse/partner we will need a form to be signed. Please contact us if you want us to act for your spouse/partner and we will send you the appropriate form. If you do not wish us to formally act we are still available to provide any advice you need.

Appendix

Working Tax Credit rates

	2014/15 Annual £
Basic	1,940
Couple / lone parent addition	1,990
Working 30+ hours per week add	800
Disabled worker	2,935
Severe disability	1,255

Continued >>>

Qualifying child for Child Tax Credit

Child Tax Credit is for people who are legally responsible for at least one child or qualifying young person.

- A child is a person aged under 16 or until the 31st August after that child's 16th birthday.
- A young person is a person aged 16 to 19 provided they are in full time non advanced education or an approved training course, either of which began before their 19th birthday.

Qualifying child for childcare element of the Working Tax Credit

The child or children you are claiming for must be under the qualifying age. For the childcare element that age is from birth up to 1st September following the child's 15th birthday. If:

- the child is registered blind or
- the child has been taken off the blind register within the last 28 weeks or
- you receive Disability Living Allowance on behalf of that child,

the qualifying age is from birth up to 1st September that follows the child's 16th birthday.

Childcare provider

You can apply for the costs of childcare arrangements if the childcare provider is:

- a registered childminder, nursery or play scheme or
- an out of hours club on school premises run by the school or Local Authority or
- a childcare scheme run on Government property or
- a childcare scheme run by an approved provider. For example, an out of school hours scheme. Your scheme will be able to tell you whether they are approved.

You cannot apply for the costs of any childcare arrangement that does not fit into one of the above categories. The childcare provider must have a registration number which is provided by the Local Authority when they are approved.

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 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 (£500,000 prior to 6 April 2012) a year.
- 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 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.
- 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

Continued >>>

- 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 if later.

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 EIS please contact us.

We can also help to guide you through the implementation of a scheme which is suitable for your circumstances.

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.

Individual Savings Accounts (ISAs) were introduced in April 1999 and the government has confirmed that ISAs are a permanent feature of the savings landscape.

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

On 1 July 2014 ISAs were reformed into a simpler product, the 'New ISA' (NISA) and all existing ISAs will become NISAs, and the overall annual subscription limit for these accounts was increased to £15,000 for 2014/15. From 6 April 2015 the overall NISA savings limit will be increased to £15,240.

Savers are able to subscribe this full amount to a cash account (previously only 50% of the overall ISA limit could be saved in cash). Under the NISA, investors also have new rights to transfer their investments from a stocks and shares to a cash account.

The Chancellor has now announced an additional ISA allowance for spouses or civil partners when an ISA saver dies. From 6 April 2015, surviving spouses will be able to invest the inherited funds into their own ISA, on top of their usual allowance. This measure applies for deaths from 3 December 2014.

Investment choices

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.

Following the introduction of simpler product the NISA there are changes to the rules on the investments that can be held, so that a wider range of securities to include certain retail bonds with less than five years before maturity can be invested. In addition, Core Capital Deferred Shares issued by building societies will become eligible to be held in a NISA, Junior ISA or Child Trust Fund (CTF).

Types of ISA

Investors are able to invest in two separate ISAs in each tax year; a cash ISA and a stocks and shares ISA.

Tax advantages

The income from ISA investments is exempt from income tax. However the tax credits on any dividends are not reclaimable.

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.

Junior Individual Savings Account (Junior ISA)

The government has introduced a Junior ISA which 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 ISAs. They can be cash or stocks and shares based products. The annual subscription limit for Junior ISA and Child Trust Fund accounts will increase from £4,000 to £4,080.

The Government has previously decided that a transfer of savings from a CTF to a Junior ISA should be permitted at the request of the registered contact for the CTF. The Government has confirmed the measure will have effect from 6 April 2015.

How we can help

Please contact us if you would like any further information on ISAs.

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 either not domiciled (referred to as 'non-dom') here or is not ordinarily resident here 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 a number of years, has rental income arising from the letting of property in Poland. Let's pose two different scenarios for 2014/15 assuming his overseas income is still £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 in 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 2014/15 it is necessary to look at the individual's UK residence position going back as far as 2005/06 (ie to 6 April 2005). 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

Jan first came to the UK in July 2007. He will be classed as resident here from 2007/08 which will mean that he meets the seven year rule and will therefore be treated as a long term resident in 2014/15. If his residence had not commenced until July 2008 he would only have six years of residence and would not become a long term resident until 2015/16.

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).

Continued >>>

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 Jan is a long term resident. He can only secure the remittance basis for 2014/15 if he pays the RBC. Clearly it would be nonsensical for him to pay that charge to avoid tax on say £4,000 of income which was unremitted. He will therefore not elect for the remittance basis and will pay UK tax on the full £5,000 of income arising in Poland. If that income has been subject to tax in Poland he may be entitled to set any Polish 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 2014/15 he has income of £150,000 arising in Spain and also makes a capital gain of £200,000 on the sale of a Spanish property. He remits none of this to the UK in 2014/15.

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 just over £107,000 of the capital gain which, taxed at 28%, would represent a liability of £30,000.

That would satisfy the RBC and would mean that £107,000 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

Where an individual has been resident in the UK for 12 out of the previous 14 years, the RBC increases to £50,000. Some individuals may decide that the increased RBC is too high a price to pay for the favourable remittance basis.

Example

If Sergio (from the previous example) has been living in the UK for say 15 years then given the same circumstances he may decide that £50,000 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 £50,000 and must nominate income or gains to represent this sum. He could nominate just over £178,500 of the capital gain which, taxed at 28%, would represent a liability of £50,000.

That would satisfy the RBC and would mean that £178,500 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.

Further changes ahead for the RBC

It was announced in the Autumn Statement 2014 that the charge payable by people who have been UK resident for 12 out of the last 14 years will increase from £50,000 to £60,000. A new charge of £90,000 will be introduced for people who have been UK resident for 17 of the last 20 years. The government will also consult on making the election apply for a minimum of three years.

What is a remittance?

HMRC take the view that whatever method an individual may use to bring income or gains into the UK will be 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

Continued >>>

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 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 this 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
- 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
- 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.

As can be seen from this brief review, the rules are wide ranging and complex. The non-dom now needs to take great care in how they organise their overseas assets and in particular cash funds. Ideally pure capital funds should be kept clear of any income so that they can still be used as a means of tax free remittance.

How we can help

Each individual's situation is going to have different problems. Please contact us if you would like to discuss how the rules impact on you and the steps you can take to mitigate their impact.

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, so 2013/14 runs from 6 April 2013 to 5 April 2014. 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 2013/14 return must be filed by 31 October 2014 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)

* Previously the penalty could not exceed the tax due, however this cap has been removed. This means that 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, up to £3,000 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.

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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 tax payers 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 a significant amount of 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 2012/13 (after tax deducted at source) is £8,000. Her liability for the following year is £10,500. Payments for 2013/14 will be:

		£
31.1.2014	First instalment (50% of 2012/13 liability)	4,000
31.7.2014	Second instalment (50% of 2012/13 liability)	4,000
31.1.2015	Final payment (2013/14 liability less sums already paid)	2,500
		£10,500

There will also be a payment on 31 January 2015 of £5,250, the first instalment of the 2014/15 tax year (50% of the 2013/14 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 2015 is not paid within 30 days (the 'penalty date' is the day following)
- A further 5% penalty if the tax due on 31 January 2015 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 2015 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 we can 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.

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. Allowable expenses include mortgage interest, repairs, agent's letting fees and an allowance for furnishings.

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 and is then taxed at either 18% or 28% or a combination of the two rates. CGT is payable on 31 January after the end of the tax year in which the gain is made.

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.

Continued >>>

The amount of rental income chargeable to income tax is reduced by a deduction known as 'rent a room relief'. This is £4,250 each year. 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 has been significantly amended. Most importantly the regime has been extended to cover qualifying property located anywhere in the European Economic Area (EEA). This extension is effectively backdated and means that it may be possible to claim the benefits of FHL treatment of losses and capital gains in UK tax years within the normal four year time limit.

The conditions necessary to qualify for FHL treatment have been amended from 6 April 2012. From that date the property will have to be available for letting for at least 210 days in each tax year and must actually be 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.

One area of previous benefit which has now gone is that losses arising in an FHL business can no longer be set against other income of the taxpayer. This change applies for the 2011/12 tax year onwards. It also becomes necessary to segregate losses into 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.

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 by 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 claim a corporate tax deduction for the rent
- finance costs will be 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 taxed at 18% or 28% or a combination of the two.

Capital gains tax 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 from 6 April 2008 onwards.

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?

Do you already have a company?

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 spouse's annual exemption if jointly owned) on eventual disposal to reduce the gain.

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.

In contrast, a company can still currently use indexation allowance to reduce a capital gain. This effectively uplifts the cost of the property by the increase in the Retail Price Index over the period of ownership. 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.

The net rental income will be taxed at the company's marginal rate of tax, which is generally lower than for an individual but again if 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

Continued >>>

- inserting the property into an existing company may result in your shareholding in that company not qualifying for ER
- if you form another company to protect the trading status of the existing company, that may increase the corporation tax bill on your trading company (because of 'associated company' rules).

If you do not have a company at present

Personal or joint ownership may be the more appropriate route but there are currently significant other advantages of corporate status particularly if you expect that:

- you will be increasing your investment in residential property and
- 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 company as a tax shelter

Profits up to £300,000 are currently taxed at 20%. This rate applies for 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? May be 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.

To the extent that the dividends when added to your other income do not exceed your personal allowances and the basic rate band there will be no income tax to be paid.

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 on the property purchases.

Stamp duty land tax (SDLT)

SDLT is payable by the purchaser.

From 4 December 2014 the system for calculating SDLT on residential property has been radically reformed. The previous 'slab' system has been replaced and the new percentage rates are only be payable on the portion of the property value which falls within each band.

Where contracts have been exchanged but not completed on or before 3 December 2014, purchasers will have a choice of whether the old or new structure and rates apply. This measure will apply in Scotland until 1 April 2015 when SDLT is devolved to the Scottish Parliament.

Prior to the change SDLT was a flat percentage of the consideration paid (up to 7%).

Where the consideration on residential property is £125,000 or less no SDLT is payable.

Corporate investment in expensive residential property

In 2012 a new top rate of SDLT (15%) was introduced where expensive residential property, valued at more than £2 million, is purchased by a 'non natural person' broadly a company. The value limit was reduced to £500,000 for purchases from 20 March 2014.

In addition 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.

There are exemptions from the top rate of SDLT and the ATED charge; in particular, property companies letting out residential properties to third parties.

The government has now announced an increase in the rates of ATED by 50% above inflation. From 1 April 2015, the charge on residential properties owned through a company and worth:

- more than £2 million but less than £5 million will be £23,350
- more than £5 million but less than £10 million will be £54,450
- more than £10 million but less than £20 million will be £109,050
- more than £20 million will be £218,200.

It had previously been announced that residential property over £1 million and up to £2 million will be brought into charge with effect from 1 April 2015 (the annual charge will be £7,000). Properties worth over £500,000 and up to £1 million will be brought into charge with effect from 1 April 2016 (the annual charge will be £3,500).

At present CGT is charged at 28% on disposals of properties liable to ATED. This will be extended to residential properties worth over £1 million with effect from 6 April 2015 and for residential properties worth over £500,000 from 6 April 2016.

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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.

Seed Enterprise Investment Scheme

The Enterprise Investment Scheme (EIS) has been in place for a number of years and provides tax relief for individuals prepared to invest in new and growing companies. 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. A junior version of EIS known as Seed Enterprise Investment Scheme (SEIS) has been introduced from 6 April 2012 onwards.

Key features

The key features of the new 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 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 that gain in 2012/13 and 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

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- the company must not have had EIS or Venture Capital Trust (VCT) investment before the SEIS shares are issued
- the company can seek EIS or VCT investment after it has received SEIS investment but must show that it has spent at least 75% of the money received under SEIS, and
- the total amount of investment made under 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 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 SEIS in 2013/14. 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 is also planning to invest £60,000 under SEIS but not until 2014/15. His forecast tax liability for 2014/15 is only £20,000 so the claim to relief under 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 2014/15) to the preceding tax year 2013/14.

The relief must be claimed and requires a certificate from the company issuing the shares. This is a critical point in relation to the validity of any claim as the relief can only be claimed when the company has spent at least 70% of the money raised by the share issue on qualifying business activities.

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 the 10% rate of CGT under Entrepreneurs' Relief 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 SEIS in 2012/13 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 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 in 2013/14 and beyond (100% relief was available for 2012/13 only).

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 2013/14 for £200,000 making a gain of £80,000. He invests £80,000 of the proceeds in new shares which qualify under SEIS. He will be able to claim a reduction of £40,000 (being 50% of the amount invested in SEIS) in the chargeable gain on the shares.

Comparison to EIS

The introduction of SEIS supplements the current long established EIS scheme. Some aspects of both schemes are similar but there are also key differences. These are not considered in detail here but for example, consider the position of the individual investor. Improvements to the EIS scheme mean that those investing in qualifying companies under that scheme be able to put up to £1 million into EIS companies, for which they will 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 is a welcome addition to the existing EIS and related Venture Capital Trust investment schemes particularly 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.

Statutory Residence Test

The concept of residence in the United Kingdom is fundamental to the determination of UK tax liability for any individual. For over 200 years the term 'residence' has never been defined in our tax laws and the issue of interpretation in any situation has been dependent upon considering case law and HMRC practice. From 6 April 2013 a Statutory Residence Test (SRT) has been introduced into legislation.

The 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 be 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

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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.

Continued >>>

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 not 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 bear in mind that whatever your UK residence status may have been in 2012/13, there is no automatic assumption that it will continue in future years. The facts will have to be separately considered each tax year and the changes in 2013/14 means that great care must be taken in that and subsequent years.

Please do contact us for any advice you may need.

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. Since December 2005, 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.

If either you or your spouse were born before 6 April 1935, 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.

From April 2015 married couples and civil partners may be eligible for a new transferable tax allowance.

The transferable tax allowance will enable spouses and civil partners to transfer a fixed amount of their personal allowance to their spouse.

The transferable allowance is £1,060 for 2015/16 being 10% of the personal allowance.

The option to transfer will be available to couples where neither pays tax at the higher or additional rate. If eligible, one spouse will be able to transfer £1,060 of their personal allowance to the other spouse. The transferor's personal allowance will be reduced by £1,060. It will mean that the transferee will be able to earn £1,060 more before they start paying income tax.

The claim will be made online and entitlement will be from the 2015/16 tax year. 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 £212.

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, for 2014/15 £11,000 per annum. Gains are treated as an individual's top slice of income and charged at 18% or 28% or a combination of both rates.

Some limited tax savings may be made by ensuring that maximum advantage is taken of any available capital losses and annual exemptions.

Continued >>>

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 inheritance tax 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. New rules have been 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.

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

A Child Tax Credit (CTC) is available to some families. We have a separate factsheet which provides more detail about this area. To see whether you are entitled to claim go to HMRC website at www.hmrc.gov.uk

Junior Individual Savings Account (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 £1,752.

The taxpayer's adjusted net income is £54,000.

The income tax charge will be £700.80.

This is calculated as £17.52 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.

Continued >>>

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.

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. If a VCT sells a holding and breaches the test, the VCT is allowed a six month period to reinvest cash received into another qualifying investment.

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.

From 22 April 2009 the time limits concerning the employment of money invested are relaxed.

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

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.

Certain changes to the qualifying conditions for VCTs have been made to ensure that the scheme continues to meet European State Aid requirements.

In summary the changes are:

- VCT shares must be traded on an EU regulated market rather than being restricted to an official UK list
- the rules governing the amount of a VCT investments which must be held as equity, and the types of shares qualifying will change
- companies will be excluded from qualifying for VCT purposes where it would be regarded as an 'enterprise in difficulty' under the European Commission's guidelines.

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.

CAPITAL TAXES

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?

- Capital gains tax (CGT) at the rate of 18% applies to gains (including any held over gains coming into charge) where net total taxable gains and income is below the income tax basic rate band of £31,865 for 2014/15 (2013/14 £32,010). Gains or any parts of gains above this limit will be charged at 28%.
- Entrepreneurs' relief may be available on certain business disposals.

Entrepreneurs' Relief

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 lifetime limit has previously been £5m, £2m and £1m since the introduction of the relief.

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.

What is clear is that 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.

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 2014 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 2014 in the same company.

The disposal of 2000 shares will be matched firstly with later transaction of 500 shares as it is within the following 30 days and then with 1,500/ 4000 (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 2014/15 is £11,000 (2012/13 £10,900). Consideration should be given to ensuring both spouses/civil partners utilise this facility.

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.

Continued >>>

Other reliefs which you may be entitled to

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

- private residence relief;
- business asset roll-over 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 foreign tax implications may then 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 three years of ownership of a property that has at some time been the main residence. It was announced in the Autumn Statement 2013 that from 6 April 2014 the final period exemption will be reduced from 36 months to 18 months for the majority of individuals. Those in long term care or disabled that meet the necessary conditions will continue to benefit from a 36 month exemption.

Case study

Wayne, an additional rate taxpayer, acquired a home in 2003 in which he lived full-time. In 2007 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. In 2013 he sells both properties realising a gain of £100,000 on the first property and £150,000 on the second property.

Continued >>>

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 three years of ownership qualifies providing the property has been the main residence at some time. If however the date of disposal is after 5 April 2014 the final period exemption will be reduced from three years to 18 months.

In other words out of the ten years of ownership, a total of seven qualify for the exemption. Therefore 3/10ths of the gain - ie £30,000 will be taxable. Not bad on total gains of £250,000.

Impact of the reduction in the final period exemption

If, using the same example but assuming the acquisitions and disposals took place a year later so the disposals were made after 5 April 2014 then only 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, Wayne would have found the gain on the first property wholly exempt and the gain on the second property wholly chargeable. Failure to make an election can be an expensive mistake.

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 2000 and lived in it as his main residence for eight years until 2008. Then he bought a second property which immediately became his main residence and the first property was let from then until its sale in 2015.

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 2000 to 2008)

18 months (last 18 months of ownership - part way through 2014 and 2015)

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 2008 to part way through 2014. 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.

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.

Most gifts made more than seven years before death will escape tax. Therefore, if you plan in advance, gifts can be made tax-free: the result can be 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. 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 tax on death is 40% and 20% on lifetime chargeable transfers. For 2014/15 the first £325,000 is chargeable at 0% and this is known as the nil rate band.

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%. The reduced rate applies to deaths occurring on or after 6 April 2012.

IHT on lifetime gifts

Lifetime gifts fall into one of three categories:

- a transfer to a company or a 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. It might therefore be more advisable to regard them as potentially chargeable transfers.

IHT on death

The main IHT charge is likely to arise on death. IHT is charged on the value of the estate. This includes any interests in trust property where the deceased had a right to income from, or use of, the property. Furthermore:

- PETs made within seven years become chargeable
- there may be an additional liability because of chargeable transfers 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.

Use of PETs

Wherever possible gifts should be made as PETs rather than as chargeable transfers. This is because the gift will be exempt from IHT if the donor survives for seven years.

Nil rate band and seven year cumulation

Chargeable transfers covered by the nil rate band can be made without incurring any IHT liability. Once seven years have elapsed a gift 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 pass assets out of the estate.

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 to the next year but not thereafter.

Gifts between husband and wife

Gifts between husband and wife are generally exempt if both are 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.

Continued >>>

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. However the reliefs may not be so generous in the future and therefore gifts now may be advisable.

Agricultural property relief (APR)

APR is similar to BPR and 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 the type of trust which may be suitable for your circumstances.

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.

Wills

As the main IHT liability is likely to arise on death, an up to date Will is important.

How we can help

Whilst some generalisations 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 over 25 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 new 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.

Continued >>>

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 new 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. HMRC have also conceded that only cash gifts made after 6 April 1998 can be caught within the rules.

Start date - retrospection?

Despite the fact that the new 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 new 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 new 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.

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 2010/11 the election should have been made by 31 January 2012. HMRC will however allow a late election at their discretion.

What now?

The new 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 are not affected by the regime and so it is more important than ever to ensure you have a tax-efficient Will.

Wills

Wills are not affected by the regime and so it is more important than ever to ensure you have a tax-efficient Will.

Continued >>>

Summary

This is a complex area and professional advice is necessary before embarking on any course of action. The new 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.

Stamp Duty Land Tax

Who pays the tax?

SDLT is payable by the purchaser in a land transaction.

What is a land transaction?

A transaction will trigger liability if it involves the acquisition of an interest in land in the United Kingdom. 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?

From 4 December 2014 onwards each SDLT rate will only be payable on the portion of the property value which falls within each band. The government believe this will remove the distortion created by the previous system, where the amount of tax due jumped at the thresholds.

The current rates and thresholds are:

Residential property Purchase price of property	Rates paid on the part of the property price within each tax band %
£0 - £125,000	0
£125,001 - £250,000	2
£250,001 - £925,000	5
£925,001 - £1,500,000	10
£1,500,001 and above	12

The SDLT rates up to 3 December 2014 for residential property are set out in the table below. SDLT was charged at a single percentage of the price paid for the property, depending on the rate band within which the purchase price falls. The whole of the price was taxed at the appropriate rate:

Residential property	Rate %
£0 - £125,000	0
£125,001 - £250,000	1
£250,001 - £500,000	3
£500,001 - £1,000,000	4
£1,000,001 - £2,000,000	5
£2,000,001 and over	7

Where contracts have been exchanged but not completed on or before 3 December 2014, purchasers have a choice of whether the old or new structure and rates apply. This measure will apply in Scotland until 1 April 2015 when SDLT is devolved to the Scottish Parliament.

What about non-residential and mixed property?

The rates for non-residential and mixed property are set out in the table below. SDLT is charged at a single percentage of the price paid for the property, depending on the rate band within which the purchase price falls. The whole of the price is taxed at the appropriate rate:

Non-residential and mixed property	Rate %
£0 - £150,000	0
£150,001 - £250,000	1
£250,001 - £500,000	3
£500,001 and over	4

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. 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%.

Continued >>>

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%.

HMRC have SDLT calculators which work out the amount of SDLT payable. The calculators can be found at http://www.hmrc.gov.uk/sdlt/calculate/calculators.htm

How do I tell HMRC about a liability?

The purchaser must complete an SDLT 1 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.

Trusts

What are trusts?

Trusts are a long established mechanism which allows individuals to benefit from the assets without assuming the legal ownership of those assets so that others (the trustees) have 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.

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 the 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 don't.

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.

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. Historically by careful planning the value could often be maintained under the taxable limit, for example by the use of multiple trusts. The Government will introduce new rules to target avoidance through the use of multiple trusts and has issued draft legislation on this issue following consultation.

Finally there is an 'exit' charge if assets are appointed out of the trust.

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

Continued >>>

- the trust was created after 22 March 2006 under the terms of a will and gives an immediate interest in the income to a beneficiary with strict conditions as to what happens to the property at the end of the interest; 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 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 10% on dividends and 20% on other income. Discretionary trusts pay tax at 37.5% (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 released at the trustees' discretion from discretionary trusts, the beneficiaries will receive the income net of 45% tax. They are able to obtain refunds of any overpaid tax and if they pay tax at 45%, they will get credit for the tax paid.

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.

PENSIONS

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). This new objective on sustainable growth came into force on 14 July 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.

TPR has two core activities that underpin its regulatory approach:

- the gathering of detailed and up to date information about schemes and how they are being run and
- a risk assessment of every pension scheme.

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 latest reforms, introduced under Pensions Act 2008, have brought about a new 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 in to 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 new 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.

Continued >>>

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. From April 2006 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 legal and administrative information about the scheme
- an investment report
- actuarial 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.

Pensions - Automatic Enrolment

The role of the employer

To encourage more people to save in pension schemes, the government has placed greater responsibility on employers to provide access to pension provision.

Up until 1 October 2012 there was no requirement for an employer to pay employer contributions into a scheme. There was also no requirement for the employee to enter an employer provided scheme.

Most employers were however obliged to designate a registered stakeholder scheme that employees could join. This obligation has been removed due to the advent of automatic enrolment (or auto enrolment).

What is automatic enrolment?

Automatic enrolment places new duties on employers to automatically enrol 'workers' into a work based pension scheme. 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
- register with The Pensions Regulator and keep 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. 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 (£10,000 2014/15). It is expected that the minimum earnings threshold will be changed in line with the income tax single person's allowance in future years.
- 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 either 'opt in' (i.e. join a scheme) and therefore to 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 new 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 existing employer's 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.

Continued >>>

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.

When does automatic enrolment apply to an employer?

The law came into force for very large employers on 1 October 2012 but fortunately, the automatic enrolment rules have a staggered implementation by reference to the number of employees.

An employer can precisely work out when the automatic enrolment rules will have to be applied as the implementation date (known as the 'staging date') is set by reference to the number of persons in an employer's PAYE scheme on 1 April 2012. The more employees an employer has on that date, the earlier the staging date.

Examples of staging dates

No. of employees	Staging date
250	1 February 2014
62	1 July 2014
50	1 April 2015

For those with less than 50 employees the earliest start date is 1 June 2015 but the precise date will depend not only on the actual number of employees on 1 April 2012 but also an employer's PAYE reference number. The earliest date for an employer with up to 30 employees on 1 April 2012 is 1 June 2015 and the latest date is 1 April 2017.

Importantly it doesn't matter how many employees an employer has on the staging date – there may be considerably more (or less) than on the 1 April. So if you are an employer, look at the number of employees you had on the 1 April to know where you stand.

Employers with less than 50 employees but are part of a larger PAYE scheme

You may be an employer of a company which has less than 50 employees but the company is part of a group of companies and the company has a shared scheme with other employers.

There are special rules for such employers.

An employer can find out the detailed staging date rules from 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 has developed a set of letter templates to help you when writing to your workers.

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 contributions. If the employer only pays the employer's minimum contribution, employees' contributions will start at 1% of their salary, before eventually rising to 4%. An additional 1% in the form of tax relief will mean that there is a minimum 8% contribution rate.

Transitional period	Duration	Employer minimum contribution	Total minimum contribution
1	Employer's staging date to 30 September 2017	1%	2%
2	1 October 2017 to 30 September 2018	2%	5%
1 October 2018 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 threshold of £5,772 and the higher threshold of £41,865 for 2014/15. The earnings between these amounts are called qualifying earnings. The thresholds will be 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.

Registering with The Pensions Regulator and keeping records

The Pensions Regulator was established to regulate work-based pensions.

An employer must register with The Pensions Regulator within four months of the staging date (or the last day of the postponement period(s) where postponement was used at staging). In essence the registration 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.

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.

How we can help

As you can see Pensions automatic enrolment is not a straightforward business. 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:

- Occupational schemes
- Personal Pension schemes.

An occupational pension is an arrangement an employer can use to provide benefits for their employees when they leave or retire. The number of occupational pension schemes has declined in recent years in part due to the regulations imposed upon the schemes.

A Personal Pension scheme is a privately funded pension plan but can also be funded by an employer. In many cases the employer may organise the establishment of pension plans for their employees through a Group Personal Pension scheme.

A stakeholder pension is a personal pension plan but has restrictions on the amounts that may be charged by the pension provider (typically a pension company).

We set out below the tax reliefs available to members of 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 Personal Pension 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. Self employed and employed individuals can have a Personal Pension.

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 a Personal Pension scheme (see below)

Key features of Personal 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 Personal 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 Personal Pension 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

Continued >>>

- 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

The level of the annual allowance is £40,000 for 2014/15 (previously £50,000) but in order to determine whether the allowance has been exceeded a pension input period needs to be determined for the scheme. A pension input period does not have to be the same as the tax year. In addition, each scheme can have a different pension input period, so special care is required in this area.

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. It is expected that most individuals and employers will actively seek to reduce pension saving below the annual allowance, rather than fall within the charging regime.

The rate of charge

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 2014/15. He makes personal pension contributions of £50,000 net in 2014/15. He has made similar contributions in the previous three tax years.

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 (i.e. £40,000). The annual allowance for the current tax year is to be treated as increased by the amount of the unused annual allowance from the previous three tax years.

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 per year (previously £50,000) 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.

An amount of the excess for an earlier tax year is to be used before that for a later tax year.

As the annual allowance has been far higher than £50,000 before 2011/12 when the new rules were introduced, when looking at whether there is unused annual allowance to bring forward from 2008/09, 2009/10 and 2010/11, the annual allowance for those years is deemed to have been £50,000.

Example

Bob is a self employed builder. In the previous three years Bob has made contributions of £40,000, £20,000 and £30,000 to his pension scheme. As he has not used all of the £50,000 annual allowance in earlier years, he has £60,000 unused annual allowance that he can carry forward to 2014/15.

Together with his current year annual allowance of £40,000, this means that Bob can make a contribution of £100,000 in 2014/15 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 and has been reduced from £1.5 million to £1.25 million for 2014/15.

If the value of the scheme(s) exceeds the limit when benefits are drawn from the scheme 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

In Budget 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'. Some of changes have already taken effect but the big changes will come into effect on 6 April 2015 for individuals who have money purchase pension funds.

The tax consequences of the changes are contained in the Taxation of Pensions Bill which is currently going through Parliament.

Continued >>>

Under the current system, there is some flexibility in accessing a pension fund from the age of 55:

- tax free lump sum of 25% of fund value
- purchase of an annuity with the remaining fund, or
- income drawdown.

For income drawdown there are limits, in most cases, on how much people can draw each year.

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.

From 6 April 2015, the ability to take a tax free lump sum and a lifetime annuity remain but some of the current restrictions on a lifetime annuity will be removed to allow more choice on the type of annuity taken out.

The rules involving drawdown will change. There will be total freedom to access a pension fund from the age of 55. It is proposed that access to the fund will 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 (as under current rules).

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.

Pensions - changes to tax relief for pension contributions

The Government is alive to the possibility of people taking advantage of the new 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.

Currently an 'annual allowance' sets the maximum amount of tax efficient contributions. The annual allowance is £40,000 (but there may be more allowance available if the maximum allowance has not been utilised in the previous years).

Under the proposed rules from 6 April 2015, the annual allowance for contributions to money purchase schemes will be reduced to £10,000 in certain scenarios. There will be no carry forward of any of the £10,000 to a later year if it is not used in the year.

The main scenarios in which the reduced annual allowance is triggered is 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 £10,000 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.

ICT

Accounting Package Selection

Selecting the right accounting package can be difficult, particularly as there are so many packages on the market. Price and functionality vary so widely it can make objective comparisons very difficult without spending a number of days on the selection process. The availability of internet (cloud-based) accounting packages has complicated the selection process.

We have set out below some areas you should consider when making your selection.

Determining your requirements

A decision is required first as to the level of complexity required from a new system.

At the most basic level, you need to decide whether you just want something to replace a spread sheet or cash-book, to handle receipts and payments, or whether a more sophisticated ledger-based system to produce quotes, VAT returns, and monthly accounts would be more appropriate.

You may decide that you need a highly sophisticated system which, as well as doing all of the above, can also handle stock control and job costing and can also integrate with a web site.

Online or in-house?

The next key decision is whether you want to run your accounting functions in-house, or over the internet using a web-based provider. There are advantages and disadvantages either way. For example, an online solution will involve a recurring monthly/quarterly fee for the service whereas an in-house solution may involve a one-off purchase price plus any annual licence and upgrade fees. Another consideration with an online solution is how secure the data is and can it be retrieved in the event the provider "disappears" or goes into administration/receivership?

The growing business

Think about what the business might be doing in say, 12-18 months' time:

- will it be going through rapid growth or a change in direction, and need more up to date and more accurate financial information, such as profitability at department or cost centre level?
- will transaction volumes be rising steeply?
- will you want to be able to connect your products to your web site and process orders and payments online?

Market sector

Your business may be in a specialist market sector for which there are tailor made systems already available. Talk to us as we have experience of your type of business. Talk to your trade body/trade association or local Chamber of Commerce as they may already produce information to help you, and they may hold events and seminars on this issue.

Cost

Many software vendors now use a subscription based model as opposed to the more traditional one-off licence fee.

Subscription based pricing is usually based on a regular monthly or quarterly fee – which for cash flow purposes may suit some organisations.

However, cost should not be the deciding factor. If you are only willing to spend, say £100, or £10/month, the system will be unlikely to meet all of your needs. This in turn may place constraints on the way the business trades, and subsequently turn out to be a hindrance to expansion. It may also mean that more expenditure and upheaval is required should you need to upgrade to a more expensive system in the future.

Some systems are available in modules or in different bundles – make sure you know exactly what you need.

Your detailed business requirements

A list of your detailed business requirements would be useful when comparing packages. The following pointers need to be considered in the context of your business:

General points

- What is the operating system for your computer network? (There is less of a choice of accounting packages if using a non-Windows platform).
- How many users will require concurrent access (now or in the future)?
- What volume of transactions will you be processing and can the software handle this?
- Can the system produce VAT returns and, if you are on a special VAT scheme, can it cope with this?
- Can orders and payments be taken over the internet and downloaded to the accounting system?
- Will the system let you export data to other packages such as spreadsheets and word processing packages?

Continued >>>

- Do you need to access the system off-site from a mobile device or remote PC link?

Your specialist processing requirements

Here is a sample list – you will need to add your own special requirements depending on the nature of your business:

- retentions
- deposits/subscriptions/donations
- discounts – quantity discounts, value discounts and prompt/early-payment discounts
- part-payments/part-receipts/part-delivery
- foreign currency customers and suppliers, and foreign currency fluctuations
- processing adjustments such as bounced cheques, bad debt write-offs, refunds etc
- direct debits/standing orders (receipts and payments) and multiple debit/credit card accounts
- accruals and prepayments
- loans, grants, mortgages, HP agreements and any special payment types and terms
- component stocks and bill of materials
- mixing of service and stock items on an invoice and as separate stock records
- payments to suppliers electronically (via BACS)
- label and mail shot capabilities for customers/suppliers
- ability to create XML formatted transactions (to facilitate electronic transmission to other systems)
- debt factoring/financing (may require specific work rounds)
- data import and data export requirements

Your information and reporting requirements

You need to determine what kind of management and user information is required from the system.

A sample list might include:

- financial reports – trial balance, profit and loss, balance sheet, cash flow and turnover reports
- key ratios and other business metrics
- actual vs budget reports
- work in progress and profit/loss on job or contract
- profit/loss by department, or by cost centre or other levels of analysis
- customer/supplier balances and aged debtors/aged creditors
- statements and invoices

Other points

- How does the system cope if you need to amend a transaction?
- Is there a full audit trail (including details of modified transactions)?
- Does the system produce the information in an acceptable form to you and us (as your accountant) in order to complete all statutory and regulatory financial year-end and fiscal year-end tasks?
- Does the system enable statutory online filing (VAT returns and EC Sales List returns for example)
- Are there adequate security routines to prevent unauthorised access?

Training

Training for your new system and new procedures is vital for the staff that will be using the system on a day-to-day basis. Do not assume that an experienced user would not benefit from training.

We may be able to provide training for you or help you find appropriate training.

The final choice

- Narrow the selection down to the package(s) that matches your needs most closely.
- If the potential user(s) of the system have not so far been involved, now is the time to get them involved.
- Get an evaluation or trial copy if possible (some software vendors offer a free 30-day trial for example), and also go and see the system in action at a business similar to yours.

Having performed an objective review up until now, the final choice may be more subjective. It will probably be down to look and feel of the system at the end of the day!

Implementation

Whilst the beginning of the financial year is the most logical time to start, this may not be a particularly convenient time for the accounts staff.

You may wish to discuss the timing with us, as we can help in drawing up a list of opening transactions and the opening trial balance at the appropriate time.

Other issues to think about at this stage are:

- customer/supplier/nominal and cost centre/stock/job costing codes
- designing/ordering pre-printed stationery (invoices for example)
- creating records and posting opening transactions (if you already have a system in place it may be possible to import some or all of this data)
- developing periodic processing, authorisation and verification routines
- backup and restore procedures for the accounting data files
- long-term retention of accounting data (minimum of 6 years).

How we can help

We are here to help you with any of the steps involved in choosing and implementing an accounting package. Please contact us for further advice.

Bring your own device (BYOD)

BYOD refers to the policy by which employees can use their own personal mobile devices (such as phones, tablets, laptops) to access company networks/systems. We consider guidelines on creating a policy.

In practice BYOD means that an individual's mobile device can be used, or potentially used, to access, store and even process confidential information relating to both the firm itself and the firms' clients.

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 1988 (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, can be easily lost/mislaid/stolen and can be sold on.

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.

	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.

Which applications are acceptable?

The firm may wish to restrict access to certain applications – most often email and internet only. Full blown network and applications access should be avoided where possible other than from PC's or Laptops and then only via trusted intranets or secure remote access tools.

Continued >>>

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 have the confidence 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 the device might also be used 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 it 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 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 n 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.

Continued >>>

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 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 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.

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 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

It is accepted, universally, that 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 which 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 on data stored 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 undertaking 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 a finite 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 and
- maintain a regular log of backups and log 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, this will be useless if it's buried under tons of rubble, or the premises otherwise become inaccessible.

Continued >>>

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.

We would always recommend therefore that if a third-party is used, that the business uses a combination of both traditional in-house backup solutions and cloud backup services. Where data is stored in the cloud, try to ensure that as little personal data as possible is processed and stored in this way.

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 - 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.

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 include 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 and corporations has hit the headlines.

However, any company, however large or small can suffer data loss unless sensible precautions are taken.

In the past year alone, according to research undertaken by the Department for Business Innovation & Skills some 87% of small businesses have experienced some sort of security breach.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/200455/bis-13-p184-2013-information-security-breaches-survey-technical-report.pdf

Small businesses were commonly subject to system failures and data corruption, with computer theft and fraud also featuring on the list of types of security breach.

Mobile devices in particular – which can run applications, link to corporate servers and can receive emails with corporate and personal data in the form of attachments - can be considered high risk. Firms may want to think about a BYOD (Bring Your Own Device) policy.

There are usually two ways in which data can go missing:

- an employee accidentally or deliberately loses a device, or discloses personal information
- the data is stolen through the physical theft of a device, or by electronic penetration.

Audit 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, sickness/absence 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 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 first 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.

So here are some steps which should be undertaken to reduce the risk of data loss –

- Undertake regular backups and store backup data off-site
- Review the type of information which is stored on devices (such as laptops, mobiles or other media) 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
- 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

Continued >>>

- Ensure that company websites which process online payments have the highest levels of security. This means adopting SSL encrypted transmissions, and also testing 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

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.

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 (the Act).

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.gov.uk) and sending this back with the annual notification fee (currently £35 for the small business).

Notification needs to be performed annually (even if there are no changes).

N.B. Be wary of 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 their personal data, and to provide them 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).

If a fee is levied, the access request does not have to be complied with until the fee has been received.

Continued >>>

Secondly, 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 a number of key areas to concentrate on -

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 put security procedures into practice.

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, or to the disposal of old equipment and old printouts.

Computer security

As well as a comprehensive backup regime, appropriate access controls and mechanisms need to be in place. Websites in particular need sophisticated security measures in place.

As well as 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.
- 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).

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 type of organisation.

Please do not hesitate to contact us if we can be of further assistance.

e-commerce - a Guide to Trading Online

According to the latest UK statistics, over 44m adults (that's an average of over 85% of adults) have internet access and a large majority of these regularly use the internet for online shopping or to search for a provider of goods/services.

As well as the domestic market, the internet provides a gateway to the international market place. Furthermore, it can be used to develop relationships with suppliers and other trading partners.

It is therefore vital that your business has an online presence.

This can be anything from a one page 'shop-front', to a complex product catalogue with online ordering and multi-currency payment systems and a world-wide delivery mechanism.

Issues to consider

e-commerce does not have to be either expensive or complicated, but as with all aspects of business there are a number of issues which need to be considered –

- register the company name or trading name as a domain name (this will incur an annual fee)
- allocate both a start up and a recurring annual budget for the online project
- set some milestones for the website and a timeline for achieving these goals
- have a look at other websites and go through the check-out process – note what you like and dislike about these and how your clients/customers might react
- consider the needs of the disabled user
- decide whether to host the website in-house, or to use an external hosting company (ISP)
- consider the ease of being able to update website content on a regular basis
- have the website optimised to ensure that it features in popular search engines
- consider pay per click advertising options to increase ranking
- keep the site simple (and fast) visitors will not spend ages on navigation or waiting for pages to load. This includes all elements of the website including graphics, searching the site and the order and payment processes
- think about how the website will link to the back office accounting, invoicing and stock systems
- ensure that both the website and any online payment procedures have all available security measures in place to prevent fraud, hacking and denial of service threats
- enable the user to view/edit orders and to see order history and order tracking
- ensure that regular statistics on number of visitors, pages visited etc are available
- have a contingency plan to ensure that online trading can continue should there be a major problem.

Legal requirements

There are quite a few legal issues to contend with, some of these will not be relevant in all cases -

Who legally owns the website (and the content) and what happens if either the web developer/ISP ceases trading?

Compliance with relevant legislation which includes:

Companies Act 2006
E-Commerce regulations 2002
Privacy and Electronic Communications Regulations 2003
Distance Selling Regulations 2000
Data Protection Act 1998
Disability Discrimination Act 2005
Provision of Services Regulations 2009

Bear in mind that legislation and the rules and regulations incorporated within primary legislation change over time. For example, all websites need to comply with regulations regarding the use of cookies.

How we can help

If you would like any further assistance please do not hesitate to contact us.

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 organisations 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 may 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 web sites which contain offensive, obscene and illegal (in the UK) material. Employees should not access such sites.

Viruses and phishing

Innocent looking web sites 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.

A Model Policy Statement

To minimise these kinds of potential problems, all 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 according to guidelines on their use as 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/firms 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.

Continued >>>

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 does 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 or with prior authority.

[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 web sites 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 memory sticks, USB pens, 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/web sites
- 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

Continued >>>

- 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 pen 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 pen 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 now 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.

SPECIALIST AREAS

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 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 (www.charitycommission.gov.uk), where there is a section dedicated to Trustees, staff and volunteers.

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).

Since early 2013, the Commisson has started to register CIOs. CIOs 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 do not have to register with Companies House but they do need to register with the Charity Commission.

All charities are affected by the Charities Act 2011, which was a consolidating act bringing together a number of pieces of existing legislation.

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

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 'Becoming a trustee' 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.

Continued >>>

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 five broad headings:

- responsibilities
- compliance
- duty of prudence
- duty of care
- if things go wrong.

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.

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 incorporated charities)
- a statement of financial activities for the year
- an income and expenditure account for the year (for some incorporated charities)
- a balance sheet
- a cashflow statement (for large charities only)
- 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. The income limit varies according to the type of charity as follows:

- all charities where income exceeds £500,000 require an audit
- charities (both incorporated and unincorporated) require an independent examination where their income falls between £25,000 and £500,000
- 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 in issue at present is the 2005 version.

Two new SORPs have been issued in Summer 2014 and are referred to as the 2015 SORPs. These updated SORPs are required to ensure compliance with new accounting standards (FRS 100 -103) which will become effective for periods beginning 1 January 2015. There are two versions of the 2015 SORP, one for smaller entities: FRSSE, and the other based on FRS 102 (for those larger charities). For a small charity it will be up to the trustees to choose which SORP will be most suitable for their charity. The two new SORPs can be viewed at http://www.charitysorp.org/.

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.

Community Amateur Sports Clubs

Since April 2002, many local amateur sports clubs have been able to register with HMRC as Community Amateur Sports Clubs (CASCs) and benefit from a range of tax reliefs including Gift Aid. In 2014, the tax benefits will be increased to encourage more clubs to register and some of the registration requirements will be amended in order to clarify the conditions that clubs will 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.

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

It is anticipated that new regulations will specify:

- 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.

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

Some of the rules as to what constitutes an 'ordinary benefit' will be amended in 2014.

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 certain travel 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.

Continued >>>

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 will be 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. The list is set out in an appendix to this factsheet.

Forthcoming change – a new income condition

All CASCs must meet a new income condition which aims to ensure that CASCs are mainly sports clubs rather than mainly commercial clubs with sports activities. The income condition will apply 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. The maximum amount of turnover that a club may receive under the income condition will be £100,000 a year, excluding VAT.

Clubs will be able to generate unlimited income from transactions with their members. Investment income and donations received will also be 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 £30,000 (this will be increased to £50,000)
- exemption from Corporation Tax under Schedule A on income from property where the gross income is less than £20,000 (this will be increased to £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 £30,000 (£50,000), all the trading profit is assessable to corporation tax.

Example

A CASC runs a trade with turnover of £40,000 and profit of £6,000. Because the turnover exceeds the £30,000 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.

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.
- 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.

APPENDIX – list of activities recognised by the Sports Council

Aikido	Gliding	Quoits
American Football	Goalball	Racketball
Angling	Golf	Rackets
Aquathlon	Gymnastics	Rafting
Archery	Handball	Rambling
Arm Wrestling	Hang gliding/Paragliding	Real Tennis
Artistic Skating (roller)	Harness Racing	Roller Sports
Association Football	Health and Beauty Exercise	Rounders
Athletics	Highland Games	Rowing
Australian Rules Football	Hockey	Rugby League
Badminton	Horse Racing	Rugby Union
Ballooning	Horse Riding	Sailing and Yachting
Ballroom Dancing	Hovering	Sand and Land Yachting
Baseball/Softball	Hurling	Shinty
Basketball	Ice Hockey	Shooting
Baton Twirling	Ice Skating	Show jumping
Biathlon	Jet Skiing	Skateboarding
Bicycle Polo	Ju Jitsu	Skater hockey (roller)
Billiards	Judo	Skiing
BMX	Kabaddi	Skipping
Bobsleigh	Karate	Snooker
Boccia	Keep Fit	Snowboarding
Bowls	Kendo	Softball
Boxing	Kite Suring	Sombo
Camogie	Knee Boarding	Speedway
Canoeing	Korfball	Speed Skating (roller)
Caving	Lacrosse	Squash
Chinese Martial Arts	Land-sailing/yachting	Stoolball
Clay Pigeon Shooting	Lawn Tennis	Sub-Aqua
Cricket	Life Saving	Surf Life Saving
Croquet	Luge	Surfing
Curling	Model Aircraft Flying	Swimming and Diving
Cycling	Modern Pentathlon	Table Tennis
Dance Sport	Motor Cruising	Taekwondo
Darts	Motor Cycling	Tang Soo Do
Disability Sport	Motor Sports	Tenpin Bowling
Diving	Mountain Biking	Trampolining
Dodgeball	Mountaineering	Triathlon
Dragon Boat Racing	Movement and Dance	Tug of War
Duathlon	Netball	Ultimate (Frisbee)
Equestrian	Octopush	Volleyball
Exercise and Fitness	Orienteering	Wakeboarding
Fencing	Parachuting	Water Polo
Fives	Petanque	Water Skiing
Floorball	Polo	Weightlifting
Flying	Polocrosse	Wind Surfing
Folk Dancing	Pool	Wrestling
Football	Power Boating	Yoga
Futsal	Powerlifting	
Gaelic Football	Puck Hockey (roller)	

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. The Government has announced that it intends to introduce new rules which will change the tax status of some LLP members (see Changes ahead for some 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 (although micro entity provisions are not available for LLPs) and 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.

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 (more details from Companies House at www.companieshouse.gov.uk) 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.

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.

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).

Continued >>>

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.

Changes for some 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 have historically been deemed to be self-employed and taxed on their respective profit shares.

With effect from 6 April 2014 the Government considers that deemed self-employed status is not appropriate in some cases. For example, individuals who would normally be regarded as employees in high-salaried professional areas such as the legal and financial services sectors have been benefitting from self-employed status for tax purposes which resulted in a loss of employment taxes payable.

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 is 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.

These rules took effect from 6 April 2014.

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.

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 decade, 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 has changed is that the definition now 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 Regulations 2007 (The 2007 Regulations).

The Act

The Act re-defines money laundering and the money laundering offences, and creates new mechanisms for investigating and recovering the proceeds of crime. The Act also revises and consolidates 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 2007 Regulations

The 2007 Regulations contain the detailed procedural requirements for those affected by the legislation. The 2007 Regulations came into force on 15 December 2007.

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?

Certain businesses have been affected by anti-money laundering rules for some time, for example, banks and other financial institutions. These businesses have been required to put in place specific arrangements to prevent and detect money laundering.

The new regime requires many more businesses to introduce procedures to combat money laundering and the criminal activity that underlies it. As money launderers have resorted to more sophisticated ways of disguising the source of their funds, new legislation aimed at catching those involved has become necessary.

The regulated sector

The legislation relates to anyone in what is termed as the 'regulated sector', which includes but is not limited to:

- accountants and auditors
- tax advisers
- financial institutions
- credit institutions

Continued >>>

- dealers in high value goods (including auctioneers dealing in goods) whenever a transaction involves accepting a total cash payment equivalent to €15,000 or more, whether in a single operation or in several operations that are linked
- casinos
- estate agents
- some management consultancy services
- company formation agents
- insolvency practitioners
- legal professionals

The implications of being in the regulated sector

Those businesses that fall within the definition are required to establish procedures to:

- apply customer due diligence procedures (see below)
- appoint a Money Laundering Nominated Officer (MLNO) to whom money laundering reports must be made
- establish systems and procedures to forestall and prevent money laundering 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 2007 Regulations affect those with high value cash sales.

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 new laws or face the prospect of criminal liability (both fines and possible imprisonment) where they do not.

Procedural changes - 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 and independent sources
- identifying where there is a beneficial owner who is not the customer. It is necessary for you to take adequate 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 beneficial owners of the business are those individuals who ultimately own or control the business
- obtaining information on the purpose and intended nature of the business relationship

You must apply CDD when you:

- establish a business relationship
- carry out an occasional transaction (one off transaction valued at €15,000 or more)
- 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. Businesses must consider why the customer requires the service, the identities of any other parties involved and any potential for money laundering.

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 licenses, 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.

Enhanced due diligence

Enhanced CDD and ongoing monitoring must be applied where:

- the client has not been met face to face
- the client is a politically exposed person
- there is a higher risk of money laundering or terrorist financing.

Additional procedures are required over and above those applied for normal due diligence in these circumstances.

Procedural changes - 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 as yet)
- they followed Treasury approved guidance.

The Courts must take such guidance into account.

Continued >>>

National Crime Agency (NCA)

The NCA is the UK new 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.

Is your business vulnerable?

Criminals are constantly searching for new contacts to help them with their money laundering. 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 €5,000 to register with HMRC and implement anti-money laundering procedures.

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! 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 2007 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 Regulations 2007 (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 cash equivalent to €15,000 or more in any currency. This applies whether the transaction is executed as a single transaction or in several instalments which are linked.

Businesses that only occasionally accept such transactions are included. Businesses that do not accept large amounts of cash or deal in services are not affected.

It is anticipated that 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 will my business be affected?

If your business does deal in goods and does accept 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 registration fee based on the number of premises through which you trade
- 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 in cash equivalent to €15,000 (or more) or insist upon payment by another means.

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.

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 now 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'.

Continued >>>

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

HMRC form MLR100 must be completed. HMRC will then send a certificate showing an MLR number.

Registration is required where a business:

- accepts the equivalent of €15,000 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. An initial fee of £110 is payable for each HVD trading premises that is required to be registered. Annual renewal fees are also payable.

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 and maintain policies and procedures relating to:

- customer due diligence
- reporting
- record keeping
- internal control
- risk assessment and management
- the monitoring and management of compliance
- the internal communication of these policies and procedures

Customer due diligence (CDD)

HVDs must establish the identity of any customer who makes a total cash payment equivalent to €15,000 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.

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. 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).

NCA

The NCA is the government body to which all suspicions of money laundering should be reported via the NCA website (www.nationalcrimeagency.gov.uk)

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 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 €15,000 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.

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How long must the records be retained for?

- Evidence of 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.

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 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

The new regime brought about significant change for those businesses that deal in goods and are prepared to accept large cash payments.

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

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 Charity Commission. If it is a charity then it will need to follow Charities Act 2011 and the Charity Commission 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.

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Like trusts, they have an asset lock which stops profits from being distributed 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)

Since early 2013, the Charity Commission (the charity regulator for England and Wales) has started to register CIOs. CIOs 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 do not have to register with Companies House but they do need to register with the Charity Commission.

In Scotland, SCIOs (Scottish Charitable Incorporated Organisations) have been available for a number of years now.

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 why they wish to register as a society instead of a company. Registration is with the FCA for an applicable fee which will depend upon its rules.

BenComs are not the same as co-operatives as these operate 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.