

TECHNICAL UPDATES

Our regular roundup of legal and regulatory change

TAX



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HMRC BEGINS WRITING TO BUSINESSES ABOUT MTD

In July 2018, ICAEW found that 42% of businesses required to submit their VAT returns using software or an app from April 2019 were unaware of the change.

While ICAEW and other professional bodies have been making members aware of Making Tax Digital (MTD) and its impact on how businesses keep their accounting records and file their VAT returns, neither the government nor HMRC has done much at all to make businesses aware of what to do.

The publicity campaign has now begun. HMRC advised ICAEW that it has started issuing letters to 200,000 businesses that are currently eligible to join the MTD VAT pilot.

HMRC also said it is testing the effectiveness of the information

campaign by using two different letters in the first wave, and taking this opportunity to monitor the effectiveness of content. "Which version a customer receives will be selected at random to ensure the results can be assessed impartially," said HMRC.

HMRC TO REFUND PENALTIES IN SOME HIGH INCOME CHILD BENEFIT CHARGE CASES

HMRC is to review cases where penalties were charged for failing to notify a liability to the High Income Child Benefit Charge (HICBC) for the tax years 2013/14, 2014/15 and 2015/16. Alongside this, HMRC is writing to taxpayers who may be liable to the HICBC for 2016/17 and/or 2017/18.

HMRC is proactively reviewing the penalties charged for 2013/14 to 2015/16 where the following circumstances apply:

- the claim for child benefit was made before the HICBC was introduced in January 2013, and
- one partner's income subsequently increased to over £50,000 in or after the 2013/2014 tax year, and
- the individual liable to the charge

received no communications from HMRC about HICBC or claiming child benefit after the charge's introduction. It is unusual and welcome that HMRC has accepted ignorance of the law can provide grounds for reasonable excuse. From the outset, the tax profession has made strong representations that the charge was not the best way to achieve the policy objective.

Given the complexity, particularly the fact that the individual liable to the charge may not be related to the children concerned and is liable only because they are the partner of a parent of the children, it does seem reasonable that HMRC should waive the failure to notify penalties. The refunds are to be made automatically.

Having made this concession, HMRC is likely to take a hard line for 2016/17 and subsequent tax years and it is advisable for taxpayers and advisers to check whether they may be liable to the charge. HMRC provides a calculator for this purpose.

NO CORRECTIONS TO DEEMED DOMICILE TRUST PROTECTIONS IN THE BUDGET

The government has decided not to amend the legislation affecting non-UK domiciliaries (non-doms) and offshore trusts. This relates to an aspect of the 'trust protections' introduced when the domicile rules changed in 2017.

From April 2017 non-doms who have been in the UK for 15 out of the last 20 years are treated as deemed domiciled in the UK for all taxes. The changes were made by Finance (No 2) Act 2017 and Finance Act 2018. As part of this change, the government introduced trust protections to ensure that income and gains in trusts set up before the individual became deemed domiciled would not be taxed if they were retained in the trust and the individual was not born in the UK with a UK domicile of origin.

However, there seems to be a defect in the legislation in that offshore income gains are not included in the protections and are therefore taxable, regardless of whether or not they are retained in the trust.

In June, we requested information from offshore trustees regarding the preponderance of non-reporting funds in offshore trusts that now fall to be within the protected trusts regime as the settlor has become deemed

domiciled since 6 April 2017. We presented the information from the survey to HMRC in the hope that changes would be introduced in the autumn budget, but there is no change.

HMRC said in a statement: "The current demands placed on parliamentary resource make it difficult for the government to justify returning to the legislation at this time to add to the generous package of protections which the government has already legislated for in the extensive reform of the non-dom rules last year."

As such, currently there will be no changes made to the legislation with effect for 2017/18 or 2018/19.

IR35 TAX MEASURES TO THE PRIVATE SECTOR DELAYED UNTIL 2020

Philip Hammond announced during the autumn budget the roll-out of IR35 tax measures to the private sector will be delayed until April 2020. The measures, originally expected to be extended to the sector in 2019, will only target large and medium-sized organisations. The extra revenue this measure will bring in is estimated at more than £3bn over the five years to 2023/24.

EMPLOYMENT LAW



THIS SECTION IS SUMMARISED FROM THE BULLETINS OF VARIOUS LAW FIRMS AND ASSOCIATIONS. NONE OF THE INFORMATION IN THIS UPDATE SHOULD BE TREATED AS LEGAL ADVICE

CORRECTION: ACAS

In the November issue of *Business & Management*, it was incorrectly stated that the Employer Service 24-hour hotline was run by Acas. It should have stated that the service gives advice based on the Acas code of practice.

Acas does, however, have its own separate helpline, though this is not 24-hour. The number is 0300 123 1100. Its web address is acas.org.uk/helpline

We apologise for any confusion caused.

DELIVERING COLLECTIVE DEFINED CONTRIBUTION PENSION SCHEMES

The Department for Work and Pensions has launched a consultation on the government's proposals for collective

defined contribution (CDC) pension schemes (tinyurl.com/BAM-PensCDC).

CDC pension schemes allow contributions to be pooled and invested to give members a target benefit level.

The government recognises there is growing interest in CDC schemes, and the Work and Pensions Select Committee recently recommended that the government should act quickly to legislate to allow the schemes.

This consultation sets out proposals as to how a particular form of CDC scheme might work in the UK, and the legislative and regulatory regime that would be needed to support any such scheme. It gives an indication of the government's policy intentions and likely focus of the legislation.

The consultation ends on 16 January 2019. Send responses to caxtonhouse.cdconsultation@dwp.gsi.gov.uk

RIGHTS OF EU CITIZENS WILL STAY PROTECTED IN NO-DEAL BREXIT

The Home Office has confirmed that employers will not have to conduct right-to-work checks on EU citizens immediately after Brexit, regardless of a deal or a no-deal scenario.

Immigration minister Caroline Nokes recently suggested that employers will be required to check whether EU citizens working for them have the right to work in the UK, in case of a no deal, from April 2019.

But the Home Office has since advised that the current checks will not change next March, and that EU citizens would still be able to prove their right to work by showing a passport or national identity card.

COURT OF APPEAL JUDGES UPHOLD RULING IN WHISTLEBLOWING CASE

Court of Appeal judges have upheld an Employment Appeal Tribunal (EAT) ruling that awarded £2m to Alexander Osipov for unfair dismissal and victimisation on the grounds he was a whistleblower.

Judges ruled unanimously that the decision in favour of Osipov, former chief executive of International Petroleum (IPL), had been correctly applied (tinyurl.com/BAM-TimOsp).

Osipov was fired in October 2014 after a series of disagreements between himself, chairman Antony Sage and IPL shareholder Frank Timis over the

business's operations. In 2016, the tribunal ruled Osipov had been unfairly dismissed for making protected disclosures under whistleblowing legislation.

The tribunal awarded him damages of more than £1.7m. Timis and Sage appealed the ruling to the EAT, which upheld the ruling in 2017 and increased the payout to £2m. The two directors escalated it to the Court of Appeal, which dismissed the appeal and upheld the EAT's ruling.

It is the first time directors have been held personally responsible and sued for unfairly dismissing an employee.

FINANCIAL REPORTING



YOU CAN FIND OUT MORE ON THE LATEST FROM THE FINANCIAL REPORTING FACULTY AT [ICAEW.COM/FRF](https://www.icaew.com/FRF)

2018/19 REPORTING

With the annual financial reporting season nearly upon us, the Financial Reporting Council (FRC) has provided UK companies with advice on how to improve the quality of their corporate reporting. Much of the guidance is aimed at listed companies and IFRS reporters, but non-listed companies and UK GAAP reporters might also benefit from some of the hints and tips.

ANNUAL REVIEW OF CORPORATE GOVERNANCE AND REPORTING

The FRC has again highlighted the importance of the disclosure of key judgement and estimates. The report includes a case study to illustrate what the FRC expects to see by way of informative disclosures.

IFRS 15 *Revenue from Contracts with Customers* and IFRS 9 *Financial Instruments* are effective for accounting periods beginning on or after 1 January 2018. The FRC reviewed the quality of the disclosures and the impact of the new standards within June 2018 interim statements and has highlighted areas for potential improvement for the year-end accounts.

More detailed reports of the findings have been published separately.

The report also takes a look at the Strategic Report and how the implications of the UK's decision to leave the EU have been reported, with

indications of what it considers to be good (and bad) practice.

An open letter to Audit Committee Chairs and Finance Directors provides a summary of the key developments for 2018/19 annual reports.

Read the full report and the open letter on the FRC's website at [tinyurl.com/BAM-CGRep](https://www.tinyurl.com/BAM-CGRep)

SMALLER LISTED AND AIM COMPANIES

The FRC has also published the results of thematic corporate reporting review of smaller listed and AIM companies with a focus on: APMs and the strategic report; pension disclosures; accounting policies, including critical judgements and estimates; cash flow statements; and tax disclosures.

This report includes several illustrative examples of good practice and a decision tree for determining disclosure requirements for judgements and estimates.

Read the full report at [tinyurl.com/BAM-SmallAIM](https://www.tinyurl.com/BAM-SmallAIM)

FINANCIAL REPORTING LAB

The FRC's Financial Reporting Lab has published guidance for companies on the presentation of performance metrics in their reporting following calls for clarity from investors. The report highlights the importance of presenting performance metrics that are aligned to strategy, transparent, in context, reliable and consistent. It aims to provide practical guidance and examples of how this can be achieved and how reporting of performance metrics can better meet investors' needs.

Read the full report at [tinyurl.com/BAM-FRLab](https://www.tinyurl.com/BAM-FRLab)

TRIENNIAL REVIEW PODCASTS

The Financial Reporting Faculty has recorded two short podcasts on recent changes to UK GAAP.

The first podcast, *FRS 102: Understanding the triennial review amendments*, provides an overview of the changes.

The second podcast, *FRS 102: Accounting for investment properties*, drills down into the specific changes relating investment properties and the accounting policy choices available.

You can listen to the podcasts at [tinyurl.com/BAM-TriPods](https://www.tinyurl.com/BAM-TriPods)

ICAEW PUBLISHES BREXIT GUIDANCE

You can find a range of resources, including our latest guide *Government guidance on Brexit*, on ICAEW's Brexit hub ([icaew.com/brexit](https://www.icaew.com/brexit)). This guide includes a summary of the recent BEIS Technical Notice on the corporate reporting implications of a 'no-deal' Brexit. See [tinyurl.com/BAM-BrexGuide](https://www.tinyurl.com/BAM-BrexGuide)

IFRS RECENT AMENDMENTS: DEFINITION OF MATERIAL

The International Accounting Standards Board (IASB) has issued amendments to IAS 1 *Presentation of Financial Statements* and IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors* clarifying its definition of material.

It now reads: "Information is material if omitting, misstating or obscuring it could reasonably be expected to influence the decisions that the primary users of general purpose financial statements make on the basis of those financial statements, which prove financial information about a specific reporting entity."

The changes are effective from 1 January 2020, but companies can decide to apply them earlier.

Read the press release at [tinyurl.com/BAM-NewDef](https://www.tinyurl.com/BAM-NewDef)

BUSINESS COMBINATIONS

The IASB has also issued narrow-scope amendments to IFRS 3 *Business Combinations* to improve the definition of a business. The aim of the amendments is to help companies determine whether an acquisition made is of a business or a group of assets.

The new definition reads: "An integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing goods or services to customers, generating investment income (such as dividends or interest) or generating other income from ordinary activities."

Companies are required to apply the amended definition of a business to acquisitions that occur on or after 1 January 2020. Earlier application is permitted. ●