TECHNICAL UPDATES

Our regular roundup of legal and regulatory change

EMPLOYMENT

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

HELP LEARNING DISABLED ACCESS PAID EMPLOYMENT: CHARITY

More needs to be done to help people with learning disabilities get paid work and that should start with an overhaul of application forms.

That was the view of charity Mencap, which carried out a survey of 1,625 adults with learning disabilities in the UK.

Marking Learning Disability Work Week in November, more than a quarter of those surveyed (29%) had experienced difficulties when filling in an application form. The charity's head of development Mark Capper described online forms and formal interviews as "closing the door on an untapped talent pool", with employers left in the dark about what people were able to achieve with the help of reasonable workplace adjustments.

As well as being excluded from the application process, 26% of those polled had been turned down for a job they went for. However, 62% said they wanted a job. Office for National Statistics figures suggest just 6% of those with a learning disability are in paid work, out of a total 1.5 million.

Mencap's working week campaign helps disabled job seekers to find work placements and also supports employers in recruiting those with a learning disability.

UPDATE TO GOVERNMENT'S PENSION LOSS CALCULATION DOCUMENT

The fourth edition of *Principles for Calculating Pension Loss* has been released in its first revision by the Employment Tribunals service.

The edition has been released in

acknowledgement that the 2003-2004 edition was "no longer reliable for calculating pension loss in Employment Tribunal cases".

Senior president of tribunals, Sir Ernest Rider, said there had been a considerable gap in guidance for all parties and where "the measurement of quite significant sums of money by way of pensions loss compensation assumes great importance".

Among the updated text are references to tax and state pensions rates, how to work out the grossing up of monies across a tax band, and samples from Ogden Tables that show the new discount rate.

See tinyurl.com/BAM-PensLoss

EMPLOYEE RELATIONSHIPS: WHAT'S THE DEAL LEGALLY?

In October, McDonald's CEO Steve Easterbrook stepped down over an alleged relationship at work. This was in breach of company policy that co-workers should not become personally involved. But at what point do such policies conflict with other laws or the efficient running of a business?

An article published by *People Management* considers various angles, with contributions from HR experts including head of public policy at CIPD, Ben Willmott. It discusses how difficult it might be to enforce policies as well as challenges that relationships can bring to a workplace, including conflicts of interest.

See tinyurl.com/BAM-EmployeeRels

SURVEILLANCE IN THE WORKPLACE

Employers with cameras on their premises may wish to take a look at the latest outcome of a case in the European Court of Human Rights (ECHR) that dealt with the issue of installing hidden cameras.

The lawyers came down in favour of the supermarket in *López Ribalda and others v Spain* (17 October 2019), after finding that the shop workers in the case did not have their privacy rights violated by the action. The workers had challenged the decision under Article 8 of the European Convention on Human Rights.

TAX

CRYPTOCURRENCY – TAX FOR BUSINESSES

HMRC has published its guidance on the taxes that a company or other businesses may have to pay if they undertake transactions in crypto currency such as bitcoin. The guidance looks at capital gains tax, corporation tax, income tax, national insurance, stamp duty, stamp duty reserve tax and VAT. HMRC's guidance for individuals was published in December 2018; the taxation treatment for individuals was also covered in the January 2019 issue of *TAXline*.

The guidance appears to be logical taxing transactions as a tax literate person may expect them to be taxed and is similar to the taxation of crypto assets for individuals. For both corporates and individuals the cost of cryptocurrency is pooled to work out the base cost for calculating the capital gain on disposal. However, there is a difference in the matching rule for disposals within close proximity of an acquisition. For an individual transactions are matched if:

- on the same day that they dispose tokens of the same crypto asset (even if the disposal took place before the acquisition);
- within 30 days after they disposed of tokens of the same crypto asset.

For a company transactions are matched if:

- a company acquires tokens on the same day they dispose of tokens of the same type (even if the disposal took place first), the disposal is matched with the same-day acquisition in priority to any tokens held in an existing pool;
- a company acquires tokens that would otherwise create or be added to a pool but within 10 days makes a disposal of tokens of the same type, then that disposal is matched with the acquisition within the previous nine days in priority to any tokens held in an existing pool. If there has been more than one acquisition within that period, then this rule applies on a 'first in, first out' basis.

See tinyurl.com/BAM-CryptoTax

OTS REPORT EXPLORES MERGING PERSONAL AND BUSINESS TAX ACCOUNTS

The Office of Tax Simplification (OTS) has published a report (tinyurl.com/BAM-OTSRep) with a number of recommendations to government, or HMRC, outlining possible ways that tax reporting and payment might be made simpler for the self-employed and those who receive private residential property income.

Individual tax account

The first recommendation explores the potential for an integrated individual tax account that merges the present personal and business tax accounts so that an individual can see everything in one place. The individual tax account may also be able to receive and display data provided by the individual and third parties and offer a running calculation of tax due and a payment facility.

Although not mentioned in the report, an integrated individual tax account might also provide a more seamless experience for any individual who needs to notify HMRC of a new source of income or whose circumstances means that they move in or out of income tax self assessment. Consideration would need to be given to how this account would work for individuals who are also either VAT registered or an employer.

Third-party reporting

The second recommendation explores the sub-sectors of the economy where third parties play a significant role; in particular where the majority of a taxpayer's activity involves third parties who would have sufficient information to support effective reporting. The need for an identifier such as National Insurance number to support effective reporting and the potential additional burden on the third party are mentioned.

Who would benefit

The final recommendation explores which types of self-employment or rental business would most benefit from being able to report data periodically and pay tax through an integrated individual tax account and what data the individual taxpayer would need to provide.

The OTS considers that the focus should be on easing the reporting requirements and facilitating voluntary payments. It recognises that government may want to consider a withholding tax system for other reasons, for example to increase compliance, but does not consider this further in the report.

HMRC NUDGE TO REPORT RECEIPTS FROM OFFSHORE INVESTMENT FUNDS

During November 2019, HMRC will be sending 'nudge' letters to some taxpayers who are dealt with by the Wealthy Unit, regarding correct reporting of income and gains from offshore investment funds.

The intention of the campaign is to educate taxpayers regarding the correct amounts to be reported and to ask them to check that the amounts they are reporting on their returns are correct. For returns already submitted, taxpayers are asked to double check the figures and also to check earlier years.

The letter explains that there are two types of offshore investment funds, reporting and non-reporting, and the taxation treatment of each.

For reporting funds, all distributions received or deemed to have been received during the tax year are taxable. If there has been a disposal of the fund, the gain or loss is within the capital gains tax regime. Income deemed to have been received includes excess reportable income, which is interest or dividends received by the fund, but not distributed. HMRC says the offshore investment fund should have made this information available to the investor either by publishing it on its website or by sending the information directly, but a direct question to the fund manager, if it is not shown on the tax pack, may be advisable.

For non-reporting funds, income tax is due on income received in the year and, if there has been a disposal, the gain is taxed as income under the offshore income gains rules.

There is a list of reporting funds on GOV.UK (see tinyurl.com/BAM-AppOffShore) to check status.

FINANCIAL REPORTING FACULTY

YOU CAN FIND OUT MORE ON THE LATEST FROM THE FINANCIAL REPORTING FACULTY AT ICAEW.COM/FRF

IMPROVING CORPORATE REPORTING

In line with previous years, the Financial Reporting Council (FRC) has written an open letter to audit committee chairs and finance directors setting out its perspective on key matters that are relevant to the 2019/20 financial reporting season. These matters include old favourites, such as disclosures on critical judgements and estimates; but new topics, such as environmental disclosures and reporting of cash, have also been highlighted this year.

Strategic report

The FRC considers the strategic report to be an important means of communication between the board and users of the accounts. The letter highlights the need for improvement in the preparation of the non-financial information statement (a new requirement last year) and the importance of the new section 172 report, mandatory for periods commencing on or after 1 January 2019.

Climate change

The non-financial information statement and the section 172 report do not specifically require companies to disclose the impact of climate change on their operations. However, the FRC highlights that companies should disclose the impact of climate change (when relevant) on their operations in line with the UK Corporate Governance Code focus on emerging risks.

2019 year-end reporting environment

One of the key messages from the FRC is the importance of transparency and good quality reporting in promoting trust in business, particularly in times of uncertainty. The FRC expects companies to consider carefully the detail provided in those areas of their report exposed to heightened levels of risk.

The letter also mentions the impact of global reforms of interest rate benchmarks, such as Libor and hedge accounting.

Findings of FRC monitoring work and thematic reviews

Although the FRC has seen improvement in the reporting of critical judgements and uncertainty and alternative performance measures (APM), there is still work to be done. The FRC continues to find basic errors in the preparation of the cash flow statement. Impairment of non-financial assets is another area of specific focus in times of uncertainty. In particular, the carrying value of goodwill as well as the investment in subsidiaries in the individual accounts of the parent are likely to come under close scrutiny.

New reporting requirements

IFRS 16 *Leases* is effective for accounting periods beginning on or after 1 January 2019 and the letter sets out what the FRC expects to see by way of disclosure. This was expanded in a press release published in November 'FRC expects companies to expand discussion of new leasing standard in annual reports and accounts'.

Although IFRS 9 *Financial Instruments* and IFRS 15 *Revenue from Contracts with Customers* are not new, the FRC highlights areas for possible improvement and includes questions to be considered when preparing the accounts to ensure good quality disclosures.

Annual Review of Corporate Reporting 2018/19

The FRC has also published its Annual Review of Corporate Reporting 2018/19. This provides further detail and context to the open letter to audit committee chairs and finance directors. In particular, it provides extracts from some of the Financial Reporting Lab's reports relevant to the FRC's areas of focus.

For more information read our blog at tinyurl.com/BAM-FRCCR ●