

TECHNICAL UPDATES

Our regular roundup of legal and regulatory change

TAX



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UPDATED PARTNERSHIP PACK TO ASSIST PLANNING FOR A NO-DEAL BREXIT

HMRC has published an updated version of the Partnership Pack on the government website to help businesses prepare for the possibility of the UK leaving the EU without a deal next month.

This builds on the previous version of the pack published in November, and includes new guidance on the steps UK businesses trading with the EU need to take in order to plan for no deal.

It also contains information on how customs intermediaries and traders completing customs declarations can apply for grants to support training and IT under an £8m investment.

The pack focuses on how VAT, customs and excise could be affected and its

information is split by topic and audience.

The pack is for organisations, intermediaries and infrastructure providers to use for their own contingency planning and to share with those they represent, their clients and members. It is designed so that you can take information from it and tailor it to suit your own channels and audiences.

Download the pack from tinyurl.com/BAM-PartPack

ENTREPRENEURS' RELIEF, ALPHABET SHARES AND PERSONAL COMPANY DEFINITION RESOLVED

Owners of alphabet shares will have been concerned by wording in Finance Bill 2018-19 which had threatened their entitlement to entrepreneurs' relief (ER). Further to considerable input from ICAEW and other professional bodies, an amendment to the Bill has been tabled by the government to protect this relief.

ER was introduced in 2008 as a replacement for taper relief, which in turn had replaced retirement relief. ER has much in common with retirement relief; provided the necessary conditions are met, the gain on disposal of a qualifying asset is taxed at 10%.

Generally, to qualify for ER on the sale of a company, the requirements are that at least 5% of the business and voting rights were owned by the vendor, and the vendor was an employee or officer of the company, and these conditions had to be met for at least a year before sale.

The changes announced in the Autumn Budget increase the minimum holding period to two years for sales on or after 6 April 2019. In addition, from 29 October 2018, shareholders must be entitled to at least 5% of the distributable profits and net assets of the company, in addition to the existing requirements on share capital and voting rights.

Prior to the change, a company qualified as a personal company for ER purposes if at least 5% of the ordinary share capital was held by the individual and at least 5% of the voting rights were exercisable by the individual by virtue of that holding, s169S Taxation of Chargeable Gains Act 1992.

The draft Finance Bill 2018-19 added two new conditions to the definition. These require the individual to be beneficially entitled to at least 5% of the company's distributable profits and 5% of its assets available for distribution to equity holders in a winding up.

This change has caused considerable anxiety as it excludes owners of alphabet shares where dividends have not been paid equally to the shareholders. The papers released at the time of the budget indicated that about 1,000 companies would be affected by the change, but we estimated it would be considerably more than that. It seemed therefore that the way the clauses had been drafted had unintentionally cast the net considerably wider than the policy had intended.

The Tax Faculty has been working with volunteers and the Chartered Institute of Taxation, and had meetings and discussions with HMRC to outline our concerns. We are delighted to say that an amendment to the Bill has been tabled (see page 28 at tinyurl.com/BAM-FinBillAm) in relation to the personal company definition.

HMRC will be publishing revised guidance in due course, but in the meantime this amendment will help remove anxiety from those in the process of disposing of their company.

DEEMED DOMICILE TRUST PROTECTIONS - AN UPDATE

There has been a recent development regarding the trust protection rules and

offshore income gains, which may be relevant for 2017/18 tax returns.

As we have previously reported, new rules for foreign domiciliaries and non-UK resident trusts were introduced from April 2017 by Finance (No. 2) Act 2017 and Finance Act 2018. The rules contain anti-avoidance provisions but also protections to help settlors of offshore trusts affected by the changes. But there is a technical defect in the legislation that could cause serious problems.

In June, we explained the technical issue with the current legislation, which appears to mean that offshore income gains are not included in the protections.

We had hoped that the defect would be corrected in the Autumn Budget, but no statutory change will be made to the legislation with effect for 2017/18 or 2018/19 - but HMRC said it would continue to monitor the situation and liaise with stakeholders.

As part of that process, an interpretation of the current legislation has been sent to HMRC, establishing that offshore income gains do come within the protections, and HMRC is currently considering the detailed technical analysis supplied.

We understand that HMRC will respond in detail to the submission. We will publish full details when available.

For those completing 2017/18 returns now, where this issue is in point, it may be preferable to delay submission until the HMRC response is published. Alternatively, for returns already submitted it may be possible to amend them in the future if the analysis is agreed.

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

GENDER PAY GAP: SMEs WON'T HAVE TO REPORT

Despite recommendations made last year by the Business, Energy and Industrial Strategy Committee, the government will not be including smaller businesses in its gender pay gap reporting strategy.

Any business with 250 or more staff must report the pay gap that exists between men and women, with

businesses expected to address the difference after publishing results on theirs and the government's dedicated website. Reporting applies even for companies where the headcount started out as 250 people but reduced during the course of that year.

There had been calls for pay gap reporting to be applicable for businesses employing 50 or more people, which would have brought an additional 35,000 businesses under the legislation.

The government rejected the change on the grounds that it would be unduly burdensome for the smallest organisations.

According to the Chartered Institute of Personnel Development, more than half of UK employees work in companies employing more than 250 people (56%).

FREE EMPLOYMENT LAW REFRESHERS WITH ACAS

The Advisory, Conciliation and Arbitration Service (Acas) runs a regular programme of free webinars aimed at employers wanting to brush up on their knowledge of employment law and employment relations.

'Managing a Fair Disciplinary Process' takes place on 27 February at 11am, and on 20 March at both 10.30am and 2pm.

Among the topics to be covered in the session are when to take an informal approach, how to conduct an investigation, and what is involved in disciplinary hearings and appeals.

For more information, visit tinyurl.com/BAM-EmpRef

Also available online is Acas's bank of e-learning modules. Visitors to the site can sign up for a free account and work through courses of interest at their own pace. Employers are encouraged to share the site's resources with employees.

Courses cover topics including conflict resolution, flexible working, mental health awareness, shared parental leave, pay and reward, and options for retirement.

See the material available at tinyurl.com/BAM-AcasElearn

APPRENTICESHIP LEVY: EMPLOYERS WANT FLEXIBILITY

Companies that have to pay the apprenticeship levy have said that they want a greater say in how the money is spent.

According to a survey undertaken by qualifications body City & Guilds,

more than 90% of those that pay in wanted more flexibility to spend the money they got back, in order to “truly fill skills gaps and shore up the talent pipeline”. Some 45% of employers wanted to be able to spend the money on non-apprenticeship training.

The report, *Flex for Success*, surveyed the 765 companies subject to the levy. See tinyurl.com/BAM-OptimiseLevy

FINANCIAL REPORTING



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

CARBON AND ENERGY REPORTING

In October 2018, the UK government approved The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018, introducing new carbon and energy reporting requirements for quoted companies, large companies and large LLPs.

Under the new rules, quoted companies will now be required to report (within the directors' report) on their global energy use in addition to the existing requirements for such companies to provide details of their greenhouse gas emissions. Furthermore, they will be required to disclose the proportion of emissions and energy consumed in the UK and offshore area, as well as describing any measures taken to enhance energy efficiency.

Large unquoted companies and large LLPs will be required to provide information on their UK energy use, the associated greenhouse gas emissions relating to gas, electricity, and transport, an intensity ratio, and any energy efficiency measures taken. Overseas emissions and energy consumption are excluded from these requirements. For companies this information will be included in the directors' report, and for LLPs, in a carbon and energy report that will form part of the annual report. LLPs will also be required to include a list of their members within the new carbon and energy report.

There are certain exemptions from providing this new information, including for example, subsidiaries included in the group report of a parent (subject to certain conditions) and entities which have consumed 40,000

kWh of energy or less in the UK during the period to which the report relates.

The regulations come into effect for financial periods beginning on or after 1 April 2019.

See tinyurl.com/BAM-CarbRep

IFRS - LOSS MAKING CONTRACTS

The IASB has published for public comment proposed amendments to IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* to specify which costs a company should include when assessing whether a contract will be loss-making.

The deadline for commenting on the proposals is 15 April 2019.

The press release can be read at tinyurl.com/BAM-IAS37Com

CORPORATE GOVERNANCE CODE

The FRC has launched a new code for the corporate governance of large private companies, providing a framework to help them meet legal requirements and to promote long-term success in this sector. The Wates Principles encourage these companies to adopt a set of key behaviours to secure trust and confidence among stakeholders and benefit the economy and society in general. The six principles are:

- **Purpose and leadership** - An effective board develops and promotes the purpose of a company and ensures that its values, strategy and culture align with that purpose.
- **Board composition** - Effective board composition requires an effective chair and a balance of skills, backgrounds, experience and knowledge, with individual directors having sufficient capacity to make a valuable contribution. The size of a board should be guided by the scale and complexity of the company.
- **Board responsibilities** - The board and individual directors should have a clear understanding of their accountability and responsibilities. The board's policies and procedures should support effective decision-making and independent challenge.
- **Opportunity and risk** - A board should promote the long-term sustainable success of the company by identifying opportunities to create and preserve value and establishing oversight for the identification and mitigation of risks.

- **Remuneration** - A board should promote executive remuneration structures aligned to the long-term sustainable success of a company, taking into account pay and conditions elsewhere in the company.

- **Stakeholder relationships and engagement** - Directors should foster effective stakeholder relationships aligned to the company's purpose. The board is responsible for overseeing meaningful engagement with stakeholders, including the workforce, and having regard to their views when taking decisions. Reporting against these principles took effect on 1 January 2019.

Read more at tinyurl.com/BAM-CGCode

ICAEW.COM/BREXIT

You can find a range of resources on the ICAEW's Brexit hub including our latest guide: *Government guidance to Brexit*. This guide includes a summary of the recent Department for Business, Energy and Industrial Strategy Technical Notice on the corporate reporting implications of a no-deal Brexit.

Read *Government guidance to Brexit* at tinyurl.com/BAM-BrexitGuide

GMP EQUALISATION

A recent judgement on the equalisation of guaranteed minimum pensions could have a significant impact on the accounts.

There are many occupational pension schemes that involved contracting out of the State Earnings-Related Pension Scheme, which, despite being compliant with the legislation, created inequalities in relation to the benefits available to male and female members of those schemes. It was held by the court that the pension schemes show disparity of benefits available to men and women and that there was an obligation to equalise benefits as far back as 1990.

The court also discussed, amongst other things, which method should be used and the issue of arrears.

The impact of the case on the reporting results of some businesses could be very substantial. Determining the appropriate accounting treatment to be applied once the cost estimation method has been agreed will depend on the specific facts and circumstances. Read our blog on the potential impact on the annual report at tinyurl.com/BAM-GMP1 ●