Foundations

Social Housing Insights

Spring 2020

Audit / Tax / Advisory / Risk

Smart decisions. Lasting value.

In this, my first edition of Foundations since joining Crowe in January, I have started by reflecting on what an eventful year 2020 is panning out to be.

The external risk that hadn't been considered by many was the global outbreak of coronavirus (COVID 19). Lockdowns, quarantines and factory closures have threatened global supply chains, workforce resourcing as well as impacting on share prices and the impact for RPs could be far reaching. It is imperative that RPs are as prepared as possible and think carefully of the implications of different scenarios and factor these into future plans. The FRC has now issued advice to companies, encouraging them to consider carefully what disclosures they might need to include in their year-end accounts relating to these events and the risks.

This edition was drafted in early March before the full impact of the Coronavirus was understood; some of the deadlines mentioned in these articles have already been put back and others may be deferred. This is clearly developing every day, you can find up-to-date information on our COVID-19 hub.

Other policy changes and regulations will be coming into force in the next few weeks. We discuss the changes to employment law, partial exemption and off-payroll working that housing providers need to be aware of. With so many issues to keep on top of, some organisations have decided to employ dedicated in-house legal and/or tax resources and we review the results of our survey in this regard.

Megxit did a good job of diverting our attention but we did exit the EU on 31 January but Brexit still brings uncertainty as our future outside of the EU post transition period is far from a done deal. External environment remains a key risk for many housing providers. We discuss the impact of Brexit on VAT in this edition.

Storms Ciara and Dennis have wreaked havoc across the country causing damage to many properties, displacing many families and resulting in major works and repairs. The government's Environmental Reporting Guidelines issued in March 2019 encourages organisations to think about exposure to the risks of climate change and take steps to capture environmental performance. Investors are increasingly requesting better environmental disclosures in annual reports and accounts and the NHF is working with housing providers to look at ESG reporting measures. In this edition of Foundations, we look at the new Streamlined Energy and Carbon Reporting (SECR) requirements.

Boris Johnson's recent reshuffle resulted in yet another new Housing Minister, the 10th since 2010. Despite the unsettled nature of the Housing Minister role, at least the Secretary of State for Housing, Communities and Local Government remains the same. We will wait to see what direction Pincher and Jenrick take Conservative housing policies outlined in the election manifesto as well as actions to come in the awaited housing white paper and response to Grenfell inquiry.

Lastly, on a personal note, 2020 brings a new role for me and I am excited to be heading up the Social Housing Team at Crowe having specialised in housing for over 15 years. I'm thrilled to be working closely with Adam Cutler and other colleagues at Crowe as we grow the team and work together to continue to support the sector. I look forward to having the opportunity to meet Crowe clients and contacts but if I can assist you in any way, do get in touch, I'd love to hear from you!

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COVID-19: What planning should registered providers be undertaking?

It is difficult to predict the financial or operational implications of the outbreak of COVID-19 on the UK Economy or the organisations which operate within it.

According to the World Economic Forum, its economic impact is already more severe than SARS (estimated global economic impact of $50 billion) or MERS (estimated global economic impact of $8.5 billion). Evidence from other countries where there has been a significant outbreak suggests a slowdown in economic activity either as a result of governmental response to the epidemic (e.g. quarantine) or arising from changes in individual behaviours (e.g. fall in consumer confidence). For the Chancellor, delivering his first budget, this was one more factor in addition to the uncertainties arising from Brexit.

The impact on Social Housing Providers will very much depend on their individual activities, for example, a RP with outright/SO sales may be impacted by a fall in sales as a result of buyers not coming out to view, whereas a care providing RP may be mostly impacted by its unavailable workforce. There are already reports of major repairs projects, including cladding remediation, being delayed.

The reality is that we do not know what the reality will be. It is therefore imperative to be as prepared as possible and think carefully of the implications of different scenarios and to factor these into future planning. Boards and management need to recognise that it is not business as usual and there are new challenges that require specific attention. Most RPs will have disaster recovery and business continuity plans. This is a good starting point for considering what factors need to be taken into account but most of these plans focus on dealing with the impact of significant one-off events, such as inability to work from an organisation's main office, rather than the challenges presented by a pandemic which will be much broader and deeper.

In the medium term, RPs will need to revisit their strategies to ensure that these are still 'fit for purpose' and achievable in light of the impact of the current uncertainties on their finances. In the first instance, scenario planning and decision trees are important tools which can be employed. Care needs to be taken that the focus is on shorter financial planning cycles given that it is unreasonable to make accurate assumptions about the future.

Scenario planning is seen as an important tool in helping organisations cope with the uncertain environment. The exercise requires placing values and analysis on different scenarios and this does require some out of the box thinking. Scenario planning will enable Boards and Management to gain perspective on critical issues facing the RP and make decisions about capital investments and budgeting. It will also enable the organisation to identify those events that will create substantial negative impacts for the RP allowing consideration of appropriate contingencies in the budgeting. Care needs to be taken that the scenarios are not treated as forecasts and the range of scenarios is not simplistic – for example optimistic and pessimistic and that the scenarios aren't unconsciously biased to thinking to what we know and wrongly thinking that the future will resemble the past or to extrapolate on the basis of what is happening now. Good scenario planning requires many perspectives and this involves engaging with a diverse team across functions in the RP. It should also include external perspectives to identify threats and opportunities that may have been overlooked.

Decision trees are also helpful so that managers and Boards can structure and consider the sequencing of their decisions.

Consideration of linked risks and the 'domino' effect or risk 'cascades' should be made. Most major value losses involve the interaction of more than one risk. Similarly, exposure to a portfolio of risks needs to be considered. An isolated concentration on value at risk could result in not spotting 'risk contagion' – where one low impact risk leads to another and another so that the cumulative impact is catastrophic.

Organisations that will survive will be those led by individuals with the right knowledge, skill, and experience to act decisively when the time is right. It will be important to identify those who hold pivotal roles in your organisation and ensure they regularly meet to share their knowledge. Providing an opportunity to discuss and deliberate issues and challenges, make decisions and to then act together to successfully communicate and implement those decisions.

RPs must be ready to make decisions within shorter time scales. The two-tier structure of Non-Exec and Executive can promote sub-optimal decisions made on a consensus. There may be an elongated path to decision making which can cause delay when acting on the RP's immediate challenges and opportunities. Therefore, there should be a re-evaluation of the RP's decision-making protocols, in particular, factoring in that some key decision-makers may themselves be unavailable for periods of time in which it is critical to making timely decisions.

There will also be a need for continuous horizon scanning and the sharing of information between the senior management team and Board.

There is a need to monitor and track the key indicators that give early warning of the imminence of a particular scenario. These indicators should be seen as signs of potentially significant change and need to be selected and monitored with great care. Each organisation may well have very different choices of indicators. Action plans for different scenarios should be developed and trigger points should be set and monitored. There may be a need to divert resources from carrying out peripheral activities to core or essential activities.

As cashflow is threatened and additional costs arise, liquidity and reserves management inevitably demand more attention. RPs with low liquidity will be the ones most likely to be significantly impacted. The issue is how is the reduction in cashflow is going to be managed. Are funds going to be obtained by borrowing, selling investments or drawing down on cash balances?

Below is a list of some of the areas RPs may need to consider in their scenario planning, budgeting, forecasting and risk registers.

1. RPs with banking covenants or tight liquidity will need to be especially vigilant, monitoring cashflows and forecasting differing scenarios frequently and discuss any issues with their banks as early as possible. RPs should factor in the impact of increase arrears as a result of tenants loss of earnings (especially those on zero hour contracts).

2. The UK government's latest plans indicate that up to a fifth of the UK workforce could be off sick at the peak of a coronavirus epidemic. This will lead to an increase in absenteeism arising from self-isolation or sickness impacting delivery of services and operational plans. This is a particular concern to RPs with supported living or care operations but will also impact on repairs and maintenance services. RPs must consider resourcing and how activities can be delivered in the event that there is a large number of employees unavailable for work. There may also be additional costs as existing employees are paid and temporary staff engaged to continue operations.

3. RPs with on-going development programmes and outsourced repairs may face disruptions as a result of third parties inability to deliver on time. The consequences of this may be an additional expenditure, use of contingencies or late completion which may impact future income (to rental as a result of delayed void works, as well as delays to new units becoming ready for rental or sale). A mounting repairs backlog would pose its own risk to tenants' safety and the ongoing standard of homes.

4. Consideration should be given to the delegation of authorities and purchase/payment authorisations in the event that key individuals are unavailable for work.

5. Shares around the world have plunged as investors fear the spread of the coronavirus will destroy economic growth with government action insufficient to arrest the decline. The main UK index dropped more than 10% in its worst day since 1987. Valuation of pension schemes' deficits may rise as a result and RPs planning capital market placements will need to consider investor nervousness in the current market and the impact on pricing.

6. There may be a fall in income for RPs with outright and shared ownership sales as a result of a reduction in buyer activity.

7. RPs need to consider the financial and reputational implications of any contractual obligations. These include the halt or delay to development activities or major repair works.

8. There is evidence that the elderly are being disproportionately impacted by COVID-19 so consideration will need to be given to any additional support elderly residents may need such as help for example with their shopping if they are unable to leave home or are unable to look after themselves during a period of illness or recovery.

9. There may be disruptions arising from supply chains that have been interrupted, not least because China has effectively been in economic lockdown since the Chinese New Year.

10. Many organisations have started to implement remote working policies and suspend or limit large gatherings or meetings. This is to help protect staff and ensure continuity of operations. Some have started to reduce/eliminate non-essential meetings to allow key management and staff to focus on dealing with the crisis and ensure continuity of services. Constitutions should be reviewed to check if remote participation is allowed for board meetings or AGMs.

11. With most RPs about to head into year-end, resources of finance and compliance teams are already stretched. More people should be aware of the various deadlines that need to be me so if a key individual is off sick, returns can still be made on time. If major staff shortages mean deadlines cannot be met, it is better to discuss this proactively with HMRC, regulators, etc.

12. Any RPs generating income from voluntary sources such as donations, fundraising or sponsorships may see a fall in their income as individuals have less disposable income (as a result of falling investment rates or inability to work and the general shrinking of the economy) to donate.

13. Safeguarding and health and safety issues need to be considered as the disease unfolds and RPs need to ensure that decisions are made to correctly safeguard their employees, residents and those they work with. RPs will need to ensure that they consider the day to day needs as well as different ways of working to protect employees in the event of a major outbreak in the UK.

14. There should be a continued focus on ensuring adherence to GDPR rules especially as there may be increased sharing of personal information on employees health or even personal travel arrangements.

15. Insurance policies need to be reviewed to check what cover, if any, is provided for loss of earnings or other factors arising from what is termed as a ‘notifiable disease’ or an ‘epidemic/pandemic’ and that there are no other exclusions on making claims. There should also be discussions around when issues should be notified to insurers to enable claims to be made.

16. Finally people who are homeless are likely to be at greater risk from this virus. RPs should consider their mission and how they can help those in need in the communities in which they work.

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Employment law changes

Housing associations need to be ready for April's changes

Housing associations need to act quickly to ensure they are compliant with the new rules. Stuart Buglass, Director, HR Advisory, outlines the main changes and how best to prepare.

There have been a series of important employment law changes which are effective from April 2020. Housing associations will need to act quickly if they are to accommodate the changes. I have outlined below the main changes that will impact employers with recommendations on how best to prepare.

Holiday pay

Employers should already know that salary paid during a holiday should be paid at the employee's normal rate of pay. Normal pay includes commissions, bonuses and overtime (if sufficiently regular). Currently in order to calculate the average rate of normal pay the employer should factor what has been paid to the employee in the prior 12 week period.

As at 6 April this prior reference period will be increased from 12 weeks to 52 weeks (or the number of weeks worked if less than 52).

Action required: for any employee with a variable component to their earnings there will be a requirement for payroll to track their average rate of pay on a rolling 52 week basis.

Written statement of employment

Currently an employer has two months in which to provide a new employee with written particulars of their employment. The 'particulars' contain the main terms of employment – key items such as the commencement date, salary, name of employer etc.

From the 6 April this statement must be provided to the new starter on or before their first day of employment and will require the following additional information:

- Greater detail on the days of the week that an individual is required to work and whether this could be subject to change
- Details of paid leave other than holiday and sick leave (such as maternity and paternity leave etc.)
- Detail on probationary periods (duration and applicable conditions)
- Detail on notice of termination
- Detail on expected duration of the employment
- Full details on all aspects of remuneration (not just basic pay)
- Details of any training entitlements or details of required training
- Detail on the terms relating to sickness absence
- Detail on the terms relating to any work outside of the UK for a period of more than one month.

Currently the 'particulars' can be provided in instalments, however under the new requirements all of the 'required information must be contained in one written statement.

There will be no requirement to issue extended statements to existing employees (those already hired before the 6 April 2020) - however an existing employee is entitled to request one, and this right extends to three months after the termination of their employment. Following a request the employer is required to provide the written statement to the individual within one month.

Action required: employers will need to ensure that their recruitment process can deliver fully negotiated and finalised terms of employment before the first day of employment. Additionally any existing employment contract templates will need to reviewed and where required amended to accommodate the additional information and ensure it can be provided in one hit.

Agency Workers and the removal of the Swedish Derogation

Agency workers can currently opt out of their right to pay parity with comparable permanent employees in return for receiving a guarantee of pay during gaps in assignments (referred to as a Swedish Derogation). Recent surveys suggest that as many as 130,000 individuals are working under a Swedish Derogation in the UK.

From the 6 April a Swedish Derogation will no longer be lawful and all new and existing contracts will be required to ensure equal pay- for the latter this will require the supply of a written statement to each individual advising them of their right to equal pay.

Action required: businesses using agency labour should check-in with their agencies to understand whether any individuals are subject to a Swedish Derogation – if they are then it is likely that the agency will require information on the compensation payable to comparable permanent employees which may result in increased fees

Increase in statutory rates

Effective from 1 April the National Living Wage (for individuals aged 25 and above) will increase to £8.72 per hour. The National Minimum Wage will also increase to £8.20/hr for workers aged 21 to 24, £6.45/hr for workers aged 18 to 20 and to £4.55/hr for those over compulsory school age but below 18.

From 5 April the standard weekly wage for Statutory Maternity/Adoption Pay, Statutory Paternity Pay, and Shared Parental Leave will increase to £151.20. As at the 6 April the weekly rate for Statutory Sick Pay is increasing to £95.85.

Lower threshold for agreement to inform and consult with staff

Under the terms of the Information and Consultation of Employees Regulations 2004 (ICE) employees working for employers with 50 or more employees have the right to request formal arrangements to inform and consult them on issues facing the employer's business, such as its economic situation and any planned major changes.

The arrangements are not automatic and have to be formally requested by the employees and currently this requires the support of at least 15 employees or 10% of the workforce, whichever is greater.

As at the 6 April this threshold is being reduced from 10% to only 2% of the workforce.

Action required: in light of an increased possibility of a request employers with 50 or more employees should consider how such a request could be accommodated.

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VAT recovery

Why you should review your partial exemption method before 30 April

Housing associations have a short window to address if their current VAT recovery method is no longer fit for purpose explains Adam Cutler

On 31 October 2019, HMRC wrote to the national sector bodies giving six months' notice of a policy change. From 1 May 2020, it will no longer be possible to backdate new VAT partial exemption special methods beyond the beginning of the current VAT year. This could be significant for organisations that have been through changes in the last few years – and who hasn't?

What does the policy change relate to?

The change concerns the amount of VAT that organisations can recover on costs that are used to generate both taxable (standard, reduced or zero-rated) income and VAT-exempt income. Obvious examples are office costs and overheads, such as telephones, computers and audit fees. However, most organisations will find it goes much wider than this. For example, an architect designing a block of flats that will be partly for rent, partly for sale; or a van used for both chargeable and non-chargeable repairs, would also fall into this category.

VAT on these costs is partly recoverable. The process of calculating how much VAT can be recovered is known as 'partial exemption'. Housing associations can adopt the 'standard' method, which uses the ratio of taxable income, to the total of taxable and exempt income. However, many will find this gives an unfair result, and will seek to agree a bespoke 'special' method with HMRC.

How has the rent cut affected this?

Whether an organisation is operating the standard method, or had agreed a special method with HMRC several years ago, many will have gone through changes in the last few years that mean these calculations may no longer give a fair result.

Most organisations have had to change the tenure mix of their development pipeline after the 1% rent cuts and the uncertainties in the property market: if a partial exemption method was based on a very different tenure mix, it may no longer provide a sensible result. Financial pressures have caused some organisations to curtail certain activities; others have diversified into new areas. Some calculations agreed with HMRC might now be redundant, while new activities are not covered at all. Two organisations that merged might have had calculations that worked fine individually, but find that neither is appropriate after the merger.

Currently, HMRC allow special methods to be backdated four years from the beginning of the VAT year in which the application was made. This has been very helpful for organisations that have been through changes in the last few years. There are enough things to think about during a merger or other major change; and how the changes feed through to VAT return calculations can take a while to establish.

What is changing?

HMRC has announced that, with effect from May 2020, it will no longer backdate new partial exemption methods beyond the start of the current VAT year. For most housing associations, the VAT year runs to 31 March. So this means, if you applied for a new partial exemption method before April 2020, it could be backdated to 1 April 2015. If you applied for a new method during April 2020, it could be backdated to 1 April 2016. If the application was sent in after April 2020, the new method could only be backdated to 1 April 2020.

HMRC consider a method is 'new', whether it is adding or removing a calculation to an existing method, or if it is a wholesale new method.

This policy change brings housing associations in line with HMRC's general policy on backdating partial exemption methods for other sectors. The additional time allowed for housing associations was a temporary measure introduced when the framework for housing association partial exemption methods was agreed in 2009. However, given the changes in housing associations' focus and the string of mergers that have been taking place over the last few years, the timing is not ideal.

What should organisations do?

If your organisation has been through changes in the last few years, it is worth considering *now* whether your existing partial exemption method remains fit for purpose. Are you spending time calculating what percentage of the VAT you can recover on costs that are now only a few hundred pounds per quarter? Was your existing method agreed when you were a recent stock transfer, concentrating on a catch-up repairs programme, but now your main focus is developing new homes? Was your method agreed 20 years ago and nobody has ever thought to update it?

Can you even find an official letter agreeing your method? Some organisations have been operating methods for years which they believe were agreed with HMRC, but there is no evidence of this – now is an ideal time to secure your position for the last four years, even if it is just to confirm what you are already doing.

With finance departments busy with year end from March onwards, this is something that housing associations should really be thinking about now, before this window of opportunity is closed for good.

After April, organisations will need to think about how changes to their activities and structure affect their VAT recovery at the same time as they are dealing with the changes themselves.

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Off payroll working

What do you need to do to prepare for 6 April?

The new regime for off-payroll workers is almost upon us. Caroline Harwood goes through HMRC's guidance and the tools available.

Most housing associations make significant use of self-employed contractors, and need to be aware of the changes coming in. In the August edition of Foundations we discussed HMRC's consultation on the proposed new regime for off-payroll workers. On 22 August 2019 the government published guidance regarding the proposed IR35 changes which will be implemented on 6 April 2020.

Following the general election, the government announced a review of the draft legislation. Indications are that there may be some small changes to the new rules but it is very likely that the key changes to the legislation will go ahead this spring, in an effort to curb what has been viewed as excessive non-compliance to the current regulations. It has also made it clear that even where workers are engaged through an agency it will be necessary for the end client to take a view on the status of the worker.

What will happen?

For private sector businesses, it is currently the responsibility of any off-payroll worker's personal services intermediary to assess their own employment status when engaging with their relevant client organisation.

From 6 April 2020 onwards, all public sector bodies, and medium and large-sized private sector organisations, will be responsible for determining the status of all off-payroll workers whom they engage, even where the engagement is through a relevant intermediary.

If you meet the criteria to be a small private sector company, then the new rules will not apply to you. You need to meet two of the following criteria to be classed as a small company for these purposes:

1. have an annual turnover of less than £10.2 million
2. a balance sheet total of less than £5.1 million
3. less than 50 employees

Unincorporated bodies only need to fail the turnover test to be 'not small' for these purposes.

What do I need to do now?

You should identify any off-payroll workers whom you currently engage and review your engagement arrangements with them as a matter of priority.

If the rule changes apply to your organisation, you will be responsible for determining the employment status of any off-payroll workers whom you engage. Unfortunately, there is no simple definition as to what makes an 'employee' for tax purposes, so you should look at the elements of their engagement. For example, does the worker have the unfettered right to send a substitute if they are unable or unwilling to carry out their work? Do they have substantial control over how they are expected to complete their work? Analysing their engagements in detail will help you to establish a decision regarding their status and the recent IR35 tax tribunal victory for HMRC makes it clear how important this is.

In summary you must:

- decide the employment status of a worker - you must do this for every contract you agree with an agency or worker where the services are provided via a personal services intermediary
- pass your determination and the reasons for the determination to the worker and the person or organisation you contract with. This is known as the Status Determination Statement
- make sure you keep detailed records of your employment status determinations, including the reasons for the determination and fees paid
- have processes in place to deal with any disputes that arise from your determination and:
  - consider the reasons for disagreeing given to you by the worker or agency paying their intermediary
  - decide whether to maintain the determination because you feel it is correct and give reasons why, or withdraw the determination because you feel it was wrong
  - keep a record of your determinations and the reasons for them
  - inform the worker and fee payer if your determination changes and tell the worker if it does not.

What are the potential tax implications for my organisation?

If you are the fee payer to any off-payroll workers, then you will be required to deduct tax and National Insurance contributions from their payments for services provided from 6 April 2020 onwards if you establish their engagement status to be one of employment. The employers NIC and any resulting apprenticeship levy payments will represent an additional cost for you.

So you will need to:

- calculate the deemed direct payment to account for employment taxes and NIC associated with the contract
- deduct those taxes and employee NIC from the payment to a worker's intermediary
- pay employer NIC
- report to HMRC through Real Time Information the taxes and NIC deducted
- apply the apprenticeship levy and make any payments necessary

It is important to note that:

- the employment allowance cannot be used against these payments
- the new rules apply to any payments made to the worker's intermediary on or after 6 April 2020, even if the work was done before 6 April 2020. However, HMRC has recently announced that this will not apply if the work has been completed by 5 April 2020.

What steps do I need to take as a potential fee-payer?

If you receive a status determination statement that shows an off-payroll worker is deemed to be an employee, then you should check if you're the fee-payer for that worker. According to government guidance, to be the fee-payer "you must be the lowest party in the labour supply chain". In the vast majority of cases, this will be the entity which pays the worker's intermediary, or the entity which pays the worker directly.

This entity must also meet the relevant eligibility criteria to be liable as the fee-paying agent, outlined as follows:

- either be resident, or have a place of business in the UK
- pay an intermediary which is either controlled by the worker, or the associate of the worker (see below for details of what type of intermediaries are liable)
- not be controlled, or not have material interest held, by either:
    - a worker, or with one or more associates of a worker
    - an associate of a worker, with or without other associates.

If you, as a fee payer, are expecting to receive a status determination statement and do not, then you may pass on any outstanding payments to the next party in the supply chain without deducting tax or NICs. However, it is recommended that you enquire with the party above you in the labour supply chain as to why the status determination statement is still outstanding.

How should I calculate any payments made to a worker if they are deemed to be an employee?

If a worker's engagement status is that of an employee of the end client, then there will be a 'deemed direct payment' to be made.

To calculate this payment due, you should take the following steps:

1. Work out the value of the payment to be made to the intermediary, deducting any applicable VAT costs
2. deduct the value of any direct costs for materials that will be used in the worker providing their services
3. deduct any expenses which the intermediary has met directly, which would have been deducted from taxable earnings if the worker were an employee
4. the remaining amount will be the 'deemed direct payment'.

You will then need to deduct the relevant tax and NICs from this payment, and make payment of the remaining sum to the worker's intermediary. You can calculate outstanding tax and NIC using your payroll software or Basic PAYE Tools.

All tax and NIC (Employers and Employees) will need to be deducted and reported to HMRC via Real Time Information (RTI).

If you are the fee payer, you are not responsible for deducting any student loan repayments or statutory payments. In addition, the worker should not be included on any pension schemes arranged via auto-enrolment. The worker should ensure that any such applicable payments are made via their own intermediary.

Are all intermediaries liable to fall within IR35?

An individual may fall under IR35 if they provide their services to an end client via an 'intermediary'. This can be any of the following:

- A company
- A partnership
- An unincorporated association
- An individual.

However, not all of these organisations will automatically be classed as 'intermediaries'; only if the organisation meets certain conditions.

If the intermediary is a company then the worker (or their associates) must meet one of the following conditions for IR35 to apply:

- they have a 'material interest' (meaning an ability to control, either directly or indirectly, more than 5% of the ordinary share capital of the company) in the company
- the payment received by the worker can 'reasonably be taken to represent' remuneration for the services that they provide to the client.

If the intermediary is a partnership, then one of the following conditions must be satisfied for IR35 to apply:

- The worker (alone or with one or more relatives), is entitled to 60% or more of the profits of the partnership
- most of the profits of the partnership come from the provision of services for engagements with a single client and that client's associates
- the income of any partner is based upon the income generated by that partner from relevant engagements.

If the intermediary is an individual, the legislation will apply if:

- A payment or benefit is received or receivable by the worker directly from the intermediary
- this can reasonably be taken to represent remuneration for services provided by the worker to the client.

If any of the above apply to the intermediaries via which the worker is engaged, then the end client in the supply chain should conduct a review of the worker's employment status to establish whether the relationship is one of employment. If they do not then the engagement is outside the new IR35 rules.

IR35 deferred

In a response to the COVID-19 situation, on 17 March 2020 the government announced that the reforms extending IR35 rules in off-payroll working to the private sector will be deferred by one year until 6 April 2021.

This move will be welcomed by housing associations and other organisations already struggling with the many challenges presented by the COVID-19 pandemic.

However this does mean that we should not expect the rules to be applied with a soft touch in 12 months' time. Once the immediate issues presented by Coronavirus have lessened, organisations should use the additional time to make sure that they have a robust process in place for operating the new rules.

How do I decide if someone has employment status?

From April 2020, end users will be expected to take reasonable care in determining whether IR35 applies to their engagements.

There are different ways an organisation can find out the status of their engagements in order to demonstrate to HMRC that they have assessed the employment status of a contractor, including:

- carrying out employment status reviews for each individual engaged via a personal service company or similar intermediary – you may use HMRC's Check Employment Status for Tax (CEST) tool and then feed this back to the individual
- obtaining external specialist advice to assess status based on every detail of the engagement.

Given the guidance available, you should think carefully about each individual's status; understand what is happening on the ground and then look at the paperwork. Make sure the paperwork and the reality tell the same story (just because a contract says that someone is self-employed, it does not mean that HMRC will agree if the facts suggest otherwise).

The CEST tool can be used by a hiring company, an agency or an individual in order to test employment status. It is not compulsory to use CEST and it should not be used to consider whether an individual has employment rights for employment law purposes.

However, HMRC has indicated that it will stand by CEST results provided the information input is accurate and it is used in accordance with their guidance. Therefore it is an important tool to use when considering the employment status of individuals as it can be used to support any arguments put to HMRC.

The Updated CEST

In response to the criticism of CEST, HMRC launched a new CEST tool on 25 November 2019 which took the maximum number of questions from 16 to 30.

The updated CEST included some new parameters to the substitution test. For example, if a worker has the right to provide a substitute and puts this into practice, the worker should be determined as 'not an employee' and therefore outside of IR35. However, where an agency provides the substitute, this does not apply and, in order to be outside of IR35, it is important that the worker pays the substitute, not the agency.

CEST may conclude a worker is outside the scope of IR35 based on isolated areas. This is common in the substitution section which does not look at the full picture. Therefore, if a result appears at odds with what you as the engager expect, you should consider taking specialist advice

The updated CEST tool includes questions on the nature of the work and exclusivity, including whether the individual can work for another organisation doing a similar role. It also asks whether the worker is subject to a restraint of trade clause.

Unfortunately it still doesn't include mutuality of obligation (MOO); HMRC simply assumes that MOO is present in all contracts for services by default, which is not the case at all. Under HMRC's rules, it could be argued that, if there is no MOO, there is no need to assess the status of the individual or use the CEST tool. However, in reality, MOO is key. In order to assess whether a contract is of employment or self-employment, we must first consider whether the engager is obliged to pay a wage and if the worker is required to provide their own work.

It is recommended that you keep a record of your employment status reviews, including any CEST tests and any information you have compiled to help enter the details into the tool.

HMRC's stance in recent cases (such as RALC Consulting Ltd) has sought to disregard the evidence of its own tool and argue against its output. In this case, it ignored that MOO existed as part of a contract and ruled that the outcome of the CEST was irrelevant as the answers had not been accurately answered. Therefore, HMRC claimed that due care had not been taken. This adds to the importance of compiling the full facts to support any challenge at a later date, should you need to defend yourself.

While other providers are offering alternatives to CEST, it is the only tool that can be used which HMRC will normally stand by on the basis that the information input is accurate and aligns with a contract and working conditions. It should be noted that the CEST tool will only say that an engagement is outside IR35 when there is absolute certainty.

Therefore, employers should consider how much reliance they place upon CEST and, although the new CEST is an improvement, if you are in any doubt, you should seek a second opinion from a specialist who can build a 'picture of status' in order to support any CEST result carried out.

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Streamlined Energy and Carbon Reporting summary

Julia Poulter discusses Streamlined Energy and Carbon Reporting (SECR) which introduces new annual reporting requirements for large companies.

What is it?

SECR is a mandatory reporting requirement for large companies which is designed to:

- Increase internal awareness of energy usage and cost;
- Drive adoption of energy efficiency measures;
- Standardise external reporting; and
- Provide greater transparency for stakeholders on energy efficiency and emissions.

Requirements have existed for quoted companies since 2013 and these have been updated in the new regulations, but are not considered here.

What are the new regulations?

The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018 ("the regulations").

The accompanying government guidance is 'Environmental Reporting Guidelines: Including streamlined energy and carbon reporting guidance March 2019' ("the guidance").

Who does it affect?

All large companies, on the Companies Act definition, being those with two out of three from:

- Turnover: £36 million or more
- Balance sheet total: £18 million or more
- Number of employees: 250 or more

This includes housing organisations, other non-profits and LLPs.

Exemption is available for entities with under 40,000 kWh of emissions per annum. There is also a 'seriously prejudicial' exemption, although this is expected to be used in exceptional circumstances only, for example in the lead up to a major restructuring or acquisition.

If financial reporting is on a group basis, reporting of emissions will also be on a group basis, unless any of the subsidiaries fall under the 40,000 kWh per annum threshold, in which case their figures can be excluded.

The guidance encourages all other private entities to include disclosures on a voluntary basis.

Where is this reported?

The new disclosures will be included in the annual report, within the Directors' report (or for charitable companies the combined Trustees' and Directors' report), unless it is considered of strategic importance to the company, in which case it should be included in the Strategic report, with a note explaining this in the Directors' report.

When does reporting begin?

Reporting starts with periods commencing on or after 1 April 2019.

What must be disclosed?

- Total UK energy use
- Greenhouse gas emissions due to UK energy use
- A relevant ratio of emissions against a factor associated with the company's activities ("intensity ratio")
- Comparative figures (these can be excluded for the first year of disclosure)
- Energy efficiency action taken in the reporting period.
- Statement of methodologies used in the calculations of these disclosures.

Energy use includes:

- Electricity – Total quantity of purchases by the company for its own use
- Gas – Total quantity of consumption of gas as fuel
- Transport – Consumption of fuel for business travel, where the organisation is directly supplied with fuel. See appendix 4 for details.

How should energy usage data be collected?

The guidance states that “organisations must use verifiable data where reasonably practicable”.

This means:

- Meter data
- Invoices from suppliers
- Annual statements from suppliers

If this cannot be obtained, a reasonable estimate should be provided based on one or more of:

- Direct comparison (for example the same month in another year)
- Pro-rata extrapolation (using verifiable data for part of a period and extrapolating across another, similar part of the period)
- Benchmarking (e.g. taking verifiable data for one site and applying it to a similar site)

What methodology should be used to calculate Greenhouse gas emissions?

There is no required method, but the method used must be disclosed and it is expected to be robust. The guidance suggests the following widely recognised independent standards:

- GHG Reporting Protocol - Corporate Standard.
- International Organisation for Standardization, ISO (ISO 14064-1:2018).
- Climate Disclosure Standards Board, CDSB.
- The Global Reporting Initiative Sustainability Reporting Guidelines.

What is an intensity ratio and how should it be selected?

An intensity ratio divides the total emissions by a normalising factor, in order to give comparable data between organisations and between periods. Examples in the guidance include total production, full time equivalent staff numbers, turnover and office floor space. Explanation of the choice of ratio(s) is recommended but not required.

How accurate must the disclosures be?

The regulations do not contain a de minimis or materiality level. The guidance suggests a materiality of 2-5% of overall emissions.

Is specific external assurance required?

No, although as with any part of the Directors' report, the statutory auditor must consider whether the disclosure:

- Is consistent with the financial statements;
- Has been prepared in accordance with applicable legal requirements; and
- Contains any material mis-statements based on their knowledge obtained in the audit.

Voluntary independent assurance on the accuracy, completeness and consistency of energy use, GHG emissions data and energy efficiency action is encouraged but not required.

Quoted companies have been reporting Greenhouse Gas Emissions since 2013, what lessons can we learn from them?

The previous listed company requirements were under the Companies Act 2006 (Strategic and Directors' Reports) Regulations 2013, SECR has also adjusted their reporting requirements, which are more detailed than those for large, unlisted companies.

Whilst the format used in historic listed company accounts is not going to be exactly transferable for SECR compliance, it is still beneficial to review a selection of FTSE 100/FTSE 250 accounts to see how this data has been presented. In particular we suggest that thought is given to how easy to understand the disclosures are for a non-expert, and whether there are lessons to be learnt to make the new SECR disclosures genuinely transparent.

The best in class for clarity open with a short narrative summary, explaining movements from the prior year and level of success against targets. After this the figures are shown in a table and then methodology and links to further information are include underneath. This is a format that can be applied to the new regulations.

What are the key next steps?

To be ready for your first SECR report you will need to:

- Establish what energy usage data you need to collect
- Set a process for reliable collection of data
- Select a methodology for calculating Greenhouse gas emissions
- Define an appropriate intensity metric for the organisation
- Draft accompanying narrative to the reporting requirements

Please get in touch with us for more guidance on preparing and reviewing the new disclosures.

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References

The Companies (Directors' Report) and Limited Liability Partnerships (Energy and Carbon Report) Regulations 2018, http://www.legislation.gov.uk/uksi/2018/1155/contents/made

Environmental Reporting Guidelines: Including streamlined energy and carbon reporting guidance March 2019 (Updated Introduction and Chapters 1 and 2), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/850130/Env-reporting-guidance_inc_SECR_31March.pdf

VAT after Brexit

How will leaving the EU change the UK VAT system?

Adam Cutler discusses how VAT applies during the transition period, and considers how VAT might change for housing associations now that the UK has left the European Union

On 1 January 1973, the UK joined what was then the Common Market. As part of the conditions of joining, the UK was required to replace the existing purchase tax system with VAT. Since then, housing associations have had to endure the standard rate of VAT doubling; the VAT rules becoming ever more complex and the administrative burden of VAT compliance rising. So, will this change now the UK has left the EU?

My expectation is that there will be little change in the short term, but there are reasons to be hopeful that some positive changes will take place in the future.

Following its exit from the EU, the UK is now in transition period debating its future trading relationship with the EU.

Housing associations are unlikely to notice any change to VAT arrangements during the transition period, as VAT rules remain almost entirely as they are.

The transition period is due to end on 31 December 2020 and at the time of writing there seems to be no political will to extend this;, although that might change as the deadline approaches. If a new trading relationship has not been agreed by the end of the transition period, the UK would be in a ‘no deal’ situation. Regulations, that were put in place to cover the potential that the UK might leave the EU without the Withdrawal Agreement and Political Declaration having been signed, would then come into force. These include measures to deal with VAT.

What seems more likely is that there will be a phased movement from existing arrangements towards a new trading relationship, with UK VAT rules adapting as this happens.

Will VAT still be subject to the European Court?

Yes, for a time at least. Throughout the transition period, UK courts can continue to refer questions about VAT to the Court of Justice of the EU (CJEU), and its rulings will still apply even if they are handed down after 31 December 2020. CJEU rulings on questions referred by other EU courts will be binding on the UK if handed down in the Transition Period.

CJEU judgements about energy saving measures and cost sharing groups have created uncertainty for housing associations over the past few years, so proceedings at the Court in Luxembourg will still need to be monitored.

Thereafter, existing decisions of the CJEU will have the same status as a UK Supreme Court judgement. One of the contentious points when the recent Withdrawal Agreement Bill was being debated in January 2020, was the extent to which ministers could overturn these.

Even after this point, decisions of the CJEU on VAT will continue to be influential in the UK for many years to come.

What about things we buy from the EU?

Housing associations are increasingly buying goods and services from suppliers based in the EU, often without realising it. During the transition period and beyond, housing associations will have to continue to charge themselves VAT on services received from overseas. After the transition period, VAT (and possibly Customs Duty) on goods might be due on importation – this will be one of the key areas to agree over the next year.

Many housing associations will have received an assessment in the last few years for IT services or goods that they have bought from suppliers based in other EU member states. Currently, HMRC is able to access sales lists from EU tax authorities which detail everything that has been supplied to UK VAT-registered customers. HMRC has been very effective in using this data to target organisations that can recover some, but not most, of the VAT they incur – like housing associations.

These assessments seem likely to continue after the transition period has ended. The Political Declaration states that the UK and the EU intend to continue administrative co-operation in respect of taxes and duties. Unless relationships seriously deteriorate the next round of negotiations, it seems likely that the tax authorities will want to keep on sharing this sort of data.

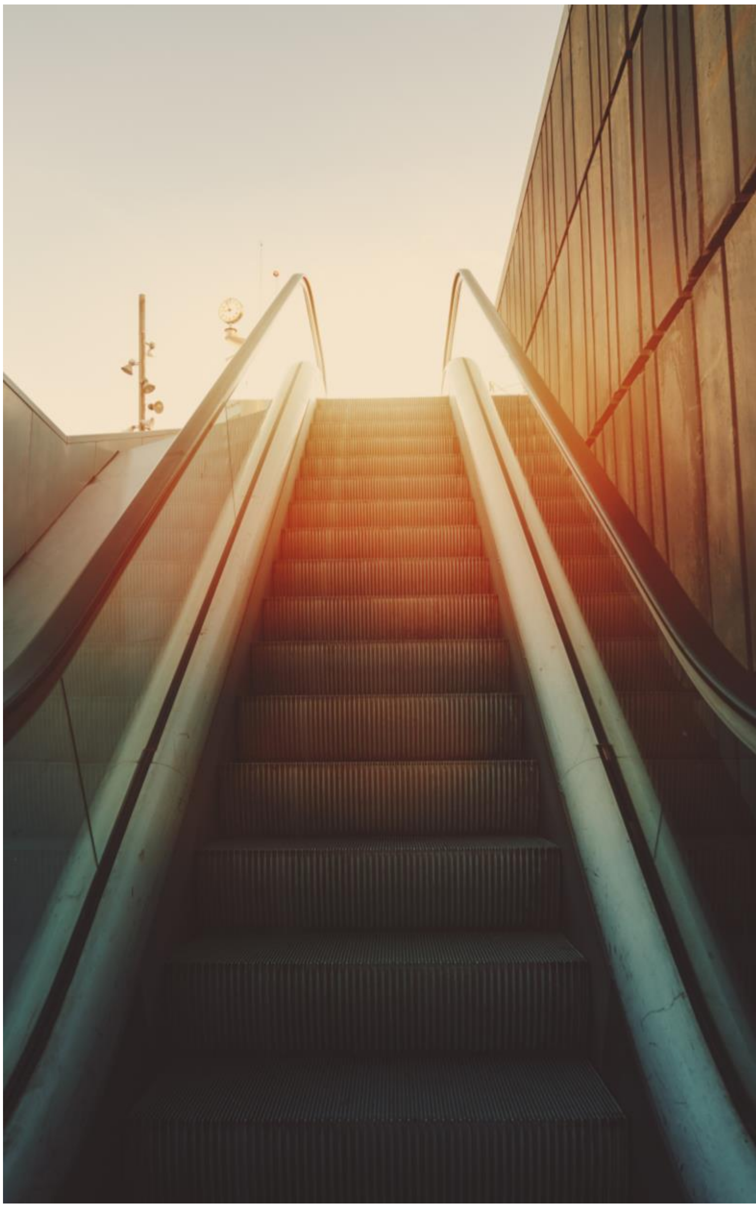
So what changes might we expect longer term?

Leaving the EU provides greater flexibility for the UK to apply different VAT rates to certain items – at least for sales within Great Britain. The most widely touted are sanitary products and domestic fuel, where the current 5% VAT rate could be reduced to nil.

However, I would expect VAT rates on many more items will be adjusted – in both directions – to reflect government policy objectives.

One of the key areas where this seems likely is for environmental reasons. Current VAT rules mean it can be cheaper to demolish a building and rebuild it, rather than refurbish it – perhaps the VAT rates on both could be brought closer together. VAT charged on building materials could be linked to their environmental impact. Further measures to improve the thermal performance of homes could benefit from a low, zero, or even negative VAT rate.

When these changes become a possibility, there will be a lot of interest groups lobbying for their special case. The housing sector will need to ensure its voice is heard.



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This article first appeared in Social Housing magazine

Meet the team

60 seconds with Julia Poulter

How did you end up in Audit?

More by accident than design really, I did my work experience in the IT department at PKF as was back then and was told about a trainee accountant role in the audit department, I had the interview there and then and started later that year when I completed my A levels.

What has kept me in Audit is the constant change and challenge, each day is different and you never know what the next email or telephone call may bring and I enjoy working with a team at Crowe that are so passionate about the sector.

What is your connection to housing?

My interest in property is probably in my DNA, my Dad was a property lawyer and my Mum runs a property management company. As you can imagine Monopoly was a hugely competitive game in our family!

I have long been passionate about business with social purpose fuelled by my voluntary work over the years and this is why I enjoy working with social housing providers, Care providers and charities and I am driven to support them to make a difference to society.

What are you working on at the moment?

I am working on Crowe's strategy to grow the social housing business. I feel that Crowe as a firm and the individuals in the team have a lot to offer Social Housing Providers. We are able to bring a fresh and different perspective by combining extensive knowledge of the social housing sector with wider knowledge drawn from working with a range of both non profits and commercial property businesses.

Tell us a secret about yourself?

For 3 years I was National Standard Bearer of the Royal British Legion, a role that afforded me the absolute privilege and honour to travel the country leading ceremonial acts of remembrance and also journey with veterans, widows and families to War Graves across the world.

What do you do in your spare time?

I love travelling so in my spare time I am either on holiday or planning a holiday! This year we are off to California, France and Taiwan.

I am also Chair of a local homelessness charity which give me the opportunity to give something back to my community through use of my professional skills for social good locally. In 21st century Britain, everybody should have a place to live but the stark reality is that the housing crisis has been overlooked for far too long so charities are faced with increasing homeless numbers, both visible and hidden but with a lack of housing supply in which to place people. Social Housing Providers play a vital role in addressing this need and this is why I am passionate about supporting providers, acting as a source and a sounding board for ideas and innovation, and to give advice that is well informed and objective to ultimately help providers deliver on their mission.

Managing tax in housing

Our survey of tax management in housing associations

Adam Cutler reviews the results of our survey of how housing associations manage tax

The burden of taxation has been increasing on housing associations over the years. This is not just in terms of the amount of VAT, PAYE and NIC that eat into budgets. The risk of making a mistake when developing new homes or branching out into new areas can be significant. Keeping on top of constantly evolving tax rules and new compliance requirements like Making Tax Digital takes up a lot of time. As associations have merged many organisations have concluded that now is the time to have one or more people dedicated to tax.

In August 2019 we undertook a survey of the top 100 housing providers to discuss how they dealt with tax management.

61% of organisations had some form of tax strategy, of which 44% had a formal framework that had been discussed at Board level.

Nearly all organisations had a design-and-build company and most had companies to undertake non-charitable trading activity such as open market sales. One in four had other entities in the group that were tax-driven. Reviewing this, only 41% felt that they had got their structure right. The others were almost evenly split between those who felt they had over-complicated things, and those who believe they were not taking advantage of tax benefits they might achieve.

For those organisations that had an in-house tax manager, they were seen as having day-to-day responsibility for tax. For those that did not, it was generally the head of finance. Nearly all felt that ultimate responsibility rested with the group finance director.

Over two thirds now had some in-house tax resource. For most of these, this meant one person, possibly part time, although some had as many as six people. On average, it was roughly one person for every 35,000 units. 100% of respondents cited the relative costs of external advice and employing someone as the reason for having – or not having – in-house resource. Nearly all cited a need to have the right experience to respond to tax queries, the complexity and sheer volume of transactions. Risk management and the pace of change were also significant factors. Although very few had been motivated by issues with their external advisers, some did mention obtaining the speed of response they needed when there were so many developments in progress.

Even where organisations have an in-house tax capability, it seems most compliance is not done by this team. Most VAT returns continue to be prepared by the financial accounting team, and employment taxes returns by payroll. Corporation Tax returns are mostly outsourced to an accountancy firm, reflecting the cost of investing in the necessary software for a small number of returns. SDLT returns were mostly prepared by whatever lawyer is undertaking the conveyancing, although it was striking that 12% of respondents also now had an in-house legal team capable of doing this.

Over two thirds of respondents now had consideration of the tax position as part of the approval procedures for new scheme appraisals, although worryingly 12% of respondents claimed that the developments team typically asked for tax advice the day before exchange! Most organisations decide with the tax position themselves on most schemes, only going out for external advice for complex and/or high value ones.

Most organisations had a principal tax adviser, although they were not averse to using others for specific projects. Most would now not use their external auditor for tax advice – either because they were prevented from doing so due to the rules around listed bonds, or simply because they had taken a policy decision not to.

Finally, we asked if you could change one thing about tax, what it would be. Unsurprisingly, the most popular response was to make it simpler – probably a forlorn hope!

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Start the conversation

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About us

Crowe UK is a national audit, tax, advisory and risk firm with global reach and local expertise. We are an independent member of Crowe Global, the eighth largest accounting network in the world. With exceptional knowledge of the business environment, our professionals share one commitment, to deliver excellence.

We are trusted by thousands of clients for our specialist advice, our ability to make smart decisions and our readiness to provide lasting value. Our broad technical expertise and deep market knowledge means we are well placed to offer insight and pragmatic advice to all the organisations and individuals with whom we work. Close working relationships are at the heart of our effective service delivery.

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