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Cambridge Colleges newsletter

WELCOME TO COLLEGE

Welcome to the third edition of our termly updates for Colleges. The aim is to keep Colleges abreast of developments which specifically affect them and is in addition to our regular Charities and Not For Profit bi-monthly newsletter.

In this edition we mainly look at the provision of accommodation. Our tax experts at PEM are on hand at all times to help with any accommodation related queries. We also have an article about the introduction of the Corporate Criminal Offence legislation and how it affects Colleges.

If there are any topics you would like us to cover in further editions please let us know.

Please look out for our first benchmarking report for Cambridge Colleges Operating Financial Review (Trustees Reports) that was circulated recently.

We look forward to working with you over the next twelve months.

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Employer provided accommodation - an update

The tax position of employer provided accommodation is an issue that affects all Colleges. With its December 2015 call for evidence on Employer Provided Living Accommodation, HMRC stated that this area would be reviewed and updated and yet no major official overhaul has been forthcoming. As any College subject to a recent HMRC employer compliance review can attest, details of accommodation provided was discussed but no opinion given or action taken.

However, in the December 2018 Employer Bulletin, HMRC published a reminder of their view on the definition of “customary” as used in one of the exemptions from the benefit charge where accommodation is provided for the better performance of the duties of employment and the employment is one of the kind where it is customary for employers to provide living accommodation.

Subsequently, in February 2019 HMRC contacted some Colleges with a technical bulletin stating that “It has been established that less than half of the employees in the H&FE sector are provided

with such living accommodation. Therefore, from 6 April 2019, HMRC will no longer accept that the ‘customary’ exemption is appropriate to accommodation provided by employers within the H& FE Sector.

HMRC will not seek to take any retrospective action for previous years except in the case of error.” As a result HMRC stated that they require an “Accommodation Benefit” confirmation to be completed by 30 April 2019, however this is not a statutory return or deadline. Similar correspondence has also been received by Oxford Colleges.

The mechanics of the approach taken by HMRC and their interpretation of this accommodation exemption is open to challenge and the Bursars’ Tax Committee is coordinating a College-wide response. Whether your College has or has not been contacted by HMRC, it is important to ensure that you are aware/involved in College-wide communications and the action being undertaken.

If you would like to discuss this further please contact Kate Millard from our Employment Taxes team via kmillard@pem.co.uk.

Corporate Criminal Offence - Are you compliant?

The Criminal Finance Act 2017 came into force in September 2017 and with it saw the introduction of the Corporate Criminal Offence ("CCO"). This legislation provides HMRC with new powers to criminally prosecute and hold corporates accountable for the activities of persons acting on their behalf where they facilitate tax evasion and where they have failed to implement relevant preventative measures.

Who is caught by this legislation?

The legislation is aimed at organisations that have been established as companies (including charitable companies), partnerships, LLPs and also includes charities that have been established by royal charter. Therefore Colleges are caught by this legislation along with any subsidiary companies.

How does an offence occur?

In order for an offence to occur there are three stages:

1. Criminal tax evasion must have taken place by a taxpayer (which could be in respect of UK or foreign taxes);
2. An associated person (e.g. an employee or agent acting on behalf of the College), whilst acting in that capacity has criminally facilitated the tax evasion; and
3. The College failed to prevent the associated person from committing the facilitation.

Who is an Associated Person?

This has a deliberately wide definition which





captures any individual that provides services for or on behalf of the College. It therefore could include fellows, staff and sub-contractors.

What is the impact of this legislation?

If an organisation is found guilty, under these new powers there would be a public record of the conviction and potential reputational damage. Additionally, they could be subject to any or all of the following:

- unlimited financial penalties;
- confiscation orders or serious crime prevention orders;
- disclosure to professional regulators.

What do you need to do?

For HMRC to bring criminal charges against a College; the College must have failed to prevent the associated person from facilitating the tax evasion. Implementing suitable prevention measures will become an essential aspect of a College's defence against prosecution under these rules.

HMRC in their guidance have outlined the steps organisations need to implement in order to remain compliant with this legislation. The steps include:

- Undertake a Risk Assessment of the College to understand where the exposures to tax evasion could occur;
- Introduce controls that are Proportional to the risks identified;
- Ensure Top Level Commitment from the management to flow throughout the organisation instilling a culture that emphasises that tax evasion is not acceptable;
- Conduct Due Diligence procedures as required on persons acting on behalf of the College;
- Once policies and procedures are implemented there should be Communication and Training to ensure full understanding of the new rules; and
- Colleges should continue to Monitor and Review the risks they face and update their policies and procedures as required.

Undertaking and documenting a comprehensive risk assessment will form the basis of your defence against prosecution. This should be complemented with the implementation of policies and procedures which demonstrate commitment to preventing the facilitation of tax evasion. At PEM we are able to assist you to undertake the risk assessment and provide clear written policy documentation to ensure compliance with this legislation.

Are you ready for Making Tax Digital?

From 1 April 2019 MTD for VAT was a reality and most VAT registered businesses will soon need to submit their first VAT return under the new regime. Fortunately, though, HMRC have agreed that Cambridge Colleges (and VAT grouped subsidiary companies) will not be subject to the new regime until 1 October 2019.

In practice, this means that the first VAT return that will need to be submitted digitally by a Cambridge College will be the one for the calendar quarter ending 31 December 2019.

However any separately VAT registered subsidiary companies will not be able to benefit from the deferment and are caught by MTD now! Colleges will need to ensure that they have mechanisms in place to cope with the staggered start and are ready to submit their first return for the period commencing on or after 1 April 2019 for any such companies.

Most Colleges are making good progress in preparing for the changes with collective discussions taking place with the various software suppliers servicing the local market. Help can also be obtained from our VAT team and our specialists will be very pleased to assist you in implementing any changes that need to be made to ensure compliance with the new rules.

Providing accommodation to students and visitors – VAT implications

It can prove tricky for College conference staff to work out whether VAT needs to be charged on the provision of accommodation. If VAT is not to be charged, the terms of the land exemption or the education exemption need to be satisfied.

The land exemption is not dependant on the status of the person providing the accommodation. However, the education exemption is. Under the education exemption, Oxbridge colleges can provide exempt accommodation. However, College conference companies cannot claim this exemption despite the fact that they are often VAT grouped with their parent College.

The land exemption covers basic room hire. So the use of a seminar room for a talk or presentation can often be exempted under the land exemption, but sleeping accommodation cannot! Exemption can be over-ridden by an option to tax in which case the standard rate of VAT would apply instead.

The education exemption covers accommodation provided to students and cannot be over-ridden by an option to tax. However, other factors may rule out exemption. The status of the customer, the contractual arrangement between the parties and the reason for the stay/occupation all need to be considered when working out whether to charge VAT or not. The accommodation must always be provided to students in connection with the provision of education.

A student is considered by HMRC to be “a person undertaking a course of educational study or instruction”. Undergraduates and other persons looking to obtain or maintain an academic or

professional qualification are all students receiving education.

According to HMRC, education is “a course, class or study in any subject, whether or not the subject is normally taught in schools, colleges and/or universities and regardless of where and when it takes place”.

In the right context, a conference delegate attending a College for an event can be viewed as a student, but this is not a given. Also, visiting academics will not always be attending a College for an educational event thereby enabling exemption to be applied.

Getting the VAT treatment wrong can result in error correction assessments, interest and penalties. Accordingly, good practice dictates that any exemption applied should be supported by a signed declaration provided by the customer even though such declarations are not legally required.

Declarations should be regularly reviewed and kept up to date. If a College uses a certificate that has not been reviewed for some time, we would be pleased to check the wording to ensure that the legislative provisions are correct and that there are suitable provisions in place to fully protect the College should any claim for exemption prove to be invalid.



Pensions update

A potential issue for employers with a defined benefit pension scheme has come to light following a recent well publicised legal case of Lloyds Banking Group Pension Trustees and Lloyds Bank PLC.

This could potentially lead to increased liabilities having to be recognised by the employer. Actuaries should be flagging this to you and including any potential liability in their report.

In the Lloyds case the court decided that due to a disparity of benefits available to men and women there was an obligation to equalise benefits as far back as 1990.

This is initially a problem for employers, who will need to consider the implications for their financial statements for accounting periods ending on or

after the date of judgement. Initial guidance from the ICAEW (Institute of Chartered Accountants in England and Wales) suggest:

1. Where an employer has not previously provided for equalisation in the past the additional obligation is accounted for as a plan amendment on the date of judgement, being 26 October 2018. The charge is treated as a past service cost and is recognised in wages costs within the Statement of Comprehensive Income and Expenditure.
2. Where the employer has previously recognised a provision, the outcome of the court case assists in determining the prior year surplus or deficit and is accounted for as a revision of accounting estimate. Any loss would be recognised in Other Comprehensive Income.

Cyber security

More charities than ever before have taken positive steps to improve their cyber security according to the Cyber Security Breaches Survey 2019.

Amongst charities the biggest statistical shift in the survey has been how cyber security is viewed by Trustees and senior managers.

Phishing remains the most common form of attack. It is therefore critical to ensure that fellows and staff understand their role in protecting the College

and that they are aware of how to report a phishing email. The introduction of GDPR has influenced the sector's approach to cyber security through staff training and the introduction of new policies and procedures.

Colleges should ensure they have considered the cyber security threat and make sure they have policies and procedures in place as well as carrying out staff training where necessary to help minimise the risk of an attack.



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